

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

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There has been considerable press coverage of the Independent Education Provision in England (Prohibition on Participation in Management) Regulations 2014, which came into force today.

Section 128 Education and Skills Act 2008 gave the Secretary of State the power to direct when a person may be prohibited from taking part in the management of an independent school in accordance with 'proscribed grounds'.

The Regulations provide those proscribed grounds as follows:

a) the person

1. has been convicted of a relevant offence;
2. has been given a caution in respect of a relevant offence;
3. is subject to a relevant finding in respect of a relevant offence; or
4. has engaged in relevant conduct; and

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

A 'relevant offence' is one where the offence is relevant to a person's suitability to take part in the management of an independent school. A 'relevant finding' includes being found not guilty by reason of insanity or due to having been convicted in another jurisdiction.

Perhaps the most controversial aspect of the Regulations is the definition of 'relevant conduct'. This would cover a person who:

1. undermines the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths or beliefs;
2. has been found to be in breach of professional standards by a professional body; or
3. is so inappropriate that, in the opinion of the appropriate authority, he or she is unsuitable to take part in the management of an independent school.

Given the reference to fundamental British values, there has been much debate about whether the Regulations were a knee-jerk reaction to the 'Trojan Horse' enquiry in response to allegations of extremist Islamist infiltration in a number of academies in Birmingham.

Although the consultation for the Regulations commenced on 7 February 2014, before the Sunday Times published the first report into the story on 23 February 2014, it is clear from The Education Commissioner's report into the enquiry that the Department for Education was aware of the issue as early as December 2013 so there is good reason to think that the proscribed grounds were written, at least in part, with these recent events in mind.

A definition of British values has long proved to be elusive and at times divisive. Therefore, a law that gives the State the right to interfere with an individual's freedoms because it considers that the person or their beliefs undermine 'British values' was always likely to be controversial. Perhaps to accommodate for this, the definition of relevant conduct has only provided a very broad outline of liberal democratic values, to allow the Secretary of State as much discretion as possible in the exercise of her powers.

There have been accusations, particularly from religious groups that the new law could lead to schools feeling unable to teach 'controversial' issues or having to downplay religious festivals which might offend other groups. The Department for Education has maintained that this is not the intended purpose of the Regulations and it anticipates that it will be rarely used.

There are concerns that it might also dissuade governors from volunteering for fear of being caught out as a result of their religious beliefs. In light of the fact that the Regulations appear to have been written with the Trojan Horse enquiry in mind, it is understandable that Muslim groups feel particularly targeted. Indeed, the Government's Impact Assessment on the new Regulations does concede that they could 'impact disproportionately on individuals involved in the management of independent Islamic schools'. However, the Assessment goes on to state that notwithstanding this, the Regulations will 'help protect Muslim children (and, indirectly, all citizens) from the dangers of extremism'.

For independent schools, which, traditionally, have been lightly regulated compared with their maintained counterparts, it is a reminder that the long arm of the law is prepared to reach in and control management, not only in relation to the protection of children, but also, to play its part in shaping the future of what British values means to society and the next generation.

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