



Department
for Education

Operating the Independent School Regulatory System

Government consultation response

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Introduction

The consultation document sought comments on draft versions of two documents which the Department for Education (DfE) proposed to publish:

- a. guidance for schools on the independent school standards; and
- b. a policy statement on regulatory and enforcement action taken by the department for independent schools not meeting those standards.

It also sought comments on draft regulations revising arrangements for information required of independent schools, and those wishing to register such schools.

The consultation was published alongside the Integrated Communities Strategy published by the Ministry of Housing, Communities and Local Government (MHCLG), and is referred to in its chapter on education and young people. The guidance on the standards and the policy statement, when finalised, are designed to partly address the dangers posed by extremism, and will support the work of the Commission for Countering Extremism, established by the Home Office.

Who the consultation was for

- Independent school proprietors and staff;
- Stakeholders with an interest in the independent schools sector including associations representing independent schools, local authorities, trades unions, local children's safeguarding boards and faith groups.

Issue date and deadline for responses

The consultation was published on 14 March 2018 and closed on 5 June 2018.

Reasons for the consultation

The consultation document set out the reasons for the proposed publication of departmental guidance on the independent school standards. The draft guidance was contained in a separate document which was available electronically and could be downloaded from GOV.UK DfE consultations.

The consultation document also set out the reasons for issuing a policy statement on regulatory and enforcement action in respect of independent schools in England, for which the Secretary of State is the regulatory authority. The draft policy statement was

also contained in a separate document which was available electronically and could be downloaded from GOV.UK DfE consultations.

The consultation document also had a section about the proposed regulations revising the arrangements governing the information which independent schools can be required to supply to the Secretary of State, and the information required from those proposing to register an independent school. Regulations were made in the summer of 2018 and are now in force¹; no separate response document was published at the time, but this document contains a section on the responses in respect of the draft regulations.

Views on the draft documents were requested. A response form was provided online alongside the draft documents. Comments could be made on all or just some of the documents.

The guidance on standards will apply to academies and free schools insofar as relevant standards apply to them. The policy statement on regulatory and enforcement action does not apply to academies and free schools. The regulations apply in part to academies and free schools.

Responding to the consultation

To help us analyse the responses, use of the online system wherever possible was requested. Those who wished to participate were invited to visit www.education.gov.uk/consultations to submit their response.

If for exceptional reasons, respondents were unable to use the online system, for example because they were using specialist accessibility software that is not compatible with the system, respondents were able to download a word document version of the response form, complete it electronically or by hand, and email it or post it to us.

The department held meetings with some stakeholder groups at the request of those groups; these took place outside the consultation period and were designed to help clarify the views expressed by some respondents.

¹ <http://www.legislation.gov.uk/uksi/2018/901/contents/made>

Summary of responses received and the government's response

The consultation received over 12,000 responses. 6,586 of these responses were received via the online system and about 5,800 were received by other means, including an estimated 5,000 in hard copy. Many of the latter were in standard form as a result of campaigns focussed on specific issues. The numerical analysis of responses in this document is based solely on the responses made online, but the comments about responses also take account of issues arising from responses received in other ways.

Main findings from the consultation

Although there was some support for adopting the proposed guidance on independent school standards – support chiefly from independent schools, which would be expected to benefit from the guidance – there was a large majority in the online responses against the proposed guidance, and overwhelmingly so in the responses received by other means. This appeared to be chiefly due to respondents' disagreement with some specific aspects of the guidance document, rather than opposition in principle to the issue of such guidance. The specific issues raised are dealt with in more detail below.

Opinions on the proposed policy statement on regulatory and enforcement action were more mixed, in that nearly a third of the online responses, and many of the others received, did not comment on it. Amongst those who did, there was very little support for the statement. Having considered the responses, the department believes that this is for two reasons. First, opposition to the guidance on the standards tended to also arouse opposition to the policy statement because the two documents, although having distinct purposes, were linked in the minds of many respondents. Secondly, the policy statement sets out details of a more rigorous approach to the regulatory regime and therefore, was potentially unlikely to garner much support from schools. So unsurprisingly there were few responses in favour of the policy statement, albeit that the statement will make no difference to the vast majority of independent schools which meet the standards consistently but should act to protect the overall reputation of the sector.

Question analysis – Part 1 Proposed advice for schools on the independent school standards

Question 1

Do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?

	Total	Percent
Yes	941	14.29%
No	3239	49.18%
Unanswered	2406	36.53%

Government response

As noted above, the government believes that the small percentage in favour of the adoption of the guidance was the result of the strong opposition to some of its proposed contents, rather than the principle of giving guidance to schools about the independent school standards. Therefore, opposition was connected to detail in the document rather than the principle of whether it should be published at all.

As set out in the consultation document, the government believes that many schools would benefit from guidance on the independent school standards, to help them meet those standards and thereby serve their pupils as well as possible. One quotation extracted from the responses received illustrates this:

Any information that helps us understand more clearly is helpful. Some independent schools are quite small and we struggle without the larger administration teams that mainstreams have to pick up on changes and to clear ensure that our school is meeting the standards. Anything that helps to understand and inform is much needed.

The government therefore intends to go ahead with publication of the finalised guidance document, having taken account of consultation responses in finalising specific sections of the guidance.

Some of the responses received were suggesting changes which would require amendments in the standards, rather than changes to the guidance. However no such revision of the standards is planned; the purpose of this guidance is to help schools meet the standards as they are at present.

Question 2

What comments do you have on the consultation draft advice?

Summary of responses

General

Both positive and negative comments were received in relation to the overall approach taken in the draft guidance document. On the positive side, it was clear that some respondent schools thought that it took the right approach:

Generally very helpful document, certainly as schools want to ensure compliance. The document does also make it clear when advice is statutory, and when it is simply guidance...

