STATUTORY INSTRUMENTS

2015 No. 728

EDUCATION, ENGLAND

The Non-Maintained Special Schools (England) Regulations 2015

Made - - - -	*16th March 2015*
Laid before Parliament	*18th March 2015*
Coming into force - -	*1st September 2015*

The Secretary of State for Education makes the following Regulations, in exercise of the powers conferred by sections 342(2), (4), (5) and (5A), 342A, 342B, 342C and 569(4) of the Education Act 1996(**1**).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Non-Maintained Special Schools (England) Regulations 2015 and come into force on 1st September 2015.

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

Interpretation

2.—(1) In these Regulations —

"the 1996 Act" means the Education Act 1996;

"the 1997 Act" means the Police Act 1997(**2**);

"the 2002 Act" means the Education Act 2002(**3**);

"the 2005 Act" means the Education Act 2005(**4**);

"the 2006 Act" means the Safeguarding Vulnerable Groups Act 2006(**5**);

"EHC plan" means a plan within the meaning of section 37(2) of the Children and Families Act 2014(**6**);

(**1**) 1996 c.56; section 342A was inserted by section 144, and sections 342A and 342B were inserted by section 145, of the Education and Skills Act 2008 ("the 2008 Act") (c.25). For the meanings of "prescribed" and "regulations", see section 579(1) of the Education Act 1996 ("the 1996 Act").
(**2**) 1997 c. 50.
(**3**) 2002 c. 32.
(**4**) 2005 c. 18.
(**5**) 2006 c. 47.
(**6**) 2014 c.6.

"employment business" has the same meaning as in section 13(3) of the Employment Agencies Act 1973(**7**);

"enhanced criminal record certificate" means an enhanced criminal record certificate issued under section 113B(1)(**8**) of the 1997 Act which includes, in such cases as are from time to time prescribed under section 113BA(1)(**9**) of that Act, suitability information relating to children or vulnerable adults, and any relevant up-date information where such a certificate is subject to up-date arrangements;

"interim prohibition order" has the same meaning as in section 141C(7) of the 2002 Act(**10**);

"maintained special school" means a community or foundation special school(**11**);

"National Minimum Standards" means the statement of national minimum standards relating to residential special schools(**12**) published in November 2012 by the Secretary of State for Education under section 87C(1) of the Children Act 1989(**13**); and in a case where a non-maintained special school is also a children's home, the statement of national minimum standards relating to children's homes(**14**) issued in 2011 by the Secretary of State under section 23 of the Care Standards Act 2000(**15**);

"prohibition order" has the same meaning as in section 141B of the 2002 Act;

"relevant up-date information" means up-date information within the meaning given in section 116A(8)(b)(i) or 116A(8)(c)(i) (**16**)of the 1997 Act;

"suitability information relating to children" has the same meaning as in section 113(BA)(2) of the 1997 Act;

"suitability information relating to vulnerable adults" has the same meaning as in section 113BB(2)(**17**) of the 1997 Act;

"supply staff" means any person working at the school supplied by an employment business;

"up-date arrangements" has the same meaning as in section 116A(3) of the 1997 Act.

(2) In these Regulations, an "enhanced criminal check" is made if —

(a) an application for an enhanced criminal record certificate is made under section 113B(1) of the 1997 Act and the application is countersigned by a registered person (as defined in section 120(1) of that Act) or on behalf of that person; or

(b) where an enhanced criminal record certificate has been obtained under section 113B(1) of the 1997 Act and is subject to up-date arrangements, relevant up-date information is obtained.

