



Department
for Education

Independent Educational Institutions – Registration requirements

Schools Bill Factsheet

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Schools Bill Factsheet: Independent Educational Institutions – Registration requirements

Some settings which children of compulsory school age attend full-time in the school day escape the registration requirements which apply to independent schools because of their extremely narrow curricula. This is despite these settings being the main or only source of a child's education. Children attending such settings are not receiving a suitable broad education and we have no assurance that they are safe. This measure addresses that problem and extends the registration requirement to more settings which could be expected to provide all, or the majority of, children's education. This will enable these settings to be subject to regular inspection against standards to ensure that they provide a safe and suitable education to the children attending.

What is the government's policy objective?

The government's policy intention is to bring settings which provide all, or the majority of, a child's education into a regulated regime.

Currently some settings which provide all (or nearly all) of children's education do not need to register with the Secretary of State because they do not meet the definition of "independent school".¹ Because these settings are not registered, we have no assurance that they provide a suitable broad education and that the children attending are safe.

These changes will, therefore, enable settings providing all of a child's education to be subject to regular inspection against approved standards thereby providing assurance that they provide a suitable broad education and are safe.

There are approximately 2,350 registered independent schools in England. The definition of an independent school is set out in section 463 of the Education Act 1996 ('the 1996 Act'), and in, broad terms, is a school which provides full-time education for five or more pupils of compulsory school age, or one or more such pupil who has an Education, Health and Care Plan or is 'looked after' by a local authority. Local authority maintained schools and non-maintained special schools are excluded from this definition. Registered independent schools are subject to regular inspection against the independent school standards, and many of these settings serve pupils from particular faith groups; it is possible to meet the independent school standards while providing an extensive faith-based education alongside a suitable broad curriculum.

This measure will bring those settings which provide full-time education to five or more children of compulsory school age (or one or more such child with an Education, Health and Care Plan or is "looked after" by a local authority) - but which do not meet the current

¹ Under s463 of the Education Act 1996

definition of an ‘independent school’ – into the registration requirement so that they are effectively regulated by the Department for Education.

In addition, this measure also aims to provide greater clarity to those running educational settings about whether a full-time education is being provided and so whether registration with the Secretary of State is required.

Why is legislation needed?

In 2020 the Department for Education consulted on two issues related to the regulatory regime in the Education and Skills Act 2008 (“the 2008 Act”):

1. First, there is no statutory definition of ‘full-time’ education. This means that it is not always clear which institutions are required to be registered with the Secretary of State. This can cause confusion to those running educational settings.
2. Second, the definition of what constitutes an ‘independent school’ does not encompass settings which provide education on a full-time basis to children of compulsory school age but teach a very narrow curriculum. This is because in being “schools”, independent schools must be, in broad terms, institutions for providing “education suitable to the requirements of children of compulsory school age”.²

A setting offering a very narrow curriculum is not providing such an education and so is not an “independent school”. The consequence is that these settings need not be registered or meet regulatory standards. In practical terms, a setting which provides ‘lessons’ throughout the normal school day but which only provides, for example, religious instruction or ballet tuition is not a “school” and not quality assured through inspection even though this setting is providing all or nearly all of a child’s ‘schooling’ and education. There is therefore no assurance with regards to the quality or suitability of the education provided to the children attending these settings.

The Department’s consultation proposed that legislation was needed so that it was clearer which settings were (and were not) required to register and so that more settings

² Under section 2 and section 4 of the Education Act 1996.

which provided education to children on a full-time basis were captured by the Department's existing regulatory regime.

What is the effect of the legislation?

Section 92 of the 2008 Act defines what constitutes an "independent educational institution", a type of institution that is regulated under Chapter 1 of Part 4 of that Act. The definition includes "independent schools".

This proposed change will amend section 92 to bring more full-time educational settings into the regulatory regime. Independent educational institutions will have to provide "full time education" (as defined in the Bill) but because the nature and/or breadth of the education offered will no longer be relevant more institutions will be brought into the regulatory regime.

Settings which provide a full-time education (even a very narrow, specialised education), at times which prevent the children attending elsewhere for their education will be required to register with the Secretary of State and be subject to regular inspection as a result, or otherwise need to change their provision.

How will this work in practice?

The changes will introduce a new test to help settings determine whether they are providing a "full-time" education to children of compulsory school age. A setting will be providing full-time education for a child if the child could be expected to get all or a majority of their education at the institution. A setting which meets this test will be captured by the regulatory regime in the 2008 Act. For instance, it will become a criminal offence to conduct such a setting if it is not registered with the Secretary of State. This change should see more educational settings brought into regulation and enable the education provided to more children to be subject to regular assurance as to its quality and suitability.