It is generally a helpful and useful document. It will help to ensure that the minority of schools who do not support the principles of the Education Act cannot hide behind ignorance and deliberate misinterpretation.

We thought the draft guidance document clear, useful and workable.

However, given the large number of respondents opposed to the principle of issuing the guidance, and opposed to some parts of its content, it was unsurprising that most comments on the overall approach taken by the document were negative in tone, for example:

The advice should avoid being prescriptive on matters of religion & ethics.

This is a thought control tactic having no place in a democratic society

Guidance should be free from identity based politics and concentrate on education only. Education should be balanced in that viewpoint diversity is respected.

One of the reasons for independent schools is that they may do things a little differently from mainline education. Parents choose those schools to fit their own ethos and family values. There are plenty of laws existing already to make sure the schools aren't promoting criminality in any way. Increasingly, traditional views on family life are being outlawed. The government and the media seem to be bent on creating a society where everybody has to think in a prescribed way. This is neither healthy nor safe.

Respondents were also able to comment on each of the sections of the draft guidance document. The sense of responses overall has been given through a selection of typical responses since no quantitative analysis was undertaken.

Part 1 (Quality of Education)

The standards addressed in this Part cover curriculum, teaching and assessment.

Thousands of negative comments were received about this Part, but they nearly all centred on two issues. The most significant was the guidance on the standard requiring that the PSHE curriculum encourages respect for other people, paying particular regard to the protected characteristics in the Equality Act 2010. This was the single most contentious section of the guidance on Part 1. Typical examples of the comments received were:

The scariest part of the whole document seems to be the 'Protected Characteristics' guidance which meshes together Racism, Sexism, Disability prejudice and a belief in the invalidity of same sex marriage as though they are on a par of unacceptability.

As a Christian parent of a child in a Christian School, living in what has always until now been a Christian country with God fearing principles, I find it abhorrent that the DfE is planning to force schools to not only teach but actually support such principles as same sex marriage.

The Department for Education is acting as if Parliament has outlawed belief in traditional marriage and the draft guidance breaks promises made by Government ministers that teachers who disagree with same-sex marriage will be respected.

I'm very concerned with paragraphs 17 and 18 - Teaching the protected characteristics. I believe that all schools should teach tolerance and respect for every person regardless of religion, race, ethnicity or gender, however I strongly object to my children being taught about each one of the protected characteristics of the equalities act 2010 as I think these are personal matters and not the responsibility of the school.

Allow our Teachers and Children to be open and respectful to viewpoints and the value of each individual. To attribute identity characteristics as the sole dimension of personhood is a huge mistake and just leads to further intolerance and oppression of individuals of a different identity get marginalised. Diversity of viewpoint is more important than diversity of identity otherwise we will end with a state imposed morality and thought policing.

The ability of teachers to propose reasons for or against issues such as faith, marriage, gender assignment etc is imperative if they are to be able to develop reasoning skills in children. Truth and opinion are often confused with the other matters such as freedom of speech and the right to be different. It is vital that children are able to develop critical thinking from an early age through balanced exposure to these topics.

We have always taught tolerance - and if you look closely at communities with a strong Orthodox cohort, you will find that the wider community feels safe when residing among them - irrespective of the cultural differences or beliefs. Many look after their vulnerable neighbours - as is best

practice.

We do not wish to have our children taught about 'protected characteristics' as this the right and privilege of parents - as are all personal matters.

There were a few supportive comments, for example:

welcomes the advice that 'it is not sufficient for a school to say that it meets this standard because its curriculum encourages respect for all people in a general way; that is not paying particular regard to protected characteristics

welcomes the department reinforcing that it is not sufficient to say that schools meet the standard set out because its curriculum encourages respect for all people in a general way.

Overall, there was a range of representations, from comments to the effect that regulations gave schools complete freedom to teach about what protected characteristics they wanted, to claims that each and every protected characteristic had to be taught to every age group.

The other issue which attracted many negative comments was creationism, which the draft guidance says should not be presented as having an equivalent evidence base to the theory of evolution. Examples of comments were:

Teaching creation - We teach this according to our faith and the children know this is our belief and is written in our Bible. We should not have to teach them other theories - this will only confuse them.

Teaching creation: Restriction shouldn't be placed on Schools with regards to teaching about The Creation of the world. I don't believe that anyone has a right to restrict us in teaching to our children what we believe is true. This would be religious coercion and should be unacceptable in a country that is democratic and has freedom of religion.

As a fundamental science and scientific research even when proven is NEVER absolute especially when it is a pure hypothesis - Therefore forcing schools to teach a scientific narrative as fact is un-educational and untruthful period!

At least one response suggested that the guidance make clear which scientific theory was considered to have a firmer evidential base but no change has been made on this account because this is implicit in the guidance as it stands.

Some comments were received about the guidance on other requirements addressed in this Part. Examples of negative responses were:

Career guidance: As a parent I want to be able to choose a school for my child that will teach career guidance compatible with my faith and lifestyle. I don't want the government to force my child's school to promote options that conflict with my faith. My children will be free to make their own choices as adults.

I feel that carer guidance should reflect the reality of most or targeted children rather than giving them unrealistic and unpractical choices.

Teaching English: Some of my children attend a Yiddish speaking school. I want them to make progress in English, but am fine if the school doesn't meet age expectations each year. They may have a late start in English but from past experience I know that they will catch up in older year groups.

I strongly believe that the Orthodox Jewish schools have an excellent standard of education, Even the ones starting English at a later stage!

Government response

Some of the responses received would require changes in the standards themselves rather than the guidance. The guidance must be consistent with the existing standards, and the overarching approach in drafting and revising the guidance reflects that requirement.

