STATUTORY INSTRUMENTS

2014 No. 1977

EDUCATION, ENGLAND

The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014

Made - - - -	*22nd July 2014*
Laid before Parliament	*25th July 2014*
Coming into force - -	*1st September 2014*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 128(2), (3), (4) and (5), 129(2), 141(1) and (2), and 166(6) of the Education and Skills Act 2008(**a**):

Citation, commencement, and interpretation

1.—(1) These Regulations may be cited as the Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014 and come into force on 1st September 2014.

(2) In these Regulations—

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

"the 2008 Act" means the Education and Skills Act 2008;

"caution" has the meaning given by section 8A(2) of the Rehabilitation of Offenders Act 1974(**c**);

"independent school" includes an alternative provision Academy that is not an independent school; and

"section 128 direction" means a direction given under section 128 of the 2008 Act.

Prescribed grounds for a section 128 direction

2.—(1) The prescribed grounds on which a section 128 direction may be given in respect of a person are that—

(**a**) 2008 c. 25. For the meaning of "prescribed" and "regulations" see section 168(1). Chapter 1 of Part 4 (which includes sections 128 and 129) applies to alternative provision Academies that are not independent schools as it applies to independent schools. See section 93A, inserted by paragraph 22 of the Schedule to, and subject to the transitional provision at Article 3 of, the Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (2012/976).

(**b**) 2002 c.32. Chapter 1 of Part 10 applies to alternative provision Academies that are not independent schools as it applies to independent schools. See section 156AA, inserted by paragraph 13 of the Schedule to Alternative Provision Academies (Consequential Amendments to Acts) (England) Order 2012 (2012/976).

(**c**) 1974 c. 53. Section 8A was inserted by section 49 of, and paragraphs 1 and 3 of Schedule 10 to, the Criminal Justice and Immigration Act 2008 (c. 4). Subsection (2) of section 8A was amended by sections 135 and 141 of, and paragraphs 1 and 2 of Schedule 24 and paragraphs 1 and 8 of Schedule 25 to, the Legal Aid Sentencing and Punishment of Offenders Act 2012 (c. 10).

(a) the person—

(i) has been convicted of a relevant offence;

(ii) has been given a caution in respect of a relevant offence;

(iii) is subject to a relevant finding in respect of a relevant offence; or

(iv) has engaged in relevant conduct; and

(b) because of that conviction, caution, finding or conduct, the appropriate authority considers that the person is unsuitable to take part in the management of an independent school.

(2) For the purposes of paragraph (1), an offence is relevant if it is relevant to a person's suitability to take part in the management of an independent school.

(3) References in paragraph (1) to a conviction include references to—

(a) a conviction of an offence in any service disciplinary proceedings within the meaning given in section 229(2B) of the Criminal Justice Act 2003(**a**); and

(b) a conviction of a service offence within the meaning of the Armed Forces Act 2006(**b**)including anything that under section 376(1) and (2) of that Act is to be treated as a conviction.

(4) For the purposes of paragraph (1) a person is subject to a "relevant finding" in respect of a relevant offence if—

(a) the person has been found not guilty of the offence by reason of insanity;

(b) the person has been found to be under a disability and to have done the act charged against him or her in respect of the offence; or

(c) under the law in force in a country outside the United Kingdom a court has made a finding equivalent to that described in sub-paragraph (a) or (b).

(5) For the purposes of paragraph (1), conduct will be relevant if it is conduct which —

(a) is aimed at undermining the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;

(b) has been found to be in breach of professional standards by a professional body; or

(c) is so inappropriate that, in the opinion of the appropriate authority, it makes a person unsuitable to take part in the management of an independent school.

(6) Subject to section 4 of and Schedule 2 to the Rehabilitation of Offenders Act 1974(**c**) and to any orders made under those provisions, references in paragraph (1) to a conviction or caution include references to a conviction or caution that is spent (within the meaning of the Rehabilitation of Offenders Act 1974).

(7) For the purposes of paragraph (1) a person (P) has been convicted of an offence, or been given a caution in respect of an offence, if P has been convicted or been given a caution in respect of an offence—

(a) in any part of the United Kingdom; or

(b) under the law in force in a country outside the United Kingdom.

(8) For the purposes of paragraph (7) P commits an offence under the law in force in a country outside the United Kingdom if P commits an act that is punishable under the law in force in that country however that act is described in that law.

(**a**) 2003 c. 44. Subsection (2B) was inserted by section 177(1) of, and paragraphs 95(1) and (3) of Part 10 of Schedule 21 to, the Coroners and Justice Act 2006 (c. 25).

