



Department  
for Education

# **Registration of independent schools**

**Departmental guidance for proprietors  
and prospective proprietors of  
independent schools in England**

**August 2019**

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## Summary

This is guidance from the Department for Education (DfE). It is non-statutory, and has been produced to help proprietors and prospective proprietors understand the requirements for the registration of independent schools in England.

## Expiry or review date

This guidance will be reviewed before February 2021.

## Who is this publication for?

This guidance is for:

- Proprietors and prospective proprietors of independent schools that are not academies or free schools
- It may also be useful for governors, head teachers and parents

## Main points

Chapter 1 of Part 4 of the Education and Skills Act 2008 (“the 2008 Act”) provides for independent schools to be registered by the Secretary of State for Education. It is an offence to conduct an unregistered independent school; therefore, applications for registration by new schools must be submitted and approved before a school begins to operate.

Regulations made under section 94 of the 2008 Act set out the standards that all independent schools in England must satisfy as a condition of registration – “the independent school standards” (“ISS”). The standards are set out in the Schedule to the Education (Independent School Standards) Regulations 2014 (as amended) and cover<sup>1</sup>:

- 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

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<sup>1</sup> A reference in this document to a paragraph of these standards, or a Part of these standards, is a reference to a paragraph or Part in the Schedule to these 2014 Regulations

- Provision of information
- Manner in which complaints are handled
- Quality of leadership in and management of schools

The independent school standards do not apply to early years provision in independent schools for pupils who have not reached 3 years of age.

However, where an independent school makes early years provision for children who have reached the age of two, then it must comply with the requirements (or standards) in the Early Years Foundation Stage (EYFS<sup>2</sup>), so far as applicable to that school. The scheme of regulation under Chapter 1 of Part 4 of the 2008 Act requires compliance with the “independent educational institution standards”. These are defined as not only including the ISS but also, when applicable, the EYFS.

The Secretary of State must be satisfied that an institution is likely to meet the ISS (and where relevant, the applicable standards in the EYFS) if it is to be registered as an independent school. As part of the registration process, Ofsted will inspect a school against these standards and make a report to the Secretary of State on the extent to which the standards are likely to be met following registration. Our policy is that, once registered, independent schools are inspected by Ofsted within the first year of operation and thereafter on a regular cycle either by Ofsted or by the Independent Schools Inspectorate (“ISI”). ISI is approved by the Secretary of State principally to inspect schools belonging to associations affiliated to the Independent Schools Council (“ISC”).

This guidance sets out the requirements of the legislation to help those intending to apply for registration to submit the necessary documentation, and to offer advice on those points most commonly raised by independent schools registration. It cannot attempt to offer an authoritative statement on all matters relating to the regulation of independent schools and given the diversity of the sector, schools may wish to seek independent advice.

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<sup>2</sup> The EYFS is to be found in “The Statutory Framework for the Early Years Foundation Stage”, published by DfE and for which a link is provided at the end of this document

## Part A: Scope of arrangements

An independent school is defined<sup>3</sup> as any school<sup>4</sup> at which full-time education is provided for five or more pupils of compulsory school age, or for one or more such pupils with an EHC plan<sup>5</sup> or a statement of special educational needs or who is “looked after” by a local authority, and is not a school maintained by a local authority or a non-maintained special school. A child is “looked after by a local authority” if he or she is in its care or is provided with accommodation for a continuous period of more than 24 hours by the authority under its social services functions (see section 22 of the Children Act 1989 and section 74 of the Social Services and Well-being (Wales) Act 2014).

If your establishment falls outside the definition of an independent school given above, it cannot be registered with the department as an independent school. However, local authorities will need to be satisfied that children of compulsory school age who are attending your establishment are receiving full-time education suitable to their age, ability, aptitude and any special educational needs they may have, including any provision being made in parallel to that in your establishment.

It is an offence to conduct an unregistered independent school, and anyone who does so is liable on summary conviction to a fine and/or imprisonment.