After considering the large number of responses related to how protected characteristics should be addressed in PSHE, the government has reconsidered the wording of the guidance. It has concluded that the wording of standards does not support drawing a sharp line between what is required for secondary school age and what is required for younger pupils, but that otherwise its approach is correct. Consequently, the government has removed the reference to a primary/secondary school age split in expectations for teaching pupils. Although the guidance is that it is for the school to decide what is age-appropriate, schools will have to be able to explain their decisions and the rationale behind them in order for the requirement to be met. As set out in the standards themselves, schools will still be able to consider how their ethos informs their approach; and the requirements in the standards do not prevent the teaching of the tenets of schools' particular faith ethos – something which many respondents did not seem to understand. Schools will also have to meet obligations imposed by other legislation, for example the requirements to be included in the standards from 2020 for sex and relationships education to be taught to secondary age pupils and relationships education to primary age pupils.

One response contended that the statement in the draft guidance that schools should not teach pupils that same-sex marriages or civil partnerships should not be recognised as being lawful unions under civil law was incompatible with human rights legislation. The government has changed the relevant text to clarify its intention and also that schools can make the position of a relevant faith clear when it is different.

The government does not believe that any substantive change to the consultation version of the guidance is required as a result of negative responses relating to the guidance on teaching creationism. We consider that the guidance here is consistent with the meaning of the ISS. Indeed, it would severely disadvantage students in their understanding and

knowledge were creationism to be taught on a par with—the theory of evolution in terms of its evidentiary basis. However, an addition has been made to the text to clarify that holding creationist views should not lead to any lack of respect from others.

The government does not accept that the guidance needs changing in relation to careers guidance. The relevant standard would not be met by constraining, in the ways proposed by respondents, the information available to pupils on choices open to them.

The guidance relating to the teaching of English has not been changed. The standards in question, in the government's view, clearly require pupils of all relevant year-groups to be taught English.

Other changes of substance made to this section include a fuller section on gender separation, following the issue of government guidance on that issue in the summer of 2018; and clarification of the inter-relationship between the Early Years Framework for Schools (EYFS) and the ISS because it was thought helpful.

Part 2 (Spiritual, Moral, Social and Cultural Development)

Many thousands of comments were also received about Part 2. To a large extent they duplicated comments on the PSHE element of Part 1, because the SMSC standard includes a requirement that the school ensures that principles are actively promoted which encourage respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act. These tended to concentrate on sexual orientation, although this was often not overtly stated, as in these examples:

Children should not have to mix with others if parents don't wish it. You just can't force some things and you should have more tolerance and respect of our faith based wishes.

What is the Government doing to respect the faith, stance and position of those schools and teachers that are contrary to sex education for children under certain age and same sex marriage?

I would like my children to be moral upstanding citizens and would not like them to be told deviant ways of life. School children are way too young to differentiate between what is good for them and what might not work for them. School should not be promoting a way of life different to the children's parents' way of life.

All schools should have to teach about tolerance and respect for everyone. but that doesn't mean schools have to teach about different lifestyles or the protected characteristics which i do not believe the standard requires.

Orthodox Jews have extremely high moral standards and are simply unable to teach certain things in schools. The children are taught about anything that is relevant to them at the correct time and the lack of SMSC education in Orthodox Jewish schools does not detrimentally affect anybody. Nobody should be forced to teach something against their will.

or same-sex marriage, which tends to be a proxy for the same issue, as for example:

they should not teach same sex marriage as it is between man and woman as clearly SCRIPTURE SHOWS

It would limit the freedom of speech and would be on the conscience of those who disagree with same sex marriage.

Far fewer comments were made on other specific sections of guidance in this Part.

Examples include:

If citizens of this country had always "respected" existing laws, there would never have been any reforms and we would still be stuck in the dark ages.

Paragraphs 69-70. Having opposing views and allowing debate is good. If the presupposition is that faith groups need to allow diversity and consideration of other faith groups, then we also need to include this for those with no faith, secular and atheist views. So a school that doesn't have a religious basis will also need to demonstrate that it does invite faith speakers in, and takes care not to 'no platform' those who it disagrees with. For example, if there is a conversation about abortion, and a Mary Stopes clinic representative is allowed to speak, then pro-life campaigners also should be allowed to express their views.

For example, paragraph 69 includes the statement that 'it would not be necessary to challenge the speakers' views at the time'. However, it may be absolutely necessary to do so, dependent on the views expressed. It is good for pupils to see views being debated, and there may be occasions when responsible adults should provide an immediate counter argument to the expression of any extreme views.

My religion does not allow for pupils to learn about the achievements about other cultures.

Christian values are of a higher standard than British values. British values lead to confusion.

I agree with the general message in part 2 but I still believe that it is unnecessary to teach children details about other faiths and beliefs. Children should be taught that there are many other religions and cultures and that people have a large variety of customs which we may not understand but have to respect.

Some more general comments were received on the guidance for this standard.

Examples are:

You lot couldn't advise on which bus to take, start to recognise your own basic level of education, i.e. ignorance and stop your mindless interference.

The guidance seems to be a relatively random selection of advice mainly targeted at Christian and Muslim schools targeting perceived limitations of those faiths from a secular perspective.

This document has nothing whatever to do with SMSC standards but is a direct attack on faith schools and aims to replace moral standards with an "anything goes" mentality pandering to a minuscule minority and which seems to be embedded in Ofsted methods.

This advice seems sensible especially in view of attempts in some universities to de-platform speakers and shut down debate.

Do we not believe in democracy and freedom of speech and beliefs anymore?

Very wordy and complicated. Surely it would be better to ask the school staff and the inspectors to use common sense?

The idea that being LGBT is a 'lifestyle choice' has historically underpinned much homophobia, biphobia and transphobia by suggesting that being LGBT is a 'choice' and not a valid identity. To avoid this potential interpretation, we recommend that references to 'lifestyle' are removed.

definitely a good idea to promote tolerance of people who think differently and to inculcate in pupils the importance of obeying the law of the country

Government response

Some of the responses were in effect seeking a change in the standards themselves, which the guidance cannot provide. Other responses were made which did not accurately relate to the content of the guidance – for example, the guidance relating to promoting respect and the protected characteristics does not mean that schools need necessarily agree with same-sex marriage.

