Supporting Documents for the Education and Skills Bill

To help inform debate and provide further information on how it is intended that the delegated powers in the Education and Skills Bill will be used, the Department for Children Schools and Families and the Department for Innovation, Universities and Skills have prepared a number of supporting documents. These either take the form of indicative Regulations, indicative Directions or policy statements and can be read alongside the Delegated Powers and Regulatory Reform Committee Memo.

The supporting documents are annexed in the order they broadly relate to clauses in the Bill:

Part 1
1. Delegated powers in relation to the central duty to participate
2. Delegated powers in relation to full time occupation and relevant education or training
3. Delegated powers in relation to employers
4. Delegated powers in relation to parents – parenting contracts and parenting orders
5. Delegated Powers in relation to the enforcement system

Part 2
6. Clause 55 - Connexions Services: draft specifications for local education authorities

Part 3
7. Delegated Powers in relation to the Adult Skills provisions
8. The Adult Skills (Specified Qualifications etc.) Regulations 200X

Part 4
9. Policy statement for Clause 77 - Independent Educational Institutions
11. Policy statement for Clause 83 - Application for registration by independent educational institutions
12. Policy statement for Clauses 91 and 92 – Independent inspectorates
13. Policy statement for Clause 93 - Inspection intervals
14. Policy Statement for Clause 97 - The level of independent educational institution inspection fees and the payment of such fees at specified times.
15. Policy Statement for Clause 99 - The manner in which inspection reports on educational establishments may be published.
17. Policy statement for Clause 109 - Provision of information by proprietors.
18. Policy statement for Clauses 114 and 115 – Prohibition on participation in management and appeals against directions made under clause 114.
19. Policy statement for Clause 118 - delegated powers in relation to providers of independent education or training for 16 to 18 year olds
21. Indicative Regulations for Clause 128 and 129 - The Education (Non-maintained Special Schools) (Withdrawal of Approval) Regulations 2008

Part 5
23. Indicative regulations for Clause 135 - The Education (Provision for Improving Behaviour) Regulations 2008
24. Indicative regulations for Clause 146 - The Schools Forums (England) Regulations 2008
Annex

1. Delegated powers in relation to the central duty to participate – policy statement on the likely content of these regulations

Clause 53: delegated powers in relation to residency

53(2) allows regulations to provide for a person to be, or not to be, regarded as resident in England for the purposes of any provision of this Part. Clause 1 sets out that the new duty to participate applies to young people who are resident in England, so these regulations are necessary to help determine who is subject to the duty. In most cases it will be clear whether a young person is resident in England, but the regulations will provide for cases where there may be doubt. Regulations will set out circumstances in which a young person is to be treated as resident in England and therefore subject to the duty to participate, and circumstances where they should not.

It is likely that circumstances in which the regulations would treat young people as resident would include:

- Where a young person has recently arrived in the country and does not yet have formal residency status but is in any case now living here indefinitely – examples would be a young person whose family has moved to settle here, or a young person who has moved from another EU country to work.
- Where a young person has two homes, one of which is not in England (for example, their parents do not live together and they spend some time with each parent), but the majority of their time is spent at the home that is in England.

Circumstances in which regulations would be made to treat young people as not resident in England may include:

- Where a young person has their home in another country but works in England - for example they live in Scotland but travel over the border to work in England every day.
- Where a young person lives in another country but is temporarily in England – for example on a shopping trip, on a holiday, or visiting relatives.
- Where a young person has a home in England but is living abroad for a significant length of time – for example, volunteering or working
- Where a young person has two homes, one of which is not in England, and the majority of their time is spent at the home that is not in England.

Clause 3: delegated powers in relation to level 3 qualifications

Clause 1 defines the people who are subject to the duty to participate – a young person is no longer subject once they have achieved a level 3 qualification. 3(1) allows for regulations to list external qualifications and/or describe qualifications that will count as level 3 qualifications for this purpose. Our current intention is to include in these regulations A levels, the Progression and Advanced and extended Advanced Diplomas, Advanced Apprenticeships, and other qualifications that are accredited by the QCA or its
replacement as being level 3 qualifications (whether publicly funded or not), such as the International Baccalaureate Diploma Programme.

3(2) describes level 3 as being the level of attainment which in the Secretary of State’s opinion is demonstrated by 2 A levels, and creates a power to amend this description by substituting a different qualification for the reference to 2 A levels. We currently have no intention to use this power; it is a power to be held in reserve so that, should the qualifications system change in the future in such a way as to mean that the reference to A levels is no longer meaningful, a different description of level 3 could be substituted without recourse to primary legislation. Any order doing this would be subject to the affirmative procedure, because it changes primary legislation.

Clause 4: regulations in relation to the definition of full time education or training

One of the ways that young people can fulfil the duty to participate is by participating in appropriate full time education or training. 4(2) allows regulations to provide for a particular description of education or training, not provided at a school, to be treated as full time for the purposes of this section. No power has been created to regulate to define full time education in a school, since this is an established concept in relation to the existing requirement for children of compulsory school age to receive full time education. As set out in the Green Paper *Raising Expectations: staying in education or training post-16* in March 2007 and the *From policy to legislation* pamphlet in November 2007, our current intention is that these regulations would provide for education or training at an establishment other than a school (for example a college of Further Education, a work-based learning provider, a centre run by a voluntary organisation) for 16 hours per week or more to be treated as full time. However, we will consider how this interacts with other definitions of full time education and the requirements for example of the benefits and financial support systems, and consult interested parties before laying draft regulations. It is our intention to provide that home education should be treated as full time education, without specifying a number of hours.
2. Delegated powers in relation to full time occupation and relevant education or training (Chapter 1): likely content of regulations

Delegated powers in relation to sufficient relevant training

Clause 7: the relevant period

One of the ways in which a young person can fulfil the duty to participate is through full time occupation and part time education or training. To fulfil the duty this way they must be occupied for more than 20 hours a week and must participate in at least 280 hours of guided learning per year. Clause 7 creates the concept of a ‘relevant period’. This is the time period in which a young person who is fulfilling the duty through the work and training route must complete a certain amount of education or training – 280 hours in a year. The reason for creating this concept rather than simply stating on the face of the Bill that all young people participating in this way must do 280 hours in a year is that we need to allow for young people to change routes during the year, and so for situations in which they are participating in this way for less than a year and need to work out how much training to do in that time.

7(3) enables a date to be prescribed in regulations that will be the end date of a relevant period, in the same way that we prescribe the end of the school year, or the school leaving date. This is so that the relevant period can be a year for most young people, in the standard case where they start participating in this way immediately after ceasing to be of compulsory school age. For that reason we intend to prescribe the date that is the anniversary of the school leaving date, so that the period is exactly a year and it is easy in most cases to work out how much training much be completed in that time: 280 hours.

Clause 8: determining sufficient relevant training or education for different relevant periods

Regulations under 8(1)(b) will set out how the number of guided learning hours to be deemed sufficient relevant training is to be calculated in a relevant period which is not a year. Our intention is that the number of hours of guided learning should be the same proportion of 280, as the length of the relevant period is in proportion to a year. An example of this expressed as a formula might be something like ‘number of months in relevant period’/12 x 280. So for example, if the relevant period is 6 months, the amount of relevant training or education that would need to be completed would be half (6/12) of 280, so 140 hours.

Regulations under 8(4) will provide for hours of guided learning to be apportioned between relevant periods where a course does not begin and end within a single relevant period. Again our intention is that in most cases these regulations would provide for the number of hours of guided learning attached to a course to be apportioned between relevant periods in the same proportions as the amount of the course that falls into each relevant period. So, for example, if a young person is doing three months of a nine month
course in one relevant period and the other six months in another, one third of the hours of guided learning involved in that course should be apportioned to the first relevant period, and two thirds to the second. If the course was 300 guided learning hours, 100 would be deemed to be in the first relevant period, and 200 in the second. So if the first relevant period was a year, the young person would need to have participated in at least 180 hours of guided learning through another course for their learning to be deemed ‘sufficient relevant education or training’ for the purposes of the duty to participate. There might be exceptions to this: one example would be a course made up of two large and distinct blocks of training, one in each year. In this case it would make sense to assign the hours of each block to the year in which it fell. We will therefore provide for cases like this in the regulations too.

Delegated powers in relation to full time occupation and ways of working

Clause 5

One way of fulfilling the duty to participate is through full time occupation, if the young person is also participating in part time education or training. Full time occupation is defined as working for at least 20 hours per week under a contract of employment, but regulations may provide for other ways of working to count. Our intention at the moment is to provide for self-employment, voluntary work, and working as an office holder (for example as a police officer or a magistrate) to count for these purposes, as is set out on the face of the legislation, although we will consult others on whether there are other ways of working that do not involve a contract of employment and that should be included.

Regulations under 5(5) will determine whether a young person should be treated as working for 20 hours per week (enough to fulfil the duty to participate if combined with sufficient learning) where their working hours vary from week to week. Our intention is that a young person who has a contract of employment for a regular working pattern in which hours vary in a regular way between weeks but average at least 20 hours a week, should be treated as working for 20 hours per week. An example would be if a young person has a contract to work 15 hours every other week and 25 hours on the weeks in between, or a contract to work 100 hours per month. Only in these cases of predictable variation would someone who often works less than 20 hours per week be counted as doing so. Where a young person’s working hours vary in an irregular way from week to week such that often they work less than to hours per week, they should not be treated as working for 20 hours per week, even if, eventually, over the course of a year, their hours average more than 20 hours each week.

Clause 49

Clause 49(1) enables regulations to provide for who should be treated as the employer for the purposes of Part 1 of the Bill (for example for the purposes of
the duties on employers), in relation to the ways of working, prescribed under clause 5, other than under a contract of employment. Our intention is that:

- in relation to self-employment, no individual would be an employer
- in relation to volunteering the person in charge of the young person’s activity would be treated as employer for these purposes
- in relation to an office holder the person who directs the young person’s work would be treated as the employer for these purposes
- in relation to agency work – the agency would be treated as the employer for purposes of duty to check and both agency and end user having responsibility for duty to release

We expect that we will need to use the power to modify any of the provisions in this Part in a number of ways in order to ensure that the duties on employers apply in a sensible and meaningful way to the other ways of working. For example, the duties on employers in Chapter 3 would not apply to self-employment as this would not makes sense – if a young person who was self-employed was not participating in any learning the most appropriate route for action would be the system of enforcement against young people. In relation to volunteering, references to a contract of employment would be taken to refer to the volunteering arrangement. While in many cases the duty to arrange reasonable hours will not be meaningful as it is harder to see how the young person could be prevented from attending training in a voluntary arrangement. We will consider whether a modified version might be needed in some specific cases.

Regulations can be made under 49(2) to modify any provisions in relation to agency working. We have no specific intentions to make regulations here at the moment but will consider carefully how the provisions of clause 5 and chapter 3 apply to agency working, and review this as labour market evolves over next 6 years, and consider whether any modifications are needed.

**Clause 50 and 51**

These clauses enable regulations to be made modifying provisions in Chapter 1 in relation to crown employment, service as a member of the armed forces and employment as a member of House of Commons or House of Lords staff. Our intention is to use these regulations to provide for references in Clause 5 to ‘normal weekly working hours’ to have the same effect in practice for people working in any of these ways, so that if a young person is working in one of these ways for at least 20 hours a week they would count as being in full time occupation for the purposes of Clause 2.
3. **Delegated powers in relation to employers**

**22(2) and 28(3) - Financial Penalty**

*Delegated Powers*

When employing a young person who is subject to the duty to participate, employers have a duty to check that appropriate arrangements for training or education have been made. Clause 22 sets out that a local authority may issue an employer with a financial penalty if they have failed in this duty and the delegated power set out in 22(2) allows for the financial penalty that a local authority may require an employer to pay to be determined in regulations.

Clause 22(3) outlines the details of what must be included in the penalty notice and 22(5) allows the penalty notice to be varied in different circumstances.

If an employer is not providing education or training and are employing a young person for over 20 hours a week, then they must allow them time off to receive education or training elsewhere. If they fail to do this, they are liable to be issued with an enforcement notice by a local authority which lays out the steps the employer must take to vary the terms of employment and permit the employee to take time off. Clause 28 allows the local education authority to issue a penalty notice to an employer if they fail to comply with the requirements in an enforcement notice and the delegated power set out in 28(3) allows for the amount of the penalty an employer is required to pay to be set in regulations.

Clause 28(4) outlines the details of what must be included in the penalty notice and 28(5) allows the penalty notice to be varied in different circumstances.

*Policy Intention*

The penalties outlined in clauses 22 and 28 are necessary to provide an appropriate disincentive to employers who ignore their responsibilities and ultimately a recourse against them that does not involve the courts. The allowance for variation in the penalty will make it possible for the amount to increase for subsequent penalties, and for the length of time they are unpaid.

This part of the Bill will not be enacted until 2013 so it would be premature to set the amount of the penalty now, this many years in advance. It is necessary to specify the amount of financial penalties like this in secondary legislation in order to allow them to be altered in response to changing costs, without having to amend primary legislation.

The employer will not be issued with a penalty notice if they can demonstrate that they have taken all reasonable steps to ascertain that the young person has made appropriate arrangements and they have enabled them to take
advantage of them. It will be possible to have different amounts payable in both the penalty notices so they can be varied, for instance, according to the time by which they were paid and/or, if it is a first or a repeat offence. Regulations will go into further detail, but will ensure that a sensible and flexible enforcement system is in place.

We would want to consult thoroughly on the most appropriate level of penalties and it would not make sense to commit to an exact penalty here. There may be other penalties employers are liable for, which we can look to, to get an idea of a rough equivalence.

We envisage that the initial penalty for failing to check a young person is enrolled in education or training should be around £200. There should then be a staggered set of higher penalties moving up in scale according to how many times an employer has committed the offence. This would mean the initial penalty was similar to the maximum level 1 fine a young person can receive a Youth Court.

The penalty for failing to follow the terms of an enforcement notice should be greater than that for failing to check a young person is enrolled in provision, as the offence is of a more serious nature. The employer will be preventing a young person from attending education or training and ignoring the terms of the enforcement notice issued by a local authority. We would want to consult on whether the penalty for this should be on a sliding scale, taking into account the number of employees affected, whether or not it is a repeat offence, the size of the business and other relevant factors. An example of a similar set of regulations we could look to would be for the Immigration and Asylum Act 2006. This brings into law a new civil offence relating to employing illegal immigrants. Regulations came into place in February 2008 stipulating that breaking this law would carry a fine of up to £10,000, at the discretion of the Secretary of State.

We are clear that employers need to be held accountable for their duties, but it is important that the system is fair, if this duty and this policy is to be respected by employers. We believe this strikes the right balance between providing a penalty that is proportionate to the offence without being so excessive that it dissuades employers from taking on 16 and 17 year olds, and so curtails young people’s choice of activities. We will of course fully consult on the penalty, including with employer groups, to make sure that when they are fully appropriate.
4. **Delegated powers in relation to parents – parenting contracts and parenting orders**

Parents will be expected to help and encourage their children to participate. When a young person is not participating and a parent may be part of the problem, the Bill gives local authorities the power to enter into a parenting contract or apply for a parenting order.

Clause 38(2) provides a power for the Secretary of State to make further provision in regulations about the exercise by local education authorities of their functions in relation to parenting contracts and parenting orders.

These are highlighted in the Bill as including –

(a) regulations limiting the powers of local authorities to enter into parenting contracts or apply for parenting orders
(b) regulations requiring local authorities to consult with each other before acting
(c) regulations requiring local authorities to provide each other with information
(d) and regulations as outlining how the costs are to be met

These matters relate to a level of operational detail that is more appropriate to be covered in secondary legislation and create a power that is precisely analogous to that already found in section 22A (1) of the Anti-social Behaviour Act 2003. The relevant parts of this act relate to the issuing of parenting contracts and orders to parents of young people for their non-attendance and poor behaviour pre-16, attendance post-16 and also to parents of young people who have been behaving anti-socially.

Parenting Contracts and Parenting Orders are measures that already exist and the provisions in this Bill are modelled on the Anti-social Behaviour Act 2003. Regulations have already been made under the equivalent provisions in that legislation and the intention is for those made here to be similar. Essentially, they

1. Limit the power of local authorities to enter into a parenting contract or apply for a parenting order where the school or young person involved are outside of the authority. This is to prevent Parenting Contracts or Parenting Orders being entered into simultaneously by two authorities.

2. Create a duty so that where more than one body has power to enter into a parenting contract or to apply for a parenting order, they must consult one another and provide any information which may be of relevance. This is to ensure that when deciding whether to enter into a parenting contract or apply for a parenting order, a local authority has all the information necessary to make an informed decision.

3. Provide for the cost associated with the requirements of Parenting Contracts or Parenting Orders to be borne by the relevant body making taking
action, but allow for them to be recovered from another relevant body by agreement. This is to ensure that where local authorities decide to act, even when the young person resides outside of their area, there is no confusion as to who initially meets the costs.

In summary, the reason for the regulation making powers is to make sure the system is flexible enough to respond where a local authority wishes to apply for a Parenting Contract or Parenting Order and the young person or their parents reside outside the authority.

The relevant regulations for the Anti-social Behaviour Act 2003, are set out below. Changes will have to be made to these as they reference the involvement of schools in the process, which will not play a part in the delegated powers under Clause 38(2). Apart from this notable difference we expect the regulations to be almost the same.

**Current regulations relating to Section 22A (1) of the Anti-social Behaviour Act 2003:**

The relevant regulations have been copied below, but the full document can be found at:


Limit on the power of a local authority to enter into a parenting contract or apply for a parenting order

7.—(1) Except in a case mentioned in paragraph (3), a local authority may not enter into a parenting contract or apply for a parenting order where the school by reference to which the contract would otherwise be entered into or the application would otherwise be made (“the school in question”) is not in the area of the authority.

(2) Except in a case mentioned in paragraph (4), a local authority may not enter into a parenting contract or apply for a parenting order where the child by reference to whom the contract would otherwise be entered into or the application would otherwise be made (“the child in question”) does not reside in the area of the authority.

(3) A local authority may enter into a parenting contract, or apply for a parenting order, where the school in question is not in the area of the authority where—

(a) the authority has an agreement with the local authority where the school in question is situated that the first authority may enter into a parenting contract or apply for a parenting order in the circumstances; or

(b) the child in question resides in the area of the authority and he has been permanently excluded.

