



Department
for Education

Operating the independent school regulatory system

Government consultation

Launch date 14 March 2018

Respond by 5 June 2018

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Introduction

This consultation document seeks comments on draft versions of two documents which the Department for Education (DfE) proposes to publish:

- a. advice for schools on the independent school standards; and
- b. a policy statement on regulatory and enforcement action taken by the department for independent schools not meeting those standards.

It also seeks comments on draft revised regulations governing information required of independent schools, and those wishing to register such schools.

This consultation is being published alongside the Integrated Communities Strategy published by MHCLG, and is referred to in its chapter on education and young people. The proposed advice on the standards and proposed policy document, when finalised, are designed to partly address the dangers posed by extremism, and will support the work of the Commission for Countering Extremism, established by the Home Office.

Who this is for

- Independent school proprietors and staff
- Stakeholders with an interest in the independent schools sector including associations representing independent schools, local authorities, trades unions, local children's safeguarding boards and faith groups

Issue date

The consultation was issued on 14 March 2018.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team on:

01325 340405

or email:

Independentschools.consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by

email: consultation.unit@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the department's response will be published on [GOV.UK](#) after the close of the consultation period.

About this consultation

This consultation document sets out the reasons for the proposed publication of departmental advice on the independent school standards. The draft advice is contained in a separate document which is available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The consultation document also sets out the reasons for issuing a policy statement on regulatory and enforcement action in respect of independent schools in England, for which the Secretary of State is the regulatory authority. The draft policy statement is also contained in a separate document which is available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The consultation document also has a section about the proposed revision of regulations which govern the information which independent schools can be required to supply to the Secretary of State, and the information required from those proposing to establish an independent school. The draft regulations are also contained in a separate document which is available electronically and can be downloaded from [GOV.UK DfE consultations](#).

We would like to hear your views on the draft documents. A response form is provided online alongside the draft documents. Comments may be made on all or just some of the documents.

The advice on standards will apply to academies and free schools insofar as relevant standards apply to them. The policy statement on regulatory and enforcement action does not apply to academies and free schools because although the relevant legislative provisions can be used for these institutions, it is not normal departmental policy to do so because other mechanism to regulate these institutions are available to the Secretary of State. The draft information regulations apply in part to academies and free schools.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the response form, complete it electronically or by hand, and email it or post it to us.

By email

Independentschools.consultation@education.gov.uk

By post

Independent Education and Boarding Team
Department for Education
3rd Floor
Bishopsgate House
Feethams, Darlington
DL1 5QE

Deadline

The consultation closes on 5 June 2018.

Part 1 – Proposed advice for schools on the independent school standards

1. The independent school standards were last revised with effect from January 2015, and are contained in the Education (Independent School Standards) Regulations 2014.¹ The standards are set out in eight Parts in the Schedule to these Regulations, dealing with:

1. Quality of education
2. Spiritual, moral, social and cultural development of pupils (SMSC)
3. Welfare, health and safety of pupils
4. Suitability of staff, supply staff and proprietors
5. Premises of, and accommodation at, schools
6. Provision of information
7. Manner in which complaints are to be handled
8. Quality of leadership in and management of schools

2. Government advice about what the standards require is currently available only about the standards in two of these Parts, those for SMSC² and those for premises³. The SMSC advice is in two documents, with earlier advice having been supplemented in 2014. Many schools and their associations have told the department that it would be useful if detailed advice was also available on the other standards. The inspectorates have also indicated that such advice is likely to be helpful to schools. The government now proposes to publish such advice in one single document, except that advice on the premises standards will continue to be published separately because it applies also to maintained schools.

3. The proposed advice document would be non-statutory (since it would be produced in reliance of common law powers and not under a specific statutory power); and when it is published schools will be under no legal obligation to follow it. However, its contents are likely to be taken into account in the hearing of appeals to the First-Tier Tribunal by

¹ SI 2014/3283

² <https://www.gov.uk/government/publications/improving-the-smsc-development-of-pupils-in-independent-schools>

³ <https://www.gov.uk/government/publications/standards-for-school-premises>

proprietors against de-registration or the imposition of relevant restrictions. It is also hoped that schools would find the advice useful in assessing whether the standards are being met, and whether there are any matters which require attention to ensure that is the case. The advice is not intended simply to be used in advance of imminent inspections, since it is a requirement of continued registration that the standards should be met by schools at all times.

4. Because the advice will set out DfE expectations about what the standards require, the advice will be relevant to decisions on taking regulatory and enforcement action (as described in the draft policy statement we are also consulting upon) and will be taken into account by inspectorates in reporting on whether the standards are met.

5. Because the standards are prescribed in regulations, the language in which they are written is often technical and some of the draft advice is devoted to explaining in lay language the implications of the standard in question. A significant part of the draft advice also draws on inspection experience when it appears that schools may encounter specific difficulties or uncertainties as to the meaning of a standard or how to ensure that it is met.

6. The section on SMSC in the draft advice starts from the existing published advice documents but has been updated on specific matters, most notably relating to gender and other protected characteristics.

