



Department
for Education

Launch date 23 June 2014

**Respond by 10:00am Monday 4 August 2014 on Part 2 and Part 4, and
by 10:00am Monday 18 August 2014 on the remaining standards**

Ref: Department for Education

Proposed New Independent School Standards

Proposed New Independent School Standards

The Department for Education is proposing to replace the Education (Independent School Standards) (England) Regulations 2010 (the ISS regulations), as amended to help raise standards in independent schools in England. This is part of the wider programme of regulatory reform for independent schools which Lord Nash set out in his letter of 28 March to the Education Select Committee.

To Independent schools; their associations; independent schools inspectorates; parents of pupils at independent schools; faith groups; academy and free schools and their associations; and other interested parties.

Issued 23 June 2014

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288

e-mail: IndependentSchoolStandards.Consultation@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the GOV.UK '[Contact Us](#)' page.

1 Summary

1.1 The Department is proposing to replace the ISS regulations as part of wider plans to move from the current regime for the regulation of independent schools contained in the Education Act 2002, to that in the Education and Skills Act 2008. Most of the provisions in the 2002 Act mirror those in the 2008 Act, although there are some important differences. There are also some minor changes in terminology, for example the 2008 Act refers to “students”, rather than “pupils”. The final new ISS regulations will be made under the 2008 Act and therefore reflect these minor changes in terminology. One of the main reasons for replacing the ISS regulations, however, is to introduce new requirements to raise standards and these are the subject of this consultation. They are:

- a) introducing a new leadership and management standard to enable more effective action to be taken where leadership is weak and needs to be strengthened or replaced;
- b) strengthening the quality of education standard, in particular by raising the expectations underlying the standard and by helping to ensure that extremism does not form part of the curriculum or teaching and that students are encouraged to respect other people and no student is discriminated against contrary to the Equality Act 2010;
- c) strengthening the spiritual, moral, social and cultural (SMSC) standard to require proprietors to actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance for those with different faiths and beliefs; and encourage students to respect other people, with particular regard to the protected characteristics set out in the Equality Act 2010;
- d) strengthening the welfare, health and safety standard by requiring schools to not only draw up relevant policies but to also implement them effectively, and to have effective risk assessments in place to safeguard and promote students’ welfare;
- e) changing how complaints are handled and improving their recording and any subsequent action; and
- f) introducing a new requirement for schools, under the provision of information standards, to publish their inspection reports on their website.

The new ISS regulations will also remove the current requirement to make available to parents of students certain information about staff.

We are also consulting on some technical amendments relating to the standard on suitability of staff and proprietors. These were not included in the amendments to the standards that were made in January 2013 because wider changes to the safeguarding regime which were being made at the time had not yet been completed.

Subject to the outcome of this consultation the target date for the new ISS regulations to come into force is the October half-term, with the changes to the SMSC and suitability of staff and proprietors standards taking effect from September 2014. Responses on the SMSC standard (Part 2) and the suitability of staff and proprietors standard (Part 4) are therefore invited to an earlier timetable.

The changes to the SMSC standard will also be reflected in updated guidance to maintained schools, which will be issued by September 2014. We will take responses to this consultation into account in updating the guidance for maintained schools.

2 Background and context

2.1 Most independent schools offer high quality education and care to children and the regulatory requirements of the Education Act 2002 have been a major driver for improvement. However, the cases that continue to come to light have led us to review the independent school standards and identify specific areas to strengthen, so that all children in independent schools receive the best possible education and welfare, and are not exposed to extremist teaching and curriculum content.

These proposals are part of a wider reform programme referred to above. A copy of Lord Nash's letter of 28 March to the Education Select Committee can be downloaded from the list of documents on the right of the consultation web page.

The reform programme also includes proposals to:

- strengthen the approval process for independent school inspectorates and the performance monitoring role of the inspectorates by Ofsted (consultation launched 28 March 2014 and closed 16 May); and
- introduce new provisions to prohibit unsuitable people from occupying management positions in independent schools (consultation launched 7th February 2014 and closed 10th April 2014).