(**b**) 2006 c. 52

(**c**) Schedule 2 was inserted by section 49 of, and paragraphs 1 and 6 of Schedule 10 to, the Criminal Justice and Immigration Act 2008 (c. 4).

Procedure for giving a section 128 direction

3.—(1) Before giving a section 128 direction in respect of a person the appropriate authority must give the person the opportunity to make representations as to why the appropriate authority should not give the direction.

(2) The appropriate authority must give the person notice that the person may make such representations.

(3) The appropriate authority must give the notice under paragraph (2) by sending it to the person by post.

(4) A person to whom notice is given under paragraph (2) may make representations in writing within the period of two months starting on the day on which the notice was sent.

(5) If—

(a) a person to whom notice is given under paragraph (2) asks to make representations after the period mentioned in paragraph (4) has expired; and

(b) the appropriate authority is satisfied that there were good reasons why the person failed to make representations in time,

the appropriate authority may allow the person such further period to make representations as the appropriate authority considers reasonable.

(6) Paragraphs (1), (2) and (3) do not apply where the appropriate authority does not know and cannot reasonably ascertain the whereabouts of the person concerned.

(7) If a section 128 direction is given in respect of a person the appropriate authority must take all reasonable steps to notify the person of that fact.

Cases in which appropriate authority may vary or revoke a section 128 direction

4. The prescribed cases in which the appropriate authority may vary or revoke a section 128 direction are where—

(a) the person in respect of whom the direction was given has sought to have it revoked or varied on one of the grounds set out in regulation 5(1);

(b) the appropriate authority is in possession of information relevant to the decision to give the earlier direction which the appropriate authority did not have at the time that the decision was made; or

(c) the appropriate authority is in possession of evidence of a material change of circumstances of the person in respect of whom the direction was given, occurring since the direction was given,

and the appropriate authority considers that it is appropriate to vary or revoke the direction.

Grounds on which variation or revocation of a section 128 direction may be sought

5.—(1) The prescribed grounds on which a person subject to a section 128 direction may seek to have it varied or revoked are that—

(a) a conviction, caution or finding on the grounds of which the direction was given has been quashed;

(b) a conviction or caution on the grounds of which the direction was given has, since the giving of the direction, become spent within the meaning of the Rehabilitation of Offenders Act 1974;

(c) a conviction or caution on the grounds of which the direction was given has, since the giving of the direction, become a protected conviction or protected caution within the meaning of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(**a**);

(d) in the case of a direction given on the grounds of a relevant finding, at least five years have passed since the finding was made;

(e) the person in respect of whom the direction was given is able to provide information relevant to the decision to give the earlier direction which the appropriate authority did not have at the time that the decision was made; or

(f) the person in respect of whom the direction was given is able to provide evidence of a material change of circumstances occurring since the direction was given.

(2) For the purposes of paragraph (1)(e) and (f), a person may not seek to have a section 128 direction varied or revoked insofar as the person's case is inconsistent with the person having been convicted of, or cautioned in respect of, an offence.

(3) For the purposes of this regulation a section 128 direction is given on the grounds of a conviction, caution, finding or conduct if the ground in regulation 2(1) is met by virtue of the conviction, caution, finding or conduct (as the case may be).

Appeals: restriction on Tribunal's power to entertain appeal

6.—(1) This regulation applies in relation to a section 128 direction which is given on the grounds of a conviction for an offence.

(2) The Tribunal may not entertain an appeal under section 129(1) of the 2008 Act against the decision to give the direction, or not to vary or revoke the direction, insofar as the appellant's case is inconsistent with the appellant having been convicted of an offence.

(3) For the purposes of paragraph (1) a section 128 direction is given on the grounds of a conviction for an offence if the ground in regulation 2(1) is met by virtue of a conviction for the offence.

Appeals: Tribunal's powers

7.—(1) This regulation applies where—

(a) an appeal has been made to the Tribunal under section 129(1) of the 2008 Act in respect of a decision to give a section 128 direction, or a decision not to vary or revoke a section 128 direction; and

(b) the Tribunal considers that the decision is not appropriate.

(2) The Tribunal may order the appropriate authority to vary or revoke the direction.

(3) Unless the parties to an appeal agree otherwise, the Tribunal, in exercising its powers under this regulation, must not consider—

(a) any information relevant to the decision to give a direction, or not to vary or revoke a direction, which the appropriate authority did not have at the time the decision was made;

(b) any evidence of a material change of circumstances of the person concerned occurring since the decision to give a direction or not to vary or revoke a direction was made.