### Full-time education

There is no legal definition of what constitutes ‘full-time’ education. However, we would consider an institution to be providing full-time education if it is intended to provide, or does provide, all, or substantially all, of a child’s education.

Relevant factors in determining whether education is full-time include:

- a) the number of hours per week that is provided - including breaks and independent study time;
- b) the number of weeks in the academic term/year the education is provided;
- c) the time of day it is provided;
- d) whether the education provision in practice precludes the possibility that full-time education could be provided elsewhere.

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<sup>3</sup> s.463 of the Education Act 1996, as substituted by s172 of the Education Act 2002 and as subsequently amended

<sup>4</sup> As defined in s.4 of the Education Act 1996

<sup>5</sup> An EHC plan is an education, health and care plan – see section 37(2) of the Children and Families Act 2014

Generally, we consider any institution that is operating during the day, for more than 18 hours per week, to be providing full-time education. This is because the education being provided is taking up the substantial part of the week in which it can be reasonably expected a child can be educated, and therefore indicates that the education provided is the main source of education for that child.

Inspectors from Ofsted may inspect any premises if they have reasonable cause to believe that an unregistered independent school is being conducted there. At such inspections, inspectors will assess whether the school meets the definition of an independent school, which will include assessing whether or not the school is intending to provide, or is providing, all or substantially all of a child's education.

Please see the Department's policy statement on prosecuting unregistered independent schools on steps that might be taken if an unregistered independent school is identified, available at [Regulating Independent Schools](#).

## Compulsory school age

A child begins to be of compulsory school age if he or she attains five years of age on one of the prescribed days, or on the next prescribed day following his or her fifth birthday. The prescribed days are currently 31st August, 31st December and 31st March.

A child ceases to be of compulsory school age on the school leaving date for any calendar year if he or she attains the age of 16 on (or will do so by) that date, or will do so after that date but before the beginning of the next school year. The school leaving date is currently set as the last Friday in June. Raising the participation age (as provided for in Chapter 1 of Part 1 of the 2008 Act) does not affect the compulsory school age. However, its effect is that a young person who has ceased to be of compulsory school age but has not yet reached the age of 18 (and has not attained a level 3 qualification), is under a duty to participate in education or training.

## Early years

Establishments that cater for children under the age of 5 will be required to register as an independent school if they meet the definition of an independent school because, for example, they have the necessary number of pupils of compulsory school age. They will also be required to implement the Early Years Foundation Stage (EYFS) for children aged under 5 although they can later seek exemption from some aspects of EYFS if they meet qualifying criteria.

If the school does not fall within the definition of an independent school because it caters solely for children under 5 it must be registered with Ofsted Early Years Directorate – tel: 0300 123 1231. A registered independent school, which has pupils aged under 2, must

have an Ofsted registration as an early years setting in addition to its DfE independent school registration.

## **Education for 16-19 year olds**

An establishment that provides solely for students over compulsory school age does not need to register with the department as an independent school. In addition, certain institutions, which are within the further, or higher education sectors are not “schools” (see section 4 of the Education Act 1996), and therefore cannot be registered as independent schools – even if they have pupils of compulsory school age.

However, establishments that cater for pupils over the age of 16, as well as those of compulsory school age, and which meet the definition of an independent school, will be required to register and must be registered before admitting pupils.

## **Special Educational Needs**

There are independent schools that cater wholly or mainly for children with special educational needs (SEN) and where they do there are differences in the provision they make. The application form asks whether a school intends to admit any pupils with SEN and if it does, for more detail about the schools provision for such pupils. Schools that do cater wholly or mainly for children with SEN will be recorded as independent special schools on Get Information About Schools (GIAS), which constitutes the register of independent schools maintained by the Secretary of State.



## Part B: How to apply for Registration

Independent schools must be registered before they start to operate. It is illegal to conduct an unregistered independent school and anybody who does so is liable to prosecution. The application form should be completed and returned to the department with the information listed below.

