

Consultation on Revision of The Education (Independent School Standards) (England) Regulations 2010

Analysis of responses to the consultation
document

Introduction

The Minister of State for Schools gave approval in November 2011 to consult on proposed changes to the Independent School Standards regulations.

The proposed changes under consideration as part of this consultation are detailed below:

- Part 1 (Quality of Education) to include a new early years curriculum provision in the event that block exemptions go ahead;
- to strengthen Part 2 (Spiritual, Moral, Social and Cultural) to address extremism issues;
- to amend outdated references and technical errors in Part 3 (Welfare, health and safety of pupils), Part 4 (Suitability of staff, supply staff and proprietors and Part 6 (Provision of Information);
- to include a new welfare provision within Part 3 to tie in with the new revised premises standard
- to clarify that the provision of information, mainly within Part 6, includes electronic transmission,

Alongside the Department's on-line consultation, there has been ongoing informal consultation with the sector including stakeholder meetings to discuss the potential impact of these changes.

This document is an overall summary of the responses to the consultation along with feedback from wider discussions. It sets out an overview of the issues raised and a summary of the responses to the individual consultation questions.

Throughout the report, percentages are expressed as a measure of those answering each question, not as a measure of all respondents.

A total of 40 responses was received; a number were not submitted in the format issued by the Department, but all comments have been considered as part of the analysis and in shaping our response. The table below provides a breakdown of the respondents:

The organisational breakdown of respondents was as follows:

Head or staff member of Independent School:	16	40%
Professional Body/Association:	8	20%
Other:	6	15%
Faith Group:	3	8%
Inspectorate:	3	8%
School Proprietor:	3	8%
School Governor:	1	3%
Total:	40	100%

Those which fell into the 'other' category included local authorities, members of the public and representative groups.

A list of the organisations that responded (not marked as confidential or anonymous) is available at Annex A.

The report starts with an overview, followed by a summary analysis of each question.

Overview

This report does not attempt to capture all individual perspectives that emerged from the consultation but to give an overview of the common themes. Whilst not setting out details of all individual responses, the Department will be taking account of, and considering, all contributions to the consultation. In summary, on the areas covered by the consultation exercise:

- The majority of respondents were satisfied that for schools granted block exemptions from EYFS, the new early years curriculum provision would adequately ensure that appropriate standards will be required in relation to the education of children aged from three until compulsory school age.
- There was majority of support for changes to Part 2 to address extremism issues although nearly half of respondents raised concerns that the terminology used, in particular the terms 'British Values' and 'democracy', which could cause difficulties for schools and inspectorates in interpreting how to implement the new standards. Some concerns were also raised.
- It was generally agreed that changes to Part 3 would improve understanding of requirements, although some of the inspectorates and associations raised concerns that removal of reference to departmental advice could result in schools seeking guidance from them; the term 'adequate' in relation to the welfare standard linked to premises was welcomed as this will empower schools to and assist inspectorates in make judgements not covered specifically by regulations but others commented the provision was too vague.
- Use of the term 'suitable' in the regulations generated many comments, with respondents concerned that this was not specific enough to ensure high quality educational environments.
- The majority of respondents welcomed the change to enable information to be provided electronically although predicted administrative savings varied widely.

Summary

Part 1 - EYFS Exemptions and new early years requirement

Proposed new standard:

2(2)(k) Where the school has pupils below compulsory school age, a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional and physical development and communication and linguistic skills.

1 Do you agree that this additional standard adequately ensures that appropriate standards will be required in relation to the education of children aged from 3 until they reach compulsory school age? If not why not?			
There were 31 responses to this question			
Options	Responses	Across Consultation	
Yes:	18	58%	45%
Not Sure:	7	23%	18%
No:	6	19%	15%

More than half of the respondents (58%) agreed that the new requirement would adequately ensure standards were maintained for those schools granted an exemption from EYFS.

Several organisations suggested that the wording should more closely match the equivalent EYFS areas of learning (i.e. language instead of linguistic).