(4) A local authority may enter into a parenting contract or apply for a parenting order where the child in question does not reside in the area of the authority if—

(a) the school in question is in the area of the authority; and

(b) the child—

(i) is a registered pupil at the school; or
(ii) has been permanently excluded from the school, where the authority has an agreement with the local authority where the child in question resides that the first authority may enter into a parenting contract or apply for a parenting order in those circumstances.

Duty to consult

9. Where in any case more than one relevant body has power to enter into a parenting contract or to apply for a parenting order, a relevant body proposing to exercise the power must consult each other relevant body.

Provision of information

10.—(1) Where a relevant body (“A”) proposes to enter into a parenting contract or apply for a parenting order they must, in relation to that entry or application, request information from any other relevant body (“B”) in relation to the child by reference to whom the contract is proposed to be entered into or application for the order made as is reasonably necessary to enable them to—
(a) decide whether or not to enter into such contract or make such application (as the case may be);
(b) avoid the entry into a parenting contract or application for a parenting order (as the case may be) where a parenting contract or parenting order exists in relation to that child or the entry into a parenting contract or application for a parenting order is pending; and
(c) make an informed decision about the terms of such a contract or the content of the application (as the case may be) with a view to the most appropriate contract being entered into or order being made in all the circumstances of the case.
(2) B must, on receipt of a request under paragraph (1), provide to A such information in its possession or control as may be reasonably necessary for the purposes set out in paragraph (1).
(3) Where A makes a request for information pursuant to paragraph (1), they may disclose to B such information as may be reasonably necessary to enable B to fulfil their duty under paragraph (2).

Costs of parenting order or parenting contract

11.—(1) The costs associated with the requirements of parenting orders or the costs associated with parenting contracts, including in each case the costs of providing counselling or guidance programmes, must be borne by the relevant body making the application or entering into the contract.
(2) A relevant body may recover the costs they incur under paragraph (1) from another relevant body by agreement.
5. **Delegated Powers in relation to Chapter 5**

The focus of the policy to raise the participation age is on galvanising the whole system into making sure there is a suitable, worthwhile learning opportunity for every young person and ensuring they get the support they need to access these opportunities. If the requirement on young people is to be taken seriously there must be a means of enforcing it if necessary. The enforcement system is designed as a deterrent and should only ever be used as a last resort. We would expect it only to be used in a very small number of cases.

The new requirements and the associated enforcement process will not come into force until 2013 and we want to take the time to get the regulations and guidance right. We will consult fully on the detail of proposals before drawing up regulations. We will also issue guidance to local authorities and panels to assist them in fulfilling their roles.

The following sets out some of our initial thoughts in relation to attendance notices, attendance panels and penalty notices, which we would want to develop further and consult on.

**ATTENDANCE NOTICES**

The purpose of an attendance notice

The Bill sets out that the attendance notice will specify education or training such that, by participating in it, the young person would fulfil the duty to participate. It will specify the place(s) and time(s) at which the person is required to attend, and the person(s) to whom they must present themselves. It will also state the period for which the notice has effect and the consequences of failing to comply with any requirement imposed by the notice.

Regulations under 40(6), 40(7) and 40(8) enable us to set out what further details of education and training should be specified, what details of a contract of apprenticeship should be stated and what other matters should be covered in the attendance notice.

**Delegated power (clause 40(6)): prescription of the details of the contract of Apprenticeship to be specified in the attendance notice**

It would be unlikely that an Attendance Notice would specify an Apprenticeship. Realistically, it could only happen where a particular employer has offered an Apprenticeship place to a young person – and has not withdrawn the offer when the young person refused to participate. This seems unlikely, even if we must allow in law for the possibility. Should it ever happen, details that we are likely to require through regulations that it must specify might include:
The regulations and directions in this document are indicative only.

- The industry
- The employer or contract holder
- The qualifications it leads to
- The modules it will cover and/or expected learning outcomes
- The wage and paid holiday entitlement

This list is not definitive or exhaustive.

**Delegated power (clause 40(7)): further details to be prescribed on the description of education or training in the attendance notice**

Clause 40(7) provides a delegated power to make regulations to prescribe the requirements, relating to the description of education or training, which may be specified in the attendance notice.

The intention is to use the regulation-making power in 40(7) to specify other requirements such as equipment or clothing.

**Delegated power (clause 40(8)): other matters to be prescribed that the attendance notice must state**

These may include, for instance:

- The level of the course
- The modules it will cover and/or expected learning outcomes
- The qualification(s) it leads to
- Whether it is full-time or part-time and if part-time, how it fits with the young person’s full-time employment
- When it begins and when it ends
- Who to contact to obtain information
- The appeals mechanisms and the process for this
- What constitutes a defence to not meeting the terms of the attendance notice – such as meeting the requirement to participate in another way
- The support available to the young person, particularly the local Connexions service and other relevant local authority services
- How the terms of the attendance notice may be varied and the process for this

This list is not definitive or exhaustive.

**Delegated power (clause 44(5) and 44(6)): variation of attendance notice**

Clause 44(5) allows regulations to set out those matters specified in the attendance notice which may be varied by the local authority issuing the notice. The intention is for the local authority to be given flexibility to make minor variations of the attendance notice without having to every time return to the attendance panel, or get the written consent of the individual...
concerned. This would include, for instance the name of the individual that the young person must report to, if there is a change of staff.

Clause 44(6) provides a power to make regulations to allow for other matters specified in an attendance notice to be varied only with either the written consent of the young person concerned, or if this could not be obtained, with the consent of the attendance panel. These would cover more significant matters, such as:

- The education or training specified (e.g. from engineering to literature)
- The setting (e.g. from full-time to part-time, or from college to school or work-based learning or other)
- The time or day of the course
- The learning provider

The panel would have guidance on whether to allow the variation.

We may under 44(6)(b) specify the procedure that the attendance panel should follow in relation to giving consent.

ATTENDANCE PANEL

The function of an attendance panel

The role of the attendance panel is:

- To hear appeals against attendance notices and fixed penalty notices for breaches of attendance notices
- To act as an additional safeguard in the enforcement process, to ensure that young people cannot enter or progress in the process inappropriately – for example if they have not been provided with appropriate support or a suitable opportunity to participate, or if they have a good reason for not participating

We will make regulations under 42(1), 43(3) and 48(3) setting out how panels must be constituted and the procedure for hearing appeals.

Delegated power (clause 42(1)): membership of the panel

We intend to use the delegated power in clause 42(1) to prescribe in regulations how an attendance panel is to be constituted – including who and how many members may sit on it.

Our intention is that the local authority would establish a pool of potential panel members by advertising. The pool would include some people with a background and expertise in either education or the support professions, who have experience and understanding of the education system. This might be similar for example to the requirement for school admissions appeals panels to include at least one person with experience in education who is acquainted
with educational conditions in the area, or who is the parent of a registered pupil.

Panel members would receive fairly brief training. This would include, for example, the law and regulations in the education and support systems, and the expectations of them in interacting with young people coming before the panel (this list is not exhaustive). Some people in the pool would be designated Chairs and receive additional training.

Each panel would consist of three people: the independent Chair, at least one person with a background in education or support, and one other panel member. We could consult on whether there should be provision for the panel to be larger in complex cases.

It would be important to try to ensure a diverse mix of panel members (race, gender, faith if appropriate, etc), as far as practicable, to reflect the local area. There are similar provisions in relation to school admissions appeal panels.

Our intention is that there will be restrictions on who may be panel members. The following will be excluded:
- any person employed by the local authority or an educational institution in question
- any person whose ability to act impartially in relation to the authority or the educational establishment might reasonably be doubted
- any person who does not satisfy the training requirements
- any person involved in making the decision being appealed against.

**Delegated power (clause 42(1)): operation of the panel**

In addition we intend to use the delegated power in clause 42(1) to set out how the panel is to operate. We would expect the following:
- There would be a clerk or administrative support to the panel, provided by the local authority
- We would consult on the basis that panel members should be volunteers and as such should only be paid expenses, and could ask whether they should also be able to be compensated for any loss of earnings
- There would be no expectation of formal legal representation, but the young person should be allowed and invited to bring someone with them
- The panel should be convened as necessary by the local authority – regular times might be provisionally held so that panel members would know when they would be required
- The panel should make decisions promptly

There will be further guidance to local authorities on how attendance panels should be set up, which will also set out our expectation that the hearing should be informal – not like a court setting.
**Delegated powers (clauses 43(3), 48(3)): procedure in relation to appeals**

Clause 43(3) provides a power to set in regulations the arrangements in relation to appeals to attendance panels against attendance notices. Clause 48(3) provides a power to make provision about the making of appeals against penalty notices. We intend to use these powers to prescribe the procedure on appeals and the powers of the attendance panel in relation to these appeals.

We would expect the panel to review documents relating to the case in advance of the hearing and invite both the local authority and the young person to submit evidence.

At the hearing, the panel should invite both the local authority and the young person to give evidence. For the local authority, this may involve people from different services. The people to be invited might be different at different stages of the enforcement process depending on how much involvement they have had in the case, and guidance will assist panels in considering who they should invite.

The panel will make a prompt decision whether to confirm or dismiss the attendance notice or fixed penalty notice, and notify both the young person and the local authority of its decision. It will also be able to make recommendations to the local authority, and again these should be notified to both parties.

The panel should keep a record of its proceedings and decisions.

The regulations about the procedure in relation to appeals are likely to include a time period within which an appeal should be heard and a decision is notified.

**Delegated powers (clause 46(6)): restrictions on proceedings for offences under section 45 of failure to comply with an attendance notice**

We intend to use the power provided under clause 46(6)(a) to secure in regulations that, before the panel makes a recommendation to the local authority that the proceedings should be instituted, the young person has an opportunity to make representations to the panel.

We may under 46(6)(b) specify the procedure that the attendance panel should follow in relation to making a recommendation to the local authority.
PENALTY NOTICES

The function of a penalty notice

A penalty notice offers a way of discharging any liability for the offence of failing, without reasonable excuse, to comply with the requirements of the attendance notice.

Where a young person is given a penalty notice, they cannot be prosecuted for the offence until after the final deadline for payment has passed, and cannot be convicted of that offence if they pay the penalty.

Any prosecution would be for the offence to which the notice relates, rather than for non-payment of the notice.

Our intention is that they would operate similarly to penalty notices for parents of children of compulsory school age.

Delegated power (clause 47(4)): the operation and administrative details of the penalty notice

The intention is to used the delegated powers provided by clause 47(4) to make provision as to:

- The form and content of penalty notices
- The amount of any penalty and the time by which it is to be paid
- The methods by which penalties may be paid
- The records to be kept
- The withdrawal of a penalty notice or it ceasing to have effect
- Action to be taken if the penalty is not paid
- Codes of conduct

The form and content of penalty notices

We would expect a penalty notice to contain the following information:

- the name and address of the young person;
- the grounds for issuing the notice
- the amount of the penalty which is to be paid and details of the varying amount to be paid according to the specified time within which it is paid the name and the address of the local authority to which the penalty is to be paid and to which any correspondence relating to the penalty notice may be sent;
- the method or methods by which payment of the penalty may be made
- the period for paying the penalty;
- a statement that payment within that period will discharge any liability for the offence;
- the consequences of the penalty not being paid before the expiration of the period for paying it; and
• the grounds on which the notice may be withdrawn.

This list is not exhaustive or definitive.

**The amount and payment of a penalty and action to be taken if it is not paid**

We would want to consult on what the amount of the penalty and the period for payment should be. The figure of £50 has been mentioned by previous Secretary of States, although we would want to consider this more fully.

The penalty would be payable to the local authority who had issued the notice.

The local authority would issue a certificate to the effect that the recipient of a penalty notice had or had not paid the amount due on or before a date stated in the certificate. This would be admissible in evidence in any legal proceedings and would be evidence of the matters stated in it.

The notice would state the consequences of not paying the penalty, where the notice is not withdrawn. This would be that the local authority may prosecute for the offence of failing to comply with the terms of the attendance notice. The notice would explain how a young person would be summoned and what legal assistance may be available.

**The records to be kept in relation to penalty notices**

We would expect a local authority to keep records of penalty notices and for this to include:

• a copy of each notice issued;
• a record of all payments made and on what dates;
• whether the notice was withdrawn and on what grounds; and
• whether the recipient was prosecuted for the offence for which the notice was issued.

We will also consider what information in respect of penalty notices that a local authority may be required to supply to the Secretary of State. This will be important in order to monitor whether local authorities are using their enforcement powers appropriately or not.

**Withdrawal of penalty notices or ceasing to have effect**

We would expect local authorities only to withdraw a penalty notice where:

• it ought not to have been issued i.e. where it has been issued outside the terms of the local code of conduct or where no offence has been committed; or
• it has been issued to the wrong person; or
• it contains material errors.
We could consult on whether there would be other instances where a penalty notice could cease to have effect.

A local authority could decide that it ceased to have effect if a young person decided to participate.

If a penalty notice were withdrawn or ceased to have effect, then this would prohibit the institution or continuation of proceedings for the offence to which the notice relates.

In the case where payment had been made for a penalty notice, and that notice is then withdrawn, the local authority would be responsible for prompt repayment of any amount paid.

**Codes of conduct in relation to the giving of penalty notices**

The local authority would be responsible for drawing up a local code of conduct after consulting, to ensure smooth administration and operation of the scheme as well as consistency, fairness and transparency in the way penalty notices are applied. We would expect for it to set out, for instance:

- means of avoiding the issue of duplicate penalty notices;
- measures to ensure that a penalty notice is not issued when a prosecution for that particular offence is already being planned or is underway;
- when it will be appropriate to issue a penalty notice for an offence;
- arrangements for co-ordination with neighbouring local authorities where appropriate

**Delegated power (clause 52(2)): use of sums**

Our intention is that the local authority will be able to retain any sums received in payment of penalty notices to cover the costs of issuing or enforcing notices, or the cost of prosecuting recipients who do not pay. Any surplus must be surrendered to the Secretary of State.
6. Clause 55 - Connexions Services: draft specifications for local education authorities

Access to advisers

Local education authorities must provide all 13-19 year olds and 20-24 year olds with a learning difficulty with reasonable face-to-face access to a Personal Adviser to provide information, advice, guidance, advocacy and brokerage (including brokering access to targeted youth support services).

Minimum qualifications for Advisers

As a minimum each personal adviser must have or be actively working towards an NVQ level 4 (or equivalent) in a relevant discipline and have undertaken relevant appropriate assessment training.

The Connexions Brand

Local education authorities must ensure services are presented through the Connexions brand.

Specified levels of contact with, and support for, particular target groups of young persons and relevant young adults.

Local education authorities must contact promptly all young people and relevant young adults (20-24 olds with a learning difficulty) who are known to have become Not in Education, Employment or Training (NEET), and are known to have left learning or who are expected to leave learning shortly.

Local education authorities must maintain regular contact with young people and relevant young adults who are at risk of becoming NEET. This might include, for example, those with particular barriers to engagement, who have had previous spells of inactivity, or who are in temporary employment.

Local education authorities must offer tailored packages of support to all young people and relevant young adults who are NEET or at risk of becoming so, and maintain contact until re-engagement in work or learning is re-established.

Connexions relationship with Connexions Direct remote services provide pursuant to Clause 59

Local education authorities must maintain an effective working relationship with the national Connexions Direct Service – in particular to ensure that the support provided by Connexions Direct accurately reflects and complements the information, advice and guidance provided in each local authority area.
Types of service: Activity Agreements

Local Authorities must provide support services to those in receipt of JSA as specified in an Activity Agreement\(^1\). (Note: this programme is being developed and will not be introduced before April 09.)

Information systems: Maintenance of a Client Management System

Local education authorities must have in place a robust client management system and client tracking arrangements that meet the Client Caseload Information System (CCIS) specification\(^2\).

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7. **Delegated Powers in relation to Part 3**

**Clause 71 of the Education and Skills Bill amends the Learning and Skills Act 2000 (LSA 2000) to insert new sections and an additional Schedule.**

**Background**

The Leitch Review of Skills highlights that the skills base in England is not world class and may, if urgent and serious steps are not taken to improve the position, undermine the UK’s long term prosperity. The report recommends that the Government’s priority should be to ensure that more people achieve ‘functional’ literacy and numeracy skills and a new target has been set to ensure 90% of the population in England have qualifications at Level 2 or higher by 2020.

There are currently 6.2 million adults in the workforce without a full Level 2, 5.2 million adults aged 16-65 with literacy levels below Level 1 and 6.8 million aged 16-65 with numeracy levels below Entry Level 3. In many other countries, much larger numbers of young adults achieve Level 2 and 3 qualifications between the ages of 19 and 25. In this country, by contrast, there is at present a sharp divide at the age of 19.

We want to send a clear message that the Government are committed in the long term to helping the low skilled so that they can gain sustainable employment and gain the skills needed to function effectively to improve their everyday lives. In delivering on these priorities for this client group, the Government is determined to ensure that all barriers to improving skills are removed; this includes financial barriers, so the Government will ensure provision is free for priority learners. We also want to close the gap between qualification levels in this country and abroad.

Under current administrative arrangements individuals undertaking adult literacy, numeracy or full Level 2 courses do not have to pay tuition fees. It is now proposed to give this administrative arrangement legislative backing. The legislation will also apply to those learners aged 19 and up to 25 undertaking their first full Level 3 qualification.

**Policy Statement (1) - Power to amend categories of qualifications**

*The Power*

Schedule 1A provides the learning aims for persons aged 19 and over. This includes the categories of qualifications to which clause 71 will apply i.e. Level 1 literacy, Entry Level 3 numeracy, Level 2 and Level 3. Paragraph 9 of the Schedule includes a power to amend the Schedule by order primarily by adding or removing categories of qualifications. This power includes a power to remove every category of qualification.
Given that the power to amend would substantially alter primary legislation, it is proposed that it will be subject to the affirmative resolution procedure. This means a draft of the order amending the schedule would have to be laid before Parliament and consent obtained before it can be made.

Policy Intention

The policy intention behind this is to allow different categories of qualifications to fall within the duty to secure provision of proper facilities and the tuition fee duty, according to identified needs. The Government are committed to the long term ambitions as set out in World Class Skills, and our plans for the current spending review period build in projections of the effect of this legislation on increasing learner demand. We would expect the provision to amend the categories of qualifications to be used in one of four ways:

I. If, following good progress against our World Class Skills ambitions, the Secretary of State considered there was no longer a need to support skills at a particular level, then this category of qualification could be removed, subject to Parliamentary approval. This might happen if we had reached our 2020 vision of having more than 90% of the population with qualifications at Level 2.