(**a**) S.I. 1975/1023. "Protected cautions" and "protected convictions" are defined in regulation 2A, which was inserted by Articles 2 and 4 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (Amendment) (England and Wales) Order 2013 (2013/1198).

Directions given under section 142 of the 2002 Act

8.—(1) The prescribed grounds for the purposes of section 141(1)(a) of the 2008 Act on which a direction under section 142 of the 2002 Act (prohibition from teaching, etc.)(**a**) was given in relation to the person are grounds relating to the person's misconduct.

(2) The prescribed condition which must be satisfied in relation to the person (for the purposes of section 141(1)(b) of the 2008 Act) is that, as a result of the direction given under section 142 of the 2002 Act, the person may not take part in the management of an independent school.

(3) As from 1st September 2014, persons who fall within section 141(1) of the 2008 Act are to be treated as if the direction given under section 142 of the 2002 Act were a direction given by the appropriate authority under section 128 of the 2008 Act for the purpose of any enactment.

John Nash
Parliamentary Under Secretary of State
Department for Education

22nd July 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the grounds on which a direction may be given under section 128 of the Education and Skills Act 2008 ("a section 128 direction") prohibiting a person from taking part in the management of an independent school or alternative provision Academy in England, or placing a restriction on a person's ability to do so. The Regulations also make provision about the procedure for giving a section 128 direction, the circumstances in which a section 128 direction may be varied or revoked and provision about appeals in respect of section 128 directions.

Section 128 directions may be given in respect of a person who has been convicted of, been given a caution in respect of, or is subject to a relevant finding in respect of a relevant offence, or has engaged in relevant conduct, if the appropriate authority (the Secretary of State) considers that the person is therefore unsuitable to take part in the management of an independent school or alternative provision Academy (regulation 2).

Regulation 2 provides that the reference to conduct includes conduct aimed at undermining fundamental British values, conduct that is in breach of professional standards, and conduct that is so inappropriate that it makes a person unsuitable to take part in the management of an independent school. Regulation 2 also provides that references to convictions and cautions include those that are spent provided there has been an order made excluding the operation of provisions of the Rehabilitation of Offenders Act 1974 which prohibit spent convictions and cautions being used as a ground to exclude a person from any office, profession, occupation or employment.

Before making a section 128 direction, the appropriate authority must give the person an opportunity to make representations as to why the direction should not be given and notice of that opportunity (regulation 3). Regulation 3 makes provision about the giving of the notice and the period within which representations may be made. All reasonable steps must be taken to notify a person in respect of whom a section 128 direction has been made.

(**a**) Section 142 was repealed in part by section 63(2) of, and Schedule 10 to, the Safeguarding Vulnerable Groups Act 2006 on 12 October 2009. Article 4 of the Safeguarding Vulnerable Groups Act 2006 (Commencement No 6, Transitional Provisions and Savings) Order 2009 saves the operation of section 142 in relation to directions to prohibit persons from participating in the management of an independent school on grounds of misconduct.

The appropriate authority may vary or revoke a direction where a person seeks to have it revoked on one of the grounds set out in regulation 5, or in the absence of variation or revocation being sought, where new information comes to light or where there has been a material change in circumstances of the person subject to the direction, provided in all cases that the appropriate authority considers it appropriate to vary or revoke (regulation 4).

Under regulation 5, a person subject to a section 128 direction may seek to have it varied or revoked on the grounds that the conviction, caution or finding in question has been quashed, that the conviction or caution in question is spent or becomes protected, or that a period of five years have passed since the finding in question was made. A person subject to a direction on conduct grounds may seek to have it varied or revoked on the grounds that new information has come to light or where there has been a material change in circumstances of the person subject to the direction.

Section 129(1) of the Education and Skills Act 2008 provides for a right of appeal against decisions in respect of section 128 directions. Regulation 6 contains a restriction on the power of the Tribunal to entertain appeals in relation to section 128 directions which are given on the grounds of convictions. "Tribunal" is defined in section 124(5) of the Education and Skills Act 2008 as meaning the First-tier Tribunal. Regulation 7 provides for the Tribunal's powers on allowing an appeal in relation to a section 128 direction. Where the Tribunal considers the decision to give the direction, or the decision not to vary or revoke it, is not appropriate it may order the appropriate authority to vary or revoke the direction.

Regulation 8 sets out the circumstances in which a person subject to a direction under section 142 of the Education Act 2002 immediately before the coming into force of section 128 of the 2008 Act will be treated as being subject to a section 128 direction as from the day the Regulations come into force.

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