



Department
for Education

The Non-Maintained Special Schools (England) Regulations 2015

**Departmental advice for non-maintained
special schools**

August 2015

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Summary

About this departmental advice

1. This is departmental advice from the Department for Education ('the department'). This advice is non-statutory, and has been produced to help recipients understand their obligations and duties in relation to the [Non-Maintained Special Schools \(England\) Regulations 2015](#) ('the Regulations').

Expiry or review date

2. This advice will be reviewed before June 2017. In the meantime the Secretary of State will keep the Regulations under review and may amend them and this advice, if appropriate.

Who is this advice for?

3. This advice is for:

- Proprietors of non-maintained special schools
- Governing bodies of non-maintained special schools
- Trustees or Board of Directors of non-maintained special schools
- Senior leaders in non-maintained special schools
- Staff in non-maintained special schools

Main points

4. The Regulations replace the Education (Non-Maintained Special Schools) (England) Regulations 2011 ('the 2011 Regulations') (as amended). The main changes include:

- The introduction of a new power that allows the Secretary of State, in an urgent case, to apply to a justice of the peace to make an order that a non-maintained special school should cease to be approved under section 342 of the Education Act 1996;
- The introduction of a requirement to ensure arrangements are made to promote fundamental British values;
- An updated complaints process; and
- Removal of detailed requirements for the schools prospectus.

Regulations

5. The following focuses on the main changes and other important points to note in the Regulations:

Regulation 2: Interpretation

Enhanced criminal record certificate

6. The definition of enhanced criminal record certificate has been amended. Also amended is the provision setting out when an enhanced criminal record check is made (regulation 2(2)) and when an enhanced criminal record check is necessary (regulation 2(5)).

7. Detailed statutory guidance on the safeguarding and checking regime can be found in Part 3 of [Keeping children safe in education 2015](#) and [Disqualification under the Childcare Act 2006](#).

National Minimum Standards

8. The definition of 'National Minimum Standards' continues to include "children's homes". Where a non-maintained special school is also a children's home, the requisite requirements for children's homes must be complied with, in order to meet the approval conditions for a non-maintained special school under the Regulations.

Proprietor

9. 'Proprietor' is defined in the Education Act 1996: "*proprietor, in relation to a school, means the person or persons responsible for the management of the school*". It is therefore not necessary to include a definition in the Regulations.

10. Whilst the proprietor is legally responsible for all the requirements contained in the conditions of approval and continued approval, it is down to the proprietor to decide how this is managed on a day to day basis. The proprietor can delegate as appropriate.

11. The proprietor will vary from school to school. It could be a Board of Trustees or the Chair of a governing body. However, given the definition (see paragraph 9), the identity of the proprietor will be clear for the purposes of the Regulations.

Regulation 5: Emergencies

12. This regulation sets out a power for the Secretary of State, in an urgent case, (i.e. where there is the risk of a pupil(s) suffering or likely to suffer significant harm), to apply to a justice of the peace to make an order that a non-maintained special school should

cease to be approved under section 342 of the Education Act 1996. Whilst the order may be made without notice the Secretary of State will give as much notice of the application as possible.

13. Any application made by the Secretary of State will comply with the duty of full and frank disclosure.

14. The department anticipates that the Secretary of State will exercise this power very rarely.

Regulation 6: Appeals

15. This regulation sets out avenues of appeal, including against an order made under regulation 5 (emergencies).

16. In order to minimise the impact on the proprietor of the institution, on staff and on parents and pupils, provision has been made for an expedited appeal process in respect of an order made under regulation 5. This is set out in a [Memorandum of Understanding](#) between the department and HM Courts & Tribunals Service.

Part 1 of the Schedule (conditions of approval)

17. The following focuses on the main changes and other important points to note in Part 1 of the Schedule:

18. The general references to arrangements being approved by the Secretary of State have been removed on the basis that given Part 1 sets out “Conditions of approval under section 342(1) of the 1996 Act”, it is unnecessary to re-state this.

