EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 3253

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

2. Purpose of the instrument

This instrument amends the Education (Independent School Standards) (England) Regulations 2003 (S.I. 2003/1910).

2.1 The instrument updates references to legislation and guidance and gives effect to part of the Department's compliance with the Government's commitment to reduce the administrative burden on businesses by simplifying the requirements on independent schools to provide information to parents and prospective parents. Where it is possible and appropriate information may be provided on-line.

3. Matters of special interest to the [Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments]

3.1 None

4. Legislative Context

4.1 The overall aim of the instrument is to contribute towards compliance with the government's commitment to reduce by 25% the administrative burden on businesses, following recommendations made in the 2005 Hampton Report. This instrument allows schools to provide specific information on-line.

4.2 The instrument also updates a number of references in the current regulations which are out of date. These are:

Bullying guidance - regulation 6(a);
Child protection guidance - regulation 6(b);
Fire safety legislation - regulation 6(c); and
Pupil registration regulations - regulation 6(d).

5. Territorial Extent and Application

5.1 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

7.1 The Education (Independent School Standards) (England) Regulations 2003 contain the standards that independent schools must meet in order to obtain and retain registration with this Department. In order to ensure that satisfactory standards governing pupil welfare and health and safety remain in place this instrument amends the regulations in light of the changes to guidance

and legislation detailed in paragraph 4.2. It also contains our proposals for compliance with the Government's commitment to reduce the administrative burden on businesses. Based on figures provided by Price Waterhouse Cooper, in consultation with independent schools, the estimated savings stand at around £18 million per annum. We will review these savings with the sector in 12 months time.

7.2 A consultation was held about these amendments, which was sent to all 2,300 independent schools. 17 responses were received and of these 12 (70%) were in favour of the proposals. There was no media interest.

7.3 Regulation 4 sets out the definition of "make available" and this allows schools to make information available on-line.

7.4 Regulation 5(b) is amended in the light of concerns from inspectorates that it was too broad to allow inspection judgements to be made.

7.5 Regulation 6 updates references to guidance and regulations.

7.6 Regulation 7 implements of some of the Department's proposals to reduce the administrative burden on independent schools in compliance with the Government's commitment to reduce the burden on businesses by 25%. Regulation 7 substitutes paragraph 6 of the Schedule to the 2003 Regulations. The revised provisions will allow independent schools to make certain information available for parents to view either on-line or in school (where there is no website).

7.7 The changes to paragraph 6 of the Schedule made by Regulation 7 make it clear that the requirement for details of academic performance to be provided refers to the school's academic performance.

7.8 For the sake of consistency with requirements for other policies a school will have to both "draw up and implement" a complaints policy – regulation 8(a) .In addition the complaints policy is included in our proposals for compliance with the reduction in the administrative burden on schools. The policy will be available to view on-line or in school - regulation 8(b) - although the outcome of a complaint will not be made available publicly but will be sent electronically to the complainant and, where relevant, the person complained about – regulation 8(c).

Consolidation

7.9 The regulations were amended in 2004 and 2007 and we intend to consolidate when further amendments are made in respect of new primary legislation in the Education and Skills Act 2008.

8. Consultation outcome

8.1 A consultation on these amendments ran from 26 September 2008 to 7 November 2008. The consultation was limited to 6 weeks as the Department was keen to ensure that schools and parents benefited from these changes as soon as possible. It was drawn to the attention of all independent schools in England (around 2300 schools), and key interested parties including inspectorates and associations. Schools were also asked to notify as many parents as possible. 17 responses were received and of these 12 (70%) were in favour of the proposals.

8.2 The main objections were to the inclusion of the child protection policy and inspection reports in the information schools were to be allowed to make available on websites or to view in school if there is no website. Changes to the proposals were made in light of these objections. It was decided that, whilst the child protection policy may be made available on-line, where there is no website it must be provided direct to parents on request – regulation 7 and whilst inspection reports will continue to be publicly available on inspectorate websites, schools will continue to be

required to send a copy direct to parents rather than making it available on their own website – regulation 7. Full details of the consultation and its outcome are contained in the attached impact assessment.