<https://www.gov.uk/independent-school-registration>

The form may be completed and submitted on-line via GOV.UK.

Where an on-line application has not been possible, the registration application form may be requested from and submitted to:

[registration.enquiries@education.gov.uk](mailto:registration.enquiries@education.gov.uk)

Or:

The Independent Education and Boarding Team  
Department for Education  
Level 3  
Bishopsgate House  
Feethams  
Darlington  
DL1 5QE

In addition to information, which will be provided as a consequence of completing the application form, certain other information must be provided<sup>6</sup>. Applicants are advised to submit all supporting documents electronically. The application will be processed more quickly if all supporting documents are uploaded to an internet-based 'cloud' file store and the link for that provided to the department. A password may be used for such a link but it must not be necessary for the department to subscribe to the service or to download software in order to be able to download the documentation. Filenames used for documents should reflect the contents. The supporting documents required are as follows (and the last 7 need to be compliant with the ISS if an application is to be granted):

- A statement that the school is an independent school;
- A plan showing the layout of the school premises and any accommodation provided;

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<sup>6</sup> The information required for an application is currently set out in regulation 4 and Part 2 of the Schedule to The Independent Educational Provision in England (Provision of Information) and Non-Maintained Special Schools (England) and Independent School Standards (Amendment) Regulations 2018

- A written policy on the curriculum as well as curriculum plans and schemes of work (see paragraph 2 of the ISS). These need to take into account the ages and aptitudes and therefore should cover all year groups at the school;
- A written framework for the evaluation of pupil performance (see paragraph 4 of the ISS);
- A written policy on behaviour setting out, amongst other matters, the sanctions to be adopted in the event of pupil misbehaviour (see paragraph 9 of the ISS);
- Particulars of the school's arrangements to safeguard and promote the welfare of pupils at the school, (which will need to have regard to guidance issued by the Secretary of State (see paragraph 7 of the ISS) and the National Minimum Standards for Boarding Schools or for Residential Special Schools if there is boarding (see paragraph 8 of the ISS);
- Particulars of the school's arrangements to ensure that relevant health and safety laws are complied with (see paragraph 11 of the ISS);
- The school's anti-bullying strategy (see paragraph 10 of the ISS);
- The school's procedure for the handling of complaints from parents of pupils (see Part 7 of the ISS).

Please note, you are strongly advised that all documents should be supplied in English to facilitate consideration of an application.

In addition to the information above, you must also provide the following information:

If the proprietor is an individual:

- Their full name and any previous names, usual residential address, telephone number, email address (if the individual has one), date of birth and national insurance number (if one has been allocated);

If the proprietor is a body of persons corporate or unincorporate:

- Its name and the address, telephone number and email address (if it has one) of its registered or principal office; and
- The full names and any previous names, usual residential addresses, dates of birth and national insurance numbers of each member of the body of persons, including the chair of the body.

In relation to the proprietor or, if the proprietor is a body of persons corporate or incorporate, the chair of the body -

- a) a statement of the proprietor's, or chair's employment history for the period of five years prior to the date on which the application was made containing the name of the institution(s) at which any post was held and the title of any post held;
- b) a photograph, which is a current likeness of the proprietor or, as the case, may be, the chair.

## Incomplete applications

Applications, which do not include all of the information required by the legislation<sup>7</sup>, do not constitute valid applications under section 98 of the Education Act 2008, and the schools to which they relate will not be considered formally for registration. You may be given further time to provide such information, but your application will not be processed without all of the required documents or information.

## School name

If the name you are proposing for your school may be construed as implying a Royal connection, e.g. Queen's, King's, Prince's etc. the adoption of that name requires prior approval from the Cabinet Office. You may write to:

The Constitutional Policy Team  
Cabinet Office  
70 Whitehall,  
London  
SW1A 2AS  
Email: [royalnames@cabinetoffice.gov.uk](mailto:royalnames@cabinetoffice.gov.uk)

Applications for use of the word 'University' in a school title or business title should be made to:

Privy Council Office  
2 Carlton Gardens London  
SW1Y 5AA  
Tel: 0207 747 5310

In the absence of approval from either the Cabinet Office or the Privy Council Office, schools will not be admitted to the register of independent schools under such titles.