II. Alternatively, the Secretary of State may consider it would be appropriate to bring other categories of qualifications within scope. This might happen (assuming that sufficient long term funding could be committed) if the Secretary of State wanted to target, for example, Level 4 qualifications for specified learners.

III. Alternatively, the Secretary of State may want to amend the titles of existing categories of qualifications. For example, work is being done to consider whether functional skills qualifications currently in development could be offered to adults and whether they should replace Skills for Life qualifications in the future.

IV. Finally, the power to remove all categories of qualifications in the Schedule would only be used in exceptional circumstances and we do not intend to exercise this power otherwise. However, it is only prudent to have a safety valve so that the Government can respond quickly to changing patterns of behaviour in what will be a fully demand-led system after 2010.

Policy statement (2) - Power to amend the age referred to

The Power

Clause 71 inserts a new section 4B into the Learning and Skills Act 2000. Section 4B places a duty on the Council to secure that a course of study for a relevant qualification is free to learners at certain ages. Subsection 4B(2)(a) will apply to learners who have attained the age of 19 and who are undertaking a specified Level 1 literacy, Entry Level 3 numeracy or a first full
specified Level 2 qualification. Subsection 4B(4)(a) will apply to learners aged 19 up to 25 who are undertaking their first full specified Level 3 qualification. New section 4B(6) includes a power to amend subsections 4B(2)(a) and 4B(4)(a) by order to insert different ages for the purposes of this duty.

This power is subject to the affirmative resolution procedure so Parliament’s consent would need to be obtained before it can be exercised.

Policy Intention

The Bill states that free tuition will apply to adults over the age of 19. The ability to amend the age range allows for flexibility according to future skills gaps as they are identified in coming years.

Ensuring free tuition for young adults aged over 19 up to 25 seeking their first full Level 3, gives those in this age group a chance to finish their education and progress into higher education or a career. Learners in this age group are more likely to study full-time and less likely to have an independent source of income, compared to older learners over this age.

The power to amend the 19 up to 25 age range would be used where this new legislation, or other policies, had enabled the policy goal to be achieved. Where future evidence showed that there was no longer a skills gap in this age group then it is possible that we may wish to remove the provisions or instead refocus resources towards a different age group that had been identified as being in greater need of additional support.

It is also possible that we would need to amend the age ranges in the future so that we do not to tie ourselves to a commitment that we cannot meet and so we have built in added flexibility through this power to amend.

Policy Statement (3) – Payment of tuition fees

The Power

The new section 4B requires that in respect of courses of study for a qualification to which the Schedule applies, these should be free to qualifying persons. Courses will usually be free to a person if no tuition fees are payable by a body other than the Council. There is however, a regulation-making power at subsection 4B(7)(b) to allow the Secretary of State to specify a further body as responsible for paying tuition fees such that a course is free to a person.

Policy Intention

The LSC is the primary funding agent for Further Education. The intention of the Bill provisions is that fees for an individual should be payable by the LSC so that specified courses are free to specified individuals. However, it is
considered necessary to include this power to cater for any exceptional circumstances where another body may be liable for the payment of the fee on behalf of an individual. This is not a power that we envisage exercising unless a particular exceptional circumstance comes to our attention. Its inclusion in the Bill is merely a safety net.
The Secretary of State for Innovation, Universities and Skills, in exercise of the powers conferred by sections 4A, 4B, 4C and paragraph 3 of Schedule 1A of the Learning and Skills Act 2000(3), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Adult Skills (Specified Qualifications etc.) Regulations 200X and come into force on XXXX.

Interpretation and application

2.—(1) In these Regulations
   “the Act” means the Learning and Skills Act 2000;
   “an education or training provider” means any body which provides courses of study for qualifications specified in these regulations;
   “the Schedule” means Schedule 1A to the Act;
(2) These regulations apply in relation to England.

(3) 2000 c. 21; sections 4A, 4B and 4C and Schedule 1A were inserted by section 70 of the Education and Skills Act 200X.
Level 1 literacy qualifications

3. [Paragraph 3(1) of Schedule 1A.] For the purposes of paragraph 1(a) of the Schedule a specified qualification in level 1 literacy is the Level 1 Certificate in Adult Literacy.

Entry level 3 numeracy qualifications

4. [Paragraph 3(1) of Schedule 1A.] For the purposes of paragraph 1(b) of the Schedule a specified qualification in entry level 3 numeracy is the Entry Level 3 Certificate in Adult Numeracy.

Vocational qualifications at level 2

5.—(1) [Paragraph 3(1) of Schedule 1A.] For the purposes of paragraph 1(c) of the Schedule, a specified vocational qualification at level 2 is a qualification which is assessed by the Council to be at the level of attainment specified in paragraph 6 of the Schedule;

(2) The Council must make a list of specified qualifications available to the public(4).

Qualifications at level 3

6.—(1) [Paragraph 3(1) of Schedule 1A.] For the purposes of paragraph 2 of the Schedule, a specified qualification at level 3 is a qualification which is assessed by the Council to be at the level of attainment specified in paragraph 7 of the Schedule;

(2) The Council must make a list of specified qualifications available to the public(5).

Persons to be treated as not having a specified qualification

7.—(1) [Section 4C(1)] A person is to be treated for the purposes of section 4A or 4B of the Act as not having the qualification specified in regulation 3 if that person—

(a) is assessed in accordance with regulation 8 as having literacy skills below the level of attainment demonstrated by the qualification specified in regulation 3; and

(b) has been awarded on a previous occasion either—

(i) the qualification specified in regulation 3; or

(ii) a qualification (including one awarded by a person outside England) which appears to the Council to be at a comparable level to or higher level than the qualification specified in regulation 3.

(2) A person is to be treated for the purposes of section 4A or 4B of the Act as not having the qualification specified in regulation 4 if that person—

(a) is assessed in accordance with regulation 8 as having numeracy skills below the level of attainment demonstrated by the qualification specified in regulation 4; and

(b) has been awarded on a previous occasion either—

(i) the qualification specified in regulation 4; or

(4) “The Council” is the Learning and Skills Council for England (see section 1 of the Act). The Council’s list of specified qualifications at level 2 is available on the Council’s website at www.lsc.gov.uk [N.B. This link is to the general website. It will be updated to point to the specific part of the site].

(5) The Council’s list of specified qualifications at level 3 is available at www.lsc.gov.uk [N.B. This link is to the general website. It will be updated to point to the specific part of the site].
(ii) a qualification (including one awarded by a person outside England) which appears to the Council to be at a comparable level to or higher level than the qualification specified in regulation 4.

Assessment of skill level

8.—(1) [Section 4C(4)] For the purposes of regulation 7 an education or training provider may assess whether a person has a skill level below the level of attainment demonstrated by the qualifications specified in regulations 3 and 4;

(2) For the purposes of performing the function in subparagraph (1) an education or training provider may select a test, assessment or tool.

Tuition fees

9. For the purposes of section 4B(8) of the Act, “tuition fees” include—

(a) the costs of any examination for a qualification specified in regulations 3 and 4;

(b) the costs of any assessment under regulation 8.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first to be made under sections 4A, 4B and 4C of the Learning and Skills Act 2000 ("the 2000 Act"). These sections were inserted by section 70 of the Education and Skills Act 200X.

Paragraph 3(1) of Schedule 1A of the 2000 Act ("the Schedule") contains a regulation-making power for the Secretary of State to specify external qualifications, or descriptions of such qualifications for the purposes of paragraphs 1 and 2 of the Schedule. Regulations 3, 4, 5 and 6 set out what constitute specified qualifications.

Section 4C(1) of the Act contains a power for the Secretary of State to specify circumstances in which, despite having a specified qualification, a person is to be treated for the purposes of sections 4A and 4B as not having that qualification. Regulation 7 sets out persons who are to be treated as not having a specified qualification. This enables persons who have obtained a specified level 1 literacy or specified entry level 3 numeracy qualification but who have since lost the skills at the relevant level, to take a further course of study to obtain the qualification again.

Section 4C(4) of the Act contains a power, for the Secretary of State to confer a function on a specified person, or description of persons, concerning the administration of an assessment. This power is exercised in regulation 8. For the purposes of assessing whether a person has a skill level below that specified for level 1 literacy and entry level 3
numeracy, education or training providers are given a discretion as to the means by which they assess skill levels.

For the purposes of the duties in respect of tuition fees in section 4B, “tuition fees” in relation to a course means the fees charged in respect of the course by the person providing it. However, under section 4B(8)(b), the Secretary of State has the power to specify fees in respect of other matters relating to the course which will also constitute "tuition fees" for these purposes. Regulation 9 sets out that the cost of an examination for a specified level 1 literacy qualification and specified entry level 3 numeracy qualification will also be "tuition fees" for these purposes.
9. **Policy statement for Clause 77 - Independent Educational Institutions**

Clause 77 introduces a new definition of ‘independent educational institution’, which includes independent schools and other educational institutions which provide part-time education. This has the effect of extending the regulatory regime that applies to independent schools to independent providers of part-time education.

The new definition is only intended to capture settings which are the main provider of a child’s education and which otherwise would not be subject to any regulatory or monitoring framework. It will apply to institutions which offer 12.5 hours a week for primary age and 15 hours for secondary age pupils for at least 28 weeks in an academic year.

It is not our intention to include provision which is not the main provider of a child’s education. The following types of provision are not covered by the definition:

- Temporary provision which does not meet the minimum threshold of 12.5 hours or 15 hours a week or is conducted for less than 28 weeks in an academic year e.g. summer schools
- Provision which is not an institution e.g. education supervised or delivered by parents

Further, sub clause 77(3)(a) enables exemptions to be made through regulations. We anticipate that the following types of provision will be excluded in regulations:

- Provision which is undertaken in addition to a child’s main education e.g. music tuition, revision and study support groups, sports clubs
- Provision that is otherwise regulated

Sub clause 77 (3)(b) also enables regulations to include or exempt certain types of activity which would count towards the 12.5 hours a week (primary) and 15 hours (secondary) educational provision threshold which would require an institution to register. It is anticipated that regulations will require the following activities to be included and therefore to be treated as times during which education is being provided:

- Morning assembly
- Morning and/or afternoon breaks
- Lunch breaks

On the other hand it is likely that regulations will exclude certain activities from being treated as time during which education is being provided:

- Certain activities provided by individual educational institutions before or after school hours e.g. breakfast clubs or after school clubs.
Sub-clause 77 (3)(c) also provides a power to amend in regulations the number of weeks per year in which education must be provided to meet the definition of ‘part time’. The clause currently sets this at 28 weeks which is a level which equates to more than half a school year. It is our view that this is a reasonable level but future changes in the delivery of education may mean that 28 weeks would not be a reasonable proportion of the school year to set as a threshold. It is proposed that the negative resolution procedure will apply to enable a quick response to any changes in the system and that this will provide the appropriate level of Parliamentary scrutiny for these regulations the scope of which is clearly defined on the face of the Bill.

Background

Prior to 2002 the definition of an independent school covered educational establishments that were not maintained by a local authority and provided full time education for 5 or more pupils of compulsory school age. This definition was amended by section 172 of the Education Act 2002 to include those that were providing a full time education for one or more pupils of compulsory school age who has a statement of specials educational needs or is looked after. This was to ensure that the educational provision for our most vulnerable children was subject to inspection and monitoring.

However, the question of whether a school provides full time education has become blurred because patterns of schooling in the independent sector are changing. There is a greater diversity of approach to education, with some parents opting for education otherwise than at school which includes part time tuition at tutorial colleges or schools. There are a number of establishments that claim not to be covered by the independent school standard regulations but which have many features of a school, or advertise as schools. Such establishments have been invited to register their provision on several occasions but have declined to do so.

It is not the intention of the proposals to remove parents’ right to educate their children at home. However we believe that it is essential that institutions which are the main provider of a child’s education are subject to the regulation and inspection which the independent school legislative framework provides. The framework ensures that pupils in these institutions benefit from appropriate learning opportunities and effective child protection procedures in a safe and secure environment which protects them from harm.

We will consult fully on the types of provision to be excluded from the new definition and the types of activities which will count towards the thresholds for the registration of part-time providers, so that we focus on institutions which are the main provider of a child’s education, and which are not otherwise regulated.

Clause 79 preserves the duty on the Secretary of State to prescribe in regulations standards for independent educational institutions. The current standards are set out in the Education (Independent School Standards) (England) Regulations 2003 (as amended) and cover the following areas:

The quality of the education and teaching;
The spiritual, moral, social and cultural development of pupils;
The welfare, health and safety of pupils;
The suitability of proprietors and staff;
The premises and accommodation;
The provision of information; and
The manner in which complaints are handled.

The detail of the requirements set out in the 2003 regulations and subsequent amendments will be largely unchanged going forward. However, sub-clause 79 (1)(h) adds a new standard governing the quality of leadership and management. We intend that the new standard should result in regulations which provide that:

- independent educational institutions have clear and strategic leadership to enable them to meet the required standards; and
- management systems to ensure that mechanisms are in place to make and sustain improvements where standards are not met.

Clause 79(2) allows standards to be prescribed in relation to all institutions, particular institutions or institutions of a particular description. The purpose of this is to allow for the standards relating to the curriculum to be varied in relation to institutions providing part time education. This will provide flexibility to allow for the fact that such institutions will not be able to offer all the curriculum areas expected of an independent school providing full time education. For example, part time providers may not offer physical education or aesthetic and creative education, which parents may provide themselves or which their child may already access through a sports club or music club. We will require individual educational institutions providing part time education to set out which of the curriculum areas they will deliver so that parents can decide what further education they must secure for their child. We anticipate that the remaining standards will largely be applied in the same way as they apply to independent schools.

The regulations will be made by the negative resolution procedure.

Background

The intention is for the standards set out in section 157 of the Education Act 2002 to be retained and to be supplemented with a new standard covering the quality of management and leadership. The aim of this new standard is to ensure that independent educational institutions have good quality leadership.
that enables the institution to meet the standards for registration. Inspection
evidence suggests that failures to meet many of the standards often result
from poor management and leadership. We consider it to be particularly
important that mechanisms are in place to sustain any improvements which
may be required following an inspection.

The current curriculum areas which independent schools are required to meet
are set out in the Education (Independent School Standards)(England)
Regulations 2003, as amended. They require independent schools to provide
full-time supervised education for pupils of compulsory school age which
gives pupils experience in linguistic, mathematical, scientific, technological,
human and social, physical and aesthetic and creative education. We
recognise that independent educational institutions providing part-time
education may not be able to cover all the curriculum areas and we will
require them to set out for parents what will be provided.

The Education (Independent School Standards)(England) Regulations 2003,
including amendments made in 2004 and 2007, are shown in below.
In exercise of the powers conferred on the Secretary of State by sections 157(1) and 210(7) of the Education Act 2002, the Secretary of State for Education and Skills hereby makes the following Regulations:

Citation, commencement and application

10. These Regulations may be cited as the Education (Independent School Standards) (England) Regulations 2003 and shall come into force on 1st September 2003.

11. These Regulations shall apply only in relation to England.

12. These Regulations shall apply to any independent school, except that—
   (a) paragraphs 1, 3(2)(d), 6(2)(f),(g),(i) and (k) and 6(7) of the Schedule shall not apply to an Academy; and
   (b) paragraphs 1, 3(9), 6(2)(f),(g),(i) and (k), 6(5) and 6(7) of the Schedule shall not apply to a city technology college or a city college for the technology of the arts.

Interpretation

1. In these Regulations—
   “the 1996 Act” means the Education Act 1996;
   “the 2002 Act” means the Education Act 2002;
   “city technology college” or “city college for the technology of the arts” means a school established under section 482 of the 1996 Act before 26th July 2002 which is not an Academy;

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(6) 2002 c.32; by virtue of the definition of “regulations” in section 212(1), these Regulations made by the Secretary of State apply only in relation to England.
(7) 1996 c.56
(8) Section 482 was substituted by section 65 of the 2002 Act.
"children’s suitability statement" has the meaning given by section 113C of the Police Act 1997;
“employment business” has the meaning given in section 13(3) of the Employment Agencies Act 1973(4) and includes a local authority and a person carrying on an employment business;
“enhanced criminal record certificate” has the meaning given by section 113B of the Police Act 1997; and
“fire authority” means the statutory body defined in section 4 of the Fire Services Act 1947(9), in section 328 of the Greater London Authority Act 1999(10) or in section 26 of the Local Government Act 1985(11);
“school” means an independent school;
“staff” means any person working at the school whether under a contract of employment, under a contract for services or otherwise than under a contract and includes a person working as a volunteer but does not include “supply staff”; and
“statement” means a statement of special educational needs made under section 324 of the 1996 Act and
“supply staff” means any person working at the school supplied by an employment business.

2. The requirements set out in the Schedule are the independent school standards for the purposes of Part 10 of the 2002 Act.

David Miliband
Minister of State
25th July 2003
Department for Education and Skills

SCHEDULE
Regulation 5

THE INDEPENDENT SCHOOLS STANDARDS

Quality of education provided

1.—(1) The quality of education provided by the school meets the standard if the requirements in sub-paragraphs (2) to (4) are met.

(2) The school shall draw-up and implement effectively a written policy on the curriculum, supported by appropriate plans and schemes of work, which provides for—

(a) full-time supervised education for pupils of compulsory school age, which gives pupils experience in linguistic, mathematical, scientific, technological, human and social, physical and aesthetic and creative education;

1947 c.41
1999 c.29
1985 c.51
(b) subject matter appropriate for the ages and aptitudes of pupils, including those pupils with a statement;
(c) pupils to acquire skills in speaking and listening, literacy and numeracy skills;
(d) where the principal language of instruction is a language other than English, lessons in written and spoken English, except that this requirement shall not apply in respect of a school which provides education for pupils who are all temporarily resident in England and which follows the curriculum of another country;
(e) where a pupil has a statement, education which fulfils its requirements;
(f) personal, social and health education which reflects the school’s aims and ethos;
(g) appropriate careers guidance for pupils receiving secondary education;
(h) where the school has pupils above or below compulsory school age, a programme of activities which is appropriate to their needs;
(i) all pupils to have the opportunity to learn and make progress; and
(j) adequate preparation of pupils for the opportunities, responsibilities and experiences of adult life.