9. Guidance

9.1 Minimal guidance is required. All of the independent schools in England will receive a copy of the amended regulations plus a note setting out the main changes. Schools have been aware of the revised guidance and legislation for some time and the remaining amendments are not complicated.

10. Impact

10.1 The impact on businesses which are also independent schools is beneficial as the amendments provide clarity for independent schools and parents about the requirements in place for independent schools in England. Parents will be able to obtain information more quickly and easily and schools will benefit from the reduction in the administrative burden incurred by providing information for parents, including prospective parents, by alternative means to hard copy.

10.2 The impact on the public sector is none.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses which are also independent schools.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to reduce the need to provide copies of policies and they can instead place them on their website. The amendments overall will reduce costs.

12. Monitoring & review

12.1 The regulations are reviewed every two years but in 2010 we will hold a review with the sector to determine whether the proposed savings have been made.

13. Contact

Margaret Pattinson at the Department for Children, Schools and Families (tel: 01325 392172 or e-mail: margaret.pattinson@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:	Title:	
DCSF	Impact Assessment of Amendments to the Education (Independent Schools Standards) (England) Regulations	
Stage: Final	**Version:** 1.0	**Date:** December 2008
Related Publications:		

Available to view or download at:

http://www.

Contact for enquiries: Stephanie Lidster **Telephone:** 01325 392162

What is the problem under consideration? Why is government intervention necessary?

The Education (Independent School Standards) (England) Regulations 2003, the legislation setting out the standards which all independent schools must meet, have worked well since they were introduced in September 2003 and the Government wishes to leave them substantially unchanged. However, the Government has identified a number of changes that are necessary to reflect current guidance and legislation and also effect proposals to reduce the administrative burden on independent schools.

What are the policy objectives and the intended effects?

The objective is to ensure parents and independent schools are aware of the guidance and legislation that impacts on independent schools. Further, the amendments form part of the Givernment's commitment to reduce the administrative burden on schools following the Hampton Report in 2005.

What policy options have been considered? Please justify any preferred option.

The preferred option is to make the necessary amendments to the regulations to ensure parents and schools benefit from an increased awareness of the guidance and legislation for independent schols and a reduction in the administrative burden on schools (option A).

The other option is to do nothing which means that neither parents nor schools benefit (option B).

Following consultation we have decided to proceeed with preferred option A and make the proposed changes to the regulations.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The Independent Education and Boarding Team will review with the sector the impact of the amendments during 2010.

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Jim Knight .....Date: 17th December 2008

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	
One-off (Transition) **Yrs**	
£ None	
Average Annual Cost (excluding one-off)	
£ None	

Description and scale of **key monetised costs** by 'main affected groups' None.

Total Cost (PV) **£**

Other **key non-monetised costs** by 'main affected groups' None

BENEFITS

ANNUAL BENEFITS	
One-off **Yrs**	
£	
Average Annual Benefit (excluding one-off)	
£ 18 million	

Description and scale of **key monetised benefits** by 'main affected groups' The proposals for reducing the administrative burden on schools are based on an independent estimate of savongs of £18 million per annum.

Total Benefit (PV) **£ Not estimated**

Other **key non-monetised benefits** by 'main affected groups' None

Key Assumptions/Sensitivities/Risks None

Price Base Year 2005	Time Period Years	**Net Benefit Range** (NPV) **£ 18 million per annum**	**NET BENEFIT** (NPV Best estimate) **£ 18 million per annum**

