



Department
for Education

Children's Wellbeing and Schools Bill

Policy Summary Notes

March 2025

Children not in school

This measure helps ensure that children not in school are receiving a suitable education and are safe. The measures will introduce in England and Wales:

- Compulsory Children Not in School registers in each local authority area.
- A duty on local authorities to provide support to the parents of children on their registers.
- Changes to the School Attendance Order (SAO) process to make it more efficient.
- A requirement whereby parents of some children for whom there are existing safeguarding concerns or attend special schools will need local authority consent to home educate (and where children subject to some child protection processes are already being home educated, the local authority will be able to require them to attend school).
- A requirement for local authorities to consider the home and other learning environments when determining whether children should be required to attend school.

What does this measure do and why do we need it?

All parents have a legal responsibility to ensure their child receives a suitable, efficient, full-time education. Most parents choose to fulfil this responsibility by ensuring their child regularly attends school, but some choose to educate them otherwise than at school (for example, by home-educating them).

Most parents who choose to home educate do so in their children's best interests, and many home educated children receive a suitable education that supports them to achieve and thrive.

However, the number of children in home education has accelerated since the COVID-19 pandemic, with an estimated 111,700⁷ children believed to be home-educated in England as of October 2024, and a further 6,156⁸ believed to be home educated in Wales. The statistics show an increase in parents reporting that they are moving their children into home education due to mental health concerns or special educational needs/ additional

⁷ Elective home education (2024). Explore education statistics. <https://explore-education-statistics.service.gov.uk/find-statistics/elective-home-education>

⁸ Pupils educated other than at school (2024). Explore education statistics. <https://explore-education-statistics.service.gov.uk/find-statistics/elective-home-education>

educational needs. In some instances, parents may not be well-equipped to provide a suitable education, and some of these children may also be at risk of harm.

Some children have been seriously harmed or died due to abuse or neglect whilst not in school or having been removed from school for the purposes of home education. Children in social care, including those on child protection plans, also experience poorer educational outcomes at Key Stages 2 and 4 than the overall general pupil population.

Education settings can be a protective factor for children, particularly those at risk of harm. Local authorities have duties to keep children in their areas safe and to make arrangements to identify those children of compulsory school age who are not in school and are not receiving a suitable education. As parents currently do not need to notify the local authority that they are home-educating, it is difficult for local authorities to fulfil these duties and take action to support and protect children where necessary.

The proposal to introduce compulsory Children Not in School registers in every local authority area in England and Wales will help local authorities to identify all children not in school in their areas. This will be bolstered by the accompanying duties on parents of eligible children and certain out-of-school education providers to provide information for the registers. Making the SAO process more efficient and broadening it to require local authorities to consider the home and other learning environment when determining suitability of education will ensure that local authorities can, where necessary, take prompt effective action to help the child access a suitable education through regular attendance at a school.

The measures will ensure that the most vulnerable children cannot be withdrawn from school until it is confirmed that this would be in their best interests, and that the education to be provided outside of school is suitable.

Parents will need local authority consent to home educate if a child registered at a school is:

- Subject to an enquiry under section 47 of the Children's Act 1989.
- On a child protection plan.
- At a special school maintained by a local authority, special academy or non-maintained special school, or at an independent school which, in the case of a school in England, is specially organised to make special educational provision for pupils with special educational needs, or in the case of a school in Wales, makes additional learning provision for pupils with additional learning needs, and where the child became a registered pupil at that school under arrangements made by the local authority (hereafter referred to as "at a special school").

If children subject to Section 47 enquiries or on child protection plans are already being home educated, the local authority will be able to require them to attend school. This legislation will ensure that the most vulnerable children do not slip under the radar of the professionals that are there to protect them.

What is the effect of the legislation?

The legislation places new requirements on parents, local authorities, schools and out-of-school education providers with the intention of improving visibility of and support for children not in school.

The clause on Local Authority Consent for Withdrawal of Certain Children from School will bring into effect a new requirement for parents to obtain consent from the local authority to withdraw their child from school to home educate them if their child is:

- Subject to an enquiry under Section 47 of the Children Act 1989.
- On a child protection plan.
- At a special school.

The local authority must decide promptly whether to grant consent. They can refuse to do so on the grounds that it is not in the child's best interests to be educated otherwise than at school or no suitable educational arrangements have been made for the child outside of school. The legislation also provides a process by which parents can appeal to the Secretary of State (in England) or Welsh ministers if they disagree with the local authority's decision.

The Registration clause will make it mandatory for a child to be registered on their local authority's Children Not in School register if they are of compulsory school age, living in the authority's area, and are either:

- Not registered at a relevant school.
- They are registered as a pupil or are a student at a relevant school but do not attend full time and it has been agreed that they can receive some or all of their education otherwise than at a school (for example, they are flexi-schooled or the local authority has placed them in an alternative provision setting).
- They are a student registered at a further education setting that provides education for children aged 14 and above but they attend that setting on a part-time basis and do not also attend a school.

The registration system will require:

- Each local authority in England and in Wales to maintain a Children Not in School register.

- Parents of children who are eligible for inclusion on the register to provide certain information for it, such as the child's name, date-of-birth, and home address and details about the education provided, such as the amount of time being educated by a parent and by other people.
- Certain providers of out-of-school education to provide information for the register in cases where they are providing education to an eligible child for more than a prescribed amount of time without any parent of the child being actively involved in the tuition or supervision of the child.
- Local authorities to provide support to families on their registers, where it is requested by the parent.
- Local authorities to include relevant information about the child's circumstances (where held or possible to obtain), such as whether they have special/additional educational needs, or current or historic children's social care involvement.

The changes to the School Attendance Order (SAO) process included in the legislation will:

- Introduce statutory timeframes for issuing and processing SAOs.
- Align the SAO process for academies with maintained schools, creating consistency and simplifying the process.
- Make it an offence for parents to withdraw a child subject to an SAO from school without following the proper procedure. Parents convicted of breaching an SAO can be prosecuted again if they continue to breach it without local authorities having to begin the process again.
- Align the maximum penalty for breaching an SAO with the offence of knowingly failing to ensure a child attends school.
- Require local authorities to consider the home and other learning environments when deciding whether education is suitable or for children subject to child protection processes, whether it is in their best interests to attend school.
- Enable local authorities to request to see the child in their home(s) and where this request is refused, consider this a relevant factor when determining whether to issue a SAO.
- Enable local authorities to use the SAO process for children who are subject to Section 47 enquiries or on child protection plans to require them to attend school where it is in their best interests to do so.

How will this work in practice?

Local authority consent for withdrawal of certain children from school

Currently, parents must notify their child's school that they wish to withdraw their child to educate them otherwise than at school. Children can then be withdrawn from school

immediately without any checks, such as whether home education is a safe or suitable educational environment for them. Local authorities and safeguarding partners have raised concerns that the current system makes it easy for vulnerable children to slip under the radar of the professionals that are there to protect them.