The intention is for independent schools to be assessed against these new standards, under the independent schools inspection framework. Academies and free schools are also required through their Funding Agreements to meet the standards, except for those in Part 1 'Quality of education provided'.

In addition to updating the guidance to maintained schools it is also our intention to ask Ofsted to change its section 5 inspection framework so that maintained schools, academies and free schools can be held to account for their performance in this area.

3 The proposed changes

3.1 We have included a draft Schedule to the ISS regulations **that identifies where changes have been made to the existing standards to show** what the revised standards might look like. This can be downloaded from the list of documents on the right of the consultation web page. The consultation document is divided into eight parts to align with those in the proposed draft standards. Questions in the consultation response document are also set out in the same manner to assist with read across when preparing responses.

3.2 Schedule

3.2.1 PART 1 - Quality of education provided

NB - The standards in Part 1 do not apply to academies and free schools as curricular matters are covered separately in their funding agreements.

The proposed changes to Part 1 are aimed at raising the threshold for meeting the quality of education standard, securing continued improvement and ensuring students have experience in a range of subjects appropriate to their age and aptitude. The intention is to ensure that schools that currently meet the standards on quality of education but secure only an "adequate" inspection judgement are likely to need to improve further in order to continue meeting these standards.

The new standards will not affect the large number of very effective and high performing independent schools, but what they will do is require improvement from those schools that are only just meeting the current standard. The overarching intention is to raise the bar to ensure all independent schools

perform at a level that is consistent with expectations in schools in the state sector.

The changes also include new requirements that the curriculum and teaching do not undermine the fundamental British values that are set out in section 1.1(c) above, and that the teaching does not discriminate against students contrary to the Equality Act 2010 (for example by girls being made to sit at the back of classes or teaching of intolerant attitudes). Although independent schools are subject to the Equality Act 2010, the only remedy directly provided by that Act is through the Courts; the new standards would allow the Department to take regulatory action against the school for failing to meet them.

The commencement, at the same time, (as part of the wider reforms) of section 114 of the Education and Skills Act 2008 will allow the Secretary of State to exercise discretion as to whether to take regulatory action in the case of minor failings. The current requirements, under the Education Act 2002 do not provide discretion for such proportionate action, but require action to be taken in all cases where the standards are not met. This change applies to all parts of the standards, but formal action by way of a statutory notice and requirement for an action plan is less likely to be taken in relation to minor education failings than those related to safeguarding, for example.

3.2.2 PART 2 - Spiritual, moral, social and cultural development of students

The proposed changes to Part 2 are aimed at making it clear to independent schools that the proprietor must actively promote the fundamental British values that are set out in section 1.1(c) above and that schools must actively promote the specified principles, including furthering tolerance and harmony between different cultural traditions and encouraging respect for democracy. A minimum approach, for example putting up posters on a notice board and organising an occasional visit to places of worship would fall short of 'actively promoting'. Schools will be expected to focus on, and be able to show how their work with pupils is effective in embedding fundamental British values. 'Actively promote' also means challenging pupils, staff or parents expressing opinions contrary to fundamental British values.

The new requirement for schools to actively promote principles which encourage respect for persons with protected characteristics (as set out in the Equality Act 2010) is intended to allow the Secretary of State to take regulatory action in various situations: for example where girls are disadvantaged on the

grounds of their gender; failure to address homophobia; or where prejudice against those of other faiths is encouraged or not adequately challenged by the school.

We intend to update and reissue the current guidance on this standard to reflect these changes.

Comments on Part 2 are invited by 10:00am on Monday 4 August.

3.2.3 PART 3 Welfare, health and safety of pupils

The proposed changes in Part 3 in the main consist of strengthening the existing standards so that schools will not meet them merely by drawing up policies but will also need to demonstrate that they have been implemented effectively. This will allow the Department to take regulatory action, as appropriate, where the requisite policies are in place but their practical implementation is poor.