What is the geographic coverage of the policy/option?				England
On what date will the policy be implemented?				March 2009 2008
Which organisation(s) will enforce the policy?				DCSF
What is the total annual cost of enforcement for these organisations?				£ NIL
Does enforcement comply with Hampton principles?				Yes
Will implementation go beyond minimum EU requirements?				No
What is the value of the proposed offsetting measure per year?				£ NIL
What is the value of changes in greenhouse gas emissions?				£ NIL
Will the proposal have a significant impact on competition?				No
Annual cost (£-£) per organisation (excluding one-off)	Micro **Nil**	Small **Nil**	Medium **Nil**	Large **Nil**
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ NIL Decrease of £ 18 million **Net Impact** **£** 18m decrease

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

1. This Impact Assessment updates the original assessment published as part of the consultation process between 26 September 2008 and 7 November 2008. Some minor amendments have been made following consultation but the main proposals remain intact with 12 (70%) out of 17 respondents in favour of the proposals.

2. Th policy options available were:

a. Update references to current guidance on bullying and child protection and legislation for pupil registration and fire safety; and

Reduce the administrative burden on independent schools by removing the requirement for schools to provide parents with a range of specified policies and information:

Whilst schools may provide copies for parents if they wish to they can, instead, place these specified documents and inspection reports on their website or, if there is no website, make a copy available to view in school.

3. (Policies will still have to be provided on request to this Department and inspection bodies.)

b. Do nothing

4. We decided on option a in order to ensure parents benefited from greater ease in obtaining information and schools benefited through reduced administration costs.

5. Background

6. The current regulations have recently been reviewed and needed updating in terms of references to current guidance and legislation. In addition, the Government accepted a recommendation made in 2005 by the Better Regulation Commission to reduce the administrative burden on businesses by 25% and these regulations contain our proposals for compliance.

Current Arrangements

There are over 2,300 independent schools in England that are registered with the DCSF. An independent school cannot open or operate unless it is registered.

Regulations made under the Education Act 2002 set out a range of standards that independent schools must satisfy as a condition of registration. These cover the:

quality of education;

spiritual, moral, social and cultural development of pupils;

welfare, health and safety of pupils;

suitability of proprietors and staff;

premises and accommodation;

provision of information and the

manner in which complaints are handled.

Independent schools are inspected either by Ofsted or by a body approved by the Secretary of State. Approximately half are inspected by Ofsted with the remaining half inspected by approved inspectorates. The Independent Schools Inspectorate (ISI) are approved to inspect Independent schools affiliated to the Independent Schools Council (ISC); the Schools Inspection Service (SIS) are approved to inspect schools that belong to Focus Learning Trust (FLT) and the Bridge School Inspectorate (BSI) has recently been approved to inspect schools belonging to the Association of Muslim Schools and the Christian Schools Trust. All inspectorates approved by the Secretary of State are monitored by Ofsted.

Independent schools that fail to meet the independent school standards must, when served with a notice, submit an action plan within a specified period of time. This plan must set out the steps that the school will take to reach the prescribed standards and the time by which each step will be taken. If steps are not taken to an agreed timetable then the school can be removed from the register of independent schools.

Rationale for government intervention

7. Recent changes in guidance for schools now need to be reflected in the regulations. In addition, in 2005 the Better Regulation Commission recommended that there should be a reduction in the administrative burden placed on businesses and these amendments contain the Department's proposals for complying with this recommendation with regard to independent schools.

Public Consultation

8. The consultation ran from 26 September 2008 to 7 November 2008 and was accompanied by this Impact Assessment.

17 responses were received and 12 (70%) of respondents were in favour of the proposals. The following changes have been made:

- The proposal that teaching at the school "shall be effective in ensuring pupils behave responsibly" has been changed to "utilise effective strategies for managing poor behaviour and encouraging pupils to act responsibly" in order to enable effective inspection.

- The requirement for schools to provide details to parents and prospective parents about academic performance has been amended to make it clear that this refers to the school's performance.
- Inspection reports will continue to be sent direct to parents but may be provided either electronically or by hard copy.
- The child protection policy may be made available on-line but must be provided direct to parents on request, either electronically or in hard copy, where there is no school website.

Costs and Benefits

Sectors and groups affected

Parents, children and independent schools.