(3) The teaching at the school shall—
(a) enable pupils to acquire new knowledge and make progress according to their ability so that they increase their understanding and develop their skills in the subjects taught;
(b) foster in pupils the application of intellectual, physical or creative effort, interest in their work, and the ability to think and learn for themselves;
(c) involve well planned lessons, effective teaching methods, suitable activities and wise management of class time;
(d) show a good understanding of the aptitudes, needs and prior attainments of the pupils, and ensure these are taken into account in the planning of lessons;
(e) demonstrate appropriate knowledge and understanding of the subject matter being taught;
(f) utilise effectively classroom resources of an adequate quality, quantity and range;
(g) demonstrate that a framework is in place to assess pupils’ work regularly and thoroughly and use information from that assessment to plan teaching so that pupils can progress; and
(h) encourage pupils to behave responsibly.

(4) The school shall have in place a framework for pupil performance to be evaluated, by reference either to the school’s own aims as provided to parents or national norms, or to both.

**Spiritual, moral, social and cultural development of pupils**

2. The spiritual, moral, social and cultural development of pupils at the school meets the standard if the school promotes principles which—

(a) enable pupils to develop their self-knowledge, self-esteem and self-confidence;
(b) enable pupils to distinguish right from wrong and to respect the law;
(c) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute to community life;
(d) provide pupils with a broad general knowledge of public institutions and services in England; and
(e) assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions.

Welfare, health and safety of pupils

3.—(1) The welfare, health and safety of pupils at the school meets the standard if the requirements in sub-paragraphs (2) to (9) are met.

(2) The school shall draw up and implement effectively a written policy to—
(a) prevent bullying, which has regard to DfES Guidance “Bullying: don’t suffer in silence”(12);
(b) safeguard and promote the welfare of children who are pupils at the school, which complies with DfES Guidance “Safeguarding Children in Education” [DfES publication number 0027/2004];
(c) safeguard and promote the health and safety of pupils on activities outside the school, which has regard to DfES Guidance “Health and Safety of Pupils on Educational Visits”(13); and
(d) promote good behaviour amongst pupils and set out the sanctions to be adopted in the event of pupil misbehaviour.

(3) Where a school provides accommodation, it shall have regard to the National Minimum Standards for Boarding Schools(14) or where applicable the National Minimum Standards for Residential Special Schools(15).

(4) The school shall have regard to the DfES guidance “Health and Safety: Responsibilities and Powers”(16).

(5) The school shall have a satisfactory level of fire safety, identified by—
(a) the school’s risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999(17) insofar as it relates to obligations under Part II of the Fire Precautions (Workplace) Regulations 1997(18); and
(b) any report from the fire authority.

(6) The school shall have and implement a satisfactory written policy on First Aid.

(7) School staff shall be deployed to ensure the proper supervision of pupils.

(8) The school shall keep a record of the sanctions imposed upon pupils for serious disciplinary offences.

(9) The school shall maintain an admission and attendance register in accordance with the Education (Pupil Registration) Regulations 1995(19).

(a) 10d communication;

(12) DfES publication number 0064/2000
(13) HSPV2
(14) ISBN 0113225415 available at www.doh.gov.uk/ncsc
(15) ISBN 011322544X available at www.doh.gov.uk/ncsc
(16) DfES publication number 0803/2001
(17) S.I 1999/3242
(18) S.I. 1997/1840; amended by S.I. 1999/1877
(b) lighting, heating and ventilation in classrooms and other parts of the school are satisfactory in accordance with the Education (School Premises) Regulations 1999;
(c) there is a satisfactory standard and adequate maintenance of decoration;
(d) the furniture and fittings are appropriately designed for the age and needs (including any special needs) of all pupils registered at the school;
(e) there is appropriate flooring in good condition;
(f) there are appropriate arrangements for providing outside space for pupils to play safely; and
(g) where the school provides accommodation, it has regard to Standards 40-52 of the National Minimum Standards for Boarding Schools or, where applicable, Standards 23-26 of the National Minimum Standards for Residential Special Schools.

4. Suitability of staff, supply staff and proprietors

For the purposes of these Regulations an “enhanced criminal record check” is made if—

(a) an application for an enhanced criminal record certificate is made under Part V of the Police Act 1997 and the application for the certificate is accompanied by a children’s suitability statement; and

(b) the application is countersigned by a registered person (within the meaning of section 120 of the Police Act 1997) or an application is countersigned on his behalf, and (in either case) the application is submitted in accordance with Part V of that Act.

In these Regulations, the “National Minimum Standards for Boarding Schools” and the “National Minimum Standards for Residential Special Schools” mean the standards published respectively under those titles in March 2002 by the Secretary of State for Health under section 23(1) of the Care Standards Act 2000.

4.—(1) This paragraph applies to the appointment of a member of staff at an independent school, other than a proprietor and supply staff.

(2) The suitability of a member of staff appointed to a position at the school meets the standard if—

(a) the proprietor carries out appropriate checks to confirm in respect of each such person—

(i) his identity;

(ii) his medical fitness;

(iii) his right to work in the United Kingdom;

(iv) his previous employment history;

(v) his character references;

(vi) where appropriate, his professional references; and

(vii) where appropriate, his qualifications;

(b) an enhanced criminal record check is made by the proprietor in respect of any such person and the enhanced criminal record certificate which is the subject of the application is obtained before or as soon as practicable after his appointment;
(c) in the case of any person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish his suitability to work in a school, such further checks are made as the proprietor considers appropriate, having regard to any guidance issued by the Secretary of State;

(d) no such person carries out work, or intends to carry out work, at the school in contravention of any direction made under section 142 of the 2002 Act(7) or any disqualification, prohibition or restriction which takes effect as if contained in such a direction; and

(e) in the case of staff who care for, train, supervise or are in charge of children for whom accommodation is provided, in addition to the requirements of paragraphs (a) to (d), a check is made by the proprietor that Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools is complied with.

(3) The checks referred to in sub-paragraphs (2)(a) and, subject to sub-paragraph (4), (2)(c) shall be completed before a person’s appointment.

(4) The checks specified in sub-paragraphs (2)(b), (2)(c) and (2)(e) do not need to be carried out where the new member of staff has worked in—

(a) a school in England in a position which brought him regularly into contact with children or young persons;

(b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or

(c) an institution within the further education sector in England in a position which involved the provision of education or which brought him regularly into contact with children or young persons;

during a period which ended not more than three months before his appointment.

4A.—(1) This paragraph applies to the appointment of supply staff at an independent school.

(2) The suitability of supply staff at the school meets the standard if the following requirements are satisfied.

(3) No person supplied by an employment business to the school may begin work at the school unless the proprietor has received—

(a) written notification from the employment business in relation to that person—

(i) that the checks referred to in paragraph 4C(4)(a)(i) have been made;

(ii) that an enhanced criminal record check has been made, or an enhanced criminal record certificate has been obtained in response to an enhanced criminal record check by that or another employment business;

(iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was supplied to the employment business, in accordance with section 113B(6) of the Police Act 1997(8); and

(b) where the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of the Police Act 1997, a copy of the certificate.
(4) Except in the case of a person to whom sub-paragraph (5) applies the certificate referred to in sub-paragraph (3)(a)(ii) shall have been obtained not more than three months before the date on which the person is due to begin work at the school.

(5) This sub-paragraph applies to a person who has worked in—

(a) a school in England in a position which brought him regularly into contact with children or young persons;

(b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or

(c) an institution within the further education sector in England in a position which involved the provision of education or which brought him regularly into contact with children or young persons;

during a period which ended not more than three months before the date on which he is due to begin work at the independent school.

(6) Before a person offered for supply by an employment business may begin work at the school his identity shall be checked by the proprietor of the school (irrespective of any such check carried out by the employment business before the person was offered for supply).

(7) The proprietor shall in the contract or other arrangements which they make with any employment business require it, in respect of any person whom the employment business supplies to the school—

(a) to provide the notification referred to in sub-paragraph (3); and

(b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B(6) of the Police Act 1997, to provide a copy of the certificate.

(8) Except for those persons to whom sub-paragraph (5) applies, in the case of supply staff who care for, train, supervise or are in charge of children for whom accommodation is provided, a check is made by the proprietor that the relevant parts of Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools are complied with.

4B.—(1) This paragraph applies to the proprietor of an independent school.

(2) The suitability of any proprietor who is an individual or the Chair of any body of persons named as the proprietor of the school in the register or in an application to enter a school in the register, meets the standard if—

(a) an enhanced criminal records check, which is countersigned by the Secretary of State, is made in respect of each such person and the enhanced criminal record certificate which is the subject of the application is obtained before that person commences acting as a proprietor, in the case of an individual proprietor, or that person’s appointment in the case of a Chair;

(b) the identity of any such person is checked and a check is made of his right to work in the United Kingdom; and

(c) in the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such an enhanced criminal record certificate is not sufficient to establish his suitability to work in a school, such further checks as the Secretary of State considers appropriate are made.
(3) The checks referred to in sub-paragraph (2) shall be completed by the Secretary of State, in the case of an individual proprietor, before that individual commences acting as such, or in the case of a Chair, before the person takes up his appointment as a Chair, for the standard to be met.

(4) The suitability of any member of a body of persons named as the proprietor meets the standard if—

(a) an enhanced criminal record check in respect of each such person is made and the enhanced criminal record certificate which is the subject of the application is obtained before his appointment;

(b) the identity of any such person is checked and a check is made of his right to work in the United Kingdom; and

(c) in the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such an enhanced criminal record certificate is not sufficient to establish his suitability to work in a school, such further checks as the Chair considers appropriate are made, having regard to any guidance issued by the Secretary of State.

(5) The Chair of any such body of persons named as the proprietor is responsible for ensuring that the checks referred to in sub-paragraph (3) are completed and that a copy of the enhanced criminal records certificate is obtained before appointment.

(6) The suitability of any person mentioned in sub-paragraph (2) or (4) of this paragraph meets the standard if no such person carries out work, or intends to carry out work, at the school in contravention of any direction made under section 142 of the 2002 Act or any disqualification, prohibition or restriction which takes effect as if contained in such a direction.

(7) In this regulation, a reference to a Chair of a body of persons includes a reference to a similar officer.

4C.—(1) The proprietor shall keep a register which meets the following requirements.

(2) In relation to each member of staff appointed on or after 1st May 2007, the register shall show whether—

(a) his identity was checked;

(b) a check was made to establish whether he is subject to any direction made under section 142 of the Education Act 2002 or any disqualification, prohibition or restriction which takes effect as if contained in such a direction;

(c) checks were undertaken to ensure, where appropriate, that he had the relevant qualifications;

(d) an enhanced criminal record certificate was obtained in respect of him;

(e) checks were made pursuant to paragraph 4(2)(c);

(f) a check of his right to work in the United Kingdom was made; and

(g) checks were made pursuant to paragraph 4(2)(e),

and the register shall include the date on which each such check was completed or the certificate obtained.

(3) In relation to each member of staff in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register shall show whether each check referred to in sub-paragraph (2) of this paragraph was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.
(4) In relation to supply staff, the register shall show whether—
(a) written notification has been received from the employment business that—
(i) it has made checks corresponding to those which sub-paragraphs (2)(a) to (c), (e) and (f) of this paragraph requires to be recorded in relation to staff at a school;
(ii) it or another employment business has made an enhanced criminal record check; and
(iii) it has obtained an enhanced criminal record certificate in response to an enhanced criminal record check made by that or another employment business;
together with the date the written notification that each such check was made, or certificate obtained, was received; and
(b) a check has been made in accordance with paragraph 4A(8) together with the date the check was completed.

(5) Where written notification has been received from the employment business in accordance with a contract or other arrangements made pursuant to paragraph 4A(7) that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6) of the Police Act 1997, the register shall also show whether the employment business supplied a copy of the certificate to the school.

(6) In relation to each member of a body of persons named as the proprietor appointed on or after 1st May 2007, the register shall show whether—
(a) a check was made of his identity and his right to work in the United Kingdom; and
(b) checks were made pursuant to paragraphs 4B(4)(a) and (c),
and the register shall include the date on which each such check was completed and the certificate obtained.

(7) In relation to each member of a body of persons named as the proprietor in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register shall show whether each check referred to in sub-paragraph (6) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(8) It is immaterial for the purposes of sub-paragraphs (2), (3), (4), (6) and (7) whether the check was made or certificate obtained pursuant to a legal obligation.

(9) The register required to be kept pursuant to this paragraph may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

Premises of and accommodation at schools

5. The premises of and accommodation at the school meet the standard if—
(h) the water supply meets the requirements of the Education (School Premises) Regulations 1999(20);
(i) there is an adequate drainage system for hygienic purposes and the disposal of waste water and surface water;
(j) each load bearing structure complies with the Education (School Premises) Regulations 1999;

(20) S.I. 1999/2
(k) the school has adequate security arrangements for the grounds and buildings;
(l) premises which are used for a purpose other than conducting the school are organised to ensure that the health, safety and welfare of pupils are safeguarded and their education is not interrupted by other users;
(m) the school buildings provide reasonable resistance to penetration by rain, snow, wind and moisture from the ground;
(n) there is sufficient access so that emergency evacuations can be accomplished safely for all pupils, including those with special needs;
(o) access to the school allows all pupils, including those with special needs, to enter and leave the school in safety and comfort;
(p) the premises have not been condemned by the Environmental Health Authority;
(q) having regard to the number, age and needs (including any special needs) of pupils, classrooms are appropriate in size to allow effective teaching, and do not compromise health or safety;
(r) there are sufficient washrooms for staff and pupils, including facilities for pupils with special needs, taking account of the Education (School Premises) Regulations 1999;
(s) there are appropriate facilities for pupils who are ill in accordance with the Education (School Premises) Regulations 1999;
(t) where food is served, there are adequate facilities for its hygienic preparation, serving and consumption;
(u) classrooms and other parts of the school are maintained in a tidy, clean and hygienic state;
(v) sound insulation and acoustics allow effective teaching and communication;
(w) lighting, heating and ventilation in classrooms and other parts of the school are satisfactory in accordance with the Education (School Premises) Regulations 1999;
(x) there is a satisfactory standard and adequate maintenance of decoration;
(y) the furniture and fittings are appropriately designed for the age and needs (including any special needs) of all pupils registered at the school;
(z) there is appropriate flooring in good condition;
(aa) there are appropriate arrangements for providing outside space for pupils to play safely; and
(bb) where the school provides accommodation, it has regard to Standards 40-52 of the National Minimum Standards for Boarding Schools or, where applicable, Standards 23-26 of the National Minimum Standards for Residential Special Schools.

Provision of information

6 The provision of information by the school meets the standard if the requirements in sub-paragraphs (2) to (9) are met.

(10) Subject to sub-paragraph (10), the school shall provide to parents of pupils and of prospective pupils and on request to the Chief Inspector, the Secretary of State or a body approved for the purposes of section 163(1)(b) of the 2002 Act—
(a) the school’s address and telephone number, and the name of the head teacher;
(b) either—

(i) where the proprietor is an individual, his full name, address for correspondence during both term time and holidays and a telephone number or numbers on which he may be contacted at all times, or

(ii) where the proprietor is a corporation, a Scottish firm or a body of persons, the address and telephone number of its registered or principal office;

(c) where there is a governing body, the name and address of its Chair;

(d) a statement of the school’s ethos (including any religious ethos) and aims;

(e) particulars of the school’s policy on and arrangements for admissions, discipline and exclusions;

(f) particulars of educational and welfare provision for pupils with statements and pupils for whom English is an additional language;

(g) particulars of the policy prepared under paragraph 1(2);

(h) particulars of the policy prepared under paragraph 3(2);

(i) particulars of academic performance during the preceding school year, including the results of any public examinations;

(j) details of the complaints procedure set out in accordance with paragraph 7, and the number of complaints registered under the formal procedure during the preceding school year; and

(k) the number of staff at the school, including temporary staff, and a summary of their qualifications.

(11) Following an inspection under section 163(1) of the 2002 Act, the school shall send to the parents of every registered pupil, by a date to be specified by the body who conducted the inspection—

(a) a summary report prepared by that body; or

(b) if no summary has been prepared, a copy of the full report.

(12) Where a summary report has been sent in accordance with sub-paragraph (3)(a), the school shall make arrangements for parents to have access to the full report on request.

(13) The school shall send to the parents of each registered pupil an annual written report of his progress and of his attainment in the main subject areas taught except that no report need be sent to a parent who has agreed otherwise with the school.

(14) The school shall provide any body conducting an inspection under section 163(1) of the 2002 Act with—

(a) any information reasonably requested in connection with it that is necessary for the purposes of the inspection; and

(b) access to the school’s admission and attendance registers.

(15) Where a pupil wholly or partly funded by a local authority is registered at the school, an annual account of income received and expenditure incurred by the school in respect of that pupil shall be submitted to the local authority and on request to the Secretary of State.

(16) Where a pupil with a statement is registered at the school, the school shall supply such information to the responsible local education authority as may reasonably be required for the purpose of the annual review of the statement.

(17) A copy of the risk assessment referred to in paragraph 3(5)(a) shall be provided on request to the Secretary of State.
(18) In relation to paragraphs (g) to (k) of sub-paragraph (2), provided that the school ensures that parents of pupils and of prospective pupils are aware that such information is available, it need only be provided to them on request.

**Manner in which complaints are to be handled**

7 The manner in which a school handles complaints meets the standard if it has a complaints procedure which—

(a) is in writing;
(b) is available on request to parents of pupils and of prospective pupils at the school;
(c) sets out clear time scales for the management of a complaint;
(d) allows for a complaint to be made and considered initially on an informal basis;
(e) where the parents are not satisfied with the response to the complaint made in accordance with paragraph (d), establishes a procedure for the complaint to be made in writing;
(f) where the parents are not satisfied with the response to the complaint made in accordance with paragraph (e), makes provision for a hearing before a panel appointed by or on behalf of the proprietor and consisting of at least three people who were not directly involved in the matters detailed in the complaint;
(g) ensures that, where there is a panel hearing of a complaint, one person will be independent of the management and running of the school;
(h) allows for parents to attend and be accompanied at a panel hearing if they wish;
(i) provides for the panel to make findings and recommendations and stipulates that the complainant, proprietor and head teacher, and where relevant the person complained about, are given a copy of any findings and recommendations;
(j) provides for a written record to be kept of all complaints, and of whether they are resolved at the preliminary stage or proceed to a panel hearing;
(k) provides that correspondence, statements and records relating to individual complaints are to be kept confidential except where the Secretary of State or a body conducting an inspection under section 163 of the 2002 Act requests access to them; and
(l) where the school provides accommodation, complies with Standard 5 of the National Minimum Standards for Boarding Schools or where applicable Standard 4 of the National Minimum Standards for Residential Special Schools.

