



Department
for Education

UNCRC assessment – Regulatory and Enforcement policy statement (Post-consultation version – April 2019)

1. What likely impact will the policy/measure have on children and young people or their families/carers?

The statement sets out the way in which the Secretary of State's intends to exercise his regulatory powers under section 114 to 116 of the Education and Skills Act 2008. Schools which do not meet the independent school standards ('the ISS') can have action taken against them under these regulatory powers, action which ranges from requiring the production of an action plan to address failures to meet the ISS to the imposition of restriction on the operation of the school and most seriously, to the deregistration of a school. When action is taken by the department, the underlying intention is ordinarily to get the school to improve and therefore improve the education and welfare of pupils in that school. However, that approach may not be appropriate in any particular case and deregistration is an option – which ultimately means the school has to close.

The policy embodied in the statement is likely to lead to more instances of enforcement action than is currently the case. It encapsulates an approach which is different from the approach which has been adopted in the past few years:

- a. it says that if an action plan submitted by a school is rejected, there is a strong likelihood that enforcement action will either follow immediately or will be taken if a single further inspection shows that there are still significant failings;
- b. it says that even if an action plan is approved, if following a progress monitoring inspection it is evident that there has not been significant progress, this means that enforcement action is more likely to be taken.

In cases where enforcement action is taken by the department, children may be unable to take a place up at the school because it is barred from accepting new pupils; or they may have to leave the school if it is deregistered or part of its operations closed (eg a sixth form). However, in such cases a child of compulsory school age will always be entitled to a place at a state school.

2. What children's rights are likely to be affected by the policy/measure?

The most significant articles engaged are:

- Article 3 (best interests of the child)
- Article 4 (protection of rights)
- Article 6 (life, survival and development)
- Article 17 (access to information from the media)
- Article 19 (protection from all forms of violence)
- Article 28 (Right to education)
- Article 29 (Goals of education)
- Article 30 (Children of minority/indigenous groups)
- Article 31 (leisure, play and culture)
- Article 34 (sexual exploitation)

In all cases the effect of the policy, through promotion of school compliance with the independent school standards through pressure of regulatory or enforcement action, should be to help meet the requirements of these articles – even if, in some cases, that can only be achieved by the child attending a different school.

The proposal also has the potential to engage

- Article 5 (parental guidance)
- Article 12 (respect for the views of the child)
- Article 13 (freedom of expression)
- Article 14 (Freedom of thought, conscience and religion)

because of the fact that the obligations placed on the school under the ISS which is the basis of regulatory or enforcement action may not accord with the views of the parent and/or child.

It is to be noted, however, that even though the standards require schools to promote certain things (eg Fundamental British values), they do not require that pupils or parents agree with those things. In addition, the standards allow schools with a particular ethos, whether faith-based or otherwise, to teach children using an approach based on that ethos.

In any event, in the government's view the standards which schools are subject to are there in the wider interests of children attending schools even if parents or children do not agree with them in all respects. The standards are intended to ensure, amongst other things, that children get a quality of education that is assured to a minimum standard, that they become capable of integrating themselves into

society and they are equipped for adult life. These are legitimate aims to underpin compulsory school standards – which a State may impose. Parents also retain the right to home educate their children to the appropriate standard.

3. Are some children and young people more likely to be affected than others?

Yes. Only about 5% of independent schools are under DfE regulatory or enforcement action at any one time, and the department's policy as set out in the draft statement will affect children in such schools. In addition, certain types of school, especially small faith schools, tend to have greater difficulty than other independent schools in meeting the standards and are disproportionately likely to be the subject of DfE action.

4. Do you need to engage with children and young people and/or their advocates and other stakeholders to seek their views?

No. The policy statement is directed at the proprietors of independent schools. However, the consultation will be public and anyone may respond.

5. How does the policy/measure promote or impede the implementation of the UNCRC?

By seeking to improve the provision made in independent schools, it promotes implementation or at worst does not obstruct it.

6. Is a full Child Rights Impact Assessment required?

No. The effect on some children could be significant to the extent that enforcement action will become more likely than it was before and enforcement action has the potential to impact on school pupils; but the number of children involved is very small, being those in independent schools affected by DfE regulatory or enforcement action. The majority of such schools (which at any one time is around 5% of the 2,300 independent schools in England) are relatively small, which reduces the number of affected children still further.