EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDEPENDENT SCHOOL STANDARDS) (ENGLAND)(AMENDMENT) REGULATIONS 2012

2012 No. 2962

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

2.1 These Regulations amend the Education (Independent School Standards) (England) Regulations, SI 2010/1997 ("the 2010 Regulations") to:

- introduce a standard about the quality of education for pupils under compulsory school age;
- introduce standards on the spiritual, moral, social and cultural development of pupils;
- simplify the standards relating to school premises and introduce a premises-related health and safety standard;
- allow information to be provided to parents and others electronically; and
- make some other minor and technical changes.

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

3.1. None.

4. Legislative Context

4.1. These Regulations amend the 2010 Regulations.

5. Territorial Extent and Application

5.1. These Regulations apply to England.

6. European Convention on Human Rights

6.1. 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 2010 Regulations prescribe standards that apply to independent schools (including Free Schools and Academies) and alternative provision Academies that are not independent schools. Independent schools must meet the standards in order to obtain and retain registration and are inspected at regular intervals to ensure ongoing compliance with the standards.

7.2. The Department consulted on the changes to the standards referred to at 2.1 above and the responses received indicated broad support for the changes proposed, although some concerns were raised and have been taken into account in producing the final draft of the Regulations. As the 2010 Regulations are made under s.157 of the Education Act 2002, which imposes a duty on the Secretary of State to prescribe standards, amendments to the 2010 Regulations are required in order to give effect to the changes.

New standard on the quality of education for pupils under compulsory school age

7.3. From 29 October 2012, a direction made under the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (SI 2008/1743) allows independent schools (not including Academies or Free Schools) which meet the eligibility criteria to opt to be exempt from some or all of the Early Years Foundation Stage (EYFS) learning and development requirements. To ensure that there remains a suitable curriculum for pupils no longer covered by those requirements, a new standard has been included in Part 1 of Schedule 1 requiring, for pupils under compulsory school age, a programme of activities appropriate to their educational needs.

New standards on the spiritual, moral, social and cultural development of pupils

7.4. Changes have been made to the standard on the spiritual, moral, social and cultural development of pupils in Part 2 to address concerns about possible extremism in independent schools. The changes reflect commitments made in the Government's revised Prevent strategy, which notes that while there is not any significant evidence to suggest that children are being radicalised in schools, concerns have been raised about the robustness of the regulatory regime for independent schools (see paragraph 10.20). The strategy also refers to allegations that a minority of independent faith schools have been actively promoting views that are contrary to British values (see paragraph 10.32). The revised Prevent strategy and associated documents can be seen at: http://www.homeoffice.gov.uk/publications/counter-terrorism/prevent/prevent-strategy/

7.5. The changes made strengthen the standards, as envisaged in paragraph 10.55 of the strategy, by:

- Making it clear that the law which pupils should be enabled to respect is the civil and criminal law, to ensure that where schools teach about any religious law relating to the school's ethos, the approach taken does not undermine the requirements of civil and criminal law.

- Clarifying the meaning of 'community' as those people living or working in the same area, and society more widely irrespective of their religion or culture.

- Introducing a requirement to encourage pupils to respect the fundamental British values of democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs. In response to concerns raised

during consultation about the meaning of "British values", the list of concepts comprising British values is now exhaustive.

- Introducing new requirements which seek to avoid political bias in school activities. These are based on requirements applying to maintained schools set out in sections 406 and 407 of the Education Act 1996 and which already apply to Academies under their funding agreements. In light of views expressed during consultation, a change was made to the consultation proposal so that only steps which are 'reasonably practicable' are required to be taken in ensuring a balanced presentation of opposing views when political issues are brought to the attention of pupils.

Simplified standards on the premises of and accommodation at schools

7.6. In 2011, the independent Review of Education Capital recommended that regulations relating to school premises be significantly revised, so that a single, clear set of regulations applied to all schools in England. The Department consulted on proposals to revoke unnecessary regulations, streamline those that remain, and produce one clear set of requirements that apply to all schools. Following the consultation, seven regulations are being retained: toilet and washing facilities; medical accommodation; health, safety and welfare; acoustics; lighting; water supplies; and outdoor space. The revised premises standards applying to maintained schools in England are now contained in the School Premises (England) Regulations 2012 (SI 2012/1943) which came into force on 31 October 2012. To ensure consistent requirements apply to all schools, Part 5 has been amended to align the standards for independent schools with the revised standards for maintained schools.