7. The sections on Parts 3 and 4 (welfare and suitability checks) are not intended to be a substitute for the statutory guidance documents *Keeping Children Safe in Education* and *Working Together to Safeguard Children* which proprietors must have regard to, but to make clearer the overall intention and meaning of the standards in Parts 3 and 4.

Questions for consultation response (the online response form has questions broken down into more specific sections)

i. do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?

ii. what comments do you have on the consultation draft advice?

iii. do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document? Relevant documents are published as part of the consultation

Part 2 – Proposed policy statement on regulatory and enforcement action in respect of independent schools

8. The department published in 2016 a statement⁴ setting out how it uses the Secretary of State's powers in s.114 of the Education and Skills Act 2008 ('the Act') to regulate independent schools which are not meeting the independent school standards.

9. The department now considers that this document should be replaced by a more comprehensive statement which sets out policy not only on the use of regulatory powers but also the powers in s.115 – s.118 of the Act to take enforcement action by imposing a 'relevant restriction' on a school or removing it from the register of independent schools, which has the effect of obliging it to close, since it is an offence under s.96 of the Act to conduct an unregistered independent school. There is a close connection between these two sets of powers, and a school which is the subject of enforcement action will have previously been subject to regulatory action designed to secure improvement, although the period of such regulatory action varies considerably. It is intended that by making it clear in the new policy statement how the whole spectrum of powers is used, the department will encourage schools to take early steps to improve if they are found to be not meeting the independent school standards, and thereby avoid the more serious penalties, to their own advantage and that of their pupils.

10. It should be noted that the policy statement embodies proposals which represent a significant change in existing policy. Currently, if a school submits an action plan and this is rejected by the Secretary of State, it is normal practice for a school to be allowed at least two progress monitoring inspections before enforcement action is considered. Under the new policy, enforcement action is likely to be taken in most cases after only one such inspection, or even immediately after rejection of the action plan if the school's failings are very serious. This change of policy is intended to ensure that schools do not fail their pupils by not meeting the standards for extended periods.

⁴ Available at <https://www.gov.uk/government/publications/regulating-independent-schools>

Questions for consultation response (the online response form has questions broken down into more specific sections)

iv. do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?

v. Do you agree with the change in policy highlighted at paragraph 10 above?

vi. What comments do you have on each section of the draft policy statement?

vii. do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document? Relevant documents are published as part of the consultation

Part 3 – Proposed revised regulations for the provision of information

11. The department, on behalf of the Secretary of State, normally requires certain information from independent school proprietors at specific points in the course of normal business. What can be required is set out in regulations made in 2010 under s.123 of the Education and Skills Act 2008⁵.

12. The regulations are split into three parts, setting out the information which may be required when an application is made to register a new independent school; in the three-month return which schools make after the school is first registered, and in the School Level Annual School Census (SLASC), which is held annually on the third Thursday of January.

13. The government's intention is to lay revised regulations following the consultation process, and that if possible this should be done in time to inform the 2019 SLASC exercise. Information requirements for the first two elements set out above would be changed immediately the revised regulations came into force.

14. The proposed revision is not extensive. Some data items have been removed (for example, details of a chair of governors). The most significant additions relate to information about proprietors and trustees, and are designed to make it easier for the department to carry out due diligence checks for those wishing to register a new school, or in cases where there are changes of school proprietors or members of proprietor bodies.

15. Two further amendments will be made to the version of the draft regulations being used for consultation. It is intended that in paragraph 10 of the schedule, the reference to paragraph 7 being excluded will be changed, to refer instead to paragraph 8, because what is required of schools at that point is the number of staff rather than names of individual staff members. Secondly, paragraph 14 will be changed so that the figures to be supplied in the census for the number of boarding places provided are, in each annual return, for the current academic year, and the two previous academic years if the school provided boarding places then.

15. The department also intends to use this opportunity to make amendments to the Non-Maintained Special Schools (England) Regulations 2015 (S.I.2015/728) to update the references from the National Minimum Standards 2012 to the National Minimum Standards 2015 and to the statement on quality standards published in April 2015 under

⁵ The current regulations are at <http://www.legislation.gov.uk/uksi/2010/2919/contents/made>

section 23 of the Care Standards Act 2000. This change is not included in the consultation draft.

16. A further amendment is intended to be made to the Education (Independent School Standards) Regulations 2014 (S.I. 2014/3283) to clarify that additional checks on suitability of supply staff are required in the case of such a person who is living, or has lived, outside the United Kingdom. It is proposed that such amendments are included in the amending Regulations. This change is not included in the consultation draft.

17. Comments on both of these additional proposals are invited.

18. Following the consultation exercise, the government will consider responses and then lay the proposed regulations before Parliament for approval, incorporating any changes consequent upon consultation results. The regulations are subject to the negative resolution procedure.

Questions for consultation response (the online response form has questions broken down into more specific sections)

viii. Do you agree that the government should replace the current regulations with those revised as shown in the draft regulations?

ix. Are there any changes in the revised regulations which you believe should not be made?

x. Are there any items of information which are not included in the regulations which you believe should be required from schools?

xi. Do you have any comments on the proposals to make amendments in respect of the Non-Maintained Special Schools Regulations or Independent School Standards as described above?

xii. do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) to the proposed regulations? An equality impact log is published as part of the consultation



Department
for Education

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