STATUTORY INSTRUMENTS

2007 No. 1088

EDUCATION, ENGLAND

The Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2007

Made - - - -	*28th March 2007*
Laid before Parliament	*10th April 2007*
Coming into force - -	*1st May 2007*

The Secretary of State for Education and Skills, in exercise of the powers conferred by sections 342(2), (4) and (5) and 569(4) of the Education Act 1996(**a**), makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Non-Maintained Special Schools) (England) (Amendment) Regulations 2007 and come into force on 1st May 2007.

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

Amendments

2. The Education (Non-Maintained Special Schools) (England) Regulations 1999(**b**) ("the principal Regulations") are amended in accordance with regulations 3 and 4.

Interpretation of the principal Regulations

3.—(1) In regulation 2(1)—

(a) after the definition of "the 1996 Act" insert—

""Chair", except in paragraph 21 of the Schedule, means, where the relevant person is a body of persons, the chair or similar officer of that body and, where the relevant person is not a body of persons, the relevant person himself;

"children's suitability statement" has the meaning given by section 113C of the Police Act 1997(**c**);

(**a**) 1996 c. 56; section 342 was substituted by section 149(1) of, and paragraph 82 of Schedule 30 to, the School Standards and Framework Act 1998. By virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), the power conferred by section 342 is exercisable by the Secretary of State only in relation to England. For the meaning of "prescribed" and "regulations", *see* section 579(1).

(**b**) S.I. 1999/2257, amended by SI 2002/1982.

(**c**) 1997 c. 50; section 113C was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c. 15), amended by article 6(1) of S.I. 2005/3496 and prospectively repealed by section 63(2) of and Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47).

"employment business" has the meaning given by section 13(3) of the Employment Agencies Act 1973(**a**) and includes a local authority and a person carrying on an employment business;

"enhanced criminal record certificate" has the meaning given by section 113B of the Police Act 1997(**b**);

"Her Majesty's Chief Inspector of Education, Children's Services and Skills" means the person holding the office of that title under section 113 of the Education and inspections Act 2006(**c**);".

(b) after the definition of "maintained special school" insert—

""National Minimum Standards for Boarding Schools" and the "National Minimum Standards for Residential Special Schools" means the standards published respectively under those titles in March 2002 by the Secretary of State for Health under section 23(1) of the Care Standards Act 2000(**d**);".

(c) after the definition of "special school" insert—

""work" includes work of any kind, whether under a contract of service or apprenticeship, under a contract for services or otherwise than under a contract or as a volunteer.".

(2) After regulation 2(1) insert—

"(1A) For the purposes of these Regulations an "enhanced criminal record check" is made if—

(a) an application for an enhanced criminal record certificate is made under Part V of the Police Act 1997 accompanied by a children's suitability statement; and

(b) the application is countersigned by a registered person (within the meaning of section 120 of the Police Act 1997(**e**)) or an application is countersigned on his behalf, and (in either case) the application is submitted to the Secretary of State in accordance with Part V of that Act.

(1B) For the purposes of these Regulations a person is appointed to a position if he is—

(a) engaged to work in a position at the school;

(b) appointed to the governing body; or

(c) appointed to the relevant person, where the relevant person is or is to be a body of persons;

and he is not a person supplied by an employment business.

(1C) A person is to be treated as meeting any staff qualification requirements if he—

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

(**a**) 1973 c. 35; section 13 was last amended by sections 59 and 174(2) of, and paragraph 19 of Schedule 4 and Part 2 of Schedule 17 to, 2005 c. 15.

(**b**) Section 113B was inserted by section 163(2) of 2005 c. 15 and amended by section 63(1) of, and paragraph 14 of Part 2 of Schedule 9 to, 2006 c. 47.

(**c**) 2006 c. 40.

(**d**) 2000 c. 14; there are amendments to section 23 not relevant to these Regulations.

(**e**) Section 120 was last amended by sections 163(3) and 178(4) of, and paragraphs 1 and 6 of Schedule 14 to, 2005 c. 15.

