



## BRIEFING PAPER

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# Independent schools (England)

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## Introduction

Around 7% of pupils in England attend schools that are not funded by the state.<sup>1</sup>

The term 'independent school' in legislation includes academies, which are state-funded, but more commonly the term is used to refer to schools that do not receive state financing, but are instead principally funded through the fees paid by pupils.

This briefing is concerned with **fee-charging** independent schools.

Independent schools are not subject to many of the requirements placed on state-funded schools, and in particular those placed on local authority maintained schools. Their freedoms include greater autonomy relating to the curriculum, in hiring teachers, and in their admissions policies.

These schools are, however, required to register with the state and are subject to the independent school regulations that prescribe certain aspects of their operation. Independent schools are subject to inspection, by Ofsted or other accredited school inspectorates.

Independent schools are also, as educational institutions, able to take charitable status, which has associated advantages including relief from business rates. The Government states that around half of independent schools have this status. This is a politically contentious issue, with recent proposals from both Labour and the Conservatives seeking respectively to remove independent schools' ability to take charitable status, or place conditions on their ability to do so.

This briefing provides a broad overview of issues relevant to independent schools that are frequently encountered by Members of Parliament in their work. It does not attempt to cover all issues relevant to independent schools.

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<sup>1</sup> [Figures provided by the Independent Schools Council](#)

# 1. Independent schools: overview and registration

## 1.1 What is an independent school?

Section 463 of the *Education Act 1996*, as amended, defines an independent school:

(1) In this Act “independent school” means 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 for whom a statement is maintained under section 324, 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 Well-being (Wales) Act 2014]),

and which is not a school maintained by a local authority non-maintained special school.

(2) For the purposes of subsection (1) (a) and (b) it is immaterial if full-time education is also provided at the school for pupils under or over compulsory school age.

This briefing is concerned with **fee-charging** independent schools.

Independent schools, as they will be discussed for the purposes of this briefing, are not funded by the Government, and are often referred to as private schools. They charge fees to attend in the absence of state funding.

All independent schools must be registered with the government and are inspected regularly.

Independent schools are exempt from many of the restrictions on local authority schools – for instance they do not have to follow national admissions policies (and many select by academic ability, as well as parental ability to pay fees), hire qualified teachers, or teach the National Curriculum.

## 1.2 Are academies independent schools?

Yes. Section 1A of the *Academies Act 2010* provides that, alongside other criteria, academies (including free schools) are independent schools with which the Secretary of State has entered into an academy agreement.

Academies, however, cannot charge fees, and so are outside of the scope of this briefing.

The Library briefing [FAQs: Academies and Free Schools](#), CBP 07059, provides information on academies.

## 1.3 Registration

Part 4, Chapter 1 of the *Education and Skills Act 2008* requires that independent schools in England must be registered with the Secretary of State for Education. It is an offence to operate an unregistered independent school. Regulations under section 94 of the 2008 Act set out the relevant standards it is necessary to satisfy for an independent school to register.

Department for Education advice on the [Registration of independent schools](#) provides more information. In particular, on the registration process, it states:

The Secretary of State must decide whether the independent school standards are likely to be met before a school can be registered. Once an application for registration has been received, the Secretary of State must notify Ofsted of it and Ofsted must then inspect the institution and make a report to the Secretary of State on the extent to which the school is likely to meet the independent school standards upon registration. [...] The Secretary of State will consider the report from Ofsted and any other evidence relating to the independent school standards which is available in coming to a decision. If the Secretary of State decides that the standards are likely to be met once the institution becomes registered as an independent school then it must be registered as such.<sup>2</sup>

A smooth registration process is expected to take approximately six months.

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<sup>2</sup> Department for Education, [Registration of independent schools](#), June 2017, p9-10

## 2. Independent School Standards

The standards independent schools in England must meet are set out in the *Education (Independent School Standards) Regulations 2014*, as amended.