In determining whether this new test is met, the Bill sets out a number of factors that will need to be taken into account. These factors are concerned with the number of hours per week, the time of day, and the number of weeks per academic year that a child is expected to attend a setting. These factors may be varied by the Secretary of State via regulation.

The Department intends to produce guidance to assist proprietors understand how these factors interact with each other and which combination of factors constitute "full-time education".

Key questions and answers

Did you consult on these proposals?

Yes. DfE ran a consultation between February and November 2020 on the proposals to reform the regulation of independent educational institutions. A total of 532 responses were received. 91% of respondents thought the existing registration requirements should be widened to capture full-time educational settings, regardless of the nature or breadth of the curriculum taught. The main reasons cited by respondents in favour of this proposals were:

- settings ought to be regulated, primarily to ensure a broad and balanced education was provided (with concerns expressed about a narrow religious education potentially being provided in place of this)
- children's rights to such an education were protected
- to close loopholes, which create space for registration avoidance, and would help alleviate concerns around the safeguarding of children's welfare, protection and rights.

How many settings do you think will need to be registered following this change?

There is no reliable data on the number of unregistered settings which currently provide a full-time education to children. We are aware that in some local authority areas, hundreds of children (mostly boys, mostly between the age of 13 and 16) attend these settings and so may not receive a safe and broad education.

Any setting which is brought into our regulatory regime through the proposed changes, and which did not wish to register will have the option of amending the provision offered so that they are not providing a full-time education (for example, settings which only operate at evenings and weekends will not be impacted by the proposed changes).

Why are unregistered settings a risk?

All registered independent schools are subject to regular inspection by either Ofsted or the Independent Schools Inspectorate. These inspections report on whether the school is meeting the independent school standards (linked to [here](#)) and if applicable, the Early Years Foundation Stage.

Independent schools which meet the independent school standards are ensuring that their pupils, for instance, receive a broad education which assists them to acquire speaking, listening, literacy and numeracy skills while being taught by staff who have been subject to Disclosure and Barring Service (DBS) checks, in a building which is safe.

Unregistered independent schools are not to subject to regular inspection against, nor do they need to comply with, the independent school standards, even though they may be the main or only source of children's formal education.

Part 2: Additional detail on Delegated Powers

There are three regulation-making powers associated with these measures.

The first delegated power is a Henry VIII power which provides the flexibility needed to amend the factors considered when determining whether a setting provides “full-time education” to reflect changes in how institutions operate in practice.

The second power concerns “excepted institutions”. “Excepted institutions” are those which despite meeting the other requirements of being an independent educational institution are not to be regulated under the regime in the 2008 Act. This power will allow additions to be made to the list of excepted institutions so that other settings may in future be removed from regulation under the 2008 Act.

The third delegated power will permit other legislation which applies to “independent schools” to be applied to independent educational institutions that are not independent schools, once these settings are brought into the regulatory regime for independent schools contained in the 2008 Act.

Expanding the scope of regulation – amending the factors to be taken into account in determining whether a setting provides “full time education”

What does this delegated power do?

This power permits regulations to be made to amend the factors which are to be taken into account when deciding whether a setting is providing “full-time education” to a child (and so may be captured by the regulatory regime in the 2008 Act). The power also allows regulations to be made about how the factors are to be taken into account.

The Bill specifies the factors which will all have to be taken into account in reaching a decision about whether a setting is providing “full time education” to a child. The factors are:

- (a) the number of hours per week for which children at the institution are expected to attend.
- (b) the number of weeks in an academic year for which children are expected to attend;
and
- (c) the time of day at which children are expected to attend

This power permits these factors, and how they are to be taken into account, to be amended so that more settings may be brought into or taken out of regulation.

Why is this power necessary?

The government’s policy intention is to bring more institutions which provide all, or the majority of, a child’s education into the regime which currently regulates independent schools. However,

where and when and how children receive their full-time education may change over time as this sector innovates. There may be a need to change the factors which are to be considered, and how they are considered to respond to future, unforeseen, delivery models as well as deliberate attempts to avoid regulation.

Do we have an example of this power potentially being used?

The main anticipated need for this power is to respond to the development of alternative forms of full-time education provision which are not yet foreseen, so it is not possible to provide a comprehensive list of all possible scenarios where it may be considered necessary to use this delegated power. However, an illustrative example can be provided of where this regulation-making power may be used to bring into the regulatory regime modes of full-time education which it is not currently the intention to capture but which may, in the future, be in the public interest to regulate.