As well as requiring local authorities to keep registers of children not in school, this legislation would require schools to check with the local authority if the child can be removed from the school roll immediately, or if the child falls into one of the categories which require parents to obtain local authority consent before they can be removed from the school roll to be home educated.

Where it is the case that local authority consent is required, we envisage that the local authority will write to the parent requesting information from them to help with their decision making. The local authority will also sometimes need to gather information from other relevant persons, such as the school or the child's social worker. Where the child is subject to a Section 47 enquiry, or on a child protection plan, the local authority will consider the request in the context of the wider child protection processes.

After considering this evidence, the local authority must decide whether to grant consent. They must decide not to consent if the evidence shows that it's not in the child's best interests to be home educated, and/or they do not believe suitable education arrangements are in place for them outside of school. The local authority must inform the parents and the school of their decision. If consent is granted, the school will remove the child from its register. Parents can appeal to the Secretary of State (in England) or Welsh ministers if they disagree with the local authority's decision to refuse consent, and the Secretary of State or Welsh ministers can overturn or uphold the decision or refer it back to the local authority for reconsideration. If one of the child's parents did not support the application for consent, they may appeal against a decision to grant consent; and the Secretary of State or Welsh ministers can uphold the decision to grant consent or refer it back to the local authority for reconsideration.

Children who are no longer the subject of a Section 47 enquiry because it has concluded without the child being placed on a child protection plan will not be required to get the local authority's permission to be withdrawn from school for home education. The local authority would not be able to place such children into school on the grounds that it would be in the child's best interests to attend school. If a SAO has been issued on these grounds and the Section 47 enquiry has concluded without a child protection plan being put in place, then the Order is automatically revoked.

Where children in the cohorts subject to child protection processes are already being home educated, we will set out in statutory guidance that local authorities should conduct a review to consider which children may be better served by being in school. Local authorities will then be able to use the SAO process to require these children to attend a named school.

Children Not in School Registers

Each local authority will keep a register of all children not in school in their area. These are likely to mainly include home educated children but could also include children who are flexi-schooled or are in certain forms of alternative provision. Registers will need to include for each child: their name, address, date-of-birth, and their parents' names and addresses, as well as details of how they are receiving their education. Parents will be required to provide this information. If they do not provide the correct information then the local authority can begin the SAO process, which would require parents to provide evidence that their child is receiving a suitable education. Regulations may make it compulsory for other information to be included on registers; and local authorities can also include any other information they think is relevant – however, although encouraged to do so, parents will not be required to provide this additional data.

Certain out-of-school education providers will be required to provide information for the registers. Out-of-school education providers will be in scope of the provider duty if they are providing education to an eligible child for more than a specified proportion of their education and without the parent being actively involved in the tuition or supervision of the child.

The exact proportion of education that a provider needs to deliver to fall into scope of the provider duty will be set in regulations; and this will be consulted on to ensure it is set at an appropriate level.

If a provider is in scope of the duty and a local authority serves a notice requiring information, the provider will need to give: all eligible children's names, dates of birth, and home addresses; the amount of time each child spends receiving education from the provider, and the amount of time the child spends receiving that education without any parent of the child being actively involved. Providers will need to give this information for eligible children that were being educated at the provision at the time of the request and any eligible children receiving education in the previous three months. We would expect providers to already hold this information for health and safety and safeguarding purposes, so the duty should not introduce undue burdens on providers. Those providers who do not hold that information will be required to obtain it. Local authorities will have discretion to impose a monetary penalty (the amount will be set in regulations) on providers who refuse to provide information or provide incorrect information, but the legislation sets out that local authorities cannot do this within the first three months of the law coming into effect. This will give out-of-school education providers time to adjust to their new duty. The provider duty will be crucial in supporting local authorities to check that the information on their registers is accurate and identifying children who are not currently included in their registers but should be.

Support Duty

Local authorities will be required to provide support to the parent of a child that is included in their register by giving advice or information about the child's education, if requested by the parent. Local authorities have discretion over what advice and information they think is appropriate to provide based on what the parent has requested. This can include, for example, advice about the child's education or information about other sources of support for the child's education. Local authorities can still offer other forms of support if they wish to do so, but this duty places a minimum requirement on authorities to offer advice and information to parents who want it.

Changes to School Attendance Orders

Local authorities will have discretion to trigger the SAO process if a parent of an eligible child does not provide information for Children Not in School registers. The proposals also place specific timeframes on parts of the process to minimise the time a child is potentially not in receipt of suitable education. The first step of the process is that the local authority issues a preliminary notice to the parent. This notice requires parents to demonstrate that their child is receiving a suitable education or for children subject to child protection processes, to demonstrate that it is in the best interests of their child to receive their education outside of a school. Where parents do not provide evidence of the above, the local authority usually must issue an SAO without delay. An SAO remains in force until revoked by the local authority or a court, or when the child is no longer of compulsory school age. This legislation will ensure that parents can be prosecuted and convicted for ongoing failure to comply with an SAO.

Considering the Home and Other Learning Environments

The legislation will also require the local authority to consider the suitability of all settings where a child is being educated. As part of this requirement, the local authority will be empowered to request to see the child in their home(s) to help decide whether education is suitable or for children subject to child protection processes, that it is in the best interests of the child to receive their education outside of a school.

If the child's parent refuses the local authority's request, then the local authority will need to take this into consideration as part of their overall decision-making process. As the home environment is an integral part of the child's ability to receive a suitable education or the education being in the child's best interests, if access to the home is refused, the local authority may conclude that they do not have sufficient evidence of the above and therefore need to issue a SAO. Local authorities will not be empowered to request that parents grant them access to see other learning environments which the child may attend – for example, tuition centres—as parents may not be able to organise access to these, but other learning environments will be a factor when assessing whether education is

suitable or, in the case of children subject to child protection processes, in the child's best interests

Additional information on delegated powers

The government is seeking the following powers to make regulations as part of these measures.

Regulations on when a child is to be regarded as falling or not falling within eligibility for registration relating to children not in school

Local authorities in England and in Wales must keep a register of eligible children. Eligible children include those of compulsory school age who:

- Are not registered at relevant schools.
- Are registered at relevant schools (including FE) but do not attend full time and receive education outside of school or college.

The second category mainly intends to cover flexi-schooled children and those in unregistered alternative provision. However, it could also include children who are absent on a very short-term basis for school trips or swimming lessons that take place away from the school site. We intend to use this power to ensure children who are absent on a very short-term basis are not brought into scope – so as not to cause an unnecessary administrative burden on both local authorities and parents.