In addition there is a new requirement for schools to demonstrate that they have an effective risk assessment policy in place to safeguard the welfare of pupils at the school.

3.2.4 PART 4 Suitability of staff, supply staff and proprietors

These standards are very detailed and reflect the importance of proper checks being made on those who work in schools, and those who are proprietors. There are four broad changes:

(a) consequential amendments following the coming into force of the Protection of Freedoms Act 2012 – proprietors of independent schools are no longer engaged in “regulated activity” by virtue of their position as such, so barred list checks cannot be made on them by virtue of their position;

(b) a requirement that no member of staff or any proprietor carries out work, or intends to do so, in contravention of a “prohibition order” or “interim prohibition order”. These terms are defined in the School Staffing (England) Regulations 2009, as amended;

(c) a requirement that persons in a management position are not subject to a direction made under s.128 of the 2008 Act barring them from such positions

(regulations which are proposed to be made pursuant to this power were the subject of the second consultation referred to in section 2.1 above);

(d) it is proposed that the requirement that proprietors have the right to work in the UK be removed. Please note that at the same time as this consultation, further work is being carried out on the employment and immigration implications of this proposal.

Comments on Part 4 are invited by 10:00am on Monday 4 August.

3.2.5 PART 5 Premises of and accommodation at schools

No changes are proposed to this part at this point as it was revised only very recently in January 2013 to align with requirements for maintained schools.

3.2.6 PART 6 Provision of information

Most of the proposed changes are minor and apply to free schools and academies as well as other independent schools. There are two exceptions to this: a proposed new requirement for schools to publish their inspection reports on their website; and the proposed removal of the requirement to publish summary details of staff (paragraph 24(3)(h)¹). The latter does not affect free schools and academies because it does not currently apply to them anyway.

3.2.7 PART 7 Manner in which complaints are handled

The main change in Part 7 is to paragraph 25(j). The intention is to ensure that schools record what action is taken as a result of a complaint. It is also intended that schools are no longer obliged to record all complaints, and that schools use their judgment as to when complaints are recorded. For example, it may not be practicable for schools to make a record every time a parent informally raises an issue with a teacher in a playground.

¹ The number of staff at the school, including temporary staff, and a summary of their qualifications.

3.2. PART 8 Quality of leadership and management

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The quality of the leadership and management of any school is critical to its success. The proposed new requirements set out the standard for the quality of leadership and management in independent schools. The intention is to give the Secretary of State greater flexibility to require a school to take action to improve leadership and management.

The standard will ensure that where leadership and management is found to be weak, for example as evidenced by failings against other standards, schools can be required to produce appropriate action plans setting out how the leadership and management of the school will be improved so that this standard is met. This may, for example, mean that in certain cases a person with leadership, management or governance responsibilities at a school should be replaced. Ultimately it will be for the school to decide on the appropriate action to take so that the standard is met.

The standard will allow the Secretary of State to take action where there are concerns about safeguarding, extremism, or persistent minor failings that stem from poor leadership and management.

It is not expected that the new standard would be used in isolation: the Department would expect that a school would only be found to have not met it if failings against other standards are also evident, and these suggest that a failure of leadership and/or management has taken place at the school. Under the existing standards some schools have repeatedly failed inspections, corrected this for a time but done nothing to improve the way in which the school is led and therefore the faults tend to recur, to the detriment of pupils' education and welfare.

4 How To Respond

- 4.1** Consultation responses can be completed online at: <https://www.education.gov.uk/consultations/>

by

emailing: IndependentSchoolStandards.CONULTATION@education.gsi.gov.uk

or by downloading a response form which should be completed and sent to:
Department for Education
FAO Yvonne Feldon
GF, Area F
Mowden Hall
Staindrop Road
Darlington
DL3 9BG

5 Additional Copies

- 5.1** Additional copies are available electronically and can be downloaded from the GOV.UK website.

6 Plans for making results public

- 6.1** The results of the consultation and the Department's response will be published on the GOV.UK website in Autumn 2014.