Benefits

9. Standards in independent schools will be improved by an increased awareness of relevant

guidance and legislation and the administrative burden on independent schools will be reduced. The Government cannot identify any risks or unintended consequences of implementing this package of changes.

Costs

10. There will be no additional costs associated with updating references to current guidance and legislation. Independent schools have already been made aware of changes to the Safeguarding guidance and have been inspected against these accordingly. The current guidance on dealing with bullying does not differ greatly from previous guidance. Instead, it expands on what constitutes bullying and how schools can successfully manage it. Good schools see dealing with bullying as a priority and will already have a range of strategies in place. The administrative burden on independent schools will be reduced by around £18million per annum.

11. Analysis and Evidence

12. Following the recommendation made by the Better Regulation Commission that there should be a reduction in administrative burdens on businesses an independent consultancy was commissioned to assess the cost to the independent school sector of complying with regulatory regimes. The views of independent schools and associated bodies were sought on costs and, after removing "business as usual costs", ie the cost to schools of undertaking functions essential to the running of a school, the cost to the sector of complying with the regulatory standards was assessed, using the internationally recognised standard cost model, as £44.1 million. A large part of this was attributed to the cost of providing information to parents in paper form.

13. We identified several provisions of information requirements that could be equally well served via electronic means for the vast majority of parents and schools.

14. Based on costs estimated by the independent consultancy this should save the sector around £18 million per annum. Following implementation we will review their impact, with the sector, in order to assess the savings

Small Firms Impact Test

635 independent schools have less than 100 pupils (i.e. 29% of the sector). Of these, 417 do not have charitable status and are therefore operating as small businesses (i.e. 19% of the sector). When independent schools were consulted in 2003, when the new registration arrangements were introduced, only 48 (12%) of schools that were operating as small businesses responded. Generally, schools indicated that the introduction of standards brought benefits in terms of improving the quality of the education and care of pupils and by providing a clear framework for inspection purposes.

Competition Assessment

15. There are around 2,300 independent schools in England of which about 50% are charities. Independent schools vary in size depending upon the market they target. Some are small schools catering for children with special educational needs with placements paid for by the local authority. Others are small schools catering for pupils from minority faiths. Some 635 independent schools have less than 100 pupils. No independent school has more than a 10% market share. There will be no effect on the market structure as the proposals apply equally to all schools

Enforcement, sanctions and monitoring

16. The current systems for enforcement, sanctions and monitoring will continue to apply.

Implementation and delivery plan

17. All independent schools, inspectorates and associations will be notified direct of the amending regulations.

Post-implementation review

18. To be carried out in 2010.

Summary and Recommendation

19. That in light of a favourable response to the consultation the changes outlined above are made to the Education (Independent School Standards)(England) Regulations 2003.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

20. Equality Screening Impact Assessment

21. Introduction

22. The Department has a duty to assess the likely impact on gender, minority ethnic groups, those with disabilities and human rights of legislation that we propose to introduce. Everyone should have an equal opportunity to meet their aspirations, realise their full potential and improve their life chances.

23. Context – Standards and equality and diversity

24. The focus of the Standards is to ensure a satisfactory level of provision in independent schools in the following areas:

25. The quality of the education provided;
26. The spiritual, moral, social and cultural development of pupils;
27. The welfare, health and safety of pupils;
28. The suitability of proprietors and staff;
29. School premises and accommodation;
30. The provision of information; and
31. The manner in which complaints are handled.
32.
33. The current regulations containing these standards may be found at:

34. http://www.legislation.hmso.gov.uk/si/si2003/20031910.htm

35. In addition, during inspection accessibility plans as required by the Disability Discrimination Act 1995 will be examined.

36. These standards support the Every Child Matters initiative and are fully inclusive of all registered independent schools and their pupils, regardless of their ethnicity, culture, religion or belief, home language, family background, disability or special educational need, gender or ability.

37. The proposed amendments to these regulations do not impact more heavily on one group than another and nor do they infringe any human rights.