Regulations prescribing specific details to be included in registers

This power allows Secretary of State and Welsh ministers to specify additional information to be included in local authority registers if held by the local authority. This power will be used to require local authorities to gather more detailed information about a child's background and needs, such as ethnicity, special educational needs, and safeguarding concerns and any related local authority and partner agency action. Local authorities can request this information from parents, but parents will not be under a duty to provide this additional information. The intention behind this is to ensure that local authorities have a fuller picture of each child's circumstances so they can target support – and, where necessary, protection - effectively. The ability to adjust data requirements through regulations ensures that they can be adjusted in a timely manner if new circumstances arise, or if feedback is received from local authorities following implementation of the registers that certain categories of data would be useful to have consistently collected across individual local authorities' registers.

Regulations about the keeping of registers and how time is to be recorded by a parent or carer

This power will allow regulations to be made setting out how local authorities deal with administrative elements of their registers. This may include how amendments should be made to information on the registers, the format of registers, whether standard information collection forms should be used to populate registers with the required information, and how the amount of time a child spends receiving education is to be recorded on registers.

Our intention is for there to be consistency across all local authorities to ensure that all registers are kept to an appropriate standard, as well as helping to create the most accurate national picture of electively home educated cohorts. Greater consistency will help make the system easier to navigate for parents. These administrative matters may require adjustment over time, for example to account for differences in local authority structure or internal processes, and so regulations are appropriate.

Regulations setting a threshold for providers of out-of-school education to provide information

This power will be used to set the threshold for when out-of-school education providers will be required to comply with the provider duty. This is likely to be based on the amount of time that an eligible child would need to be provided with out-of-school education by a particular provider without any parent of the child being actively involved in their tuition or supervision. It is appropriate to put this in regulations as changes to the threshold may be needed in time as local authority and department data improves and authorities develop a clearer picture of educational arrangements and the impact on providers in their area as well as nationally.

Regulations making exceptions to duty to provide information

This power is linked to the new power set out above which sets the threshold at which a local authority is able to require out-of-school education providers to provide information for their registers.

Providers of some types of out-of-school education may become inadvertently subject to the duty to provide information, by virtue of the threshold being set, for example, at a particular number of hours per day or week. As an example, if the threshold were set as 9 hours per week, this might capture a museum that offers an extensive educational programme for children, which is open to all members of the public. Without being able to exclude such cases from scope, we could place undue requirements on such providers, and that might serve to discourage the provision of these activities.

Therefore, this power will be used to prevent cases like these, and potential unforeseen providers being brought into scope of the duty, and to adjust the exceptions to eligibility due to any changes to the threshold.

Regulations to set a monetary penalty for failure to provide information and setting the increase in the penalty if provided late

This power will be used to set the level of the monetary penalties that in-scope out-of-school education providers could be subject to if they refuse to provide information for local authority registers on request, or if they provide incorrect information. The power will be available to adjust the level of the penalties as may be needed from time to time, such as to keep in line with inflation and to keep in line with other comparable penalties. It may also be necessary to adjust the level of the penalty in light of experience of the system in operation, as the out-of-school education sector is varied, and it is not easy to predict what level of penalty will be most effective.

Regulations prescribing information local authorities must provide to the Secretary of State/ Welsh ministers

The government will use this power to stipulate which information contained within the registers must be provided by local authorities to the Secretary of State or Welsh ministers upon request. This could include the provision of information such as:

- The number of children on register.
- Details of the child's education provision.
- Ethnicity.
- Sex.
- Reasons for electing to home-educate (if applicable).
- Whether the child has any SEND/additional learning needs (ALN).
- Whether the child has an EHC plan or Individual Development Plan.
- Whether the child is or was a child in need, looked after child, subject to a Section 47 enquiry, or on a child protection plan.
- Whether the child is missing education.

The government would use this data to evaluate the impact of the registration system on local authorities and eligible families. The information will help inform policy development, for example in relation to the types and level of support needed by families and the resources of local authorities to deliver that support, and whether particular groups need more support than others and why. We will use the data to understand the reasons why parents home educate a child or why the child has been placed in alternative provision and identify any trends or common issues within a particular area. This could help improve understanding of SEND/ALN or issues like bullying or mental health.

Regulations prescribing persons to whom Secretary of State/ Welsh ministers may provide information

This power will allow the Secretary of State and Welsh ministers to share information from registers with prescribed persons. This is to ensure that professionals, organisations or education settings that are there to support – and, where necessary, protect - children on the registers have a full and accurate picture of a child. The powers will enable the department to create a consistent view of a child's education – particularly if they have moved across different education settings — and share this information back to relevant local authorities, education settings or professionals so that the child could benefit from more tailored support. The Secretary of State and Welsh Ministers will therefore need to be able to share certain information with relevant persons – for example, relevant local authorities, education providers, or other organisations connected with promoting the education or wellbeing of children in England and Wales.

Prescribed form of School Attendance Order

Regulations will set a requirement for a standardised form for a School Attendance Order (SAO) that is issued by a local authority in England and Wales, including the format and wording used within it.

Prescribing a standard form for SAOs will ensure that such orders contain the right information for the parents on whom they are served and achieve the aim of consistency across all issuing local authorities, making the process clearer for local authorities and parents. Once the new form of SAOs has been prescribed and begun to be used in practice, it may be necessary to review the form to ensure it's as clear as possible for parents and local authorities.

Guidance to be given on registration of children not in school and use of School Attendance Orders

The power gives the Secretary of State and Welsh ministers the ability to issue statutory guidance to local authorities on how they must exercise their duties in relation to keeping registers and the SAO process. The final contents of the guidance will be subject to consultation with stakeholders; however, we would expect it to include information such as:

- How local authorities should engage with home educating families in relation to Children Not in School registers.
- Entering / recording of information on registers.
- Procedures for changes to registers (amendments, deletions).
- Information sharing practices.
- Guidance on the minimum requirement of support to offer to home educators.

- Considering the home and other learning environments.

It is intended that this guidance will be issued when the relevant provisions of the Bill come into force.

Key questions and answers

Is the intention of the Children Not in School measures to criminalise home-educating parents?

No. The measures aim to support local authorities to identify all children not in school in their areas, so they can – with partner agencies - fulfil their existing education and safeguarding duties.

Most parents who home educate do so in their children's best interests, and many home educated children receive a suitable education that supports them to achieve and thrive. These measures are not intended to criminalise the parent, but to provide children with a route to suitable education and protect those at risk of harm.

Why are you requiring consent to home educate for children on Child Protection Plans, or who are subject to Section 47 enquiries?

While home education is not a safeguarding risk in itself school can be a protective factor for children who are at risk of harm. The proposal to require local authority consent for children on child protection plans, or who are subject to Section 47 enquiries, before they can be home educated will help ensure that the most vulnerable children do not slip under the radar of professionals who are there to protect them.