(3) In these Regulations a person is appointed to a position if that person is—

(**7**) 1973 c. 35.
(**8**) Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15).Section 113B(1) was amended by articles 36 and 37(c) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006), sections 97(2), 112(2) and Part 8 of Schedule 8 of the Policing and Crime Act 2009 (c.26) and section 80 (1) of the Protection of Freedoms Act 2012 (c.9) ("the 2012 Act").
(**9**) Section 113BA was inserted by section 63(1) of, and paragraph 14(1) and (4) of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 ("the 2006 Act").
(**10**) Section 141C was inserted by section 8 of the Education Act 2011 (c.21) ("the 2011 Act").
(**11**) For the meaning of "community special school" and "foundation special school" see section 20 of the School Standards and Framework Act 1998 (c. 31) ("the 1998 Act").
(**12**) The National Minimum Standards relating to residential special schools are available at https://www.gov.uk/government/publications/residential-special-schools-national-minimum-standards.
(**13**) 1989 c. 41; Section 87C was inserted by section 107 of the Care Standards Act 2000 (c. 14) ("the 2000 Act").
(**14**) The National Minimum Standards relating to children's homes are available at https://www.gov.uk/government/publications/childrens-homes-national-minimum-standards. A children's home is defined in section 1 of the 2000 Act.
(**15**) 2000 c.14.
(**16**) Section 116A was inserted by section 83 of the 2012 Act and amended by articles 36 and 37(g) of the Protection of Freedoms Act 2012 (Disclosure and Barring Service Transfer of Functions) Order 2012 (S.I. 2012/3006).
(**17**) Section 113BB was inserted by section 63(1) of, and paragraph 14(1) and (4) of Schedule 9 to, the 2006 Act.

(a) engaged to work at a school, other than a person supplied by an employment business, or

(b) appointed to the governing body of a school.

(4) A person is to be treated as meeting any staff qualification requirements if the person—

(a) fulfils any requirements with respect to qualifications or registration which apply to the person as a result of regulations made under sections 132 to 135 of the 2002 Act(**18**) and regulations made under section 19 of the Teaching and Higher Education Act 1998(**19**);

(b) meets any conditions with respect to health and physical capacity, which apply to the person as a result of regulations made under section 141 of the 2002 Act(**20**);

(c) is not barred from regulated activity relating to children, to vulnerable adults or to both under section 3 of the 2006 Act, where that person is or will be engaging in activity which is regulated activity within the meaning of Part 1 of Schedule 4 of that Act; and

(d) is not subject to a prohibition order or an interim prohibition order.

(5) For the purposes of paragraphs 4(4), 5(2)(a)(ii) and 6(3)(a) of Part 1 of the Schedule, an enhanced criminal record check is only relevant where a person or an individual is or will be engaging in—

(a) regulated activity within the meaning of Part 1 of Schedule 4 to the 2006 Act; or

(b) regulated activity relating to children or vulnerable adults within the meaning of Part 1 of Schedule 4 to the 2006 Act, as it had effect immediately before the coming into force of section 64 of the Protection of Freedoms Act 2012(**21**).

Conditions of approval and requirements to be complied with

3.—(1) Part 1 of the Schedule provides the requirements a school must comply with as a condition of approval by the Secretary of State(**22**) under section 342(1) of the 1996 Act.

(2) Part 2 of the Schedule provides the requirements a school must comply with while approved under section 342(1) of the 1996 Act.

Withdrawal of approval

4.—(1) The Secretary of State may withdraw approval from a school on the ground that there has been a failure to comply with any requirement contained in these Regulations.

(2) Approval may only be withdrawn if—

(a) the Secretary of State has given written notice to the proprietor specifying each requirement that must be complied with ("the specified requirement") and the time limit within which compliance must be achieved ("the specified time limit"), and

(b) the proprietor has failed to comply with a specified requirement within the specified time limit.

(3) The Secretary of State must withdraw approval from a school if the proprietor makes a written request to that effect.

(**18**) The relevant regulations are the Education (School Teachers' Qualifications (England) Regulations 2003 (S.I. 2003/1662), amended by S.I. 2007/2782 and 2009/3156; and the Education (Specified Work and Registration) (England) Regulations 2003 (S.I. 2003/1663), amended by S.I. 2007/2117.