(**f**) 2002 c. 32; at the time of making these Regulations, the relevant Regulations were the Education (School Teachers' Qualifications) (England) Regulations 2003, S.I. 2003/1662, the Education (Specified Work and Registration) (England) Regulations 2003, S.I. 2003/1663 and the Education (Head Teachers' Qualifications) (England) Regulations 2003, S.I. 2003/3111. S.I. 2003/3111 was amended by S.I. 2005/875 and 2005/3322.

(**g**) 1998 c. 30; at the time of making these Regulations, the relevant Regulations were the Education (Induction Arrangements for School Teachers) (Consolidation) (England) Regulations 2001, S.I. 2001/2897 as amended by S.I. 2001/3938, 2002/2063, 2003/106, 2003/2148, 2005/1740, 2007/172 and 2007/603.

(b) meets any conditions with respect to health and physical capacity which apply to him by regulations made under section 141 of the Education Act 2002(**a**); and

(c) is not subject to any direction made under section 142 of the Education Act 2002(**b**), or any disqualification, prohibition or restriction which takes effect as if contained in such a direction, that he may not carry out work to which that section applies.".

Requirements in relation to staff

4.—(1) After paragraph 3 of Part I of the Schedule insert—

"Suitability of staff

3A.—(1) This paragraph applies to the appointment of a person to a position at the school which is not the position of Chair.

(2) No person is to be appointed to a position at the school to which this paragraph applies unless the requirements of sub-paragraphs (3) to (7) below are met.

(3) The identity of any such person is checked, he meets all relevant staff qualification requirements and a check is made of his right to work in the United Kingdom.

(4) An enhanced criminal record check is made in respect of any such person and the enhanced criminal record certificate which is the subject of the application is obtained before or as soon as practicable after his appointment.

(5) In the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish his suitability to work in a school, such further checks as the relevant person considers appropriate, having regard to any guidance issued by the Secretary of State, are made.

(6) In the case of a person who cares for, trains, supervises or is in charge of children for whom accommodation is provided, Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools is met.

(7) The checks referred to in sub-paragraphs (3) and (6) are completed before a person's appointment.

(8) Sub-paragraphs (4) to (6) do not apply to a person who has worked in—

(a) a school in England in a position which brought him regularly into contact with children or young persons; or

(b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or

(c) an institution within the further education sector in England in which his position involved the provision of education which brought him regularly into contact with children or young persons,

during a period which ended not more than three months before his appointment.

Supply staff

3B.—(1) No person supplied by an employment business to the school may begin work as a teacher or member of support staff at the school unless the relevant person has received—

(a) written notification from the employment business in relation to that person—

(**a**) S.I. 2003/3139.
(**b**) Section 142 has been prospectively repealed by section 63(2) of, and Schedule 10 to, 2006 c. 47.

(i) that the checks referred to in paragraph 3C(5)(a) have been made;

(ii) that an enhanced criminal record check has been made, or an enhanced criminal record certificate has been obtained in response to an enhanced criminal record check by that or another employment business; and

(iii) whether, if the employment business has obtained such a certificate before the person is due to begin work at the school, it disclosed any matter or information, or any information was supplied to the employment business, in accordance with section 113B(6) of the Police Act 1997;

(b) where the employment business has obtained an enhanced criminal record certificate before the person is due to begin work at the school, and it discloses any matter or information, or any information was provided to the employment business in accordance with section 113B(6) of the Police Act 1997, a copy of the certificate.

(2) Except in the case of a person to whom sub-paragraph (3) applies, the certificate referred to in sub-paragraph (1)(a)(ii) shall have been obtained not more than three months before the date on which the person is due to begin work at the school.

(3) This sub-paragraph applies to a person who has worked in—

(a) a school in England in a position which brought him regularly into contact with children or young persons; or

(b) a maintained school in England in a position to which he was appointed on or after 12th May 2006 and which did not bring him regularly into contact with children or young persons; or

(c) an institution within the further education sector in England in which his post involved the provision of education which brought him regularly into contact with children or young persons,

during a period which ended not more than three months before the date on which he is due to begin work at the school.

(4) Before a person offered for supply by an employment business may begin work at the school his identity shall be checked by the relevant person at the school (irrespective of any such check carried out by the employment business before the person was offered for supply).