Having considered the responses on this section, the only changes of substance to this section of the guidance for the finalised version were to the text on securing balance when external speakers are used, and the removal of the phrase 'lifestyles'. In addition the text relating to the requirement for promoting respect for people having regard to the protected characteristics was amended to align it with the approach taken, elsewhere in the guidance, on the similar requirement in Part 1 relating to PSHE.

Part 3 (Welfare and health and safety)

Far fewer responses were received for this section of the guidance than those relating to Parts 1 and 2; and many of those that were had content that was clearly related to those Parts rather than Part 3 (for example by referring to the protected characteristics) – these were disregarded in considering possible changes to Part 3 but were considered along with the other responses in connection to the guidance on Parts 1 and 2.

Amongst responses received in relation to Part 3 which did relate to its subject were:

This is well written and clearly expressed.

The Safeguarding Policy is a particularly crucial and sensitive document and we welcome the guidance about what should be included. This may in time lessen the need for third-party organisations to sell schools their own 'checklists' and policies, which can only be a good thing.

Bullying is detrimental anytime anywhere and as such should never be tolerated in any school or community! But it is just as harmful to introduce children prematurely to risks of which they are unaware of and do not affect them

Our children are extremely well looked after, they will never be found hanging around on street corners etc, let alone after dark. Cyber-bullying is simply non-existent. It is simply unreasonable to imply a blanket advice on children's welfare to encompass children of all communities, backgrounds and faiths. In our mind, this goes against their welfare by exposing them to fears that are totally not applicable to them. This is not the intention of the regulations.

The upholding of the parent as the ultimate decision maker in respect of their children's welfare. No child should be taken for an abortion without the parents knowledge. If they believe there is abuse in the immediate family, then social services should be involved.

Yes, make sure playing fields are sold off, conkers are banned, no one should be exposed to snow, i could go on but you have hearing difficulties

The paragraph that relates to the use of corporal punishment in schools (83) needs strengthening. It needs to be clearer that this is a criminal offence.

Accessible mental health care should be more readily available

All teachers and parents are well aware of their responsibilities in these matters without the government interfering, especially when thinking about the complete mess of other parts of society they have had a hand in

Again, less government interference is necessary. For generations children and teachers have managed to cope with existing safeguards, and there is no need to try to legislate for every little idea civil servants have been able to think up.

There is no requirement in the standards contained within Part 4 'suitability of staff, supply staff and proprietors', to disqualification by association checks. It would be helpful for these checks to

be explained under the overarching safeguarding standard (7(a)) as these can be overlooked by schools.

Government response

Despite this wide range of topics covered by responses, the government does not consider that any of them meant that substantive changes should be made for the finalised version, except in two respects. For these (the guidance given about corporal punishment, and in connection with boarding pupils who are registered at a different school) some clarification has been inserted - because it was considered that the original consultation text was for the former not clear enough on a school's obligations, and for the latter, insufficiently detailed. Otherwise, the responses were considered to be expressing opinions which did not justify any change in the guidance, or were irrelevant to the standards in question.

Part 4 (Suitability checks and recording of checks)

Again, fewer comments were received on the substance of this section and many of those received were actually about Parts 1 and 2. Some other responses appeared to have resulted from a misunderstanding of the term 'suitability checks' since they referred only to teachers' opinions and knowledge rather than the actual checks required.

Amongst those responses received on the substance of Part 4 were the following:

Please make it very clear about how to deal with references for new staff, particularly ancillary staff. We often find that referees simply do not reply despite regular requests and even phone calls. How essential is it to have two written references for ancillary staff, how should a phone reference be recorded on paper, is there a set form?

Page 32 'Because of the need for precision the standards are worded in ways which are not always easy for schools to interpret. This should be seen as an opportunity for the DfE to be very clear about compliance with the standards. This is the area in which schools are most often non-compliant. The standards and the advice given for compliance with regard to the SCR need to be easy for schools to follow.'

The requirement for all supply staff to have a DBS certificate that is no more than 3 months old when they start work is a difficult one. There are many reasons why some teachers only work as supply staff. This requirement means that they have to work at least some part of every school term. I worked as supply for a school which wanted me in regular work for tuition in the autumn and spring terms, but after SATS tests in May, did not need me. It meant I was free to support my husband in his work as a pastor. It included travelling abroad with him sometimes. I was happy to have the summer term free of teaching, but both the school and I had to ensure that I did one day in that term, even though they didn't really need me. It is a silly requirement. My DBS certificate would have become useless, and needed to be re-done, if I had not done that one day.

Supply teachers are no more likely to turn criminal just because they don't teach for a term. If the normal school policy is to renew every 3 years, then that should stand, whether or not a supply teacher has worked.

Government response

Since the document is guidance on the standards it cannot change the substance of those standards, for example by amending the requirement for DBS checks. Furthermore, the government does not believe that the guidance requires significant expansion because more detailed information on checks and safer recruitment is available in the statutory guidance document 'Keeping Children Safe in Education', which is re-issued annually. Changes of substance from the draft version relate to an amendment made, after publication of the consultation draft, to one of the standards covered in Part 4 about supply staff who have lived or are living abroad; a correction on the interaction between material changes and checks on the chair of the proprietor body; and a new section on barring by association, which relates to changes made to other legislation but was missing from the draft version, as some respondents pointed out.

Part 5 (Premises and accommodation)

This section of the draft guidance document is very brief as the standards are the same as those for maintained schools, and there is a separate guidance document already published on the gov.uk website. It therefore identifies only a few key issues which sometimes arise during inspection so that schools can be prepared for them.