Part 2 – changes to requirements to prevent extremism

2 Do you agree that these proposed changes provide adequate safeguards against the promotion of extremism in schools? If not why not?			
There were 36 responses to this question			
Options	Responses	Across Consultation	
Yes:	16	44%	40%
No:	13	36%	33%
Not Sure:	7	19%	18%

3 Do you believe that any of the proposed changes to the standard are unnecessary, or should be changed from the draft text? If so, please explain why.			
There were 36 responses to this question			
Options	Responses	Across Consultation	
Yes:	17	47%	43%
No:	13	36%	33%
Not Sure:	6	17%	15%

4 We envisage that a small number of schools are likely to need to review their curriculum; do you agree and can you estimate how many?			
There were 21 responses to this question			
Options	Responses		Across Consultation
Not Sure:	16	76%	40%
Yes:	4	19%	10%
No:	1	5%	3%

5 For schools that will need to review their curriculum, could you estimate the costs of review?			
There were 0 responses to this question			
Options	Responses		Across Consultation

6 We believe there will be intangible benefits for pupils and wider community - do you agree, and if so what will these benefits be?			
There were 27 responses to this question			
Options	Responses		Across Consultation
Yes:	13	48%	33%
Not Sure:	10	37%	25%
No:	4	15%	10%

Proposed new standard:

5. The standard about the spiritual, moral, social and cultural development of pupils at the school is met if the proprietor;

(a) ensures that principles are promoted which—

(i) enable pupils to develop their self-knowledge, self-esteem and self-confidence;

(ii) enable pupils to distinguish right from wrong and to respect the civil and criminal law;

(iii) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute to the lives of those living and working in the locality in which the school is situated;

(iv) provide pupils with a broad general knowledge of public institutions and services in England;

(v) assist pupils to acquire an appreciation of and respect for their own and other cultures in a way that promotes tolerance and harmony between different cultural traditions; and

(vi) encourage pupils to respect fundamental British values including democracy, the rule of law, individual liberty and mutual respect, and tolerance of those with different faiths and beliefs;

(b) precludes the promotion of partisan political views in the teaching of any subject in

the school; and

(c) ensures that where political issues are brought to the attention of pupils—

(i) while they are in attendance at the school;

(ii) while they are taking part in extra-curricular activities which are provided or organised by or on behalf of the school; or

(iii) in the promotion at the school, including through the distribution of promotional material, of extra-curricular activities taking place at the school or elsewhere;

they are offered a balanced presentation of opposing views.

Just under half of all respondents (48%) agreed the proposals would provide adequate safeguards against the promotion of extremism in schools, with 36% unsure how effective the new standard could be mainly due to concerns over interpretation and how this would impact on inspection and enforcement of the standards.

47% of respondents indicated that they felt the changes were unnecessary or required further amendment, although 36% were satisfied with the suggested wording above.

48% of respondents believe there would be intangible benefits for pupils and the wider community, with 37% of respondents not sure.

Although respondents were mainly supportive of changes that would encourage community cohesion and seeks to address extremism in schools: *'There is a balance to be struck between the rights of parents to choose and to bring up their children in their own beliefs, the rights of children to be properly educated including understand that there may be other faiths and facts, and also the rights of the public at large to be protected. The proposed new rules try to strike a balance between these competing rights'* ISC; there were also concerns on how the changes would achieve this aim.

Another respondent stated that: *'If any school is actively promoting extremism the existence of a few regulations will not deter it'*.

There was some opposition to the change to require respect for 'civil and criminal law'. The respondents' position is that although their schools do so, they also teach pupils not to obey the law if it conflicts with what they see as God's will.

The Inspectorates and Associations, although not objecting to the changes, which they agreed should not cause a problem for the majority of schools, raised concerns in relation to legal and definitional problems, in particular the difficulty for schools and inspectorates in interpreting 'British Values' and 'Democracy'. There is no legal definition for the term 'British Values' and failing schools due to lack of 'Britishness' could conflict with the Equality Act 2010. Respondents suggested a reference to the Universal Declaration of Human Rights would form a better point of reference for defining democracy.

There was also widespread agreement that inspecting 5(b) and 5(c) was likely to prove very difficult. For example, even if balance was provided in the curriculum that might be over a course of lessons, not a single lesson. Concerns were summarised below:

- the provisions were more onerous than those for maintained schools for example in not having a 'reasonably practicable' caveat;

- inspecting balance in extra-curricular activities and lessons are likely to be particularly challenging;
- for some schools it might be difficult to differentiate between faith and political issues;
- it would be necessary for inspectors to receive additional training so that schools were inspected by those with appropriate knowledge and attitudes. Some inspectors, for example, had completely incorrect beliefs about Islamic social attitudes.