(5) The relevant person shall in the contract or other arrangements which they make with any employment business require it, in respect of any person whom the employment business supplies to the school—

(a) to provide the notification referred to in sub-paragraph (1); and

(b) if any enhanced criminal record certificate which the employment business obtains contains any matter or information, or if any information was supplied to the employment business in accordance with section 113B(6) of the Police Act 1997, to provide a copy of the certificate.

(6) Paragraph (7) applies to a person offered for supply by an employment business to begin work at the school to care for, train, supervise or be in charge of children for whom accommodation is provided, except for those persons to whom sub-paragraph (3) applies.

(7) Before a person to whom this paragraph applies may begin work at the school, the relevant person shall make a check to ensure Standard 38 of the National Minimum Standards for Boarding Schools or, where applicable, Standard 27 of the National Minimum Standards for Residential Special Schools is met.

Register of checks

3C.—(1) A register shall be kept by the relevant person which meets the following requirements.

(2) In relation to each member of staff appointed on or after 1st May 2007, the register shall show whether—

(a) his identity was checked;

(b) a check was made to establish whether he is subject to any direction made under section 142 of the Education Act 2002 or any disqualification, prohibition or restriction which takes effect as if contained in such a direction;

(c) checks were undertaken to ensure that he met the requirements with respect to qualifications or registration mentioned in regulation 2(1C);

(d) an enhanced criminal record certificate was obtained in response to an enhanced criminal record check in respect of him;

(e) checks were made pursuant to paragraph 3A(5);

(f) a check of his right to work in the United Kingdom was made; and

(g) where applicable, checks were made to ensure compliance with the requirement in paragraph 3A(6),

and the register shall include the date on which each such check was completed or the certificate obtained.

(3) In relation to each member of staff in post on 1st August 2007 who was appointed at any time before 1st May 2007, the register shall show whether each check referred to in sub-paragraph (2) was made and whether an enhanced criminal record certificate was obtained, together with the date on which any check was completed or certificate obtained.

(4) Sub-paragraph (3) applies, in the case of a member of staff appointed before 12th May 2006, only if the work of his post brings him regularly into contact with children or young persons.

(5) In relation to any person supplied by an employment business to work at the school, the register shall show whether—

(a) written notification has been received from the employment business that—

(i) it has made checks corresponding to those which sub-paragraph (2)(a) to (c), (e) and (f) requires to be recorded in relation to a member of staff of a school;

(ii) it or another employment business has made an enhanced criminal record check;

(iii) it has obtained an enhanced criminal record certificate in response to an enhanced criminal record check made by that or another employment business,

together with the date the written notification that each such check was made, or certificate obtained, was received; and

(b) a check has been made in accordance with regulation 3B(7) together with the date the check was made.

(6) Where written notification has been received from the employment business in accordance with a contract or other arrangements made pursuant to paragraph 3B(5) that it has obtained an enhanced criminal record certificate which disclosed any matter or information, or that information was provided to it in accordance with section 113B(6) of the Police Act 1997, the register shall also show whether the employment business supplied a copy of the certificate to the school.

(7) It is immaterial for the purposes of sub-paragraphs (1) to (3) and (5) whether the check was made or certificate obtained pursuant to a legal obligation.

(8) The register required to be kept pursuant to this paragraph may be kept in electronic form, provided that the information so recorded is capable of being reproduced in legible form.

(9) The register required to be kept pursuant to this paragraph shall be available for inspection at the school during school hours by Her Majesty's Chief Inspector of Education,

Children's Services and Skills in carrying out his functions under Part 1 of the Education Act 2005(**a**).

Suitability of Chair

3D.—(1) No person is to be a Chair unless the requirements of sub-paragraphs (2) to (5) below are met.

(2) The identity of any such person is checked and a check is made by the Secretary of State of his right to work in the United Kingdom.

(3) An enhanced criminal record check is made by the Secretary of State in respect of such person and the enhanced criminal record certificate which is the subject of the application is obtained before his appointment.

(4) In the case of any such person for whom, by reason of his living or having lived outside the United Kingdom, obtaining such a certificate is not sufficient to establish his suitability to work in a school, such further checks as the Secretary of State considers appropriate are made by him.

(5) The checks referred to in sub-paragraphs (2) and (4) shall have been completed before any such person becomes a Chair, for the requirements of this paragraph to be met.".

