EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND) (UNSUITABLE PERSONS) REGULATIONS 2010

2010 No. 2920

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

The purpose of the instrument is to amend regulation 2 of the Education (Independent Educational Provision in England) (Unsuitable Persons) Regulations 2009 (the 2009 Regulations), which sets out the kind of work prescribed for the purposes of section 119(1)(a) of the Education and Skills Act 2008.

3. Matters of special interest to the Joint Committee on Statutory Instruments

None

4. Legislative Context

The 2009 Regulations are made under section 119 of the Education and Skills Act 2008 which contains the power for the Secretary of State to remove an independent school from the register of independent schools if a person who is unsuitable to work with children or vulnerable adults ("a barred person") carries out work of a prescribed kind at the school. The 2009 Regulations enable a school to be removed from the register if a barred person "regularly" works at the school, which is defined as two days out of every 30. These Regulations amend that provision so that a school can be removed from the register if a barred person does *any* work at the school.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

The 2009 Regulations define work as:

- Any form of work (whether or not for gain), which the person (W) carries out regularly and gives W the opportunity, in consequence of anything W is permitted or required to do in connection with the work, to have contact with

children or vulnerable adults (as defined in the Safeguarding Vulnerable Groups Act 2006);

- In any period of 30 days W carries out work regularly if W carries out the work on more than two days in that period.

7.2 Section 9 of the Safeguarding Vulnerable Groups Act 2006 Act (the 2006 Act) makes it an offence to permit a barred person to engage in regulated activity, which includes working in an independent school. An offence is committed if such a person does *any* regulated activity rather than regulated activity on two out of every thirty days. It is anomalous that a school can be removed from the register only if the barred person does two or more days work at an independent school. The amendment removes this anomaly so that the school can be removed from the register if a barred person does any work of a prescribed kind at the school, and brings the provision into line with the offence in section 9 of the 2006 Act.

7.3 Regulations for schools are normally implemented on 1 September each year preceded by a term's notice. However, this is a correcting regulation and it is important that these provisions are brought into line as soon as possible with those governing the employment of barred persons.

8. Consultation outcome

There has been no consultation on this amendment as it is a technical amendment which brings this provision into line with those governing the employment of barred persons.

9. Guidance

Minimal guidance is required. All independent schools in England will receive a copy of the regulations plus a note explaining the amendment.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil

10.3 An Impact Assessment has not been prepared for this instrument as it does not impose a burden.

11. Regulating small business

11.1 The legislation applies to small businesses that are independent schools.

11.2 No approach has been taken to minimise the impact of the requirements on firms employing up to 20 people.

11.3 The basis for the approach described at paragraph 11.2 is that there can be no

difference in the way in which schools are dealt with if they employ unsuitable persons.

12. Monitoring & review

12.1 Regulations governing independent schools are regularly reviewed every 2 years.

13. Contact

Stephanie Lidster at the Department for Education (tel: 01325 735564 or e-mail: stephanie.lidster@education.gsi.gov.uk) can answer any queries regarding the instrument.