Additionally, broadening the SAO process to consider suitability of home and learning environments will support all children to receive suitable education in safe settings.

These measures complement wider government action to keep children safe and help families thrive, including:

- Almost doubling - to over £500m - direct government investment in preventative services for children and families from April 2025.
- Testing, through the £45m Families First Partnership Programme, new ways to reform every part of the children's social care system, helping children to stay with their families in safe and loving homes, whilst protecting vulnerable children where needed.
- Strengthening the role of childcare and education settings in local safeguarding arrangements.

- Improving information sharing between agencies, including through a consistent identifier for children.
- Establishing multi-agency child protection teams.

Registration of full-time settings

This measure makes changes to section 92 (s.92) of the Education and Skills Act 2008 (“the 2008 Act”) and, as a result, changes the settings regulated under Chapter 1 of Part 4 of the 2008 Act. In practice, this measure extends the regulatory regime found in Chapter 1 of Part 4 so that it applies to more full-time educational settings in England in addition to independent schools.

What does this measure do and why do we need it?

S.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 and as a result is required to register with the Secretary of State. The definition includes “independent schools”.

Independent schools are settings which satisfy the definition found in section 463 of the Education Act 1996 - any school at which full-time education is provided for (a) five or more pupils of compulsory school age, or (b) at least one pupil of that age for whom an EHC plan is maintained (or an individual development plan) or who is looked after by a local authority (within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Wellbeing Act (Wales) 2014) and which is not a school maintained by a local authority or a non-maintained special school). However, there are some full-time educational settings which, because they offer a very narrow education, are not covered by the definition of “independent school” and so operate without being regulated under Chapter 1 of Part 4 of the 2008 Act.

This proposed change will amend s.92 to bring these full-time educational settings into the regulatory regime which already applies to independent schools.

Settings captured by this change will be required to apply to register with the Secretary of State and, once registered, will be subject to regular inspection against specified standards,

Proprietors of settings who do not wish to register will be required to either change their provision and operate part-time (and so allow the children to receive a suitable full-time education elsewhere) or cease operating. Those proprietors who continue to operate a full-time independent educational institution, without registering, will be committing a criminal offence.

This change promotes the principle that full-time independent educational institutions, those responsible for children’s educational wellbeing, should be regulated to ensure that they help children achieve and thrive. It extends the protections which already apply to children who attend registered independent schools to more children.

What is the effect of the legislation?

Chapter 1 of Part 4 of the 2008 Act imposes certain obligations on proprietors of independent schools. Among other things, they are required to register with the Secretary of State (because in running an unregistered independent school they will be committing a criminal offence under s.96 of the 2008 Act) and their schools are subject to regular inspection against the independent school standards (s.109 of the 2008 Act). The 2008 Act also provides mechanisms which allow the Secretary of State to act in cases where there is a threat to children's wellbeing. This system gives assurance that the proprietors of independent schools are providing an education which helps children achieve and thrive.

The effect of this legislation is to extend this existing regime so that it applies to full-time independent educational institutions which are not "independent schools" and so extend the protections found in Chapter 1 of Part 4 of the 2008 Act to the children attending these settings.

This legislation also removes from the scope of the 2008 Act part-time educational settings, which at present may be regulated under the 2008 Act. In practice, however, these provisions have never fully been in force and so educational settings which do not operate on a full-time basis will not be impacted by this change.

How will this work in practice?

This measure extends the existing regulatory regime found in Chapter 1 of Part 4 of the 2008 Act, and which applies to independent schools, to other full-time educational institutions that provide full-time education for at least five children of compulsory school age, or for one or more such child who is "looked after by a local authority" or who "has special educational needs" (as defined in the Bill). Whether a setting is providing "full time" education for a child will be determined by reference to the test of whether the child could be expected to receive all or a majority of their education at the setting. An exhaustive list of factors is to be taken into account in deciding whether that test is met:

- the number of hours per week children are expected to attend.
- the time of day at which children are expected to attend.
- and the number of weeks per academic year that children are expected to attend.
- other factors, such as the nature or breadth of education provided will not be a relevant factor in this consideration.

The government intends to produce guidance to assist proprietors understand how these factors interact with each other to constitute full-time education. This will provide clarity to proprietors of educational settings, and others, on whether the regulatory regime found in Chapter 1 of Part 4 of the 2008 Act applies.

Additional information on delegated powers

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

The first set permits the Secretary of State to, in the Act, change the list of factors to be taken into account and prescribe how they are to be interpreted (so-called “Henry VIII powers”), and to prescribe how the factors are to be taken into account. The powers are intended as an anti-avoidance measure and to allow the regulatory regime to respond to novel educational approaches taken in future and so ensure that the aims of the legislation are fulfilled.

The second set 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 2008 Act, usually because they are more appropriately regulated in other ways. This delegated power allows the Secretary of State to designate other types of setting as “excepted institutions”. It is intended that this power will be used to respond to novel approaches to educational provision which it would be inappropriate to regulate via the 2008 Act.

The third delegated power will permit other legislation which applies to “independent schools” to be applied to independent educational institutions. This will ensure other regulatory obligations which protect children in independent schools can be applied to protect children in other independent educational institutions once Parliament has agreed in principle to the regulation of these under Chapter 1 of Part 4 of the 2008 Act.

Key questions and answers

Will changes to the registration requirement prevent parents from securing the faith-based education that they want for their children?

Every child should receive an education that allows them to achieve and thrive. That is our aim in bringing forward this measure. This does not prevent parents securing a faith-based education for their children, if that is their wish. Neither does it presuppose that the settings to be brought into regulation are unsafe or unsuitable.

Many registered independent schools already provide a faith-based education which combines a substantial focus on religious education with the broad education required to meet the independent school standards.

If you think these settings are unsafe or unsuitable, why are you not closing them down?

The government does not have evidence that the settings to be brought into regulation are actively unsafe or unsuitable for children, although some may be.

This measure is aimed at giving greater assurance with regards to the education offered to children in these settings and so extend the protections which apply to children who attend independent schools to more children.

The government already has many options to intervene against an educational setting which is actively unsafe or unsuitable for students and will consider these in all cases as appropriate.

Independent education setting and safeguarding: due diligence and standard setting

Proprietors of independent schools are required to ensure that they meet the Independent School Standards (“ISS”) at all times. This measure, among other changes, enables the Secretary of State to set standards that require an individual proprietor or those with certain significant roles in a proprietor body to be, in the opinion of the Secretary of State “fit and proper”-i.e. “a fit and proper test”. Such standards could supplement the existing due diligence checks which are already taken before an individual proprietor, or Chair of a proprietor body, is approved for the running of an independent school.

The second measure within this clause allows a standard to be prescribed by reference to whether the proprietor of an independent educational institution has regard to guidance issued, or a document published, by the Secretary of State from time to time.