**Savings**

(1) Subject to paragraphs (2) and (3), the amendments made by these Regulations do not affect the suitability of any staff, supply staff or proprietor appointed before 1st May 2007, and accordingly paragraph 4 of the Schedule to the principal Regulations, as it had effect immediately before these Regulations came into force, continues to have effect in relation to the persons to whom it applied before that date.

(2) Notwithstanding paragraph (1), the provisions of paragraphs 4C(3), (4), (5) and (7) of the Schedule to the principal Regulations, as amended by these regulations,
have effect in relation to any staff, supply staff or proprietor appointed before 1st May 2007.

(3) In the case of any staff, supply staff or proprietor appointed before 1st May 2007, nothing in paragraph (1) shall prevent the amendments made by these Regulations applying in relation to those persons when taking up subsequent appointments.

Andrew Adonis
Parliamentary Under Secretary of State
Department for Education and Skills

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations set out the Independent School Standards (“the standards”) to which independent schools will be inspected under Part 10 of the Education Act 2002.

A person conducting such an inspection will make a report on the extent to which the standards are met, which the registration authority will consider along with any other evidence in determining whether to register a new school or to take enforcement action against an existing one.

The Schedule sets out the detail of the standards.

Regulation 3 amends the principal regulations with the effect that the provisions of the Schedule to the principal regulations concerning the suitability of staff, supply staff and proprietors apply to all independent schools, including Academies, city technology colleges and city colleges for the technology of the arts.

Regulation 4 amends a number of definitions in the principal Regulations.

Regulation 5 substitutes new provisions relating to the suitability of staff and proprietors for the existing paragraph 4 of the Schedule to the principal regulations. The requirements substituted by regulation 5 of these regulations are independent school standards for the purposes of section 157 of the Education Act 2002. The paragraph numbers below are references to the paragraphs contained in the Schedule to the principal Regulations as amended by these Regulations.

A requirement is introduced that 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 (4(2)(d)), and on their identity, medical fitness, right to work in the United Kingdom, previous employment history, character references and qualifications and professional references where appropriate (4(2)(a)). It is also a requirement that, subject to exceptions, such a member of staff, prior to or as soon as practicable after, his appointment be subject to an enhanced Criminal Records Bureau (“CRB”) check made under the Police Act 1997 (4(2)(b) and 4(4)). Paragraph 4(2)(c) provides that any person who has lived outside the United Kingdom must be subject to further checks if a CRB check is insufficient to establish suitability to work in a school.
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, and schools are required in their arrangements with agencies to place them under an obligation to provide this information, paragraph 4A.

The Secretary of State carries out an identity, right-to-work and enhanced CRB check on a person intended to become a proprietor, paragraph 4B, before an individual takes up the post. Any Chair of a body of persons named as proprietor who has been checked by the Secretary of State is required to carry out checks on other members of the body of persons named as proprietor.

Independent schools are required to keep a register of the checks which they have made in respect of their own staff and members of bodies of persons named as proprietors, and, in the case of supply staff, of the information about checks provided by the supply agency and carried out by the proprietor, paragraph 4C.

Regulation 6(1) provides that the amendments made to the principal Regulations by these Regulations shall not take effect in relation to staff, supply staff or proprietors appointed before these Regulations come into force on 1st May 2007. The suitability of such persons will meet the standard if the provisions of paragraph 4 of the Schedule to the principal Regulations, as in force immediately prior to the coming into force of these Regulations, are satisfied. Regulation 6(2) provides that the requirement to keep a register of any checks carried out in respect of persons appointed before 1st May 2007 applies notwithstanding the saving referred to. Regulation 6(3) provides that where staff, supply staff or a proprietor appointed before 1st May 2007 leaves the post on or after the date on which these Regulations come into force, the amendments made by these Regulations will apply to such a person if he is appointed to a post covered by these Regulations at a later date.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Stephen Erskine, Department for Education and Skills, 2nd Floor, Area C, Mowden Hall, Staindrop Road, Darlington, DL3 9BG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.
11. **Policy statement for Clause 83 - Application for registration by independent educational institutions**

Clause 83 allows proprietors of independent educational institutions to apply to Her Majesty’s Chief Inspector of Education, Children’s Services and Skills for entry on the register maintained by HMCI. Together with clause 80, this preserves the provisions contained in sections 159 and 160 of the Education Act 2002 which require independent schools to apply for and obtain registration prior to the admission of pupils. Clause 83 requires any application to be made in a prescribed way and contain certain information, the broad headings of which are set out in clause 83(3). The current regulations that prescribe the required information, and the manner in which it must be provided, are the Education (Provision of Information by Independent Schools) (England) Regulations 2003 (as amended) and these are attached to the policy statement for clause 109.

There are no plans to change the manner in which information required in support of an application to register an independent institution is obtained. Amendments will be made to require an independent institution to set out whether it is registering as a (full time) independent school or a (part time) institution under clause 77(1)(b) and also, where it is specially organised to make special provision for pupils with special education needs, to declare the type of SEN provision they will cater for. Otherwise the current requirements set out in the Education (Provision of Information by Independent Schools) (England) Regulations 2003 (as amended) will remain largely unchanged.

The regulations will be made by the negative resolution procedure.

**Background**

It is essential that independent institutions provide information about the type of provision for which they are seeking registration. The required information includes the intended pupil cohort and supporting documentation to demonstrate that they have relevant plans and policies for those pupils. The information provided is taken into account in determining applications for registration and to aid inspection of new schools.

The information currently required covers the following broad areas:

- Details about the institution, the proprietor and the Chair of Governors
- The age range, maximum number and gender of pupils
- Whether the institution intends to provide boarding accommodation
- Whether the institution intends to admit pupils with special educational needs
- Plans of the premises and accommodation
- Detailed curriculum plans, schemes of work and pupil assessment procedure
- Written policies relating to the prevention of bullying, child protection, health and safety and behaviour of pupils
- The complaints procedure
The regulations and directions in this document are indicative only.

- The religious ethos (if any) of the institution
- The charitable status of the institution

In addition to these we will add the new requirement for institutions specially organised to make special provision for students with special needs, to provide details of the type of special education need they will cater for.
12. **Policy statement for Clauses 91 and 92 – Independent inspectorates**

Clause 91 preserves the power contained in section 162A(1)(b) of the Education Act 2002 to approve independent inspectorates for the purposes of inspecting independent schools and, going forward under this Bill, independent educational institutions. The Independent Schools Inspectorate has been approved to inspect schools in membership of the Independent Schools Council, the School Inspection Service has been approved to inspect schools affiliated to Focus Learning Trust and the Bridge School Inspectorate has just been approved in principle to inspect schools belonging to the Christian Schools Trust and the Association of Muslim Schools.

Clause 91 also provides a new power to allow the Secretary of State to set, in regulations, criteria for the approval and withdrawal of approval of independent inspectorates (i.e. inspectorates other than Ofsted) to undertake certain inspections of independent educational institutions. The purpose of setting criteria is to make the approval process more transparent, so that institutions, parents and the wider public can be confident that inspectorates are competent and independent, and that they have an objective perspective on inspection and performance.

We are currently consulting on the criteria for approval of independent inspectorates. Subject to the outcome of the consultation we anticipate the regulations might:

- set technical proficiency criteria, e.g. the qualifications and relevant experience required for inspectors, the inspection framework and the management of inspections;
- set criteria relating to independence and objectivity of the inspectorate and their inspectors;
- set criteria for the numbers of institutions to be inspected and the type of provision they cater for.

The consultation which began on 21 January 2008 and ends on 14 April 2008 may be found at: [http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1528](http://www.dfes.gov.uk/consultations/conDetails.cfm?consultationId=1528)

The proposals in the consultation document largely mirror the criteria which have been used to approve the existing independent inspectorates, in so far as technical proficiency and independence and objectivity of the inspectorate and their inspectors is concerned. The regulations will put these criteria on a statutory footing and add new criteria about the size and diversity of the institutions which they should inspect so that they have a broad view of standards in a wide range of institutions on which to base inspection judgments.
Clause 92 requires the Chief Inspector to provide an annual report for the Secretary of State on independent inspectorates approved under Clause 91. The purpose of the report is to provide an assessment of the inspection work of approved inspectorates. The assessment will be based on evidence from Ofsted monitoring of a sample of inspections undertaken by the independent inspectorate and of inspection reports it produces.

Clause 92 will provide flexibility for the Secretary of State in relation to the remit of the report. Sub clauses 92(2) & (3) enable the Secretary of State to direct the Chief Inspector about matters to which she must have regard in preparing the report and the form and contents of the document. We propose that these directions, including what should be taken into account and the form and contents of the report, will be set out in a protocol to be agreed with Ofsted. The protocol will also set out the broad expectations concerning the extent of Ofsted’s monitoring and the issues to be covered in reports made to the Secretary of State. We believe this will further increase public confidence in the approval arrangements for independent inspectorates.

It is anticipated that the Secretary of State will direct the Chief Inspector to have regard to the following matters in preparing her report: the provision of advice on whether inspections, inspection judgements and inspection reports are consistent with those of Ofsted; and whether inspectorates provide secure and reliable evidence about the extent to which the institutions they inspect are meeting the regulatory standards required for registration as an independent educational institution.

In providing this advice it is anticipated that Ofsted will be directed to take into account the following matters:

- the suitability of inspectors and their training,
- the way in which the inspectorate conducts inspections against the regulations framework,
- the judgements reached and the evidence base for reaching judgements,
- the quality of the reports of inspections;
- and the quality assurance arrangements put in place by the independent inspectorate.

These matters reflect the areas covered by the annual assessment of the inspection work carried out by other inspectorates which Ofsted already publishes. These reports are published on the Ofsted website and we would expect this to continue.

The regulations will be made by the negative resolution procedure.

**Background**

Until 1999 all independent schools were inspected by Ofsted, although reports were not published or made available through schools to parents. However, those schools which were members of an independent school association affiliated to the Independent Schools Council (ISC) also had published
accreditation inspections carried out by the association of which they were a member. These reports had a substantial overlap with unpublished Ofsted inspection reports. In 1999 the government and ISC agreed that it made sense to have a single published report which covered all aspects of ISC schools’ education provision, and that inspections would be carried out by the Independent Schools Inspectorate (ISI) with a sample checked by Ofsted to ensure common standards were applied across the independent school sector. The Education Act 2002 put these arrangements onto a statutory footing.

Although the 2002 Act allowed inspectorates other than Ofsted to undertake inspection of independent schools, the Secretary of State retained the right to commission an Ofsted inspection of any independent school if this was thought necessary. That right is retained again in the new legislation, under clause 94. Ofsted continue to undertake all initial inspections of new independent schools applying for registration.

All inspectorates operate under strict monitoring arrangements whereby Ofsted carries out such checks as are necessary to satisfy themselves and the wider public that inspections conducted by inspectorates against the statutory standards are consistent with those of Ofsted on other independent schools. Ofsted publishes an annual assessment of the inspection work carried out by these other inspectorates. The Education and Skills Bill places these arrangements on a statutory footing.

The ISI has inspected independent schools belonging to the ISC for several years. Since 2002, in addition to ISI, two further inspectorates have been approved. The Schools Inspection Service which inspects 26 schools affiliated to Focus Learning Trust, and the Bridge School Inspectorate which has just been approved, in principle, to inspect schools belonging to the Christian Schools Trust and the Association of Muslim Schools.
13. **Policy statement for Clause 93 - Inspection intervals**

Clause 93 requires the Chief Inspector to inspect independent educational institutions at set intervals unless the institution has been inspected by an approved independent inspectorate. Clause 93 provides the Secretary of State with a new power to prescribe in regulations the intervals between inspections of independent educational institutions. The purpose of this power is to ensure the regular inspection of independent educational institutions against the standards.

The current inspection arrangements for independent schools are set out in sections 162A and 162B of the Education Act 2002. This does not prescribe intervals of inspection. Instead the Secretary of State may request an inspection at any time. In practice the Secretary of State has arranged for a regular cycle of inspections to be conducted, currently set at six years. Clause 93 puts these arrangements on a statutory footing following the transfer of responsibility for inspection arrangements for independent educational institutions to the Chief Inspector so that the regular cycle of inspections continues.

Sub-clause 93(1) requires the Chief Inspector to inspect independent educational institutions at intervals prescribed by the Secretary of State and prepare reports on how each institution meets the standards. By virtue of sub-clauses 93(2) and 93(3) the Chief Inspector will not be required to inspect an institution if it is inspected by an approved inspectorate and that if inspectorate has provided a report to the Chief Inspector within the specified time frame. That time frame broadly equates to the intervals prescribed by the Secretary of State for Ofsted inspections, with the possibility of a further extension of time.

Ofsted are moving to a three year cycle of inspection of independent schools from Summer 2008. The three independent inspectorates approved to conduct inspections of independent schools will also have moved to a three yearly cycle by the time Clause 93 comes into effect. The regulations will, therefore, specify intervals of three years from the time of the last inspection and will bring independent educational institutions into line with the Ofsted inspection intervals for maintained schools and early years providers. A three yearly interval will enable a joined up inspection visit for those independent educational institutions which also have early years provision.

The regulations will be made by the negative resolution procedure.

**Background**

Section 162A of the Education Act 2002 currently requires the Chief Inspector, or an approved independent inspectorate, to inspect independent schools when required to do so by the Secretary of State. However, no timescales are specified and Section 162A provides that the Secretary of State may require inspections at any time. Until recently Ofsted, and
approved inspectorates, have conducted inspections on a six year cycle but this will be shortened to a three year cycle.

Prescribing in regulations the time scale for inspections will ensure that the three yearly cycle of inspection will continue once responsibility for registration and monitoring of independent educational institutions transfers to Ofsted.
14. **Policy Statement for Clause 97 - The level of independent educational institution inspection fees and the payment of such fees at specified times.**

Clause 97 enables the Secretary of State to make regulations requiring payment of inspection fees for independent educational institutions inspected by the Chief Inspector. The current power requiring payment of inspection fees is contained in Section 162B(6) of the Education Act 2002 but clause 97 enables fees to be charged for a wider range of inspections as explained below. Inspections will be conducted every three years.

This clause does not include a power to set fees for inspections of institutions by an independent inspectorate. It is entirely a matter for independent inspectorates to decide the level of fees they set for inspections by them.

Under the current inspection regime fees have been paid following full inspections against all the regulatory standards, which have taken place every six years. The current level of fees is set out in The Education (Independent School Inspection Fees and Publication)(England) Regs 2003. Payment is required either in full within 28 days of the inspection or in two equal instalments with the final payment due within 28 days of the first anniversary of the inspection. The current amounts are calculated by reference to the following table:

<table>
<thead>
<tr>
<th>Number of registered pupils on the date to which the last annual return was made up</th>
<th>Amount of Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 50</td>
<td>£40 per pupil</td>
</tr>
<tr>
<td>50-149</td>
<td>£500 + £40 per pupil</td>
</tr>
<tr>
<td>150-385</td>
<td>£500 + £40 for each of the first 149 pupils + £15 for each further pupil</td>
</tr>
<tr>
<td>386+</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

We propose that regulations made under sub clause 97(2), (3) & (4) will require payment of inspection fees as follows:

- A £500 fee for an inspection required to consider an application for registration of a new independent educational institution and where re-inspection is necessary a £500 fee for each further inspection until such time as the institution can demonstrate it meets the standard for registration.
- An annual fee which will cover the cost of an inspection, against the regulatory standards, every 3 years. This will make it easier for institutions to budget as payment will be spread over a longer period.
than at present. Successful institutions will benefit from a reduced tariff inspection for every other inspection, subject to their continuing to meet most of the regulatory standards.

- A fee required for any inspection necessary to determine whether an institution has put in place measures to meet standards it did not meet at its previous inspection. This will only be necessary for institutions with serious or numerous regulatory failings.

It is proposed that fees will be waived for inspections carried out to investigate complaints or allegations as these may prove to be malicious or unfounded. Fees will also be waived for inspections required in connection with an appeal to the Care Standards Tribunal.

The proposed level of annual charges is as follows:

**Reduced Tariff Inspections (RTI)**

<table>
<thead>
<tr>
<th>Number of registered pupils on the date to which the last annual return was made up</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 150</td>
<td>£200 + £7.50 per pupil</td>
</tr>
<tr>
<td>151 +</td>
<td>£1,333</td>
</tr>
</tbody>
</table>

**Costs for institutions ineligible for RTI**

<table>
<thead>
<tr>
<th>Number of registered pupils on the date to which the last annual return was made up</th>
<th>Annual Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less than 150</td>
<td>£200 + £9 per pupil</td>
</tr>
<tr>
<td>151 +</td>
<td>£1,667</td>
</tr>
</tbody>
</table>

The fees for follow up visits where follow up visits are required to check compliance with the regulatory standards will be two thirds of the annual rate for a first follow up and one and a half times the annual rate for any subsequent visits.

The regulations will be made by the negative resolution procedure.

**Background**

The level of fees currently set out in The Education (Independent School Inspection Fees and Publication) (England) Regulations 2003 needs revising in order to recoup for Ofsted a more realistic level of inspection costs.

We believe the changes to the fee regime will have the following benefits:

- Annual fee payment will make it easier for institutions to budget as payment will be spread over a longer period than at present. We anticipate this will particularly benefit small institutions, as they will not
have to put aside reserves to cover inspection fees which fall due at present every six years.

- The introduction of fees for registration inspections will encourage new independent educational institutions to meet the standards for registration before they first apply or re-apply and will ensure that a higher share of costs are borne by institutions and not the tax payer.
- Introducing fees for follow up inspections of poor institutions will encourage them to put matters right quickly.

The consultation about the transfer of responsibility for the registration of independent schools and the regulation of independent and non-maintained special schools (NMSSs) to Ofsted included consultation on the level of fees. The results of the consultation were published on 21 January 2008 and can be found at http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1498

The revised fee arrangements is intended to reward successful institutions and penalise those that fail to meet the regulatory standards. This in turn will benefit both parents and pupils, as weaker institutions will have the incentive to improve quickly.
15. **Policy Statement for Clause 99 - The manner in which inspection reports on educational establishments may be published.**

Clause 99 extends existing powers contained in section 162A of the Education Act 2002 to allow the Chief Inspector to publish reports following any inspection of an independent educational institution which she carries out. Sub-clause 98(2) retains existing powers for the Secretary of State to prescribe in regulations the manner in which such reports may be published.