The factors to be taken into account are focused on attendance by children at an institution. This points towards an interpretation that “independent educational institutions” do not include providers that educate children entirely remotely. It is not the current intention to regulate this sort of educational provision.

However, as new models of such provision develop (and the number of children who make use of such provision as their sole source of education increases), it may become appropriate to regulate some of them under the 2008 Act and introduce standards to provide assurance as to the quality and suitability of the education provided by them.

Being able to amend the factors or changing how they are to be taken into account, would provide a method to allow these settings to be brought into regulation and provide clarity to proprietors, parents, commissioners and others about the settings which are caught (and, for example, required to register with the Secretary of State) and which are not.

Will there be any further consultation on this issue?

No further consultation is planned on this issue. This proposal has been informed by the recent consultation on Regulating Independent Educational Institutions, the government response to this was published on 6 May and is available here: [Regulating independent educational institutions - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/consultations/regulating-independent-educational-institutions)

Excepted institutions

What does this delegated power do?

There are some educational settings which provide full-time education to five or more children (or one or more child with special educational needs or who is 'looked after' by a local authority) but which it is not appropriate to regulate as an independent educational institution under the 2008 Act. These settings are known as "excepted institutions".

There are 7 categories of excepted institutions specified in the Bill. These are:

- (i) an institution that provides only early years provision
- (ii) a school maintained by a local authority
- (iii) a school approved under section 342 of the Education Act 1996 (approval of non-maintained special schools)
- (iv) a hospital (within the meaning of section 275 of the National Health Service Act 2006) that is not an independent school
- (v) a 16 to 19 Academy
- (vi) an institution that is within the further education sector or the wider higher education sector
- (vii) a secure college, secure training centre or young offender institution

These are all categories of settings which may provide full-time education, but which are not currently regulated by the 2008 Act (and will continue to not be so regulated following this change).

This delegated power permits the Secretary of State to add further categories of settings to the list of excepted institutions in cases where it is considered appropriate to exclude from regulation under the 2008 Act new classes of setting that might otherwise be brought into the registration requirement. This might include settings that are separately subject to new or existing regulatory regimes.

This power will help provide certainty to settings in cases where there might be ambiguity about whether they are captured by the regulatory regime which applies to independent educational institutions.

How will this power be used?

If it is considered appropriate to remove categories of institutions from the system of regulation under the 2008 Act, then the Secretary of State will need to seek Parliament's approval. This is because the regulation-making power here is subject to the affirmative resolution procedure. This will allow for the opportunity for debate on any changes and proposed exceptions.

Will there be any further consultation on this issue?

Before using this power to bring forward regulations excepting specified categories of setting from regulation, consultation may be held as is considered appropriate. The extent and nature of any consultation will vary depending on the specific exception planned.

Application of provisions applying to schools to independent educational institutions

What does this delegated power do?

One practical impact of this measure will be to extend the regulatory regime which already applies to independent schools (and found in the 2008 Act), to settings which are not independent schools but provide education – albeit of a very narrow nature – on a full-time basis.

However, there is other pre-existing legislation which applies in England in relation to independent schools beyond the 2008 Act. This delegated power permits that legislation to be applied, with or without modifications, to those independent educational institutions which are not independent schools.

How will this power be used?

The Schools Bill will allow Parliament the opportunity to debate the principle that more full-time settings should be subject to the regulatory regime which already applies to independent schools in England. The principal piece of legislation which applies to independent schools is the 2008 Act and so amending this Act will establish that settings providing full-time, but narrow education to children should be registered and regulated in an equivalent fashion.

Once this principle has been established, it will be appropriate to consider whether other pieces of legislation which apply to independent schools in England should also be applied to these other full-time settings which have been captured by the regulatory regime for independent schools.

As an example, section 547 of the Education Act 1996 makes it an offence to cause or permit nuisance or disturbance at an independent school. It may also be appropriate to make regulations to make it an offence to cause or permit nuisance or disturbance at an independent educational institution which is not an independent school.

This power is a mechanism to allow these appropriate changes to be made. Any proposed changes will be subject to the affirmative resolution procedure.

Does this power permit the Secretary of State to amend any legislation for any purpose?

The use of this power will be limited to applying legislation which applies to independent schools in England to independent education institutions.

Before any regulations are made, it will be necessary to get Parliament's approval because the affirmative resolution procedure applies. This will allow for the opportunity for debate on any changes.

Will this power impact on legislation in Scotland, Wales or Northern Ireland?

No. This power extends to amending legislation as it applies in England.



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