Paragraph 2: Governing body

19. At paragraph 2(2)(a)(i), it is worth noting that this member is **appointed** by a local authority, but does **not** have to be a local authority employee or elected member of the local authority.

20. The proprietor is ultimately responsible for ensuring members and, as appropriate, trustees fully understand their roles and responsibilities. The following links may be useful:

- [NCTL- the role of the chair](#)
- [The NGA](#)
- [The Welcome Trust- Questions for Governors](#)
- [The Charity Commission- the essential trustee- what you need to know](#)

21. The detailed requirements for a member elected by, or appointed to represent, parents of children at the school have been removed (paragraph 2(2)(a)(iii)). This provides schools with greater freedom to appoint a suitable person with the requisite skills.

22. If for any reason the arrangements at paragraphs 2(2)(a)(i), (ii) or (iii) cannot be met, for example, after a genuine effort to find a teacher member a willing teacher cannot be found, the proprietor should write to the department which will consider whether in the circumstances, the school can dispense with the requirement for such a member.

Paragraph 3: Welfare of pupils

23. A new requirement has been added, for the proprietor to include arrangements that actively promote the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs.

24. This is a sector wide requirement that has been placed on all schools in England.

25. The proprietor should have a clear strategy for embedding fundamental British values, and be able to show how the school’s work with pupils is effective in achieving this. Actively promoting the values also means challenging opinions and behaviour in

school that are contrary to fundamental British values. Schools should review their curricula and teaching practice and make any changes needed to ensure that they conform with this requirement.

26. Proprietors should consider the age and physical and mental capabilities of their pupils when considering this requirement and ensure the curricula and teaching practices relating to fundamental British values are appropriate. Individual schools are best placed to make judgments as to the scope of this requirement on a case by case basis, especially where a child has profound learning disabilities and or complex needs.

27. It is not necessary for schools or individuals to promote teachings, beliefs or opinions that conflict with their own, but nor is it acceptable for schools to promote discrimination against people or groups on the basis of their belief, opinion or background.

The list below (subject to paragraph 26) describes the understanding and knowledge expected of pupils as a result of schools promoting fundamental British values:

- an understanding of how citizens can influence decision-making through the democratic process;
- an appreciation that living under the rule of law protects individual citizens and is essential for their wellbeing and safety;
- an understanding that there is a separation of powers between the executive and the judiciary, and that while some public bodies such as the police and the army can be held to account through Parliament, others such as the courts maintain independence;
- an understanding that the freedom to choose and hold other faiths and beliefs is protected in law;
- an acceptance that other people having different faiths or beliefs to oneself (or having none) should be accepted and tolerated, and should not be the cause of prejudicial or discriminatory behaviour; and
- an understanding of the importance of identifying and combatting discrimination.

28. The following is not designed to be exhaustive, but provides a list of different actions that schools can take, such as:

- include in suitable parts of the curriculum, as appropriate for the age of pupils, material on the strengths, advantages and disadvantages of democracy, and how democracy and the law works in Britain, in contrast to other forms of government in some other countries;

- ensure that all pupils within the school have a voice that is listened to, and demonstrate how democracy works by actively promoting democratic processes such as a school council whose members are voted for by the pupils;
- use opportunities such as general or local elections to hold mock elections to provide pupils with the opportunity to learn how to argue and defend points of view;
- use teaching resources from a wide variety of sources to help pupils understand a range of faiths; and
- consider the role of extra-curricular activities, including any run directly by pupils, in promoting fundamental British values.

Paragraphs 4, 5 and 6: Suitability- of staff and governors, of supply staff, and of the chair of the governing body

29. Whilst the proprietor is ultimately responsible for ensuring the suitability of anyone appointed to a position or supplied by an employment business, all staff and governors have individual responsibility for the welfare and safeguarding of pupils.

30. Detailed statutory guidance on safeguarding and suitability checks can be found in [Keeping children safe in education 2015](#), [Working together to safeguard children](#) and [Disqualification under the Childcare Act 2006](#).