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<sup>7</sup> See footnote 6 above for the current legislation

## Registration process

The Secretary of State must decide whether the ISS are likely to be met before a school can be registered (and the EYFS, so far as they are applicable). Once a completed 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 ISS (and the EYFS, where applicable) upon registration. The inspector will have copies of the documents, which accompanied the application and will examine these as well as looking at the proposed premises and discussing with the school's proposers their plans for operating the school.

The Secretary of State will consider the report from Ofsted and any other relevant evidence, which is available in coming to a decision. **The decision on whether to register the school lies with the Secretary of State.** 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.

The application process is expected to take approximately six months from receipt of a complete application.

Upon receipt of an application, the department will carry out a number of checks on individuals who are named on the application form. These checks will include due diligence checks along with any other checks that the department considers appropriate in order to enable it to decide whether all of the ISS (and where relevant, the EYFS) are likely to be met, such as those in Part 4 of the ISS, which imposes requirements regarding the suitability of staff, supply staff and proprietors. The information, which is required to be provided on an application relating to proprietors (as set out on page 10), facilitates these checks.

## Key registration points

Proprietors are advised to make their application to register well in advance of the proposed admission of pupils. However, the department expects that, having made an application, the proposed school will be ready to undergo a pre-registration inspection (or shortly thereafter). Premises, therefore, need to be in a state which allows the pre-registration inspection to reach a conclusion on whether the standards applicable in relation to premises are likely to be met.

Requests for pre-registration inspections to be deferred are only likely to be granted in **exceptional circumstances** for example, in cases of bereavement or sudden illness, and would need to be agreed by DfE and Ofsted. Please note, a school stating that it is simply not ready is not an adequate reason for delay and inspections will not be deferred for this reason alone. Similarly, we do not consider incomplete building works as reasonable justification for deferring inspections. As explained above, our expectation is

that when an application is made (or very shortly thereafter) that a school will be ready for pre-registration inspection. If you make a request for a deferral and it is not granted, you will have the option to continue with the pre-registration inspection or withdraw your application and re-apply at a later date.

We also expect the proprietor(s) and the person(s) who will be responsible for the day-to-day operation of the school to be present during the pre-registration inspection or at the very least, available to speak to the inspectors on the day of the inspection, to answer any questions they may have. Ofsted inspectors will report back to the department and only where they have sufficient evidence, will they be able to conclude whether all of the relevant ISS (and applicable standards in the EYFS) are likely to be met. The report is an integral part of the evidence for the department's consideration of the application, which will only be approved if we can conclude that all of the relevant standards are likely to be met.

Once the pre-registration inspection has been undertaken, Ofsted will write a report about the extent to which the ISS (and EYFS, where relevant) are likely to be met at the school. A draft copy of the pre-registration report will be sent to both the proposed school to check for factual accuracy with a timescale for comments, and also to the department. Typically, proposed schools will receive a copy of the finalised inspection report within 23 working days of the end of the inspection. In most circumstances, the final report will be published on Ofsted's website within 28 working days of the end of the inspection. However, Ofsted may publish the report at any time after the finalised report has been sent to the proposed school. Ofsted will notify the proposed school of the proposed publication date when it sends the draft report for comment. The final version of the report will also be sent to the department and a decision on registration will not be taken until this has been received.

If your application is successful, a letter will be sent to you by the department confirming that your school has been entered on the register of independent schools and informing you of your school's registration number. A school **must not** admit pupils before it is registered.

Whilst no fee is payable to the department for the registration of an independent school, a fixed charge will be payable to Ofsted for any pre-registration inspection. If a further pre-registration inspection is necessary for the same registration application then the fee would need to be paid again. Schools have the option of withdrawing their application before a further inspection if they consider they need more time to demonstrate compliance with the standards; but if the registration application was then re-submitted, there would need to be another pre-registration inspection in due course – with the fixed fee payable to Ofsted. Schools need to ensure that they are ready for a pre-registration inspection when, or very soon after, they make an application for registration, to avoid multiple inspections and the fees that these would incur.