Again some comments were actually about issues such as the protected characteristics. Amongst those which were about the substance of Part 5 were:

The government has to set standards regarding safety and not general standard e.g the colour of the paint

Government should advise rather than regulate and encourage and promote improvement in buildings and premises, using the tax system e.g. not charging VAT on such works, or grant maintaining improvements.

I vehemently disagree with the suggestion that "a judgement as to whether a standard is met will often be a matter for the professional expertise of a school inspector, having regard to what would normally be regarded as suitable for the pupils concerned;"

All students should have a right to - sufficient play space; sufficient classroom space; hygienic facilities; fire safety plans - to name but a few. The department is being lazy in not drawing up detailed prescriptive requirements.

Buildings do not make good schools. They must be safe and secure with adequate toilet facilities, reasonable classroom space and play areas, but they do not have to be architectural edifices with no heart

High standards required. We should be beyond the days of leaking roofs and classrooms with asbestos or rooms that are too small or too crowded or playgrounds that have unsafe areas in. . Adequate toilet and shower facilities etc.

As long as health and safety standards are met why should government be interested in the buildings particularly at independent schools. There is not unlimited budgets for buildings

Government response

Some of those responses quoted above are actually about the standards themselves rather than the guidance given on them; the guidance cannot change the substance of the standards. Given that this section simply noted some issues which have commonly arisen for independent schools, rather than being a substitute for the general guidance on premises standards published on the gov.uk website, the department does not consider that changes to the consultation version of this part of the guidance are needed, except for one small clarification relating to the security of premises and health and safety.

Part 6 (Provision of information by schools)

This section of the guidance document is relatively complex because the standards it concerns are very detailed but there is no other guidance available upon them. Again, the number of responses received in relation to this section was lower than those relating to Parts 1 and 2; but some of those which were received were about Parts 1 and 2 in relation to protected characteristics, and were therefore considered in relation to those Parts.

Amongst those which were received on the substance of Part 6 were:

Schools should not attempt to correct the reasonable and legitimate views of parents by providing information with which they might disagree.

Less bureaucracy please. GDPR is bad enough!

This looks to be sensible advice.

There should be a handbook, regularly updated, given out to parents outlining all the relevant information they should know, and making clear the standards the school expects pupils to adhere to. Also outlining all school procedures regarding pupil behaviour etc. Then ignorance of this, like the law, should be no defence.

For example, this should include an expectation that the school will facilitate opportunities for inspectors to speak with school staff, pupils and parents. The rationale for this is that inspectors are required to assess compliance with the ISS, and they cannot do this without being able to speak with a range of staff, pupils and parents.

This is the most helpful element of the guidance and one of the areas [body] is asked about most by its members. it will be useful to simply refer to this.

I am pleased to note that the guidance continues to recognise that a school may not have a website.

Parents of children who have an EHC plan should be given a clear report each year before the annual review how the LA funding is being used for their child. Parents should be given opportunity to challenge that in a non threatening environment.

It is helpful to have clarification of documentation to send out to separated parents, as in the example of paragraph 118.

Government response

Some of the responses are about the substance of the standard, which is not being changed. The government was pleased to note some responses which pointed to this section of the guidance as being helpful. Only one material change is being made for the finalised version of the guidance on Part 6, which is to explain, amongst other things, that the standard requiring proprietors to provide the information necessary for an inspection can encompass information from others such as staff or pupils. This relates in particular to the need for inspectors to be able to talk to staff and pupils during inspections if they are to be able to gather evidence of compliance with the ISS. Other responses received were irrelevant to the standards in question, or made comments which did not appear to justify any change to text which already explains sufficiently the requirements in question.

Part 7 (The handling of complaints)

This section of the guidance is relatively short, as the standard on complaints is fairly self-explanatory: the guidance concentrates on some issues which the department has

become aware of through correspondence with schools and parents. Not surprisingly there were relatively few comments on this section. Some comments were about the handling of allegations of abuse against staff (which is a subject more pertinent to consideration of the responses for Part 3 of the standards rather than this Part); and some were about how schools could complain about inspections. Such responses have been disregarded in considering possible changes to Part 7 but were considered as part of the responses on the Part to which they were relevant. Examples of responses which were pertinent to Part 7 were:

Internal complaints system that is consistent and fair and not open to abuse or exploitation by those in leadership whose views may not be in sympathy with the views of the complainant. Where appropriate and to ensure equity, there should be a wide representation of views on the panel, added by invitation if needed.

Handling complaints procedures should be simple and non intimidating.

It is important that any complaint is handled with discretion, and with due process. Both sides of any picture should be investigated before the matter is sent to any higher or further authority, and all decisions should be fair, and in the interests of both pupils and staff.

Complaints should be handled by an independent body with a broad spectrum of representative views including parental influence.

complaints should be handled by what the majority of human beings believe in, not by people who believe in antichristian practices

This should not be a lawsuit charter. A proper procedure for complaints needs to be in place to avoid the "ambulance chaser" scenario.

The clarifications of who may attend panel hearings (Paragraph 125 (d) and (e) are particularly helpful.

Government response

Some of these comments are actually about the substance of the standard; the guidance cannot change that. In any event, the government believes that the standard itself strikes a reasonable balance between fairness and practicability; and that the consultation version of the guidance on the standard helps schools to operate their complaints policy fairly by illustrating some detailed points about implementing the standard here. No change has been made to the consultation version of the guidance in consequence of consultation responses except to clarify the circumstances in which the standard does not apply to children who are no longer pupils at the school.

Part 8 (Leadership and Management)

The standard covered by this Part attempts to ensure, amongst other things, that school leaders have the knowledge to meet the other standards consistently. Some comments, again, were about the guidance for Parts 1 and 2 rather than the substance of this section of the guidance, and were considered along with the responses on those Parts.

Amongst the comments received were:

Managers, head teachers and education authority staff should declare their membership of xxx and other subversive organisations.

Leaders and managers of Independent Schools may well be forced to resign and potential leaders dissuaded from applying for posts if this proposal was adopted.