The standards cover:

- Quality of education provided
- Spiritual, moral, social and cultural development of pupils
- Welfare, health and safety of pupils
- Suitability of staff, supply staff and proprietors
- Premises of and accommodation at schools
- Provision of information
- Manner in which complaints are handled
- Quality of leadership in and management of schools

Part C of the Department for Education advice on the [Registration of independent schools](#) provides more details on the standards.

### 2.1 Guidance

Following a [consultation](#) in 2018, the DfE published [non-statutory guidance](#) for schools on the Independent School Standards in April 2019.

Inspectors take this guidance into account when reporting on the extent to which independent schools are meeting, or are likely to meet, the standards.

The DfE also publishes wider information on the [regulation of independent schools](#).

## 3. Curriculum requirements

### 3.1 Overview

Independent schools are not required to teach the National Curriculum. Nonetheless, they are required to have a comprehensive curriculum in place for full-time teaching, appropriate to the ages of the children being taught.

The Department for Education advice on the [Registration of independent schools](#) sets out the areas which the curriculum at an independent school is expected to cover:

- **Linguistic:** this area is concerned with developing pupils' communication skills and increasing their command of language through listening, speaking, reading and writing - pupils must acquire speaking, listening and literacy skills. In all schools, except schools following the curriculum of another country where all pupils are temporarily resident in this country, if the principal language of instruction is not English, there must be lessons in written and spoken English;
- **Mathematical:** this area concerns pupils making calculations, understanding and appreciating relationships and patterns in number and space and developing their capacity to think logically and express themselves clearly. Their knowledge and understanding of mathematics should be developed in a variety of ways, including practical activity, exploration and discussion;
- **Scientific:** this area is concerned with increasing pupils' knowledge and understanding of nature, materials and forces and with developing the skills associated with science as a process of enquiry: for example, observing, forming hypotheses, conducting experiments and recording their findings. This does not necessarily require extensive practical work;
- **Technological:** Technological skills, can include the use of ICT; developing, planning and communicating ideas; working with tools, equipment, materials and components to produce good quality products; and evaluating processes and products. If a school does not allow the use of IT systems it should still teach pupils to be aware of the impact these can have in their lives;
- **Human and social:** this area is concerned with people and with their environment, and how human action, now and in the past, has influenced events and conditions. In most schools, the subjects of history and geography make a strong contribution to this area;
- **Physical:** this area aims to develop the pupils' physical control and co-ordination as well as their tactical skills and imaginative responses, and to help them to evaluate and improve their performance. Pupils should also acquire knowledge and understanding of the basic principles of fitness and health;
- **Aesthetic and creative:** this area is concerned with the processes of making, composing and inventing. There are

aesthetic and creative aspects of all subjects, but some make a particularly strong contribution including art, music, dance, drama and the study of literature because they call for personal, imaginative, and often practical, responses.<sup>3</sup>

## 3.2 Spiritual, moral, social and cultural awareness

Independent schools are also expected to ensure that they plan and provide effectively in order to develop pupils' spiritual, moral, social and cultural awareness.<sup>4</sup>

The DfE has published advice for schools on meeting the [Spiritual, Moral, Social and Cultural \(SMSC\) development standard](#).<sup>5</sup>

Regulation 5 of the *Education (Independent School Standards) Regulations 2014* sets out that:

- The standard about the spiritual, moral, social and cultural development of pupils at the school is met if the proprietor—
- (a) actively promotes the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs;
  - (b) ensures that principles are actively promoted which—
    - (i) enable pupils to develop their self-knowledge, self-esteem and self-confidence;
    - (ii) enable pupils to distinguish right from wrong and to respect the civil and criminal law of England;
    - (iii) encourage pupils to accept responsibility for their behaviour, show initiative and understand how they can contribute positively to the lives of those living and working in the locality in which the school is situated and to society more widely;
    - (iv) enable pupils to acquire a broad general knowledge of and respect for public institutions and services in England;
    - (v) further tolerance and harmony between different cultural traditions by enabling pupils to acquire an appreciation of and respect for their own and other cultures;
    - (vi) encourage respect for other people, paying particular regard to the protected characteristics set out in the 2010 Act; and
    - (vii) encourage respect for democracy and support for participation in the democratic process, including respect for the basis on which the law is made and applied in England;
  - (c) precludes the promotion of partisan political views in the teaching of any subject in the school; and