## Fire precautions

One of the requirements of the ISS is compliance with the Regulatory Reform (Fire Safety) Order 2005 (“the 2005 Order”). You should therefore contact the local Fire and Rescue Service (FRS) to advise it of your proposed school and request that it inspects its premises – although based on its assessment of risk, it may advise you that this is either unnecessary or will be done at a later date. The Ofsted pre-registration inspection will look at the school’s compliance with the 2005 Order only in terms of a completed fire risk assessment, evidence of a request to the FRS, and whether the school has basic fire precautions in place. The Ofsted pre-registration inspection is not a substitute for an inspection by the FRS if that is judged appropriate by the FRS. See also the later section on fire precautions in relation to the ISS.

## Unsuccessful applications

If your application is unsuccessful, the department will write to you setting out the reasons for rejecting your application. It is open to you to resubmit your application but you are advised you should only do that once you are in a position to show that the school is likely to meet the ISS (and the EYFS, to the extent applicable). It is possible to appeal to the First-Tier Tribunal against a decision by the Secretary of State that the standards are not likely to be met upon registration. However, the Tribunal cannot grant registration. If it does not confirm the Secretary of State’s decision, it can only refer an application back to the Secretary of State for reconsideration (though taking into account the Tribunal’s findings). You would therefore want to consider carefully whether to appeal or re-apply; it may be simpler to re-apply when you are ready. In any case, a school should not begin to operate before registration is granted. It is an offence to conduct an independent school, which is not registered, and anyone who does so is liable on summary conviction to a fine and/or imprisonment.

## Deemed Consent

Applications to register independent schools are exempted from certain requirements in Directive 2006/123/EC of the European Parliament and Council on services in the internal market. The directive normally requires all licensing and registration authorities to set out timescales within which applications for business licences and registrations must be processed. Where an authority fails to meet a timescale the Directive requires the licence or registration to be deemed to be granted. Different arrangements are permitted where these are justified by an overriding reason relating to the public interest. It is our view that an exemption is appropriate, as it is not in the public interest for the registration of an independent school to be deemed granted in this way as this may lead to a risk to the welfare, health and safety of children.

## Part C: The independent school standards

The standards are set out in the Education (Independent School Standards) Regulations 2014 as amended by subsequent sets of regulations (see section on Further Sources of Information).

The department has published guidance on the ISS, which is intended to help schools meet them consistently. Publication details for this guidance are in the section on Further Sources of Information.

### Boarding Schools

Boarding schools are those that provide overnight accommodation for pupils, (but excluding accommodation for pupils away from the school premises during a brief school trip). Accommodation is provided by a school either where it is provided by the school on its premises or where the school arrange for pupils to be accommodated elsewhere, e.g. with a host family. Unless such accommodation arrangements with a third party are made by the child's parent(s) (or someone else), the school is responsible for the child's welfare, and inspections will include such arrangements in their scope.

Boarding provision at independent schools is inspected by Ofsted or by ISI in relation to those schools which it is approved to inspect. Ofsted or ISI inspect the boarding provision against the National Minimum Standards for Boarding Schools.

Residential schools, which cater wholly or mainly for pupils with SEN, will be inspected against the National Minimum Standards for Residential Special Schools. Residential Special Schools also have social care inspections annually, which are carried out by Ofsted.

Any boarding school that provides accommodation for more than 295 days in any 12 month period is a children's home for the purposes of the Care Standards Act 2000 and as such must also be separately registered with Ofsted, and meet the Children's Homes (England) Regulations 2015 which include the Children's Homes Quality Standards.