Allowing for electronic transmission of information

7.7. Standards in Part 6 (provision of information) and Part 7 (manner in which complaints are to be handled) require schools to provide certain information to parents and others. To allow schools to operate more efficiently, amendments have been made to allow for such information to be provided by electronic means.

Other minor, technical amendments

7.8. Other minor amendments have been made to:

- update references to the latest National Minimum Standards for Boarding and National Minimum Standards for Residential Special Schools;
- remove requirements to have regard to withdrawn statutory guidance on anti-bullying and health and safety in Part 3, replacing them with requirements to implement policies on those matters; and
- correct technical errors in some references to school in Part 4 and in requirements related to the provision of information to local authorities in Part 6.

Consolidation

7.9. The Department intends to undertake a review of other parts of the 2010 Regulations in 2013 and the question of consolidation into a single new set of regulations will be considered at that stage. An informal consolidated text will be made available on the Department's website.

8. Consultation outcome

8.1. Consultation on the changes other than those for premises ran from April 2012 to June 2012. 40 responses were received from proprietors, governors and staff at independent schools, inspectorates, independent school associations, faith and representative groups, professional bodies, local authorities and members of the public. Alongside this public consultation, there was informal consultation with the sector including stakeholder meetings. There was broad support for amending the 2010 Regulations and respondents were mainly supportive of changes that would encourage community cohesion and seek to address extremism in schools, although concerns were raised over interpretation of additional wording within the Part 2 on the spiritual, moral, social and cultural development of pupils and how this would impact on inspection and enforcement of the standards. The Department responded to the concerns raised by revising some of the provisions in the final draft of the Regulations.

8.2. A more detailed analysis of the consultation outcome is in the Consultation Report and the Final Impact Assessment, both of which are available on the independent school section of the Department for Education's website: http://www.education.gov.uk/schools/leadership/typesofschools/independent

8.3. Consultation on changes to the School Premises Regulations ran from November 2011 to January 2012. A total of 175 responses were received from local authorities, dioceses, schools and governors, parents and technical professionals, which included responses from the Independent Schools Council, the Independent Schools Inspectorate and 10 independent schools. While overall there was broad support for simplifying the existing regulations, concerns were raised about the use of the word 'suitable' throughout the regulations and the Department has responded to this by revising the supporting supplementary information. A majority of responses were opposed to the proposed regulation on outdoor space; this proposal did not, however, represent a significant change for independent schools, who were more in favour of the proposal than average.

8.4. A more detailed analysis of consultation outcome is in the Summary of Consultation Responses, and the final Impact Assessment, both of which are available at: http://www.education.gov.uk/schools/adminandfinance/schoolscapital/a00212403/changing-standards-school-premises

9. Guidance

9.1. Departmental advice on the revised premises standards for maintained schools has been published on the Department's website, the content of which is equally applicable to independent schools. All independent schools, independent school associations and inspectorates in England will receive a letter setting out the main changes introduced by the Regulations and providing links to the informal consolidated text and other available guidance.

10. Impact

10.1. The impact on businesses and charities which are also independent schools will be largely positive. While there will be a cost in reviewing the Regulations, and for a few schools (estimated at around 100) more substantial costs in adjusting the curriculum in consequence of the changes to Part 2 (the spiritual, moral, social and cultural development of pupils), these are expected to be outweighed by the savings to the independent school sector through the ability to provide information electronically to parents and others.

10.2. An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

11.1. The Regulations apply to small businesses which are also independent schools.

11.2. There has been no consideration given to minimising the impact of the requirements on firms employing up to 20 people. It is important for parents, pupils and the wider community that all independent schools are held to the same standards.

12. Monitoring & review

12.1. The impact of the amended 2010 Regulations will be reviewed in 2016. The basis of the review will include the consideration of:

- whether changes to Part 2 have achieved their purpose in addressing extremism in independent schools;
- whether, in light of changes to the school premises standard, school premises remain adequate for the health, welfare and safety of pupils; and
- the effectiveness of the provisions allowing for the electronic transmission of information by independent schools.

13. Contact

Theresa Hoggart at the Department for Education, email: theresa.hoggart@education.gsi.gov.uk can answer any queries regarding the instrument.