(2) In paragraph 15 of Part II of the Schedule before the words "in the case of a residential school" insert "Without prejudice to paragraphs 3A to 3D of this Schedule,".

(3) In paragraph 21 of Part III of the Schedule—

(a) in sub-paragraph (1) for "chairman" substitute "chair"; and

(b) in sub-paragraph (6)(a) for "section 400 of the 1996 Act", substitute "section 98 of the Learning and Skills Act 2000"(**b**).

Saving

5.—(1) Subject to paragraph (3), paragraph (2) applies in the case of a person who immediately before 1st May 2007—

(a) was appointed to a position at;

(b) was supplied by an employment business to; or

(c) held the office of Chair at,

the school and who remains in such a position, continues to be so supplied or continues to hold such office (as the case may be) at that time.

(2) Regulation 3 (conditions of approval) and regulation 4 (requirements to be complied with) of the principal Regulations shall not apply, in relation to the requirements contained in paragraphs 3A, 3B and 3D of the Schedule to the principal Regulations introduced by these Regulations, in the case of a person to whom this paragraph applies.

(3) Nothing in paragraph (2) shall prevent the provisions referred to in that paragraph applying in the case of any subsequent appointment, supply, or holding of office which takes place on or after 1st May 2007 of a person who fell within paragraph (2) but ceased to—

(a) remain in the position referred to in paragraph (1)(a);

(b) be supplied by the employment business referred to in paragraph (1)(b); or

(c) hold the office of Chair.

Andrew Adonis
Parliamentary Under Secretary of State

(**a**) 2005 c. 18.
(**b**) 2000 c.21.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Education (Non-Maintained Special Schools) (England) Regulations 1999 (the "principal Regulations"). Both these Regulations and the principal Regulations apply only in relation to England.

Regulation 3 amends several definitions in the principal Regulations for the purposes of the changes introduced by these Regulations.

Regulation 4 introduces requirements into Part I of the Schedule of the principal Regulations. The requirements contained in Part I are both initial conditions of approval of a non-maintained special school under section 342(1) of the Education Act 1996 (under regulation 3 of the principal Regulations), and requirements to be complied with by such a school while approved (under regulation 4 of the principal Regulations). The paragraph numbers below are those of the Schedule of the principal Regulations as amended by these Regulations.

A new requirement introduced is that all members of staff and members of the governing body except for the Chair (in the capacity of Chair, but see reference to paragraph 3C below) must meet specified requirements as to qualifications, health, physical capacity and the absence of any bar from working with children and young persons. It is also a requirement that, subject to exceptions, such a person must, prior to, his appointment be subject to an enhanced Criminal Records Bureau ("CRB") check made under the Police Act 1997.

These Regulations add further requirements: a person's identity and right to work in the United Kingdom must be checked, paragraph 3A(3), and persons who have lived outside the United Kingdom must be subject to further checks if a CRB check is insufficient to establish suitability to work in a school, paragraph 3A(5).

Non-maintained special schools are required to keep a register of the checks which they have made in respect of their own staff, paragraph 3C(2), and, in the case of supply staff, of the information about checks provided by the supply agency, paragraph 3C(5).

Before a person is appointed as a Chair, identity, right-to-work and enhanced CRB checks carried out by the Secretary of State must have been obtained, paragraph 3D. The Chair is (except in paragraph 21 which now refers to the chair of the governing body) the chair of the relevant person where the relevant person is a body of persons or otherwise the relevant person himself.

A teacher or member of support staff supplied by an employment business cannot work at a school until the employment business has confirmed that checks have been carried out, and schools are required in their arrangements with employment businesses to place them under an obligation to provide this information, paragraph 3B.

Regulation 5 is a saving provision to ensure that non-maintained special schools approved under the principal Regulations at the date these Regulations come into force are not regarded retrospectively as having failed to perform their statutory duty under regulations 3 and 4 of the principal Regulations for failing to have complied with the new requirements made by these Regulations in relation to persons who are already in a position at the school, are already supplied to the school by an employment business or are already Chair when these regulations come into force; neither need checks be carried out on such persons going forward unless they cease to hold such positions and then acquire new positions.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Vulnerable Children Group, Department for Education and Skills, Mowden Hall, Staindrop Road, Darlington DL3 9BG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website.

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