### Fire Precautions

The Regulatory Reform (Fire Safety) Order 2005 came into force on 1 October 2006. The order places responsibility on a 'responsible person', which in the case of an independent school will ordinarily be the proprietor, to (amongst other things):

- carry out a fire risk assessment (formally recorded and regularly reviewed so as to keep it up to date);
- produce a fire risk policy which includes the elimination or reduction of risks from dangerous substances;

- develop fire procedures and provide staff training (repeated periodically where appropriate);
- ensure the safety of staff or anyone else legally on the school premises;
- carry out fire drills and contact emergency services when necessary;
- appoint one or more competent persons (with sufficient training, experience and knowledge) to assist in taking preventive and protective measures (including firefighting and evacuation);
- have a suitable system for the maintenance of: clear emergency routes and exits (with doors opening in the direction of escape), signs, notices, emergency lighting where required, fire detectors, alarms and extinguishers (the maintenance should be by a 'competent person' (for example, ISO9001 certified or BAFE approved));
- provide staff and any others working on the school site with fire safety information.

Additionally, staff are required to take 'reasonable care' in carrying out their duties.

The fire risk assessment should be reviewed regularly and revised in light of any changes that occur at the school. The local Fire and Rescue Service (FRS) will inspect independent schools periodically in the same way as any other business i.e. on a risk assessment basis. This is likely to mean more frequent FRS inspections, for instance, for boarding schools or those dealing with pupils who have special needs.

## **Admissions and attendance registers**

Independent school proprietors are required to keep registers of both admissions and attendance and proprietors should acquaint themselves with the Education (Pupil Registration) (England) Regulations 2006 as amended ("the 2006 Regulations"), which govern this.

These regulations specify the detail required in the registers and the manner of their completion. Proprietors of independent schools must make the registers available for inspection by Ofsted. Proprietors are also required, under the 2006 Regulations, to make returns to the local authority detailing the names and addresses of any pupils who fail to attend school regularly and to notify the local authority when they delete pupils' names from the admission register. Boarding schools without day-pupils are not required to keep an attendance register. Schools with a mixture of day-pupils and boarders must keep an



attendance register for the day-pupils. However, it may be good practice for all proprietors to keep attendance registers - see school attendance guidance for further advice<sup>8</sup>.

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<sup>8</sup> <https://www.gov.uk/government/publications/school-attendance>

## Part D: Arrangements for inspection of registered independent schools, including the fees payable

Our policy is that all newly registered independent schools will have an Ofsted inspection in their first year of operation, and provided they meet all the standards at that point will thereafter be inspected on a regular cycle. Schools which are not approved to be inspected by ISI will continue to be inspected by Ofsted. Otherwise, cyclical inspections will be carried out by ISI – which is principally approved to inspect schools belonging to an association that is part of ISC.

ISI is an approved body for the purposes of inspecting registered independent schools and operates an inspection framework, which is approved by the department. Ofsted makes a report to the Secretary of State on an annual basis about independent inspectorates, which is published on GOV.UK. In addition, the department has the right to require Ofsted to inspect any independent school at any time even if it is normally inspected by ISI. In addition, inspections by Ofsted or ISI may be more frequent where the department has cause for concern.

Boarding facilities at independent boarding schools are inspected by Ofsted - or by ISI where ISI is approved to inspect the school - every three years, against the National Minimum Standards for Boarding Schools. Residential facilities at residential special schools are inspected annually by Ofsted against the National Minimum Standards for Residential Special Schools. Boarding inspections will be integrated with education inspections where the timescales make this sensible.

Early years settings will also be inspected against the Early Years Foundation Stage for Schools by Ofsted (or by ISI if the school is ordinarily inspected by that inspectorate).

### Inspection fees

When a school is inspected by Ofsted, costs are based on a sliding scale relating to the size of the school, and fees will be collected in instalments on an annual basis. Ofsted will invoice and collect payment. Schools will be able to plan for and build inspection costs into their budget process.