(**19**) 1998 c. 30; section 19 is amended by sections 139 and 153 of, and Schedule 11 to, the Learning and Skills Act 2000 (c. 21), section 215 of, and Schedule 21, paragraph 85 to, the Education Act 2002 ("the 2002 Act") and S.I. 2010/1158. The relevant Regulations are the Education (Recognition of School Teachers Professional Qualifications) (Consequential Provisions) (England) Regulations 2007 (S.I. 2007/2782).

(**20**) The relevant regulations are the Education (Health Standards) (England) Regulations 2003 (S.I. 2003/3139).

(**21**) 2012 c.9; and came into force on 1st May 2012 .

(**22**) Section 337A of the 1996 Act (substituted by section 142(1) of the 2008 Act) provides that the Secretary of State is the appropriate national authority in relation to a non-maintained special school in England.

(4) If the Secretary of State withdraws approval from a school following a request to do so by the proprietor, the Secretary of State may determine that the decision will have effect from such date as the Secretary of State may specify.

Emergencies

5.—(1) In an urgent case the Secretary of State may apply to a justice of the peace to make an order that a non-maintained special school in England should cease to be approved under section 342 of the 1996 Act.

(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.

(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 Secretary of State as soon as reasonably practicable after the order is made.

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

(7) As soon as reasonably practicable after an order is made under this regulation, the Secretary of State must serve on the proprietor of the school in question—

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

(b) notice of the right of appeal to the First-tier Tribunal against the making of an order under this regulation.

(8) As soon as reasonably practicable after an order is made under this regulation, the Secretary of State must notify the following that the order has been made—

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

(b) any other local authority that the Secretary of State, after reasonable enquiry, is aware has specified the school in an EHC plan, in respect of a pupil at the institution.

(9) For the purposes of this regulation, "harm" has the same meaning as in the Children Act 1989(**23**) and the question of whether harm is significant is to be determined in accordance with section 31(10) of that Act.

Appeals

6.—(1) An appeal lies to the First-tier Tribunal(**24**) against—

(a) any decision by the Secretary of State to withdraw approval from the school under regulation 4(1),

(b) any decision by the Secretary of State not to approve, or not to approve a change to, or to withdraw approval from relevant arrangements(**25**) in relation to the school, or

(c) the making of an order under regulation 5.

(2) An appeal must be brought by the proprietor of the school.

(3) On an appeal under paragraph (1)(a) or (b), the First-tier Tribunal may uphold the decision of the Secretary of State, or direct that it is of no effect.

(4) On an appeal under paragraph (1)(c), the First-tier Tribunal may confirm the order or direct that it shall cease to have effect.

(**23**) 1989 c. 41.
(**24**) The First-Tier Tribunal is established under section 3 of the Tribunals, Courts and Enforcements Act 2007 (c. 15).
(**25**) For the meaning of "relevant arrangements" see section 342B of the 1996 Act.

(5) If, on an appeal under paragraph (1)(a) or (b), the First-tier Tribunal upholds a decision of the Secretary of State to withdraw approval, the school ceases to be approved under section 342 of the 1996 Act from such date as the First-tier Tribunal may specify or, if it does not specify a date, from such date as the Secretary of State may determine.

Effect of pending appeals

7.—(1) If the Secretary of State withdraws approval from a school under regulation 4(1), the Secretary of State's decision does not have effect during the period in which an appeal against the decision could be brought, or where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

(2) If an order has been made under regulation 5, such order has effect during the period in which an appeal against the order could be brought, or where an appeal has been brought, the appeal has not been determined, withdrawn or otherwise disposed of.

Revocations

8. The following regulations are revoked—

The Education (Non-Maintained Special Schools) (England) Regulations 2011(**26**); and

The Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2015(**27**).

John Nash
Parliamentary Under Secretary of State
Department for Education

16th March 2015

(**26**) S.I. 2011/1627.
(**27**) S.I. 2015/387.