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<sup>3</sup> Department for Education, [Registration of independent schools](#), June 2017, p12-13

<sup>4</sup> Ibid., p13

<sup>5</sup> Department for Education, [Improving the spiritual, moral, social and cultural \(SMSC\) development of pupils Departmental advice for independent schools, academies and free schools](#), November 2013

(d) takes such steps as are reasonably practicable to ensure that where political issues are brought to the attention of pupils—

- (i) while they are in attendance at the school,
- (ii) while they are taking part in extra-curricular activities which are provided or organised by or on behalf of the school, or
- (iii) in the promotion at the school, including through the distribution of promotional material, of extra-curricular activities taking place at the school or elsewhere they are offered a balanced presentation of opposing views.

## British values

Changes were made to the independent school standards in 2014, following the ‘Trojan Horse’ allegations in Birmingham schools.

The changes require that proprietors of independent schools ‘actively promote’ the fundamental British values of democracy, the rule of law, individual liberty, and mutual respect and tolerance of those with different faiths and beliefs. Previously schools were required to ‘respect’ those values.

The Department for Education published [supplementary information](#) to the SMSC guidance on the changes in November 2014.

Section 4 of the Library briefing on [Counter-extremism policy in English schools](#), CBP 7345, provides more background on these changes.

## 3.3 Relationships and Sex Education

Currently, independent schools are not required to teach sex and relationships education (SRE). If they choose to do so, they are required to have regard to the Department for Education’s [Sex and Relationship Education Guidance](#), published in 2000.

This position, however, is changing following recent legislation.

Section 34 of the [Children and Social Work Act 2017](#) provides for relationships and sex education to be taught in all schools in England.

Section 34(1) states:

- (1)The Secretary of State must by regulations make provision requiring—
  - (a) relationships education to be provided to pupils of compulsory school age receiving primary education at schools in England;
  - (b) relationships and sex education to be provided (instead of sex education) to pupils receiving secondary education at schools in England.

The parental right to withdraw children from sex education is retained.<sup>6</sup>

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<sup>6</sup> However, the DfE has stated that clarification is being sought on “the age at which a young person may have the right to make their own decisions,” and that a blanket right for parents to withdraw their child from sex education is no longer consistent with English caselaw (or with the ECHR and UNCRC). The outcome will be set out in regulations which will be subject to consultation and debate. See Department for Education, [Policy Statement: Relationships Education, Relationships and Sex Education, and Personal, Social, Health, and Economic Education](#), March 2017

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The changes come into force on 1 September 2020. Schools may opt-in to begin teaching the reformed subjects a year earlier if they wish.

### **Statutory guidance**

Statutory guidance on the reformed [Relationships Education, Relationships and Sex Education \(RSE\) and Health Education](#) was published in June 2019.

The Library briefing [Relationships and Sex Education in Schools \(England\)](#), SN 6103, provides broader information.

## 4. Inspection

Around half of the independent schools in England are [inspected by Ofsted](#). The schools Ofsted inspects are known as 'non-association schools'. Inspections are carried out at the request of the Department for Education.

There are two other independent inspectorates which inspect the provision of the other independent schools in England also at the request of the Department for Education:

- The [Independent Schools Inspectorate](#) is the body responsible for the inspection of schools in membership of the Associations that make up the Independent Schools Council.
- The [School Inspection Service](#) inspects schools that belong to:
  - The Focus Learning Trust (affiliated to the Plymouth Brethren Christian Church)
  - The Steiner Waldorf Schools Fellowship
  - The Cognita Group, where such schools do not belong to an Independent Schools Council Association.

Ofsted monitors the work of these independent inspectorates on behalf of the Department for Education to ensure the quality and consistency of their inspections and reports.