Currently reports following a full inspection under 162A of the Education Act 2002, which fall within the regular inspection cycle, are published. It is anticipated that the Chief Inspector will continue to publish reports following these inspections, which fall within clause 93 of this Bill. In addition, it is proposed that reports will be published in the following circumstances:

- An inspection conducted for the purposes of determining an application for registration under clause 85
- An inspection conducted for the purposes of approving a material change under clause 89
- Where an inspection has been undertaken under clause 95, in agreement with the Secretary of State
- An inspection conducted under clause 96. These are likely to include: inspections of newly registered independent educational institutions during their first year of operation, so that the Chief Inspector can be satisfied that the institution continues to meet the standards once pupils have been admitted; or those where a previous inspection indicates a follow up visit is required to check regulatory failings have been remedied. Other inspections conducted to investigate concerns raised about independent educational institutions may also be published where the concerns are substantiated.

We have no plans to change the current prescribed manner of publication as set out in the Education (Independent School Inspection Fees and Publication) (England) Regulations 2003. These regulations require the relevant inspection body to place a copy of the report on their website and send a copy to the proprietor.

The regulations will be made by the negative resolution procedure.

**Background**

Prior to 2003 reports on independent schools inspected by the Chief Inspector were not publicly available. This meant that parents and prospective parents had no access to objective information on the schools their children attended. Regulations, made under the Education Act 2002, were introduced on 1 September 2003 which enabled the publication of all full inspection reports. This clause now provides for an increase in the amount of information available to parents and others by making it possible for further reports to be made available to the public.
16. **Policy statement for Clause 105 - Unsuitable persons.**

Clause 105 preserves the power contained in Section 169 of the Education Act 2002, as amended by Section 170 of the Education and Inspections Act 2006, to deregister an independent educational institution where the proprietor or any person carrying out particular types of work (which will be prescribed) in the institution is unsuitable. A decision to deregister is subject to the right of appeal to the Care Standards Tribunal. This applies where the person is prohibited by virtue of any prescribed direction, order or decision made under any prescribed enactment.

Sub clause 105(1) provides the power to prescribe the types of work which could lead to deregistration if carried out by an unsuitable person. It is anticipated that regulations will prescribe the following work:

- Any work in an independent educational institution, paid or unpaid, and whether or not, under a contract. This will include teaching and non-teaching staff but will not include contractors who will have no contact with children.

Sub clause 105(2) provides the power to prescribe the directions, orders or decisions and the legislation under which they are made which will prohibit a person from carrying out prescribed work. This will include the following:

- A decision to include a person on the list of Barred Persons established under the Safeguarding Vulnerable Groups Act 2006;
- In relation to a proprietor of an independent educational institution, any direction made under clause 113 of this Bill [or the equivalent provision for Wales contained in section 167A of the Education Act 2002];

These regulations will be made by the negative resolution procedure.

**Background**

Safeguarding the welfare of children is paramount. Institutions must carry out pre-employment checks for all staff so there is no excuse for employing any person who is unsuitable to work with children. In addition no person should act in the capacity of a proprietor if they are unsuitable to do so. Proprietors are subject to checks on their suitability which will be made by the Chief Inspector. An institution risks being deregistered if the proprietor is unsuitable or an unsuitable person is employed to work in the school. It is an offence to continue to operate without registration.
17. **Policy statement for Clause 109 - Provision of information by proprietors.**

Clause 109 preserves the power contained in Section 168 of the Education Act 2002 for the Secretary of State to prescribe in regulations the information that must be provided by the proprietor of a registered independent educational institution on request. Clause 109 extends the provision so that the Chief Inspector, who takes over as registration authority, may also request the prescribed information. The Education (Provision of Information by Independent Schools) (England) Regulations 2003 (as amended) set out the current information requirements. They set out information to be provided in the following circumstances:

- in an application for registration;
- in a return within 3 months of the admission of pupils following approval of an application for registration;
- in an annual return; and
- the circumstances leading to the resignation or dismissal of a person on the grounds that the person is unsuitable to work with children.

The Education (Provision of Information by Independent Schools) (England) Regulations 2003, as amended, already provide a power to deregister an institution for non-compliance with the regulations and specifies that any person who fails to comply is guilty of an offence. Sub clause 109(6) provides for a new right of appeal to be set out in the regulations.

The information requirements set out in the current regulations will remain largely unchanged and are shown below.

The regulations will be made by the negative resolution procedure.

**Background**

It is essential that independent educational institutions provide information which relates to their entry on the Register of Independent Educational Institutions. This must be provided so that the details are current. The information is required so that the Chief Inspector can carry out her functions as the registration authority. The information will also aid inspection of the institution. In addition the Register of Independent Educational Institutions must be kept up to date so that parents and others have current information about the type of provision offered by institutions. The regulations, which are reproduced in the following annex, also provide important safeguards by requiring institutions to make reports where they cease to employ people who may be unsuitable for future work in any school or institution.
In exercise of the powers conferred on the Secretary of State by sections 160(1), 168, 210(7) and 214(1) of the Education Act 2002\(^{(21)}\), the Secretary of State for Education and Skills hereby makes the following Regulations:

**Citation, commencement and application**

4. These Regulations may be cited as the Education (Provision of Information by Independent Schools) (England) Regulations 2003 and shall come into force on 1st September 2003.

5. These Regulations shall apply only in relation to England.

6. These Regulations shall apply to any independent school, except that—
   (a) regulations 6 and 7, and paragraphs 3(5) to 3(10), 3(15) and 4 to 13 of the Schedule shall not apply to an Academy; and
   (b) regulations 5 to 7 and parts 1 to 4 of the Schedule shall not apply to a city technology college or a city college for the technology of the arts.

**Interpretation**

7.—(1) In these Regulations—
   “the 2002 Act” means the Education Act 2002;
   “application” means an application under section 160(1) of the 2002 Act to enter an independent school in the register;
   “city technology college” or “city college for the technology of the arts” means a school established under section 482 of the Education Act 1996\(^{(22)}\) before 26th July 2002 which is not an Academy;

\(^{(21)}\) 2002 c.32; see section 212(1) for the definition of “regulations”, by virtue of which these regulations made by the Secretary of State apply only in relation to England. Section 212(1) also defines “prescribed”.

\(^{(22)}\) 1996 c.56; section 482 was substituted by section 65 of the Education Act 2002.
“looked after by a local authority” has the meaning assigned to it by section 22(1) of the Children Act 1989;
“school” means an independent school; and
“services” includes professional and voluntary services.

(2) Any reference in these Regulations to a person employed at a school is a reference to a person carrying out work to which section 142 of the 2002 Act applies.

Application for registration of an independent school

8. Every application shall—
   (a) be made in writing;
   (b) state the first date on which the school intends to admit pupils;
   (c) contain the information specified in Part 2 of the Schedule; and
   (d) contain a certificate signed by the proprietor that, to the best of his knowledge and belief, the statements made in the application are accurate.

Return within the first three months of operation

9. The proprietor of a registered school shall deliver to the registration authority within three months of the admission of pupils, or one pupil if that pupil is within section 463(1)(b) of the Education Act 1996(23), a return in writing which shall contain—
   (a) the information specified in Part 3 of the Schedule; and
   (b) a certificate signed by the proprietor or by a person authorised by him to give the certificate on his behalf that, to the best of his knowledge and belief, the statements made in the return are accurate.

Annual return

10.—(1) In every school year, the proprietor of a registered school shall deliver to the registration authority an annual return for that school within one month of being requested to do so by the registration authority.
   (2) Each annual return shall—
      (a) be provided in writing;
      (b) be made up to the date specified by the registration authority;
      (c) contain the information specified in Part 4 of the Schedule; and
      (d) contain a certificate signed by the proprietor or by a person authorised by him to give the certificate on his behalf that, to the best of his knowledge and belief, the statements made in the annual return are accurate.

Supply of information following dismissal, resignation etc.

11.—(1) Where the proprietor of a school—
      (a) has ceased to use a person’s services on a ground—
         (i) that the person is unsuitable to work with children;
         (ii) relating to the person’s misconduct; or
         (iii) relating to the person’s health where a relevant issue is raised, or
      (b) might have ceased to use a person’s services on such a ground had the person not ceased to provide those services,

(23) Section 463 was substituted by section 172 of the 2002 Act.
the proprietor shall report the facts of the case and provide all the information listed in Part 5 of the Schedule that is available to him in relation to such person to the Secretary of State within one month following the date on which that person ceases to provide services to the school.

(2) The proprietor of a school shall provide the Secretary of State such further information as may be requested by the Secretary of State which he considers relevant to the exercise of his functions under section 142 of the 2002 Act.

(3) For the purposes of paragraph (1)(a)(iii), a relevant issue is one which arises where the circumstances of the case, including occasions of conduct other than that in question, are such as to raise an issue concerning the safety and welfare of children.

Deletion of a school from the register

12. If the registration authority is satisfied that the proprietor of a school has failed to comply with any requirement specified in regulation 6, 7 or 8 it may remove that school from the register.

Offence

13. If the proprietor of a school fails to comply with any requirement specified in regulation 6, 7 or 8 he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Maximum number for existing schools

14. In relation to any school which was registered before 1st September 2003, “the maximum number of pupils” for the purposes of section 162 of the 2002 Act shall become, on the date to which the 2004 annual return is made up, the number of pupils registered at the school on that date.

Revocation

15. The Education (Particulars of Independent Schools) Regulations 1997(24) are hereby revoked.

David Miliband
Minister of State
25th July 2003
Department for Education and Skills

(24) S.I. 1997/2918
The regulations and directions in this document are indicative only.

SCHEDULE

PART 1

INTRODUCTORY

16. In this Schedule—

“charity” means any institution, corporate or not, which is established for charitable purposes and is subject to the control of the High Court in the exercise of the court's jurisdiction with respect to charities; and

“year group” means a group of pupils attending the school who attain the same age in years during the period of twelve months beginning with 1st September in the school year in which the application is made (or, as the case may be, during the period of twelve months beginning with the 1st September immediately preceding the date to which the annual return is made up).

PART 2

INFORMATION REQUIRED IN AN APPLICATION

“2.—(1) Where the proprietor is an individual, his full name, any previous names by which he has been known, his usual residential address, telephone number and date of birth.

(2) Where the proprietor is a corporation, a Scottish firm or a body of persons named as the proprietor in the register or in an application to enter a school in the register —

(a) the address and telephone number of its registered or principal office, and

(b) for each member of the Corporation, Scottish firm or body of persons his full name, any previous names by which he has been known, his usual residential address and date of birth.”

(3) The name and address of the school, its telephone number and any e-mail address.

(4) Where the school has a governing body, the full name, usual residential address and telephone number of the Chair of that body.

3.—(1) The proposed age range of pupils.

(2) The proposed maximum number of pupils.

(3) Whether the school is for male pupils or female pupils or both.

(4) Whether the school provides accommodation for pupils.

(5) Whether the school admits pupils with special educational needs.

(6) Whether the school will cater wholly or mainly for pupils with special educational needs and the type of learning difficulty catered for.

(5A) The number of pupils at the school who are looked after by a local authority

(7) A plan showing the layout of the premises and accommodation.

(8) Detailed curriculum plans, schemes of work and pupil assessment procedures.

(9) The written policies required by paragraph 3(2) of the Schedule to the Education (Independent School Standards) (England) Regulations 2003(25).

(10) The complaints procedure required by paragraph 7 of that Schedule.

(25) S.I. 2003/1910
(11) Whether the proprietor intends to provide any child with accommodation at the school (or elsewhere pursuant to arrangements made by him) for more than 295 days in any year.

(12) The religious ethos of the school, if any.

(13) Whether the premises of the school, including any accommodation provided, are at two or more separate locations, and if so, the address of each such location.

(14) Where the school is, or is conducted by, a charity, the name of that charity and the number under which it is registered.

(15) A copy of the school’s risk assessment under regulation 3 of the Management of Health and Safety at Work Regulations 1999(26) insofar as it relates to obligations under Part II of the Fire Precautions (Workplace) Regulations 1997(27).

PART 3
INFORMATION REQUIRED IN THE RETURN TO BE SUBMITTED WITHIN THREE MONTHS OF ADMISSION OF PUPILS

4.—(1) The number of pupils in each year group.

(2) In the case of a school providing accommodation the number of boarding pupils.

(3) In the case of a school also providing part-time education, the number required by sub-paragraph (1) shall be stated separately in respect of pupils receiving part-time education and those receiving full-time education.

(4) In the case of a co-educational school, all numbers required by this paragraph shall be stated separately for boys and for girls.

5.—(1) The number of pupils at the school in respect of whom a local education authority maintain a statement of special educational needs pursuant to section 324 of the Education Act 1996, and in respect of each such pupil—

(a) his full name;
(b) the date on which he became a pupil at the school; and
(c) the name of the local education authority maintaining the statement.

(2) The number of pupils at the school who do not fall within sub-paragraph (1) but who have been identified as having special educational needs.

6. In relation to teachers employed at the school (with numbers given separately for men and for women teachers)—

(a) the number of full-time teachers;
(b) the number of part-time teachers; and
(c) the aggregate number of hours a week normally worked by part-time teachers in term time.

7. In relation to every person employed at the school—

(a) his full name and any previous names by which he has been known;
(b) his sex, date of birth, National Insurance number and the capacity in which he is employed; and
(c) in the case of a teacher, his qualifications and a statement as to whether he is the head teacher, a full-time teacher or a part-time teacher.

(26) S.I. 1999/3242
(27) S.I. 1997/1840; amended by S.I. 1999/1877
8.—(1) The amount of annual tuition and other fees (excluding fees for accommodation) payable in respect of a pupil at the school as a condition of his attendance.

(2) In the case of a school providing accommodation for pupils, the amount of annual fees payable in respect of a boarding pupil for his accommodation.

PART 4

INFORMATION REQUIRED IN AN ANNUAL RETURN

9. All the information specified in Parts 2 and 3 of this Schedule with the exception of that set out in paragraphs 2(2)(b), 3(1) to 3(13), 3(15) and 7.

10. In relation to every person who has commenced employment or ceased employment at the school since the date of the last return to the registration authority—
   (a) his full name and any previous names by which he has been known;
   (b) his sex, date of birth and the capacity in which he is employed; and
   (c) in the case of a teacher, his qualifications and a statement as to whether he is the head teacher, a full-time teacher or a part-time teacher (except that no information is required on qualifications in the case of a teacher who has ceased employment).

11. In the two years preceding the date to which the return is made up (except in the case of a first annual return) the number of children attending the school for whom accommodation was provided there (or elsewhere pursuant to arrangements made by the proprietor) for more than 295 days in any year.

12.—(1) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years who are pursuing courses for examinations.

(2) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years who have completed courses for an examination in the General Certificate of Education (Advanced or Advanced Subsidiary level), or the Advanced Vocational Certificate of Education (AVCE), but remain at the school for a purpose other than for pursuing any further course of that nature.

(3) The number of pupils in each year group of pupils aged 15, 16, 17 and 18 years (except for those who fall into the category of pupils referred to in sub-paragraph (2)) who attend the school for a purpose other than for pursuing courses for a relevant examination.

(4) The numbers specified in the annual return under sub-paragraphs (1) and (2) shall be stated separately for boys and girls.

13. Where a change has occurred in the premises of or accommodation at the school since the date to which the immediately preceding annual return was made up (or, in the case of the first annual return, since the date to which the information contained in the application for the registration of the school was made up), particulars of such change.

13A. Where a change has occurred in the membership of any corporation, Scottish firm or body of persons named as the proprietor in the register or in an application to enter a school in the register, in relation to any new member the information required in paragraph 2(2)(b) of this Schedule.
PART 5
INFORMATION TO BE SUPPLIED BY A PROPRIETOR FOLLOWING DISMISSAL, RESIGNATION, ETC.

14. A statement of reasons for ceasing to use the person’s services.

15. Records relating to the cessation of the use of the person’s services or any contemplated cessation, including notes and minutes of meetings, interview notes and evidence supplied to or obtained by the proprietor.

16. Records relating to conduct which eventually led to the cessation of the use of the person’s services or might, but for the person having ceased to provide those services, have led the proprietor to cease to use his services, including notes and minutes of meetings, interview notes and evidence supplied to or obtained by the proprietor.

17. Letters, warnings or notices issued to a person in relation to the cessation of the use of his services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person’s services or might, but for the person having ceased to provide those services, have led the proprietor to cease to use his services and the person's replies or representations in relation thereto.

18. Any other statements, representations and evidence submitted by a person to the proprietor in relation to the cessation of his services or contemplated cessation, or the conduct which eventually led to the cessation of the use of the person’s services or might, but for the person having ceased to provide those services, have led the proprietor to cease to use his services.

19. Any letter advising of a person’s intention to cease to provide services.

20. Any other document or information which the proprietor considers is relevant to the exercise of the Secretary of State’s functions under section 142 of the 2002 Act.

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations revoke and replace the Education (Particulars of Independent Schools) Regulations 1997. They relate to applications for registration of independent schools under section 160(1) of the Education Act 2002 and information to be provided periodically by the proprietors of independent schools under section 168 of that Act.

Sections 160(2) and 162 of the Education Act 2002 combine to provide that a school may be removed from the register if there is a change in “the maximum number of pupils”, which new schools are required to state in their applications. Regulation 11 provides for a baseline figure in relation to existing schools.
18. **Policy statement for Clauses 114 and 115 – Prohibition on participation in management and appeals against directions made under clause 113.**

Clause 114 provides a power for the appropriate authority to make directions prohibiting or restricting the participation of unsuitable persons in the management of an independent educational institution. The current power is contained in section 167A of the Education Act 2002. This clause largely reproduces those provisions and provides that the appropriate authority for England is the Chief Inspector. To date regulations have not been made under Section 167A.

The purpose of this power is to prevent or, where appropriate, restrict unsuitable people, who would not otherwise be barred under the Safeguarding Vulnerable Groups Act 2006, from being involved in the management of an independent educational institution and therefore in a position to influence the way the institution is operated.

It is proposed that the new regulations will set out the grounds on which a direction may be made, the procedure for giving a direction and the arrangements for varying or revoking directions. The grounds which are likely to be prescribed relating to unsuitability will include:

- criminal convictions for fraud, theft or money laundering;
- offences relating to unlawful immigration and some drugs offences;
- glorification of terrorism;
- membership of a proscribed organisation;
- conducting inappropriate activities on the same premises, for example prostitution.