This measure also allows the First-tier Tribunal (“FTT”) to make a finding itself in relation to an application or an appeal relating to these standards.

What does this measure do and why do we need it?

Under section 94 of the Education and Skills Act 2008 (“the 2008 Act”), the Secretary of State is required to make standards. These are the Independent School Standards (“ISS”) that proprietors of independent educational institutions are required to comply with and if they do not, then they face the possibility of regulatory or enforcement action.

This measure introduces new powers relating to the suitability of proprietors of independent educational institutions. In particular, new standards may be made which will require that an individual proprietor, or an individual with control or legal responsibility for a proprietary body must be a person who is, in the opinion of the Secretary of State, a fit and proper person to be involved in the running of an independent educational institution.

This proposal addresses an identified gap in our regulatory regime. At present the Secretary of State is required to make specified ‘due diligence’ checks on prospective proprietors. Broadly speaking this consists of identity checks, DBS checks and Section 128 checks. These checks are narrow in scope and in some cases allow individuals who may not be suitable to become a proprietor. For example, this may include individuals who have engaged in serious financial misconduct. The change will allow the Secretary of State to make judgements about who is fit and proper, over and above mandatory criteria already set out in the standards.

Our planned change is targeted at preventing, in the small number of cases like these that are received annually, unsuitable individuals being involved in the running of independent educational institutions and so be responsible for students' wellbeing.

Our second measure will put beyond doubt that the Secretary of State may make standards requiring that proprietors must have regard to guidance, or a document published by the Secretary of State.

The measure allows determination by the FTT as to whether persons are fit and proper.

What is the effect of the legislation?

The changes to the legislation will give the government the power to prescribe, by regulations, a standard requiring a proprietor to be a fit and proper person, meaning that an application to register a new independent school, or make a material change to change a proprietor, can be refused when, in the opinion of the Secretary of State, a new proprietor is not fit and proper.

The second part of the measure will put beyond doubt that proprietors of independent schools must have regard to guidance, or a document published, by the Secretary of State.

The measure allows the FTT to take a different decision to that of the Secretary of State in determining an application or appeal in relation to these standards.

How will this work in practice?

The fit and proper person changes are an extension of the existing power to make provision about the suitability of proprietors. In particular, they allow for discretion to be conferred on the Secretary of State to decide whether someone is fit and proper to participate in the management of an independent educational institution. This will allow the Secretary of State to exclude those who are unsuitable to be involved in the running of independent educational institutions.

This measure will also put beyond doubt that standards can be made requiring proprietors to have regard to other guidance, and documents published, by the Secretary of State. The FTT may determine that for the purpose of the application or appeal, that the relevant person was fit and proper even if that opinion differs to that of the Secretary of State.

Key questions and answers

How will suitability be determined?

It is important that proprietors of independent educational institutions are suitable to carry out the role. Guidance will be published which sets out what will be considered in determining suitability in terms of a fit and proper person.

Will there be a right to an appeal against a decision to deem someone not fit and proper?

Existing rights of appeal open to proprietors and prospective proprietors will remain. Full guidance will be published, which will set out what will be considered in determining suitability, which should assist individuals in deciding whether or not they may be deemed fit and proper to be running such a setting.

Independent education setting and safeguarding: suspension of private school registration and boarding

Independent schools are primarily regulated under Chapter 1 of Part 4 of the Education and Skills Act 2008 (“the 2008 Act”). Section 120 (s.120) of the 2008 Act permits the Secretary of State to apply to the courts for an emergency order which, amongst other options, would de-register it (effectively close it permanently) in cases where a “student at the institution in question is suffering or is likely to suffer significant harm”. This measure supplements this existing emergency power by allowing the Secretary of State to suspend the registration of a registered independent educational institution temporarily where the Independent School Standards (“ISS”) (or EYFS if applicable) are not being met and as a result one or more students will or maybe at risk of harm at the setting. Outright permanent closure under s.120 may be considered inappropriate even in an urgent situation – for example, if it appears that the setting has the capacity to improve quickly

What does this measure do and why do we need it?

Currently, the only measure that the Secretary of State has available to immediately address risks at an independent school with serious safeguarding failings is the emergency power under s.120 of the 2008 Act. Under s.120, the Secretary of State may apply to a Magistrates’ Court for:

- An order imposing a relevant restriction on the proprietor.
- An order that an institution is removed from the register.

The court may only grant an order where it appears that a student at the institution in question is suffering or is likely to suffer significant harm.

In the situation where this action is typically appropriate, issues relating to an institution are rarely limited to a specific concern about its operation or part of its premises. An institution will generally have a widespread set of failings. Therefore, often practically, an application under s.120 is generally for de-registration (rather than the imposition of a relevant restriction). However, given its impact on the proprietor, staff, students and parents, because de-registration in essence means immediate and permanent closure, it is a severe option, which in some circumstances may not be appropriate.

The Secretary of State can also take enforcement action against independent schools under s.116 of the 2008 Act whereby a relevant restriction may be imposed on an independent school in order to motivate improvement or a school may be removed from the register. However, this process takes a considerable amount of time as it requires the school to have been given the opportunity to produce an action plan and implement it and often a number of inspections are required during the course of the process. Further,

an appeal against this decision suspends the enforcement action until the appeal is resolved.

This measure will allow the Secretary of State to temporarily suspend the registration of an independent educational institution (and also put in place a stop boarding order if applicable) in order to allow a proprietor a period of time to make the necessary changes/improvements to ensure the safety of students attending the setting. If those improvements cannot be made within the initial suspension period, then it may be extended to allow the proprietor sufficient time. Equally, if the proprietor can demonstrate that the necessary changes have been implemented ahead of the end of the suspension period, then the suspension must be lifted in order that students can return to the setting.

This measure therefore is necessary to give the Secretary of State more flexibility to respond to risks of harm while, where necessary, minimising disruption to students' education.

What is the effect of the legislation?

This measure allows the Secretary of State to suspend the registration of an independent educational institution where one or more students at the setting will or may be exposed to a risk of harm due to a breach of the Independent School Standards (or EYFS). During the period of suspension, it would no longer be lawful to provide education or supervised activity at the institution. In effect the institution will be required to close for the period of the suspension. In addition, where an institution provides boarding accommodation, where the Secretary of State suspends the registration, she may also impose a requirement to "stop boarding". Again, in essence this will require the boarding accommodation to be closed for use to students.

A proprietor who breached a suspension or a stop-boarding requirement (subject to certain defences) would be committing a criminal offence if they allowed this to happen; there is an existing similar offence of operating an independent school without registration. These new offences would be summary offences and punishable by up to six months imprisonment and/or an unlimited fine.

How will this work in practice?