## 5. Charitable status

The *Charities Act 2011* (a consolidation act) defines a charity as an institution which is established for a charitable purpose and provides benefit to the public. The advancement of education is a charitable purpose and so independent schools are capable of being charities. There is no longer a presumption that any type of charity is for the public benefit. Educational charities, like all other charities, must demonstrate that they are for the public benefit. There is no statutory definition of this.

The Government estimates that around half of the schools in the independent sector, around 1,300 schools, have charitable status.<sup>7</sup> The 2016 Annual School Census by the Independent Schools Council found that 78% of their member schools had charitable status: a total of 999 schools.<sup>8</sup>

The Library briefing [Charitable status and independent schools](#), CBP 05222, provides more detail.

### 5.1 Debate and proposed reform

Independent schools' ability to take charitable status, with its associated advantages including relief from business rates, is a contentious issue.

#### 'Schools that work for everyone' consultation

A Department for Education consultation, [Schools that work for everyone](#), published in September 2016, set out that the Government was considering placing new duties on independent schools, such as requirements to support existing state schools, open new state schools or offer funded places to children whose families cannot afford to pay fees.

The consultation document indicated that the Government was considering legislation to exclude independent schools not meeting the relevant criteria from charitable status:

14. We propose to set new benchmarks that independent schools are expected to meet, in line with their size and capacity. We think it is essential that independent schools deliver these new benchmarks. If they do not, we will consider legislation to ensure that those independent schools that do not observe these new benchmarks cannot enjoy the benefits associated with charitable status, and to result in the Charity Commission revising its formal guidance to independent schools on how to meet the public benefit test, putting the new benchmarks on to a statutory footing. (page 16)

The [consultation response](#) was published in May 2018. It included no proposals to place restrictions on the charitable ability of independent schools to take charitable status.

However, a [Joint understanding between the DfE and Independent Schools Council \(ISC\)](#) was published alongside the response, including a

<sup>7</sup> Department for Education, [Schools that work for everyone](#), September 2016, p13

<sup>8</sup> [ISC Census And Annual Report 2016](#), p29

statement that independent schools would be encouraged to support social mobility:

ISC schools will be encouraged to target bursary support at those on the lowest incomes as well as looked after children, to increase opportunities for these children and to support social mobility. The new Boarding Schools Partnerships Service will also see pupils from troubled homes going to ISC boarding schools next year.

### **Conservative Manifesto**

The [Conservative Manifesto](#) for the 2017 General Election set out that the Government would work with the Independent Schools Council to ensure that “at least 100 leading independent schools become involved in academy sponsorship or the founding of free schools,” with the option of changing the tax status of independent schools retained for consideration if progress was not made.<sup>9</sup>

### **Labour Manifesto**

The [Labour Manifesto](#) for the 2017 General Election included plans to fund free school meals for all primary school children, to be paid for by removing the VAT exemption on private school fees.<sup>10</sup>

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<sup>9</sup> [Conservative and Unionist Party Manifesto 2017](#), p50

<sup>10</sup> [Labour Party Manifesto 2017](#), p38

## 6. Special Educational Needs and Disability; and EHC plans

### Overview

Local authorities are required to ensure that children in their area with special educational needs (SEN) receive the support they need.

The [Children and Families Act 2014](#) provided for an overhaul of the system for identifying children and young people in England aged 0-25 with special educational needs (SEN), assessing their needs and making provision for them. The reforms to the system of support began to be implemented in September 2014, in a phased introduction planned to be completed in April 2018.

The type of support that children and young people with SEN receive may vary widely, as the types of SEN that they may have are very different. However, two broad levels of support are in place: SEN support, and Education, Health and Care Plans.

- **SEN support** - support given to a child or young person in their pre-school, school or college. In schools, it replaces the previously existing 'School Action' and 'School Action Plus' systems. For children of compulsory school age the type of support provided might include extra help from a teacher, help communicating with other children, or support with physical or personal care difficulties.
- **Education, Health and Care Plans** - for children and young people aged up to 25 who need more support than is available through SEN support. They aim to provide more substantial help for children and young people through a unified approach that reaches across education, health care, and social care needs.

The Library briefing [Special Educational Needs: support in England](#), SN 07020, provides more detailed information on the system that is in place.