This is a good development, the emphasis on consistently meeting and not just when Ofsted comes.

Regular leadership trainings should be encouraged more.

The quality of leadership and management in any school is critical to its success and its ability to achieve strong outcomes for the pupils that it services, therefore it is reassuring to see the new standard to be delivered under Part 8 which highlights the need for strong leadership and also holds proprietors accountable if they are ultimately not appointing appropriate personnel in senior posts.

Why are so many head teachers leaving. Is it the constant change and unfair inspections that are causing this

Unnecessary extension of the school standards.

It can always be improved. Leadership in all aspects of society need to be better and stick to their morals and values, as well as the morals and values of their organisations. Don't be fickle and bow to outside pressure. Stand firm, be strong.

In the voluntary sector in particular, but also in the maintained and fee-paying independent sectors as well, there is something that proprietors and other responsible leaders often forget: Nobody was born with an immutable obligation to open a school, be a headteacher, be chairman of a governing body!

Worse, when leadership is not as effective or robust as required, leaders can become overly focused on their responsibilities, obligations and "commitment", as the expense of exploring more effective ways to address whatever is lacking. There are some hopeless leaders who would be horrified at the idea of passing their duties to someone else. Why? There can be many reasons.

Just let school get on and do the job they are trained to do and stop interfering.

Government response

The government does not believe that the responses received should result in any substantive changes to the draft guidance for Part 8. The only changes being made compared with the consultation version are to clarify certain aspects, for instance in relation to the relevance of external assistance for the leadership, and the application of the standard when a school is run by a trust. Other responses were considered to convey views that did not require any change to the draft text of the guidance.

Question 3

Do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child (UNCRC) to the proposed document? Relevant documents are published as part of the consultation?

A large number of negative comments were received through the online form. Sometimes these took a critical view of human rights or equalities legislation in principle, for example:

I very much disagree with the UNCRC with regards to what is in the best interest of children.

Other respondents saw them as subordinate to other principles, for example:

The teachings of the Bible should outweigh The Equalities Act and the UN Convention on the Rights of the Child. Man made laws should not override these standards OR, at least, where they are in conflict freedom of conscience should pertain, without any penalties such as loss of jobs or position.

Other comments directly viewed the guidance as being specifically against a named religion:

The impact this will cause on all Orthodox families will be catastrophic, unlike the misjudged assessment of the Equalities log.

All Orthodox schools will be forced to close as they WILL NOT meet the requirements as laid out by the guidance due to its inherent conflict to our faith.

Other comments were about interpretation. For example:

Article 14 states that freedom to manifest one's religion or beliefs may be subject only to such limitations are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others. The rights and freedoms of others, including the right to respect are in no way curtailed by children not having an intimate understanding of all aspects of others sexual orientation.

Government response

Whatever the views of respondents, the department is obliged, in developing and publishing guidance on the standards, to comply with the Public Sector Equality Duty (PSED) and the government has made a commitment to give due consideration to the UNCRC when making new policy. The PSED requires that decisions by public bodies have regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

This means that in finalising the draft guidance the department has had to have regard to those needs and in doing so, it has taken into account consultation responses. The PSED does not mean that decisions have to be in accordance with those needs, but that the implications in terms of those needs have to be taken into account. The department is well aware that the guidance as originally drafted is opposed by some with a particular faith or belief or from a particular racial group. However, the drafting was intended to also take account of the interests of schools with a specific faith ethos which might affect the view taken on some protected characteristics - by illustrating what schools can teach while still ensuring that they meet the standards. In finalising the drafting of the guidance document the department has attempted to strike a balance which would reflect the concerns expressed but still reflect the requirements in the standards, for example to promote respect for all people, having regard to the protected characteristics.

The equalities log published with the consultation has been reviewed and amended in the light of consultation responses and is published alongside this response document.

The UK is a signatory to the UN Convention on the Rights of the Child. A number of the UNCRC articles are relevant to the guidance on the standards. The department believes that the guidance is issued in compliance with article 3 (best interests of the child shall be the primary consideration). In particular, it does not believe that the guidance document is in breach of article 14 (child's freedom of thought, conscience and religion and parents' right to provide direction in exercise of the right to those freedoms) because some parents disagree, for faith or other reasons, with certain aspects of the guidance. For example, despite what some responses seemed to assume, the article does not impose an absolute prohibition on the government from stipulating what independent schools should teach where that would conflict with a parent's faith or belief.

Question analysis – Part 2 Proposed policy statement on regulatory and enforcement action in respect of independent schools

Question 4

Do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?

	Total	Percent
Yes	201	3.052%
No	4364	66.26%
Unanswered	2021	30.69%

Government response

4,565 of online respondents answered this question with a 'yes' or 'no'. However, from examination of the comments made upon this document in response to Question 6, the department believes that most of those opposing publication of the proposed new policy statement took that position because of their opposition to specific parts of the proposed guidance on the independent school standards, with the two documents being closely associated with each other.

The department believes that publication and implementation of the policy statement is necessary to ensure that schools which do not meet the standards are dealt with properly, consistently and transparently on a timescale which reflects the interests of pupils. It therefore intends to proceed with publication of the replacement policy statement, and to carry out its regulatory and enforcement role on the basis set out in the published policy statement.

Question 5

Do you agree with the change in policy highlighted at paragraph 10 above?

	Total	Percent
Yes	208	3.158%
No	3834	58.21%
Unanswered	2544	38.63%

Government response

4,042 of online respondents answered this question with a 'yes' or 'no'. The change in policy mentioned in the question would have the effect of making enforcement action more likely for schools not meeting the independent school standards. As with the previous question, the department believes that the significant majority answering 'no' to this question arose from opinions about the proposed guidance on the independent school standards. In addition, a more stringent policy was always, as noted previously, likely to get a largely negative reaction from schools despite its overall aim of strengthening standards in the independent sector.