This proposed power may only be used if the Secretary of State is satisfied that one of more of the standards prescribed under section 94(1) of the 2008 Act (or any of the requirements in the Early Years Foundation Stage, if applicable) is or are not being met, and has reasonable cause to believe that a student at the institution will or may be exposed to the risk of harm as a consequence.

If a school is suspended, what happens to the students?

Students will not be able to be educated at the school for the period of suspension. The Secretary of State will always work with relevant local authorities to ensure that options are clear to parents and alternative places are found where this is appropriate. While the school is suspended, all the normal education options (away from the setting) will be available to those students, such as applying for a state school place, seeking a school place in a different independent school or elective home education. Suspension is a very serious step that will inevitably disrupt students' education. In deciding whether to suspend the registration of a setting, the effect of this disruption will be balanced against the risk of harm to students. The Secretary of State only intends to use these powers in the most serious cases.

Where students board at a setting, the Secretary of State will work with relevant local authorities to ensure that students are able to return home safely.

Once the suspension is lifted on the school, students can resume their education at that setting if their parents wish.

Independent education setting and safeguarding: private school deregistration - appeals

In a relatively small number of cases, the Secretary of State determines that an independent school's very serious and/or very long running failures to meet the Independent School Standards (ISS) justify the de-registration (effective closure) of that school in order to promote the wellbeing of the students currently attending the setting. This measure changes how appeals against these decisions are determined by the First Tier Tribunal. There will be a requirement in these cases that the Tribunal has due regard to whether the school will meet the ISS and the Early Years Foundation Stage (EYFS) on an ongoing basis. It also puts the burden of proof on the appealing proprietor to demonstrate that there is likely to be future compliance.

What does this measure do and why do we need it?

An enforcement decision to deregister an independent school is very serious, as it requires the school to close. It is very common for a proprietor to appeal a deregistration decision, although in some cases they withdraw their appeal if a further inspection shows that little progress has been made in meeting the ISS. The Secretary of State ordinarily withdraws from defending deregistration appeals if re-inspection finds that significant progress in meeting the ISS has been made, because the aim of the regulatory and enforcement regime is to secure improvements at schools so that they are again providing a safe and suitable education; not to close them down.

Currently, a proprietor may successfully argue, that a decision to de-register should be overturned, by making sufficient improvements to meet the ISS by the time of the appeal hearing. However, the improvements may be short-lived, with the Secretary of State returning to regulatory and enforcement action because the school does not have the capacity or willingness to sustain long-term compliance with its regulatory obligations. This creates a number of difficulties in that schools with severe and/or persistent, long-term failings are able to avoid deregistration by making temporary improvements to meet the ISS by the time of the appeal hearing, even if their history suggests they will relapse quickly. Further, the time it takes for deregistration decisions to take effect means that persistently failing schools can remain open for lengthy periods. This is very damaging to the interests of students, some of whom may be attending such schools for many years while it goes through repeated cycles of improvement and deterioration.

The government believes that to tackle this issue at its root it is necessary to change how these de-registration appeals are determined. It should be the case that the Tribunal have due regard to future compliance, and therefore this measure imposes an express obligation to do so, whilst in addition it places the burden of proof on the appealing

proprietor to demonstrate that there is likely to be compliance with the ISS on an on-going basis. This is to mitigate against the risk of failing schools continuing to provide a poor education or to inadequately safeguard their students by not putting in place sufficiently robust measures to continuously meet their regulatory obligation.

A separate change is being made as part of this measure. This change, found in clause 35, provides clarity that a registered setting may be voluntarily de-registered with the written agreement of the proprietor.

What is the effect of the legislation?

This measure will change how the Tribunal considers de-registration appeals. It reverses the burden of proof so that it is for the appealing proprietor to demonstrate they have capacity to sustain compliance with the ISS (and EYFS as relevant) in the future, rather than it being for the Secretary of State to demonstrate to the contrary.

This legislative change will ensure more consistent compliance with the ISS (and EYFS as relevant) and provide a mechanism so that the Secretary of State can more effectively de-register (effectively close) settings which, are not consistently meeting the ISS over a long period of time and are putting students at risk.

How will this work in practice?

The burden of proof will be on the proprietor, who is appealing, to demonstrate to the Tribunal (on the balance of probabilities) that there is likely to be future compliance with the ISS (and EYFS when appropriate).

Amending the legislation in this way should in the fullness of time, have a deterrent effect and therefore, a reduction in de-registration appeals in due course.

Key questions and answers

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

This change to the appeals regime will only apply where an independent educational institution has been found to have failed to meet one or more of the standards, and an enforcement decision has been taken to de-register that institution. This does not relate to institutions that are consistently compliant with their obligations.

This measure will allow the government 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 is also likely to provide certainty for parents and other stakeholders more quickly after a deregistration decision has been taken because

proprietors at a failing institution will be aware that they are less likely to succeed on appeal and therefore, not appeal or withdraw from one more quickly.

Why can schools not be given a further chance to improve before being deregistered under these circumstances?

For independent schools this measure will only apply where schools have failed to meet the ISS and/or the EYFS to the extent that a decision to de-register has been taken. The school will have been required to provide an action plan(s) and therefore, 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 required standards, improvement will not be secure. In these circumstances, it is appropriate that schools are required to close as quickly as possible. While this will disrupt the education of students 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.

Independent education setting and safeguarding: material changes

An application for registration of an independent educational institution (a setting which meets the definition found in section 92 of the Education and Skills Act 2008) must contain certain information, which is set out in the *Provision of Information Regulations* (2018)¹⁰. Once an application for registration is approved, certain details related to the institution are added to the Register of Independent Schools. If an institution wishes to amend some of these registered details, prior approval must be obtained from the Secretary of State through a material change application.

Amongst the principal changes, the measures will redefine what is a material change, introducing three new types, in addition to those currently in operation. The first relating to where an institution occupies a building, routinely for student use (or ceases to). The second relating to where an institution becomes (or ceases to be) organised to make special educational provision for students with special educational needs (becomes or ceases to be “a special institution”). The third relating to where a special institution changes the types of special educational need it caters for.

The measures will also provide a power for the Secretary of State to prescribe through regulations how an institution is to apply for a material change approval and will also ensure that the Secretary of State has a suitable discretion to approve material changes, based on the interests of students and whether relevant standards will be met soon after the change is made.

The measures will also allow proportionate action to be taken, if an institution makes an unauthorised material change, which in some cases may put students at risk of harm.

What does this measure do and why do we need it?

The current regime includes a requirement that an institution needs to apply for a material change approval when any student with a special educational need is admitted. This measure will provide for a new material change regime so it will instead become a material change where an institution becomes or ceases to be a “special institution” (an institution specially organised to make special educational provision for students with special educational needs). In addition, it will become a material change when a special institution wants to change the types of special educational needs it caters for. A

¹⁰ *Provision of Information Regulations* (2018). GOV.UK.
<https://www.legislation.gov.uk/ukSI/2018/901/made>

regulation-making power is provided to define what changes in the types of special education needs that are catered for, are a material change for this purpose.