### Support in independent schools

Generally speaking, the parents of children with SEN are responsible for funding their children's education if they choose to send them to fee-paying schools.

Parents may request a particular school is 'named' for their child to attend as part of an Education, Health and Care Plan. Local authorities must agree that request unless the school is unsuitable, or the attendance of the child or young person there would be incompatible with the efficient education of others, or the efficient use of resources. This conditional duty to name the school does not, however, extend to mainstream fee-paying schools.

Parents may nonetheless request that an independent school is named in their child's EHC plan. The local authority must consider their request, but they are not under any obligation to name that school, and

have duties relating to reasonable public expenditure.<sup>11</sup> Typically, an independent school will only be named in a child's EHC plan if there is no suitable state provision to support their particular needs. If a local authority does name an independent school in a child's EHC plan it must also meet the costs of the fees, including any boarding and lodging where relevant.<sup>12</sup>

Parents may appeal to the SEND Tribunal if they are unhappy with the school or other institution or type of school or other institution specified in an EHC plan. Chapter 11 of the Code of Practice provides information.<sup>13</sup> Information and contact details are also published on the website of the [First-tier Tribunal \(Special Educational Needs and Disability\)](#).

### **Disability Discrimination**

Independent schools, like all schools in England, are subject to the *Equality Act 2010* and its provisions relevant to schools.

Independent schools must not, for example, have admissions arrangements that would exclude a pupil on disability grounds. Some independent schools have academically selective admissions arrangements. The Equality and Human Rights Commission's [Technical Guidance for Schools in England](#) on equalities law states:

A school that is using a permitted form of selection is not discriminating by applying this form of selection to disabled children who apply for admission, provided that it complies with its duty to make reasonable adjustments for disabled applicants during the assessment process.<sup>14</sup>

Independent schools are also subject to the relevant provisions requiring for reasonable adjustments to be made for disabled pupils to be able to access services. They are not prohibited from excluding pupils with disabilities, but the exclusion cannot be because of their disability or from discriminating during the exclusions process.

The Equality and Human Rights Commission's [Technical Guidance for Schools in England](#) on equalities law provides detail, including examples, on how independent schools must avoid disability discrimination.

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<sup>11</sup> Department for Education, [Special Educational Needs and Disability Code of Practice: 0 to 25 years](#), January 2015, para 9.84

<sup>12</sup> Department for Education, [SEND Code of Practice](#), para 9.131

<sup>13</sup> Department for Education, [SEND Code of Practice](#), p259

<sup>14</sup> Equality and Human Rights Commission, [Technical Guidance for Schools in England](#), July 2014, para 2.32

## 7. Complaints

Regulation 33 of the [Education \(Independent School Standards\) Regulations 2014](#) set out what independent schools must do to meet the standard regarding their complaints procedures. They apply to all independent schools. There are three stages involved, with complainants advancing through each stage if they are not satisfied with the outcome:

- An informal complaint
- A formal written complaint
- A panel hearing if the complainant is not satisfied.

The Department for Education has published information on the cases in which it can consider [complaints about private schools](#), and also information about advice on complaints about private schools:

The Department for Education (DfE) can't investigate individual complaints about private schools. But it has certain powers as a regulator if the school is not meeting standards set by DfE for:

- education
- pupil welfare and health and safety
- school premises
- staff suitability
- making information available to parents
- spiritual, moral, social or cultural development of students

DfE will consider any reports of a major failure to meet the standards. It can arrange an emergency inspection to look at pupil welfare and health and safety, and make sure serious failings are dealt with.

DfE can ask the school inspectorates to take minor complaints into account when the school is next inspected.

You can complain to the DfE by filling in the [school complaints form](#).

### **Advice about complaining about private schools**

You can get advice on complaining about private schools from the Independent Schools Inspectorate.

### **Independent Schools Inspectorate**

Email: [concerns@isi.net](mailto:concerns@isi.net)

Telephone: 020 7600 0100

Independent School Inspectorate

CAP House

9-12 Long Lane

London

EC1A 9HA

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