Part 3 – Welfare: removing reference to obsolete guidance

7 Do you agree that the changes are clear and that the standards will assist in ensuring the welfare of pupils? If not, why not?			
There were 31 responses to this question			
Options	Responses		Across Consultation
Yes:	19	61%	48%
No:	8	26%	20%
Not Sure:	4	13%	10%

The majority of respondents agreed that the changes to Part 3 would assist in ensuring the welfare of pupils.

Some of the Inspectorates and Associations raised concerns over the removal of reference to specific departmental advice relating to the Anti-Bullying and Health and Safety as this would result in schools referring to them for advice, and they would refer schools to the DfE advice anyway. However, other associations pointed out that removal of the requirement to 'have regard' to specified guidance was welcome as reference to guidance has caused confusion in recent years and schools have been branded as non-compliant in, for example, their own policy documentation, by missing minor detail contained in such guidance.

It was also thought that it should be made clear that the standard covered educational visits and all situations where pupils were under the school's care and control, not just within the school premises and that the health and safety standard needed to take account of recent HSE guidance.

Part 3 – New welfare standard to tie in with revised premises standard

Proposed new standard:

12. The standard in this paragraph is met if the proprietor ensures that the school premises and accommodation are adequate for the welfare, health and safety of pupils.

8 Do you agree this adequately covers the requirements to ensure that premises are safe for pupils and will enable inspectors to highlight instances where school premises place the welfare, health or safety of pupils at risk? If not why not?			
There were 32 responses to this question			
Options	Responses		Across Consultation
Yes:	20	63%	50%
No:	8	25%	20%
Not Sure:	4	13%	10%

63% of respondents were supportive of this new standard as it would empower schools to assess their premises and address areas which fall short of requirements. Inspectorates approve of the addition as regulations cannot cover every eventuality and this additional provision will enable inspectors to highlight areas of concern to a school where children's health and safety may be at risk.

Although concerns were raised that the provision may be too vague and inspectors would need to be provided with the appropriate training and guidance to be able to make judgements on this standard. If not, there was a risk of inconsistency in inspection judgements and possible legal challenge as a result if cases reached tribunal stage.

One association commented that the proposed general standard on welfare, health and safety in relation to premises was arguably redundant given the existence of the new combined standard on health and safety policy; or if it was not, it should be in the premises section.

Part 6 – amend technical errors in 24(h) and 24(i) to make clear that financial data need not be supplied for pupils attracting early years entitlement funding and that information relating to SEN need only be given to local authorities if they are funding the statement of SEN

9 Do you agree that this revision is necessary and appropriate? If not, why not?			
There were 27 responses to this question			
Options	Responses		Across Consultation
Yes:	19	70%	48%
No:	5	19%	13%
Not Sure:	3	11%	8%

Proposed new standard:

24(h) 'where a pupil wholly or partly funded by a local authority (except where funding is solely for the provision of free early education entitlement) is registered at the school, an annual account of income received and expenditure incurred by the school in respect of that pupil is provided to the local authority and, on request, to the Secretary of State;

10 Do you agree that this revision is necessary and appropriate? If not, why not?			
There were 26 responses to this question			
Options	Responses		Across Consultation
Yes:	22	85%	55%
No:	2	8%	5%
Not Sure:	2	8%	5%

Proposed new standard:

24 (i) 'where a pupil with a statement funded by a local authority is registered at the school, such information as may reasonably be required for the purpose of the annual review of the statement is provided to the responsible local authority.'

It was suggested by one respondent that it should be checked whether the Education Funding Agency (EFA) should be included in possible recipients of an income and expenditure account and whether reference should be made to a publicly-funded statement

to cover instances where the EFA was providing funding although the LA would have issued the statement.

Another suggestion was that early years entitlement funding is referred to on its proper statutory basis, i.e. nursery education grant.

Clarifying when information can be provided electronically:

11 Do you agree that this revision will result in administrative savings for schools? If yes, it would be useful if respondents quantify how often schools currently 'provide' information in paper format and potential savings of electronic transmission (printing and postage of material).			
There were 24 responses to this question			
Options	Responses		Across Consultation
Yes:	19	79%	48%
Not Sure:	5	21%	13%

New regulatory definition of 'provided':

(1) In these Regulations, where an element of a standard is information or a document being "provided" to a person, that element of the standard is met—

(a) where the person has provided the school with a valid electronic mail address, by sending to that address—

(i) the information or a copy of the document in electronic form; or

(ii) the address for an internet website where the information or a copy of the document can be downloaded;

in which case the information or copy of the document must be available for inspection on the school's premises during the school day; or

(b) by sending or giving the information or a copy of the document to the person.