Whilst a change of an institution's registered address is a material change, changing what buildings are occupied for student's use, either at or away from the registered address, is not. This means there is no prior assurance that new buildings are safe for use and that the requirements of the *Independent School Standards*¹¹ (or EYFS if applicable) will be met in relation to them. The measure therefore introduces a new material change related to where an institution occupies a building for student use for a period of six months or more (or ceases to do so for more than six months).

The measure also adjusts the discretion that the Secretary of State has to approve a material change. The Secretary of State will be able to approve a material change, where it is in the best interest of student's education, welfare or safety, even if the institution will not immediately meet all relevant Independent School Standards following the change but is likely to do so in a reasonable time following approval. This may help struggling schools seeking to reorganise to facilitate future improvement.

Finally, the measure will also increase the Secretary of State's options to take proportionate action against institutions that make unauthorised material changes. As an example, currently, if a school were to exceed its registered capacity, without applying for and receiving approval for a material change, the only statutory power to specifically address this is to deregister the school, which amongst other things requires students to find new school places. This measure will enable the government to impose a relevant restriction, for example, prohibiting new admissions. This would require a school to go back to its registered capacity, over time, as students leave and without there being a disproportionate impact on current students.

Overall, the measures will create a material change regime that is clear, proportionate and enforceable. This will provide parents with greater assurance that independent educational institutions are safe and suitable, operating within registration and inspected accordingly.

What is the effect of the legislation?

Currently material changes are regulated under the Education Act 2002 ("the 2002 Act"), with the provisions on material change in the Education and Skills Act 2008 ("the 2008 Act") not fully commenced. The provisions in the 2008 Act do not cover as many types of material changes as the 2002 Act, if an institution is not a special institution. The

¹¹ *Independent School Standards* (2014). GOV.UK. <https://www.legislation.gov.uk/uksi/2014/3283/contents>

legislation will rectify this so that all those things which are material changes in the 2002 Act (with the exception of starting or ceasing to admit one or more pupils with special educational needs) become material changes under the 2008 Act for all types of institutions. Some other things will also be material changes – namely the use of “additional premises” (new buildings to be occupied by an institution for student use for more than six months), becoming or ceasing to be a special institution and in the case of such an institution, changing the types of special educational needs catered for. It will, therefore, redefine what constitutes a material change.

It will also provide an alternative remedy for an unapproved material change, in broad terms, the imposition of a restriction on how an institution operates.

It will also enable material change approval to be granted where an institution is not meeting (or is not immediately likely to meet) the Independent School Standards (or EYFS) at the time the application for approval is considered but where making the change would likely assist the institution’s performance against the Independent School Standards to the benefit of students.

It will provide a power to the government to prescribe, by regulations, how an application for material change approval is to be made and what information such an application must contain.

How will this work in practice?

The introduction of an amended regulatory regime will apply to all registered institutions. *Material change* guidance (2023)¹² will be updated to provide further details in relation to the options available to the Secretary of State to take proportionate action against institutions that make unauthorised material changes and further explain the new legislation as to what constitutes a material change under the redefined regime.

The *Enforcement and Policy* statement (2019)¹³ will be updated to explain how the department will consider using its new power, where an institution has made an unauthorised material change.

¹² Independent schools: applying for approval to make a material change (2023). GOV.UK. https://assets.publishing.service.gov.uk/media/655cd3d1d03a8d001207fdff/Independent_schools_-_applying_for_approval_to_make_a_material_change.pdf

¹³ Independent schools: regulatory and enforcement action policy statement (2019). GOV.UK. https://assets.publishing.service.gov.uk/media/5d07a0a6ed915d0a7ec8b9e1/Ind_schools_enforcement_policy_statement_post_consultation_130619.pdf

Additional detail on delegated powers

There are two significant new regulation-making powers associated with these measures. They relate to:

Applications for approval of material change and for initial registration: power to prescribe types of special educational need

This power enables Section 98 of the 2008 Act to be amended so that the Secretary of State may prescribe the types of special educational needs that are to count for the purposes of a material change involving a change in the types of need a special institution caters for.

It will also enable regulations, under section 98, regarding the content of applications to register an independent educational institution, to prescribe exactly what types of special educational needs an application is to cover.

Applications for approval for material change: power to prescribe information

This power enables the Secretary of State to prescribe, by regulations, how any application for material change should be made and what information such an application must contain.

Key questions and answers

Why is it important that independent educational institutions seek approval through a material change application, when they are required to do so?

Before institutions are registered, they are subject to a pre-opening inspection that tests whether they are likely to meet the Independent School Standards (and EYFS, if applicable) once registered. This allows parents, local authorities and others to have confidence that an institution provides a suitable broad education and is safe.

Material changes may affect an institution's ability to meet relevant standards. For example, an unsuitable new proprietor could create safeguarding risks, the institution may not be prepared to provide a suitable education to new year-groups and increasing capacity could create health and safety risks. The government, therefore, needs to be able to do appropriate due diligence before approving such changes, which can include inspection.

Why is there a need for regulatory reform?

The proposed measures will mean that it is a material change for an institution to become (or cease to be) specially organised to cater for students with special educational needs (to become or cease to be “a special institution”) or for such an institution to change the type or types of special educational needs it caters for.

In addition, the measures will create a vehicle, a regulation-making power, to clarify what kinds of special educational needs are significant for the purposes of the material change regime where a special education institution changes its provision.

This will provide greater clarity and transparency to parents, commissioners and inspectorates when both choosing and inspecting independent educational institutions.

Independent education setting and safeguarding: Ofsted powers of entry and investigations

Chapter 1 of Part 4 of the Education and Skills Act 2008 (“the 2008 Act”) already contains several criminal offences that may be committed by those responsible for independent schools. The most common offence in this area is the offence under section 96 of the 2008 Act – conducting an independent educational institution which is not registered (“unregistered independent school”). His Majesty’s Chief Inspector (HMCI) may already carry out no-notice inspections of settings suspected of being the site of this offence. These measures increase HMCI’s ability to carry out these inspections and identify criminal behaviour which may be putting children at risk from harm.

What does this measure do and why do we need it?

HMCI may already inspect suspected unregistered independent schools. The purpose of these inspections is to gather evidence to determine whether a criminal offence is being, or has been, committed and, if so, whether, regulatory action, up to and including, criminal prosecution is justified. The current powers available during these inspections are found in section 97 of the 2008 Act.

The government’s experience is that these powers are too limited to allow effective investigations of some settings which are operating unlawfully; it is too easy for those committing a criminal offence to prevent the discovery of evidence of this and so avoid prosecution. A stronger investigation regime is needed to allow inspections of suspected unregistered independent schools or breaches of relevant restrictions in registered independent schools to proceed and find evidence of wrong-doing, and those responsible to be identified and prosecuted where this is appropriate.

