



Department
for Education

Independent Educational Institutions – De-registration appeals

Schools Bill Factsheet

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Schools Bill Factsheet: Independent Educational Institutions – De-registration appeals

What is the government’s policy objective?

The government’s aim is that all children of compulsory school age receive a safe and broad education. The proposal will allow the government to take effective action against institutions with long term failings more quickly and efficiently.

What does this measure do?

The ultimate sanction that the Department for Education (‘the Department’) can impose on a school that fails to meet the independent school standards is deregistration, which requires the school to close permanently. Such action is only taken in relation to very serious or very long running failures where the greatest risks arise. As this sanction stops the operation of a school, it is often appealed, and an appealed deregistration means the deregistration does not take effect until an appeal is withdrawn or the First Tier Tribunal finds in favour of the Department. Appeals can take a long time, through which the failing school continues to operate. This measure will change the basis on which appeals are heard in some specific circumstances where schools have failed for a long time. This will mean that appeals in these cases can be heard and resolved more quickly and failing schools closed sooner.

Why is legislation needed?

An enforcement decision to deregister an institution is very serious, as it requires the school to close. It is therefore very common for a proprietor to appeal, although in some cases they withdraw their appeal if a further inspection shows that little progress has been made in meeting the standards. This is because the lack of progress means the appeal is likely to be lost. For its part, the Department ordinarily withdraws from defending appeals if re-inspection finds that significant progress has been made. The overall aim of the regulatory and enforcement regime is to secure improvements at institutions so that they are meeting the standards; not to close them down.

Currently, deregistration decision appeals are heard on a full-merits basis, meaning the First Tier Tribunal decides on the basis of the evidence available at the time of the appeal hearing whether it considers deregistration to be appropriate in all the circumstances (and not the circumstances at the time the decision was made). In addition, a de-registration decision does not take effect until after the 28-day period for lodging an appeal has expired or if an appeal is lodged in time, the appeal has been determined or withdrawn which, from the government’s experience, can take six months or more.

This creates a number of difficulties in that independent educational institutions with

persistent, long-term failings are able to avoid deregistration by making temporary improvements to meet the standards by the time of the hearing, even if their history suggests they will relapse quickly. The Department then has difficulty taking decisive action against institutions with long term failings that go through cycles of improvement and relapse. The time it takes for deregistration decisions to take effect means that persistently failing institutions can remain open for lengthy periods which is very damaging to the interests of pupils, some of whom may be attending such institutions for many years while the Department's efforts to secure improvement have only a temporary effect as the institution goes through repeated cycles of improvement and deterioration.

The government believes that in order to tackle this phenomenon at its root, to deter institutions from going through such repeated cycles of failure, the basis of how the First Tier Tribunal determines appeals against decisions to de-register an institution, should be altered so that proprietors are less likely to be able to succeed on appeal simply because they have brought about what subsequently transpires to be another temporary improvement.

In addition, changing the basis of how these appeals are heard, will shorten the timeframe between the de-registration decision and the conclusion of the appeal proceedings in that, a further inspection will not be needed in order to give the Tribunal an up-to-date picture of compliance with the standards at the affected institution.

This legislative change is therefore required in order to ensure more consistent compliance with the standards and more swiftly enforce deregistration action against those institutions with longer term failings, meaning students will spend less time at failing institutions.

What is the effect of the legislation?

The key difference is that that the court will decide whether the original decision was made lawfully according to the principles of administrative law. For example, a decision to take enforcement action would not be made lawfully if:

- a. it was made outside the powers available - for example, if the Secretary of State took enforcement action even though none of the pre-conditions for doing so specified in s.115 of the 2008 Act were met;
- b. it was made in breach of a statutory duty – for example, if the public sector equality duty contained in section 149 of the Equality Act 2010 was not complied with;
- c. it was procedurally unfair – for example, if a promise had been made to consult with the proprietor of the school before taking enforcement action and there was not a proper justification to resile from that promise;
- d. it was irrational, that is to say it was unreasonable and unsustainable having regard to the facts, or was one no reasonable Secretary of State would have

reached – for example, by failing to take into account the department’s policy statement on how enforcement decisions would be taken; or

e. it was incompatible with a right under the European Convention on Human Rights (for example, because the decision-maker had decided to de-register a school on the basis of the faith of the proprietor, which would be a breach of Article 14 of the Convention).

At the conclusion of the judicial review hearing, the court will have the power to either:

- (a) confirm the decision to de-register, or
- (b) direct that the decision is of no effect.

How will this work in practice?

The proposed legislation is based on the approach that an appeal against de-registration will be decided on the basis of the same principles that are applicable on application for judicial review where:

- (a) the affected institution has undergone three inspections within a 6-year time period,
- (b) its proprietor has been required to submit an action plan after the first two inspections and
- (c) at all three inspections, the institution has been found not to be meeting one or more of the standards.

The legislation will also mean that the new basis for hearing an appeal will only apply if the Secretary of State has first given the proprietor of an institution the opportunity to make written representations as to why the Secretary of State should not take a decision to remove the institution from the register. If this was not done, any subsequent appeal against de-registration would be heard by the First Tier Tribunal on the normal full merits basis.

Amending the legislation in this way should in any event have deterrent effect and therefore, a consequent reduction in de-registration decisions in due course.

Key questions and answers

Is this the government taking power to close down good schools?

This change to the appeals regime will only apply where an institution has been found to have failed to meet the standards, following three inspections within a six-year period. This does not relate to institutions that are consistently compliant with their obligations.

This measure will allow us to better secure the timely closure of institutions that, over time, are unable to fully meet the standards (often they will show some improvement then relapse). It will also provide certainty for parents and other stakeholders more quickly after a deregistration decision has been made by speeding up the appeals process.

Why can't schools where the circumstances apply be given a further chance to improve before being deregistered?

This measure will only apply where schools have failed to meet the independent school standards at three successive inspections. After two of those inspections, the school will have been required to provide an action plan and been given the opportunity to improve. Schools may show some improvement over such a period, but if they are unable to address their underlying leadership and management issues and meet the standards, improvement will not be secure. If three inspections show failure, it is unlikely that a school will quickly improve and assure the Department and parents that it is providing a suitable broad and safe education. In these circumstances, it is appropriate that schools be required to close as quickly as possible. While this will disrupt the education of children attending the school, they will be able to secure an alternative place elsewhere at a registered school that does provide a suitable broad and safe education.

How does this measure address the weaknesses in the enforcement regime identified in the Independent Inquiry into Child Sexual Abuse's (IICSA's) report following its residential schools investigation?

Along with other measures, this measure will help the Government ensure that registered independent schools provide a suitable broad education and meet safeguarding standards. Where a school fails to meet standards over an extended period (three inspections within six years) and other conditions are met (the school has been required to submit an action plan twice and been given the opportunity to make representations in response to the proposed deregistration) appeals against deregistration will be heard more quickly.



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