The government believes that the change in policy highlighted is necessary to protect the interests of pupils in schools which persistently fail to meet the standards, and the published policy statement will incorporate the change.

Question 6

What comments do you have on each section of the draft policy statement?

Respondents were able to make comments separately on the two sections of the statement relating to regulatory action and enforcement action, and a large number did so. In many cases, no clear distinction was drawn between the contents of the two sections in making comments. The great majority of the comments received had a common theme of opposition to the proposed statement, with the following being typical examples:

I think schools should be given time to improve. I don't think that the the proposal to speed up regulatory action is a good idea

As stated above, closing down schools is bad and may just lead to more illegal schools with NO regulation. I therefore disagree with the proposal to speed up regulatory and enforcement action. Schools should rather be given adequate time to improve and succeed.

The proposed accelerated rate of enforcement action will not allow schools to improve at a steady, reasonable pace, making meaningful changes and upgrades.

this will only cause chaos and anarchy, education will simply go underground and not be monitored.

In electing to send their children to an independent school, parents are seeking education provision that differs in certain respects from that provided by the state. Government advice, backed up by enforcement action, can tend to erode that difference and place independent schools under pressure to conform to a state model.

Any enforcement action where the breach is due to characteristics outlined in the Equality Act 2010 then the response should be approved by an independent review panel whether specialists in the Equality Act 2010 may reside and ensure that the enforcement action itself does not inadvertently breach the Equality Act 2010.

There were some comments which were more positive:

Good and in my view necessary in certain circumstances.

I think that schools need some reassurance on when, and how, the enforcement action would be pursued vigorously. Some regulatory failings are broader than others. Some failings have little impact on the education of the child (but still need to be addressed) whereas others will need immediate rectification. In principle the suggestion to move to action more swiftly is reasonable but I have some concerns about its application.

Government response

Despite the opposition of many respondents to the issue of the statement and to its proposed aim of introducing a stricter regulatory and enforcement regime, the government believes that adopting the statement - and following the policy set out within it - is in the interests of the vast majority of pupils in independent schools. Regulatory action normally achieves the improvement and change necessary to meet the independent school standards. Where a decision is made to take enforcement action, the policy set out in the statement will ensure that it is proportionate but carried out in a timely and transparent fashion to meet the aims set out in the policy statement. Schools will be able to avoid being subject to enforcement action by taking prompt steps when failings are first found. It is not in the interests of pupils or their families for schools to be left for many months in a position where standards are not met.

Compared with the draft version issued for consultation, the final published version of the policy statement is not changed fundamentally; but as a result of consultation responses received in respect of both the draft guidance on the ISS and draft statement, the following main changes have been made:

- a. the statement makes it clearer that schools will not be able to remain indefinitely in a loop of action plans and re-inspection, in response to representations that the draft version was not strong enough in this respect;
- b. it is made clearer that if a school does not apply for a revocation of a relevant restriction that does not mean that further inspections will not be commissioned, and if on inspection it is found that significant improvement has not been made then a move to de-registration is likely. This was in response to representations that the draft version was not strong enough in this respect. This and the preceding change were designed to emphasise that despite the views of many respondents that schools should not face regulatory/enforcement action, or have more time before such action is taken, government policy is that in fact such action needs to be speeded up compared with the present position;
- c. the statement is now to the effect that enforcement action will not normally occur if there are only one or two unmet requirements from the standards, although the judgement on this will take into account their severity, including the extent to which the failings put children's safety at risk. This is in response to widespread concerns that a school could be closed even if there were minor breaches of one or two requirements in a standard;
- d. the insertion of text making it clear that EYFS is part of the standards and breaches can lead to regulatory and enforcement action; and

e. the statement has been amended to clarify the circumstances in which material changes may be approved. This and the preceding change were designed to clarify text which was deficient in the consultation version.

Question 7

Do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child (UNCRC) to the proposed document?

A significant proportion of the respondents, especially those from the Charedi Jewish community, commented in negative terms. Amongst typical responses were:

*The Equalities Log is incorrect as regards Orthodox Jews, it will not result in our children attending a registered schools and will be detrimental to their interests.
The UNCRC comments are similiarly flawed for the same reasons.*

*The conclusions within the Equalities Log are wrong. It fails to take into account the loyalty of Orthodox Jews to their faith. Enforcement action will simply 'not' be in the interest of children as it will 'not' lead them attending a different independent or state school. It will actually cause significant harm to the education and wellbeing of thousands of children and their families from faith minorities.
The conclusion of the UNCRC assessment that, these proposals are in the best interests of the child, is simply wrong.*

The Orthodox Jewish Community is extremely committed to their faith, whilst still promoting respect and tolerance to people of other faiths. No amount of enforcement action would force us to send our children to another independent or state school, and the only outcome would be thousands of children without a school. This would be the ultimate harm for a minority community that puts education, religion and respect at the forefront of our childrens' upbringing. This would definitely not be a 'short-term disruption, but a long-term catstrophe.

Government response

The Public Sector Equality Duty (PSED) in s.149 of the Equality Act 2010 requires that decisions by public bodies have regard to the need to:

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

The PSED means that in finalising the statement the department has had to have regard to those needs; and in doing so, it has taken into account consultation responses. The PSED does not mean that decisions have to be in accordance with those needs, but that the implications in terms of those needs have to be taken into account.

Overall, responses of the nature of those set out above are saying that a stricter enforcement policy is likely to result in schools closing, and the pupils who attended those schools then being without a school place, rather than being educated in schools which do meet the standards. The implication is that children would be worse off, rather than better off, if the stricter policy is enforced.

Many other comments made in response to this question were clearly about the proposed guidance on the independent school standards, and whilst taken into account in relation to the guidance were disregarded for the purposes of considering the policy statement – except that the contents of the statement in relation to the likelihood of enforcement action being taken in relation to a breach of only one or two requirements have been amended, in response to comments made on the guidance on standards related to the protected characteristics.