Paragraph 7: Register of checks

31. Minor changes have been made to make the drafting simpler to follow. Full details of the requirements in relation to the register of checks can be found in Part 3 of [Keeping children safe in education 2015](#).

Paragraph 9: Financial viability

32. As a condition of approval, a school must be able to demonstrate that it will be financially viable. In considering financial viability, the criteria will be based on the Education Funding Agency (EFA) financial assessment process and it would be expected that the school would be rated as satisfactory or better. More information is available via the [EFA Assurance Framework](#).

Part 2 of the Schedule (requirements for continued approval)

33. The following focuses on the main changes and other important points to note in Part 2 of the Schedule.

Paragraph 22: Admissions and special educational provision

34. If a non-maintained special school is likely to be in breach of the requirements under this paragraph, for example, where

- the admission of a child with an EHC plan would mean that the school would exceed the maximum agreed number of pupils; or
- the child is no longer within the registered SEN designation of the school; or
- a child to be admitted is under or over the agreed age limits,

then as with any other potential breach of any requirement, the school should write to the department, setting out the position.

35. The department will consider on a case by case basis whether to amend the arrangements under paragraph 1 (in Part 1 of the Schedule) or, where appropriate, to approve the arrangements for a specified period.

36. Schools may find the following guidance useful. It explains the duties of local authorities, health bodies, schools and colleges to provide for those with special educational needs under part 3 of the Children and Families Act 2014: [SEND code of practice 0-25](#).

Paragraph: 26 Meals and refreshments

37. The paragraph sets out a basic minimum requirement that the school must meet. However, in many instances, a non-maintained special school will cater for pupils with severe and complex needs that may mean that the arrangements they put in place are different from the minimum requirements set out in the Regulations. This is to be expected and a non-maintained special school will not be in breach of this requirement where it is clear that those arrangements are necessary for the welfare of pupils at the school or the implementation of their EHC plan (or statement).

Paragraph 27: Incident books and records

38. The incident book and records can be kept in electronic form, provided that the information recorded is capable of being printed.

Paragraph 28: Co-operation with local authorities

39. This paragraph provides that non-maintained special schools must co-operate with a local authority that maintains an Education Health and Care plan (or statement) for a pupil attending the school, as well as allowing reasonable access at all times to any person authorised by the local authority.

Paragraph 29: Accounts

40. As a condition of continued approval the school, upon request by the Secretary of State, must be able to demonstrate it is financially viable. In considering financial viability, the criteria will be based on the Education Funding Agency (EFA) financial assessment process and it would be expected that the school would be rated as satisfactory or better. More information is available via the [EFA Assurance Framework](#).

41. Reporting and accounting requirements that are set out in other legislation and or funding agreements have been removed from the requirements.

Paragraph 31: Complaints

42. This paragraph sets out the complaints procedure. Where an initial complaint has not been resolved through informal channels, a formal procedure for the complaint to be made in writing should be adopted.

43. Schools are no longer required to keep a written record of all complaints. In accordance with paragraph 31(i), they are only required to keep a written record of formal complaints.

Paragraph 33: Prospectus

44. The proprietor must publish a prospectus in advance of each school year, which may be in electronic form, but it is for the school to decide what information the prospectus should contain. It is expected that as a minimum, the prospectus will provide a reasonable overview of the school that will allow parents, or if appropriate the local authority, to make a reasoned judgement of the suitability of the school for prospective pupils. The prospectus must be provided, on request by a parent or a prospective parent, or a local authority.

45. Proprietors should of course continue to comply with any separate legal requirements to publish information.

Deleted paragraph (Teaching of religious education)

46. The requirement relating to the teaching of religious education in the 2011 Regulations (paragraph 31) has not been included in the Regulations.

Further information

Other relevant departmental advice and statutory guidance

- [Keeping children safe in education](#)
- [Disqualification under the childcare Act 2006](#)
- [Working together to safeguard children](#)
- [SEND code of practice 0-25](#)
- [National minimum standards for residential special schools](#)
- [Children's homes regulations](#)

Other information

- [Prevent duty guidance](#)



Department
for Education

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Reference: DFE-00173-2015



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