The grounds to vary or revoke a direction would include the availability of new information, ie a successful appeal against a conviction or substantial evidence that the original allegation was false.

Clause 115 allows a person in respect of whom a direction is made under clause 114 to appeal against the making of the direction or any refusal to vary or revoke it. The appeal lies to the Care Standards Tribunal. Clause 115 carries forward the power contained in section 167B of the Education Act 2002 for the Secretary of State to make regulations relating to these appeals.

Regulations may:

- Prescribe the circumstances in which the Care Standards Tribunal (CST) is obliged to grant an appeal against a direction under clause 113;
- Prevent the CST from entertaining an appeal where the appellant’s
The regulations and directions in this document are indicative only.

case is inconsistent with him having been convicted of an offence; and

- Prescribe the powers available to the Tribunal on allowing an appeal.

The purpose of this power is to prevent an appellant seeking to re-open the findings of a court where he has been convicted of an earlier serious offence when the appellant argues his case in support of an appeal against a clause 114 direction. For example, this will limit the right of appeal where an appellant seeks to appeal against a direction made on the basis of previous financial misconduct on grounds that his financial conduct was above board, lawful and appropriate in circumstances where the appellant has been convicted of fraud.

On the other hand, regulations should set out the circumstances in which an appeal must be allowed, and the powers the Tribunal may have to revoke or amend a direction prohibiting participation in the management of an independent educational institution.

The regulations will be made by the negative resolution procedure.

Background

It is important that unsuitable persons are prevented from participating in the management of an independent educational institution so that they are not in a position to undesirably influence the way in which that institution is operated, including the employment of staff who may be influenced to condone any wrong doing.

It is right that there should be an appeal mechanism for persons who have been the subject of a direction that they are unsuitable to take part in the management of an independent educational institution. However, the grounds for making such a direction relate to very serious offences, of which persons will already have been convicted by a court, and it is equally right that there should be a limitation on the right of appeal.
19. **Policy statement for Clause 118 - delegated powers in relation to providers of independent education or training for 16 to 18 year olds**

Clause 118 defines a new group of private education and training providers that do not currently fall under the definition of an independent educational institution, so are not subject to the requirements imposed on such institutions, and do not receive any state funding. These institutions are providing education or training for at least 16 hours a week for at least 4 weeks in an academic year, to at least 5 people over compulsory school age including at least one under the age of 18, or to at least one student with special educational needs.

Subsection (1) of this clause allows regulations to provide for any part of the independent educational institution standards or any of the other provisions in Chapter 1 of Part 4 of the Bill to apply to this group of providers, subject to any modifications.

**Rationale**

Education offered by independent providers would be one way that a young person could meet his or her requirements under the new duty to participate – the full time education or training route is not required to be in a state-funded institution and does not have to be towards accredited training.

Independent schools educating children of compulsory school age are currently required to register with the Department (this will be with Ofsted in future, subject to the passage of this legislation) and are required to adhere to standards and be inspected. Private training providers receiving funding from the Learning and Skills Council (the LSC), such as those involved in the provision of Apprenticeships, for example, are required by their contracts with the LSC to ensure a healthy, safe and supportive environment for learners. Unlike other suppliers of education and training for this age group, and unlike independent schools educating young people of compulsory school age, however, independent providers are currently not subject to specific obligations (outside general health and safety law) either in statute or contract to look after the safety, wellbeing and welfare of their students.

Given that in future some young people will be participating at such institutions as a way of fulfilling their legal obligation, it is incumbent on Government to ensure that their health, safety and welfare is secured while they are doing this, and we therefore need to ensure that there is sufficient power to regulate such providers to secure certain standards.

Independent educational institutions that already educate children of compulsory school age will be unaffected, as will private providers that already receive state funding through the LSC, because the definition in clause 118(2) sets out that ‘an independent post-16 college’ is not an independent educational institution nor an institution in receipt of funding from the LSC.
Intention

The primary focus in applying any provision of this Chapter would be on ensuring a healthy, safe and secure environment for learners.

No decisions have yet been taken about which standards would be applied and what modifications would be required. We are taking the power to make regulations here because it is right that in putting a new expectation on young people to participate until they are 18 we simultaneously take the power to ensure that they are safe and supported, wherever they choose to participate. Regulating this new group of independent post-16 institutions would bring them in line with the standards imposed on and expected of other post 16 providers such as schools, colleges and LSC-funded training providers. Before setting any standards we will consult with Ofsted, representatives of the institutions affected, and other stakeholders, as required by Clause 119, and we will aim to make any requirements as light touch as possible.

Any draft regulations laid before Parliament under clause 119(1) would be subject to the affirmative procedure, providing an opportunity for Parliament to scrutinise them carefully.
The regulations and directions in this document are indicative only.

20. Clause 127

STATUTORY INSTRUMENTS

2008 No.

EDUCATION, ENGLAND

The Education (Non-maintained Special Schools) (Right of Sixth-form Pupils to Opt Out of Religious Worship) (England) Regulations 2008

Made - - - - ***
Laid before Parliament ***
Coming into force - ***

The Secretary of State, in exercise of the powers conferred by section 342(5A) of the Education Act 1996(28), makes the following Regulations:

Citation, commencement and application

21.—(1) These Regulations may be cited as the Education (Non-maintained Special Schools) (Right of Sixth-form Pupils to Opt Out of Religious Worship) (England) Regulations 2008 and come into force on […].

22. For paragraph 10 of the Schedule to the Education (Non-Maintained Special Schools) (England) Regulations 1999(29) and the subtitle which precedes it, substitute the following—

“Collective worship and religious education

10.

Arrangements must be made to ensure that, so far as practicable, every pupil attending the school—
The regulations and directions in this document are indicative only.

(a) receives religious education unless withdrawn from receiving such education in accordance with the wishes of the pupil’s parent; and
(b) attends religious worship unless withdrawn from attendance at such worship—
   (i) in the case of a sixth-form pupil\(^\text{30}\), in accordance with the pupil’s own wishes; and
   (ii) in any other case, in accordance with the wishes of the pupil’s parent.”

[Signature]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply only in relation to England and amend the Education (Non-Maintained Special Schools) (England) Regulations 1999 ("NMSS Regulations") which make provision as to the requirements which are to be complied with as a condition of approval under section 342(1) of a school as a non-maintained special school.

Regulation 2 amends paragraph 10 of the NMSS Regulations in effect creating a requirement to be complied with by any non-maintained special school while approved under section 342 that the school makes arrangements to ensure that, so far as practicable, every pupil attending the school receives religious education and attends religious worship.

The school need not make such arrangements for religious education if the pupil is withdrawn from receiving it in accordance with the wishes of the pupil’s parent.

The school need not make such arrangements for attendance at religious worship, if, in the case of a sixth-form pupil, the pupil is withdrawn in accordance with the pupil’s own wishes or, in any other case, in accordance with the wishes of the parent.

\(^{30}\) Section 342(5B) (inserted by section 126 of the Education and Skills Act 2008) defines “sixth-from pupil” as a pupil who (a) has ceased to be of compulsory school age, and (b) is receiving education suitable to the requirements of pupils over compulsory school age.
Citation, commencement and application

23.—(1) These Regulations may be cited as the Education (Non-maintained Special Schools) (Withdrawal of Approval) Regulations 2008 and come into force on […].

(2) These Regulations apply only in relation to England.

Interpretation

24. In these Regulations—

“relevant arrangements” means arrangements that require the approval of the Chief Inspector by virtue of section 342(5)(a),

“Tribunal” means the tribunal established under section 9 of the Protection of Children Act 1999(32).

Application to justice of the peace for order

25.—(1) The Chief Inspector may apply to a justice of the peace for an order against the proprietor of a non-maintained special school in England that the school ceases to be approved under section 342.

(2) If it appears to the justice that a pupil at the school in question is suffering or is likely to suffer significant harm, the justice may make the order.

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(31) 1996 c. 56. Sections 342A, 342B and 342C were inserted by the sections 127 and 128 of the Education and Skills Act 2008. NB: These are illustrative regulations made in connexion with the Education and Skills Bill (Bill 12).

The regulations and directions in this document are indicative only.

(3) An application under this regulation may be made without notice.

(4) An order under this regulation must be in writing.

(5) A copy of an order under this regulation must be served on the proprietor of the school by the Chief Inspector as soon as reasonably practicable after the order is made.

(a) An order under this regulation has effect from the time the copy is served on the proprietor.

(6) For the purposes of this regulation, “harm” has the same meaning as in the Children Act 1989(33) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act(34).

Notification

26.—(1) The Chief Inspector must comply with this regulation as soon as reasonably practicable after an order is made under regulation 25 against the proprietor of the school.

(2) The Chief Inspector must serve on the proprietor—

(a) a copy of any written statement in support of the application for the order, and

(b) notice of the right of appeal conferred by regulation 30.

(3) The Chief Inspector must notify the following that the order has been made—

(a) the local education authority in whose area the school is situated;

(b) any other local education authority that the Chief Inspector, after reasonable enquiry, is aware has specified the school in a statement of special educational needs in respect of a pupil at the school.

Rights of appeal against decisions of the Chief Inspector

27.—(1) The proprietor of a non-maintained special school in England may appeal to the Tribunal against a decision by the Chief Inspector—

(a) to withdraw approval from a school by virtue of section 342(4)(b) (failure to comply with prescribed requirement) otherwise than at the request of the proprietor;

(b) not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school.

(2) An appeal under paragraph (1) must be made within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.

Effect of decisions of Chief Inspector suspended

28.—(1) This regulation applies where the Chief Inspector decides to withdraw approval from a school by virtue of section 342(4)(b) (failure to comply with a prescribed requirement) otherwise than at the request of the proprietor.

(2) The Chief Inspector’s decision does not have effect during the period in which—

(a) an appeal may be brought under regulation 27(1)(a) against the decision, or

(33) 1989 c. 41. At the time of drafting, that Act provides that “harm” means ill-treatment or the impairment of health or development including, for example, impairment suffered from seeing or hearing the ill-treatment of another.

(34) Section 31(10) of 1989 c. 41 provides that where the harm suffered by a child turns on the child’s health or development, the question of whether the harm is significant turns on how his health or development is affected compared with that which could reasonably be expected of a similar child.
(b) where such an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

**Determination of appeal against decision of Chief Inspector**

29.—(1) On an appeal under regulation 27 the Tribunal may—

(a) confirm the decision, or

(b) direct that the decision is of no effect.

(2) Where the Tribunal confirms the decision, the school ceases to be approved under section 342 from such date as the Tribunal may specify or, if it does not specify a date, from such date as the Chief Inspector may determine.

**Appeals against order of justice of the peace**

30.—(1) The proprietor of a non-maintained special school in England may appeal to the Tribunal against the making of an order under regulation 25 (order by justice of peace in an emergency).

(2) On an appeal under this section the Tribunal may—

(a) confirm the making of the order, or

(b) direct that the order is to cease to have effect.

Andrew Adonis

Address Parliamentary Under Secretary of State

Date Department for Children, Schools and Families
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations apply only in relation to England and relate to the withdrawal of approval of non-maintained special schools.

Regulation 25 empowers the Chief Inspector to apply, in an urgent case, to a justice of the peace for an order against the proprietor of a non-maintained special school that the school ceases to be approved under section 342 of the Education Act 1996. It is under that section that a school is approved as a non-maintained special school, which is defined in section 337A.

The justice may make the order if it appears that a pupil at the school is suffering or is likely to suffer significant harm.

If the justice makes the order, a copy of it must be served on the proprietor of the school by the Chief Inspector as soon as reasonably practicable afterwards, from which time the order has effect.

Regulation 4 obliges the Chief Inspector, as soon as reasonably practicable after an order is made by a justice of the peace, to serve on the proprietor a copy of any written statement in support of the application for the order (so the proprietor is made aware of the factual background to the application) and notice of the right of appeal enjoyed by the proprietor.

The proprietor may appeal against the decision of the justice under regulation 8 to the tribunal established under section 9 of the Protection of Children Act 1999 (the “Tribunal”), often referred to as the Care Standards Tribunal. On appeal the Tribunal may confirm the making of the order or direct that the order is to cease to have effect.

Regulation 5 confers a right of appeal on the proprietor to appeal to the Tribunal against a decision by the Chief Inspector to withdraw approval from a school for failure to comply with prescribed requirement or against a decision not to approve, not to approve a change to, or to withdraw approval from, relevant arrangements in relation to such a school. “Relevant arrangements” means arrangements, generally school-specific, that require the approval of the Chief Inspector by virtue of section 342(5)(a) of the Education Act 1996.

The appeal must be made within the period of 28 days beginning with the day on which notice of the decision is served on the proprietor.

During this time, regulation 6, a decision of the Chief Inspector to withdraw approval from a school for failure to comply with a prescribed requirement does not have effect. Also, where an appeal has been brought, the decision does not have effect while the appeal has not been determined, withdrawn or otherwise disposed of.

The effect of an order by a justice of the peace in an urgent case is not suspended in this way, in the interest of pupil welfare. Neither is a decision of the Chief Inspector regarding relevant arrangements.

Regulation 7 provides that on appeal against a decision of the Chief Inspector, the Tribunal may confirm the decision or direct that the decision is of no effect. Where the Tribunal confirms the decision, the school ceases to be approved from a date the Tribunal specifies or, if it does not specify a date, from such date as the Chief Inspector may determine.
The regulations and directions in this document are indicative only.

22. Clause 134

STATUTORY INSTRUMENTS

2008 No.

EDUCATION, ENGLAND


Made - - - - 2008
Laid before Parliament 2008
Coming into force - - 2008

The Secretary of State for Children, Schools and Families, after consulting the Administrative Justice and Tribunals Council, makes the following Regulations in exercise of the powers conferred by sections 94(5A), 95(3A) and 138(7) of the School Standards and Framework Act 1998(35):

Citation, commencement and application

31.—(1) These Regulations may be cited as the Education (Admissions Appeals Arrangements)(England)(Amendment) Regulations 2008 and come into force on XXX 2008.

(2) These Regulations apply only in relation to England.

Amendment of Regulations

32. The Education (Admissions Appeals Arrangements)(England) Regulations 2002(36) are amended as follows.

33. In regulation 2, insert in the appropriate place the following definition—

“\textit{appropriate authority} means the body or bodies responsible for making the arrangements described in regulation 3.”

34. In regulation 4(1), omit sub-paragraph (a).

35. For Schedule 2, substitute the following—

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(35) 1998 c.31; subsection (5A) was inserted into section 94 by section 50 of the Education Act 2002 (c.32). [Subsection (5A)(aa) was inserted into subsection (5A) by clause 136 of the Education and Skills Bill]. See section 142(1) for the definition of “regulations”.

(36) S.I.2002/2899, to which there are amendments not relevant to these Regulations.
Appeals made pursuant to section 94

1.—(1) In this paragraph—

"appeal" means an appeal made under the arrangements referred to in regulation 3(a) to (d); and

"a decision about sixth form education" means a decision—

(a) made in relation to a preference expressed in accordance with arrangements made under section 86A(1) as to where education should be provided for a child, or

(b) refusing permission for a child to enter the sixth form of the school to which he has been admitted.

(2) Particulars of the arrangements for making an appeal, including information containing the contact details for whichever body or bodies are responsible for those arrangements, shall be set out in any document containing a notification to parents of—

(a) a decision referred to in section 94(1)(za), (b) and (2) refusing their child admission to a school for which the parents have expressed a preference in accordance with the arrangements made under section 86(1), including any co-ordinated arrangements made in accordance with sections 88M and 88N; or

(b) a decision referred to in section 94(1)(a) as to the school at which education is to be provided for their child.

(3) In the case of a decision about sixth form education, notices must be sent to the child and his parents containing the following—

(a) notification of—

(i) a decision referred to in section 94(1)(za), (b) and (2) refusing the child admission to a school for which the child or any parent of his has expressed a preference in accordance with the arrangements made under section 86A(1),

(ii) a decision referred to in section 94(1)(a) as to the school at which education is to be provided for the child; or

(iii) a decision referred to in section 94(1A) or (2A) refusing permission for a child who has already been admitted to a school to enter the school's sixth form;

(b) particulars of the arrangements for making an appeal, including information containing the contact details for the appropriate authority; and

(c) a statement explaining that where a child and any parent of his make separate appeals in respect of the same school, the appeals must be heard together.

(4) Where a child and any parent of his make separate appeals in respect of the same school, the appeals must be heard together.

(5) An appeal shall be by notice in writing setting out the grounds on which it is made.

(6) An appeal shall give the appellant an opportunity of appearing and making oral representations, and may allow him to be accompanied by a friend or to be represented.
The regulations and directions in this document are indicative only.

(7) An appeal shall be heard in private except where the body or bodies by whom the arrangements under section 94 are made direct otherwise; but—

(a) if the panel so direct, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 of Schedule 1;

(b) if the panel so direct, one member of the governing body of the school in question may attend, as an observer, any hearing of an appeal by an appeal panel constituted in accordance with paragraph 1 or 2 of Schedule 1 (or in accordance with paragraph 2 as it applies by virtue of paragraph 3 of that Schedule); and

(c) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—

( i ) training, or

(ii) appraisal of the performance of clerks or appeal panel members.

(8) For the purposes of sub-paragraph (7), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, shall be treated—

(a) as an appeal to an appeal panel constituted in accordance with paragraph 1 of that Schedule if it relates to a community or voluntary controlled school; and

(b) as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made shall be communicated by the panel in writing to—

(a) the appellant and the local education authority,

(b) in the case of an appeal heard jointly with another appeal in accordance with paragraph 1(4), to the appellant in the other appeal; and

(c) in the case of an appeal to an appeal panel constituted in accordance with paragraph 2 of Schedule 1, (or in accordance with that paragraph as it applies by virtue of paragraph 3 of that Schedule), to the governing body by whom or on whose behalf the decision appealed against was made.

(11) For the purposes of sub-paragraph (10), an appeal to an appeal panel constituted in accordance with paragraph 1 of Schedule 1, as it applies by virtue of paragraph 4 of that Schedule, shall be treated as an appeal to an appeal panel constituted in accordance with paragraph 2 of that Schedule, if it relates to a foundation or voluntary aided school.

(12) Subject to sub-paragraphs (2) to (11), all matters relating to the procedure on appeals, including the time within which they are to be brought, shall be determined by the appropriate authority.

Appeals made pursuant to section 95

2.—(1) In this paragraph “appeal” means an appeal made under the arrangements referred to in regulation 3(e).