The department is well aware that the statement as originally drafted is opposed by some with a particular faith or belief or from a particular racial group. In finalising the drafting of the statement, the department has attempted to strike a balance which would reflect the concerns expressed but still reflect the requirements in the standards, for example to promote respect for all people, having regard to the protected characteristics.

The equalities log published with the consultation has been reviewed and amended in the light of consultation responses and is published alongside this response document.

The UK is a signatory to the UN Convention on the Rights of the Child. A number of the UNCRC articles are relevant to the statement. The department believes that the guidance is issued in compliance with article 3 (best interests of the child shall be the primary consideration). In particular, it does not believe that the policy statement is in breach of article 14 (child's freedom of thought, conscience and religion and parents' right to provide direction in exercise of the right to those freedoms) because some parents disagree, for faith or other reasons, with certain aspects of the guidance. For example, despite what some responses seemed to assume, the article does not impose

an absolute prohibition on the government from stipulating what independent schools should teach where that would conflict with a parent's faith or belief.

The government is also well aware that for many respondents the requirements of some of the independent school standards are less important than other matters (for example their religion or belief), and they believe that as a consequence schools should not need to meet those standards and therefore, face enforcement action for breaches of those standards. In addition, if as a result of enforcement action for breaches of these standards a school closes, the parents of affected pupils might not be able to find school place which they would find acceptable.

The government does not believe that parental views should result in a situation in which some schools are automatically treated differently from others by, in effect, being immune from enforcement action for breaching certain standards. It does not consider it appropriate that parents, or a school, should pick and choose which standards a school needs to comply with. The ISS are intended to apply to independent schools irrespective of parental choice about which of the standards they agree with – though in each case of deciding whether to take enforcement action, the Secretary of State will need to consider the circumstances by reference to, for example, the public sector equality duty and the ECHR. Therefore, the policy statement has not been changed to fall in with such an approach. If the result of enforcing the standards is the withdrawal of children from schools, then the parents concerned become responsible for providing them with a suitable education. The law allows parents that choice. If they do not then provide a suitable education, this is likely to result, in appropriate cases, in the local authority serving school attendance orders to ensure that the children go to school. The local authority may consider action to enforce school attendance orders or seek education supervision orders.

Question analysis – Part 3 Proposed revised regulations for the provision of information

Question 8

Do you agree that the government should replace the current regulations with those revised as shown in the draft regulations?

	Total	Percent
Yes	486	7.379%
No	2078	31.55%
Unanswered	4022	61.077%

The government noted that more respondents were against the regulations being replaced than in favour. Judging from the comments made (see Question 9) this is likely to have been as a result of opinions about matters which were not relevant to the regulations.

Question 9

Are there any changes in the revised regulations which you believe should not be made?

Nearly all the respondents to this question mentioned issues related to teaching about the protected characteristics under the Equality Act 2010 – which is something not relevant to the information regulations, although they were to the proposed guidance on the independent school standards. They were not, therefore, taken into account in finalising the regulations (though they were taken into account in relation to the guidance and policy statement).

Question 10

Are there any items of information which are not included in the regulations which you believe should be required from schools?

Very few responses were made to this question, and most of those which were, again related to teaching about the protected characteristics and were not relevant to the draft regulations. One response did result in a change to the finalised regulations, as described below.

Question 11

Do you have any comments on the proposals to make amendments in respect of the Non-Maintained Special Schools Regulations or Independent School Standards as described above?

The draft regulations also contained amendments to two other sets of regulations as well as those relating to the provision of information. The responses received and how they were considered are described in the Explanatory Memorandum to the (finalised) regulations (see below).

Question 12

Do you have any comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) to the proposed regulations? An equality impact log is published as part of the consultation

Very few responses were made to this question and most of those were, again, related to teaching of the protected characteristics and were not relevant to the regulations. No change was made to the legislative proposals here as a result of responses received.

Government response

Because of the legislative timetable and the need to have the regulations in force for the beginning of the 2018/19 academic year, the Independent Educational Provision in England (Provision of Information) and Non-Maintained Special Schools (England) and Independent School Standards (Amendment) Regulations 2018² were made as soon as possible after the consultation closed, having taken account of relevant responses.. Although the responses to Question 8 showed a clear majority against replacement of the 2010 regulations³ which the new regulations replaced, it was clear that most of these objections arose from respondents' views on the proposed guidance and policy

² <http://www.legislation.gov.uk/uksi/2018/901/contents/made>

³ <http://www.legislation.gov.uk/uksi/2010/2919/contents/made>

statement, the contents of which had no specific connection with the proposed regulations.

The final regulations can be found at:

<http://www.legislation.gov.uk/uksi/2018/901/contents/made>

and came into force on 1 September 2018. Their contents are substantively as in the draft version published for consultation, except in one respect – the regulations as made include a provision to ensure that when a school has premises at more than one location, details of those premises are provided at both the initial return and annual return. Further details about the consultation response are included in the Explanatory Memorandum for the regulations, which is also published at the location specified above.

After the consultation had ended, the equalities log published with the consultation was revised so that ministers were able to consider two further equalities issues which were known about, although not raised in the responses. One was that a greater depth in due diligence checks may have a greater impact on persons of certain faiths or race because a greater proportion of them may be prevented from being registered as the proprietor of independent schools through holding views incompatible with the independent school standards. The other was that the addition of the requirement for checks on staff, supplied by employment businesses, who have lived or worked overseas may well affect people who are of certain races more than others, because they are more likely to have lived and worked outside the UK. However, the department's view was that the need to safeguard children outweighs any potential detriment to the staff involved, by ensuring that suitability checks on all staff are as complete as possible.

Next steps

The finalised guidance on the independent school standards and the policy statement on regulatory and enforcement action are published alongside this government response document on the gov.uk website.



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