What is the effect of the legislation?

This legislation broadens and strengthens HMCI’s existing powers of entry and investigation in this area. These strengthened powers will be available during inspections to determine whether one (or more) of the specified offences is being, or has been, committed, or evidence of this may be found.

In these cases, the legislation permits HMCI to act in stronger ways than at present. Among other things, the legislation provides for mechanisms to allow HMCI to apply for a warrant to facilitate entry into settings, and act in a more thorough fashion once present in a setting; for example, HMCI may “search” rather than inspect, and may require people present during an investigation to provide specified information or assistance.

These powers will not apply during HMCI's routine activity during inspections of a school's performance.

In addition, a separate clause introduces new preventative orders designed to stop those who have been found guilty of conducting an illegal unregistered independent school from again holding positions of responsibility over children's educational wellbeing. These orders can impose positive or negative obligations on the recipient and a breach of these orders will be a criminal offence.

How will this work in practice?

HMCI may inspect settings suspected of being the site of one (or more) of the criminal offences in Chapter 1 of Part 4 of the 2008 Act. This measure broadens and strengthens HMCI's powers during these investigations and permits HMCI to act in ways proportionate to their role to enter and investigate premises where HMCI has a reasonable belief that a criminal offence is being or has been committed or there is evidence of the relevant offence may be found on the premises.

These powers should ensure that in all cases HMCI is able to determine whether a criminal offence which puts children at risk of harm is taking place.

Key questions and answers

Will these powers apply to all inspections of independent schools?

No. The legislation is clear that these powers are only available to investigate the commission of the relevant offences specified in the legislation. These powers will not be available to Ofsted when inspecting independent schools against the Independent School Standards or any other routine activity.

Some part-time provision is very unsafe. Why don't these powers allow inspections of these?

These powers are aimed at improving Ofsted's capacity to inspect settings suspected of being the site of a relevant criminal offence (or which contain evidence of the committal of a relevant offence).

These will, in the main, be full-time settings which are operating in breach of their regulatory obligations.

Separate powers already exist to allow the government and partners to intervene where unregulated part-time provision is unsafe.

How many unregistered independent schools are there and how many children attend unregistered schools?

Those conducting an unregistered independent school are committing a criminal offence and do not maintain a relationship with the department. Accordingly, the department does not retain data about the number of unregistered schools operating in England nor the number of children attending these settings.

Since 2016 Ofsted have identified 172 unregistered independent schools. The real number is likely higher but limitations in the existing inspection powers mean that these go undetected.

Independent education setting and safeguarding: Ofsted information sharing

Under section 106 (s.106) of the Education and Skills Act 2008 (“the 2008 Act”) the Secretary of State may approve (or withdraw approval from) a body to carry out inspections of registered independent educational institutions (instead of by His Majesty’s Chief Inspector of Education, Children’s Services and Skills – HMCI – who heads Ofsted). Approved bodies are known as ‘independent inspectorates’.

At present, the Independent Schools Inspectorate (ISI) – a body approved to inspect “association” independent schools – is the only independent inspectorate.

This measure facilitates joint working between ISI and Ofsted by clarifying that information held by HMCI can be passed to ISI (or another independent inspectorate if there were one) for the purposes of assisting inspections by the latter. This measure also varies the existing obligation placed on Ofsted to report at least annually on the performance of inspectorates approved under s.106, and a similar obligation already placed on Ofsted through the Children Act 1989. These obligations, found in s107 of the 2008 and s87BA of the Children Act 1989, are being replaced with a more flexible approach, allowing the Secretary of State to require such reports as and when she wishes and on all independent inspectorates or only one. This will allow more frequent and/or precise reports to be commissioned if necessary.

What does this measure do and why do we need it?

This measure makes two changes to the relationship between Ofsted and the independent inspectorates, currently only ISI. The need for these measures is informed by the government’s experiences of how best Ofsted and ISI interact. Two distinct changes are proposed to that relationship, both with the aim of facilitating closer working between Ofsted and ISI.

First, the existing obligation on Ofsted to report at least annually on the other independent inspectorates is being replaced with a more flexible obligation which permits the Secretary of State to require such reports as she desires – either more or less frequently. Second, any ambiguity about whether Ofsted (as a public body) can share information directly with ISI is being removed. This will allow the freer flow of information between both inspectorates and facilitate closer and joint working for the purpose of keeping children safe.

Both measures aim at clarifying and strengthening the relationship between both inspectorates, to improve the performance of both.

What is the effect of the legislation?

This proposal makes changes to s.107 of the 2008 Act (and a similar change to s.87BA of the Children's Act 1989), which change how Ofsted is required to interact with the independent inspectorates and report on the performance of both the 'independent inspectorates' of private schools and inspectors appointed under s87 of the Children's Act 1989.

How will this work in practice?

It is already the case that Ofsted and the Independent Schools Inspectorate ("ISI") work closely to ensure the protection and wellbeing of children in independent schools. These changes facilitate the smoother working of that relationship.

The first practical impact will be to remove HMCI's existing obligation to report on the Independent Schools Inspectorate. Instead, HMCI will be required to report as and when commissioned by the Secretary of State.

The second practical impact will simplify how information held by Ofsted on an independent school, for instance, information on historic safeguarding risks, is passed to ISI to inform their inspection work. At present, the department must act as a conduit for such information meaning that information-sharing can be inefficient. This measure removes this unnecessary step in the process.

Key questions and answers

Why is a private organisation like the Independent Schools Inspectorate involved in inspecting schools?

The current system of inspection has its genesis in the Education Act 2002 ("Act 2002") which introduced regular inspections of independent schools against standards set out in regulations.

At that time the Independent Schools Inspectorate (ISI) had been successfully inspecting schools under an informal agreement for over four years. The 2002 Act recognised ISI's experience in this area and provided the statutory basis for it to continue to inspect certain independent schools.

ISI approval as an inspectorate is kept under review and ISI was most recently approved to inspect certain independent schools in 2023.

Are inspections by Ofsted and ISI the same?

Both inspectorates inspect against the Independent School Standards (ISS) which all independent schools are required to meet at all times.

Inspectorates are responsible for developing their own inspection frameworks. Ofsted and ISI operate different frameworks, with different quality judgements but we are content that each inspectorate provides schools with a vigorous inspection which prioritises students' wellbeing. ISI's framework must be approved by the Secretary of State as a condition of its approval.

No matter which inspectorate or framework is used for independent school inspection the consistent element is judging whether schools meet the standards laid out in regulations – the ISS. All independent schools must meet these standards at all times or face regulatory and enforcement action.



Department
for Education

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