(2) Where any such decision as is mentioned in section 95(2) is made by or on behalf of the local education authority, the authority shall give the governing body of the school notice in writing—

(a) of that decision; and
(b) of the governing body’s right to appeal against the decision in accordance with sub-paragraph (3).

(3) An appeal by the governing body against any such decision must be made not later than the 15th school day after the day on which they are given notice under sub-paragraph (2).

(4) An appeal shall be by notice in writing setting out the grounds on which it is made.

(5) The appeal panel shall meet to consider an appeal on such date as the local education authority may determine but the date so determined must not be later than the 15th school day after the day on which the appeal is lodged.

(6) On an appeal the panel shall allow—

(a) the local education authority and the governing body to make written representations;

(b) an officer of the authority nominated by the authority, and a governor nominated by the governing body, to appear and make oral representations; and

(c) the governing body to be represented.

(7) Appeals shall be heard in private except when the local education authority direct otherwise; but—

(a) if the panel so direct, one member of the local education authority may attend, as an observer, any hearing of an appeal by an appeal panel; and

(b) if the panel so direct, any person may attend a hearing of an appeal for the following purposes—

(i) training, or

(ii) appraisal of the performance of clerks or appeal panel members.

(8) Two or more appeals may be combined and dealt with in the same proceedings if the appeal panel consider that it is expedient to do so because the issues raised by the appeals are the same or connected.

(9) In the event of a disagreement between the members of an appeal panel, the appeal under consideration shall be decided by a simple majority of the votes cast and, in the case of an equality of votes, the chairman of the panel shall have a second or casting vote.

(10) The decision of an appeal panel and the grounds on which it is made shall—

(a) be communicated by the panel in writing to the local education authority and the governing body; and

(b) be so communicated by the end of the second day after the conclusion of the hearing of the appeal.

(11) Subject to sub-paragraphs (2) to (10), all matters relating to the procedure on appeals shall be determined by the local education authority."
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made under section 94(5A), 95(3A) and 138(7) of the School Standards and Framework Act 1998 and come into force on XXX 2008.

They make amendments to the Education (Admissions Appeals Arrangements)(England) Regulations 2002 (“the 2002 Regulations”). Regulations 3 and 4 move a definition into regulation 2 of the 2002 Regulations so that it applies generally. Regulation 5 substitutes a new Schedule 2 into the 2002 Regulations. The new Schedule makes provision for appeals in cases where decisions are made about children entering the sixth form, or receiving education after they have ceased to be of compulsory school age. In cases where the child and any parent of his make appeals in respect of the same school, the appeals must be heard together.
23. **Delegated Powers for clause 135 – Admissions Arrangements**

**Policy statement for the Education and Skills Bill: Clause 88C – Procedure for determining admission arrangements**

The effect of Clause 88C is to replace the requirement in primary legislation that admission authorities consult various bodies about their admission arrangements before determining them, with a power to make Regulations about the consultation process.

Currently, primary legislation requires admission authorities to consult annually with the bodies set out in section 89(2) of the School Standards and Framework Act 1998. Removing this requirement from primary legislation and instead taking a power to make Regulations to prescribe the consultation process will mean that a more flexible and adaptable consultation process, that better engages with parents and communities, can be designed and set out in Regulations. We will make new Regulations to replace The Education (Determination of Admission Arrangements) Regulations 1999 (as amended) to set out the new consultation process, including who should be consulted, on which elements of the arrangements they should be consulted, and how often.

We intend to consult formally during summer 2008 on these draft Regulations, as part of a wider consultation on proposed changes to the School Admissions Code and admissions Regulations to strengthen the school admissions framework. Proposals for consultation will include prescribing in Regulations a requirement for admission authorities to consult on admission arrangements every three years (instead of annually) except where changes are proposed within the period, making it a statutory requirement to consult parents and communities during the process, improving the promotion of determined admission arrangements, strengthening the statutory guidance in the School Admissions Code on the consultation process and on practices that should be ruled out in oversubscription criteria.

**Policy statement for the Education and Skills Bill: Clauses 88I, 88K and 88L – Additional functions of the Schools Adjudicator**

Clause 88I introduces additional functions for the Schools Adjudicator relating to admission arrangements. It places a new duty on him to consider admission arrangements referred to him by the Secretary of State or mentioned in a local authority report, and to decide whether they are lawful or not. It also gives him a new power to consider arrangements which he thinks may be unlawful and have come to his attention by other means.

Clauses 88K and 88L (along with clauses 88H and 88J) contain consequential amendments to the legislation relating to the Adjudicator’s role, including the restriction on the alteration of admission arrangements following an Adjudicator’s decision, which result from the introduction of these additional

We have widened the existing regulation-making powers that have been carried over into new clauses 88K and 88L from sections 90 and 90A of the School Standards and Framework Act, to allow for the introduction of these additional functions for the Schools Adjudicator. The Regulations currently made under sections 90 and 90A - the School Admissions (Alteration and Variation of, and Objections to, Arrangements) (England) Regulations 2007 - will also need to be amended so that they apply to the Adjudicator’s new functions as well as his current ones.

The provisions in the Regulations that need to be amended relate to: the power under which the Adjudicator may require an admission authority to provide him with information; the manner of publication of an Adjudicator’s report; circumstances in which an admission authority may revise their admission arrangements in light of an Adjudicator’s decision and the procedure to be followed; and the restriction on alteration of admission arrangements following an Adjudicator’s decision.

We intend to consult formally during summer 2008 on these draft Regulations, as part of a wider consultation on proposed changes to the School Admissions Code and admissions Regulations to strengthen the school admissions framework.

Background

These amendments should be viewed in the context of a range of proposals recently announced by Ministers to strengthen the school admissions framework and ensure more compliance with the School Admissions Code and admissions legislation.

As part of this, we are taking steps to enhance the role of the Schools Adjudicator. The Secretary of State has asked the Chief Schools Adjudicator to report to him by the end of August on the extent to which admission arrangements for September 2009 are compliant with the School Admissions Code and admissions legislation. We have also tabled an amendment to the Education and Skills Bill to place a duty on local authorities to report annually to the Chief Adjudicator on the legality, fairness and effectiveness of admission arrangements in their area. This would allow the Chief Adjudicator to draw on these reports in his annual report to the Secretary of State.

Policy statement for the Education and Skills Bill: sections 88P and 88Q - Duty on local authorities to report annually on admission arrangements in their area, and provision of information

Section 88P and 88Q place a duty on local authorities to report to the Schools Adjudicator on the admission arrangements in their area.
Reports will cover Academies’ admissions as well as those of maintained schools. Section 88P(4) sets out some general subject areas for Reports to cover, such as the determination of arrangements as well as their operation, and local co-ordination. Regulations will prescribe the timing, form and more detailed content of the reports, referring back to the subject areas in section 88P(4). Our intention is for local authorities to produce reports each summer on the admission arrangements which are to apply in the following year, and also on the effectiveness of the arrangements of the previous year.

We expect that local authorities already have full access to the information they will need – they are consulted on proposed admission arrangements and must be notified of final determined arrangements so they can refer objections to the Adjudicator. They can also draw upon the Admission Forum reports, if one is produced. To support this, section 88Q requires relevant persons to provide information to the local authority for the purposes of the preparation of the Report.

We want to place a clear duty on local authorities to produce an annual report on the fairness, legality and effectiveness of admissions arrangements in their areas as part of their role in monitoring compliance with the School Admissions Code and admissions legislation. Producing a report is also in line with their general duty to ensure fair access to educational opportunity.

We intend to consult formally during summer 2008 on these draft Regulations, as part of a wider consultation on proposed changes to the School Admissions Code and admissions Regulations. The Regulations would come into force for September 2010 admissions and will be made by the negative resolution procedure.

**Background**

The duty will ensure that reports are received from every local authority – the current voluntary system (through Admission Forums) is unlikely to achieve this.
The regulations and directions in this document are indicative only.

23. Clause 138

STATUTORY INSTRUMENTS

2008 No.

EDUCATION, ENGLAND

The Education (Provision for Improving Behaviour) Regulations 2008

Made - - - - ***
Laid before Parliament ***
Coming into force - - ***

The Secretary of State, in exercise of the powers conferred by section [29A] of the Education Act 2002(37), makes the following Regulations:

Citation, commencement and application

36.—(1) These Regulations may be cited as the Education (Provision for Improving Behaviour) Regulations 2008 and come into force on [...].

(2) These Regulations apply only in relation to England.

Interpretation

37. In these Regulations—

“relevant day” means a day on which a pupil is required to attend at a place outside the school premises for the purpose of receiving educational provision intended to improve the pupil’s behaviour pursuant to a requirement imposed by the governing body of the school under section 29A(1),

“relevant person” means—

(a) in relation to a pupil under the age of 18, a parent of the pupil,
(b) in relation to a pupil who has attained that age, the pupil;

“representative of the governing body” means a member of the governing body of a maintained school who is not—

(c) the head teacher of the school in question or any person who has held that position within the previous five years,

(37) 2002 c. 32. Section 29A was inserted by the section 133 of the Education and Skills Act 2008. NB: These are illustrative regulations made in connexion with the Education and Skills Bill (Bill 12).
(d) any person employed by the authority other than as a head teacher,
(e) any person who has, or at any time has had, any connection with the pupil in question, of a kind which might reasonably be taken to raise doubts about the ability of the member to act impartially;

“school day” means a day on which the school meets.

Educational provision for improving behaviour: prescribed information

38.—(1) Where the governing body of a maintained school in England decide to impose a requirement on a pupil under section 29A(1), the governing body must give written notice to the relevant person.

(2) The notice must be given as soon as practicable, and not less than two school days before the educational provision is due to be made at the place outside the school premises.

(3) The notice must contain—
   (a) the address at which the educational provision is to be provided for the pupil;
   (b) particulars identifying the person to whom the pupil should report on first attending that address for the purposes of receiving the educational provision;
   (c) in relation to the educational provision—
      (i) where two sessions per day are provided, the times at which the morning session commences, the afternoon session ends and the break between them commences and ends; or
      (ii) where a single session per day is provided, the times at which the session commences and ends.

Initial review meeting where requirement imposed

39.—(1) At the end of the period described in paragraph (2), the governing body is under a duty to hold a review meeting in accordance with regulation 41.

(2) The period—
   (a) begins with the first relevant day, and,
   (b) ends with the thirtieth relevant day falling after that day.

Subsequent review meetings where requirement imposed

40.—(1) At the end of a period described in paragraph (2), the governing body is under a duty to hold a review meeting in accordance with regulation 41.

(2) A period—
   (a) begins with the relevant day next following the day on which a duty last arose under these Regulations to hold a review meeting (whether under regulation 39 or this regulation), and
   (b) ends with the thirtieth relevant day falling after that day.

Conduct of review meetings

41.—(1) The purpose of a review meeting is to discuss whether the governing body should, or (as the case may be) should continue to, impose a requirement on the pupil under section 29A(1).

(2) The review meeting must be held on a school day within the period—
   (a) beginning with the school day next following that on which the duty to hold a review meeting arises under regulation 39 or 40 (as the case may be), and
(b) ending with the fifteenth school day falling after that day.

(3) The governing body must request the following persons to attend the review meeting—
   (a) the relevant person,
   (b) the head teacher of the school,
   (c) a representative of the governing body, and
   (d) where the pupil has a statement of special educational needs, a representative of the local education authority who maintain the statement.

(4) The request must be made by notice in writing.

(5) Before giving the notice the governing body must use reasonable endeavours to arrange the review meeting for a date and time within the period specified in paragraph (2) suggested by the relevant person.

(6) The notice must be given no later than six school days before the date of the review meeting.

Outcome of review meeting

42.—(1) Following a review meeting the governing body must decide whether to impose, or (as the case may be) to continue to impose, a requirement on the pupil under section 29A(1).

(2) Where the governing body decide—
   (a) to impose a requirement under section 29A(1), or (as the case may be)
   (b) to continue to impose a requirement under section 29A(1),
they must give notice in writing to the relevant person of that decision and of their reasons for making it.

(3) Where the governing body decide—
   (a) not to impose a requirement under section 29A(1), or (as the case may be)
   (b) to cease to impose a requirement under section 29A(1),
they must give notice in writing to the relevant person of their decision.

(4) A notice given under paragraph (2) or (3) must be given no later than six school days after the date of the review meeting.

(5) A notice given under paragraph (2) may be combined with a notice given under regulation 38 in a case falling in paragraph (2)(a).

(6) Where the pupil has a statement of special educational needs, the governing body must give, as soon as practicable, a representative of the local education authority who maintain the statement a copy of any notice given to the relevant person under this regulation.

Notices

43.—(1) Any notice referred to in these Regulations, or a copy of a notice in the case of regulation 42(6), may be given either—
   (a) by delivering it to the intended recipient’s last known address, or
   (b) by properly addressing, pre-paying and sending by first class post to the intended recipient’s last known address a letter containing the notice, or a letter containing a copy of a notice in the case of regulation 42(6).

(2) In this regulation “intended recipient” means in respect of a notice or a copy of a notice, the person upon whom that notice or copy of a notice is to be served.
Guidance

44. The governing body of a maintained school exercising functions under section 29A(1) must have regard to any guidance given from time to time by the Secretary of State.

EXPLANATORY NOTE
(This note is not part of the Regulations)

Regulation 3 obliges the governing body of a maintained school in England, who impose a requirement on a pupil under section 29A(1) of the Education Act 2002 (to send a pupil off the school premises for the purpose of receiving education to improve the behaviour of the pupil), to give a written notice to the pupil (where the pupil is 18 or over) or the pupil’s parent. The notice sets outs the address at which the provision is to be made, the person to whom the pupil should report on attending that address and the times of the sessions and lunch break.

Regulation 4 describes when the governing body must hold an initial review meeting when they have imposed a requirement under section 29(1).

Regulation 5 describes when the governing body must hold subsequent review meetings when they have imposed a requirement under section 29(1).

Regulation 6 provides the purpose of a review meeting is to discuss whether the governing body should, or (as the case may be) should continue to, impose a requirement on the pupil under section 29A(1). The regulation also provides when the review meeting must be held and whom the governing body must request to attend it by notice.

Regulation 7 provides for the governing body to give notice of their decision, following a review meeting, whether to impose, to continue to impose, not to impose or cease to impose a requirement on the pupil under section 29(1) (as the case may be) and notify the pupil’s parent or (where the pupil is 18 or over) the pupil accordingly.

Regulation 8 provides for the manner in which notices must be given under these Regulations.

Regulation 9 obliges the governing body of a maintained school in England exercising functions under section 29A(1) to have regard to any guidance given from time to time by the Secretary of State.
The regulations and directions in this document are indicative only.

25. Clause 146

STATUTORY INSTRUMENTS

2008 No. 0000

EDUCATION, ENGLAND

The Schools Forums (England) Regulations 2008

Made - - - - 2008
Laid before Parliament 2008
Coming into force - - 2008

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by section 47A of the School Standards and Framework Act 1998\(^{\text{(38)}}\).

Citation, commencement and interpretation

45.—(1) These Regulations may be cited as the Schools Forums (England) Regulations 2008 and come into force on [ ] 2008.

(2) In these Regulations—

“the 1998 Act” means the School Standards and Framework Act 1998;

“local authority 14-19 partnership” means an arrangement made by a local education authority to promote co-operation between itself, the Learning and Skills Council for England\(^{\text{(39)}}\) and any other person in the area who exercises functions in relation to, or is engaged in activities relevant to, the provision of education and training for 14-19 year olds; and

“PVI providers” means persons other than governing bodies of primary schools, local education authorities or the proprietors of Academies who provide nursery education for three and four year olds for which no charge is made.

Appointment and eligibility of non-schools members

5.—(1) Subject to paragraph (3), the relevant authority must appoint non-schools members to their forum, and must by [1st April 2009]—

(a) appoint one or more persons to represent the local authority 14-19 partnership and one or more persons to represent PVI providers; and

\(^{\text{(38)}}\) 1998 c.31. Section 47A was inserted by section 43 of the Education Act 2002 (c.32), and has been amended by section 101 of, and paragraph 7 of Schedule 16 to, the Education Act 2005 (c.18); sections 57 and 184 of, and paragraphs 2(1), (3) and (4) of Schedule 5 to and Part 6 of Schedule 18 to, the Education and Inspections Act 2006 (c.40) and by section 141 of the Education and Skills Bill.

\(^{\text{(39)}}\) The Learning and Skills Council for England was established under section 1 of the Learning and Skills Act 2000 (c.21).
(b) identify bodies appropriate for representation on the forum (“appropriate bodies”), seek nominations from, and appoint representatives of, those bodies.

(2) In identifying appropriate bodies for the purposes of paragraph (1)(b), the relevant authority shall consider whether the following should be appropriate bodies—

(a) the Diocesan Board of Education for any diocese any part of which is comprised in the relevant authority’s area;

(b) the bishop of any Roman Catholic Diocese any part of which is comprised in the relevant authority’s area;

(c) where there are schools within the relevant authority’s area, other than Church of England or Roman Catholic schools, designated under section 69(3) of the 1998 Act as having a religious character, the appropriate faith group in respect of any such schools.

(3) The following may not be appointed as non-schools members—

(a) any executive member or relevant officer of the authority;

(b) any representative of—

(i) the local learning and skills council (“the LSC”) or regional learning and skills council for the relevant authority(40), or

(ii) the Learning and Skills Council for England.

(4) Within one month of the appointment of any non-schools member, the relevant authority shall inform schools maintained by them of the name of the member and the body that member is representing.

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Name

Minister of State

Date

Department for Children, Schools and Families

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(40) Local Learning and Skills Councils were established under section 19 of the Learning and Skills Act 2000 (c.21). The Further Education and Training Act 2007 (c.25) repeals this section, abolishing local learning and skills councils. Section 2 of the 2007 Act inserts new sections 18A, 18B and 18C which enable regional learning and skills councils to be set up in regulations. These provisions have not yet been commenced.
EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations prescribe various matters relating to the establishment and constitution of schools forums.

Regulation 5 requires the local education authority to appoint non-schools members to represent the local authority 14-19 partnership and PVI providers before [1st April 2009]. The relevant authority is also required to identify other bodies they think might be appropriate to be represented as non-schools members (“appropriate bodies”) and seek nominations from, and appoint representatives of, those bodies. The relevant authority must consider whether the various religious bodies listed might be appropriate bodies.

Executive members and relevant officers of the authority are excluded from being non-schools members, as are representatives of local and regional learning and skills councils and the Learning and Skills Council for England.