79% of respondents agreed this change to provision of information electronically would result in administrative savings for schools. However, the quantity of the amount saved varied widely; one respondent indicated that as the school sends out at least two letters a week, savings would be significant. In another response, a school indicated 90% of information is already provided electronically so a move to 100% would result only in a further small amount of savings.

Conclusion: overall impact of changes to the regulations

12 a) Do you agree that the overall changes to the Regulations will assist schools, inspectorates and associations in understanding what is expected of them?			
There were 28 responses to this question			
Options	Responses		Across Consultation
Not Sure:	12	43%	30%
Yes:	11	39%	28%
No:	5	18%	13%

12 b) Do you agree that there will be small administrative costs to review the revised Regulations when made? It would be helpful if respondents could estimate the costs.			
There were 24 responses to this question			
Options	Responses		Across Consultation
Yes:	14	58%	35%
Not Sure:	7	29%	18%
No:	3	13%	8%

The majority of respondents indicated the changes will assist in understanding due to the removal of out of date references and would bring the regulations up to date with current legislation. However, one respondent expressed disappointment that the prescriptive nature of the standards has not been altered very much. Others welcomed the majority of changes, particularly the provision of information electronically but expressed concerns that changes to Part 3 may be too vague and Part 2 difficult to interpret.

58% respondents agreed there would be small administrative costs, 29 were not sure and 3 indicated that there would be no cost.

Although further suggested amendments to the regulations were not requested, one respondent has pressed for pupils who are mature enough to be able to make complaints themselves on the basis of the provisions in the regulations, rather than relying on parents or guardians. Reference was made to the current legal definition of 'parent' which applies for these regulations (s.576 of the Education Act 1996) means that for a pupil who is over 18 and whose natural parents have died, there is no one who is able to make a complaint within the scope of the regulations, in respect of that pupil.

Another respondent pointed out that some definitions of 'school' in Part 4 of the standards (related to checks on suitability of staff) are wrong, and amongst other effects, mean that a new member of staff who had previously worked in a maintained school with children would have to be checked again by the independent school, although that is not what is intended by the Regulations.

Annex A – List of respondents

Organisation	Ref No.
Association of Orthodox Jewish Schools and Organisations Ltd, The (J Baumgarten)	34
Association of Teachers and Lecturers (Nansi Ellis)	36
Board of Deputies of British Jews (Sandra Teacher)	17
Bootham School (Jonathan Taylor)	32
Buckinghamshire County Council (Muriel Alleaume)	33
Cambridge International School (Harriet Sturdy)	1
Focus Learning Trust (Ted Picton)	7
Forest School (Sharon Woolston)	2
Friends' Schools Council (Seren Wildwood)	29
Girls' Day School Trust, The (David Boyd)	22
House Schools Group (Anthony Rentoul)	39
Independent School (Christina Wells)	9
Independent Schools Council (ISC) (Sara McKimm)	31
Independent Schools Inspectorate (Rowenna Abel)	35
International College, Sherborne School (Christopher Greenfield)	11
IOSH Education Group (Dave Garioch)	26
ISA (Neil Roskilly)	19
Islamic Shakhshiyah Foundation, Slough (Farah Ahmed)	18
King of Kings School, The (Brenda Lewis)	8
Leicester City Council (Trevor Pringle)	28
Leighton Park School (Alex McGrath)	30
Lesbian & Gay Foundation, The (Heather Willams)	24
Mander Portman Woodward (Steve Boyes)	3
NASS - - National Association of Independent Schools and Non-Maintained Special Schools (Claire Dorer)	16
NASUWT (Darren Northcott)	37
National LGB&T Partnership, The (Adam Winter)	23
Ofsted (Paul Harrison)	14
Sidcot School (Paul Whitehouse)	27
Steiner Waldorf Schools' Fellowship (Kevin Avison)	15
Tabernacle School (Sunil Chothi)	21
Vranch House School (Graeme Wheeler)	4