The fees which are charged to schools are set out in regulations<sup>9</sup>. Schools inspected by ISI will be invoiced by ISI at the rate set by the inspectorate. If a school fails to pay fees

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<sup>9</sup> The Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018 (SI 2018/205)

due to ISI, the department may decide to direct Ofsted to inspect that school instead of ISI, in which case Ofsted inspection fees would apply as described below.

## **Ofsted inspection fees**

There is a fee for the pre-registration inspection carried out by Ofsted, which is necessary before any new independent school can be registered. Thereafter, the standard inspection fee applies to a standard inspection. This is normally held every three years (i.e. one in the first year of operation and every three years thereafter); however, the fee for a standard inspection is paid in annual instalments at rates specified in regulations based on the size of the school. These fee rates are liable to change, sometimes annually. There are also fees for progress monitoring inspections if a school has been found not to meet the ISS; these are at higher rates for a second or subsequent progress monitoring inspection if such an inspection is necessary. Reports of all these inspections will be published. The department can also commission emergency inspections of any school. When such an inspection is carried out by Ofsted, no fee is payable by the school.

The fees for an inspection carried out by ISI, whether commissioned specifically by the department or part of the regular cycle, are at the rate set by the inspectorate.

If the proprietor fails to pay any inspection fee recovery action will be initiated by Ofsted; the department can also remove the school from the register for non-payment of fees. If a school is sold, the liability for any outstanding inspection fees transfers to the new proprietor. If the school closes, any outstanding fees have to be paid in full prior to closure.

Boarding schools, residential special schools and Children's Homes will be charged separate fees for inspections against the National Minimum Standards.

## Part E: Making changes to a registered school

Despite the fact that as of 5 January 2015 independent schools in England are regulated pursuant to Chapter 1 of Part 4 of the 2008 Act, section 162 of the Education Act 2002 remains in force for independent schools in England and requires them to gain approval under that section from the Secretary of State before making certain specified changes. These are known as 'material changes' and are explained below. Whilst the majority of changes will be approved quickly, some may take up to six months, and the department may request an inspection to inform its decision. A material change will not normally be approved if a school is at the time subject to regulatory action because it was not meeting the independent school standards relevant to the material change in question (for example teaching standards if the age-range is to be extended, or premises standards if the capacity is to increase in the same premises).

A material change<sup>10</sup> is:

- a change of proprietor (this does not include a change of chair of a proprietor body when the body itself is not changing);
- a change of school address (but not the addition of extra premises, unless the maximum capacity of the school is increased at the same time);
- a change in the age range of pupils;
- a change to the maximum number of pupils;
- a change to admit boys only, or girls only, or become co-educational;
- a change to provide, or cease to provide, boarding accommodation;
- a change to admit, or cease to admit, pupils with special educational needs.

An application for approval for any material change must be made by the proprietor or in the case of a change of proprietor, by the proposed new proprietor. Applications may be made by post or email to the contact addresses shown at the end of this document, or can also be made online.

Schools should not attempt to make a material change amendment to their GIAS record themselves. If this is done, the department will contact the school and seek further information about the intended change. Where a material change is made without seeking approval, the Secretary of State may remove the school from the register of independent schools. A more detailed guide to material changes is available on request

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<sup>10</sup> As defined in section 162 of the Education Act 2002

from the Independent Education and Boarding Team (address provided at the end of this document).

Deemed consent (for more on this, see the section on this subject in Part B) also does not apply in relation to an application to make a material change as there is an overriding public interest in the outcome of these applications. Therefore, if an application is not processed within, for example, six months it will not be deemed granted. This is to prevent changes to the registration of an independent school being approved inadvertently and subsequently resulting in a possible risk to the welfare, health and safety of children.

## **Part F: Failure by an independent school to meet the required standards**

Once registered, if an independent school fails to comply with the ISS (or the EYFS, if applicable), then regulatory or enforcement action may be taken. The department has published a policy statement relating to how it takes such action in the “Independent Schools: Regulatory and Enforcement Action Policy Statement” (See section on Further Sources of Information). The statement also provides information about the powers available to the Department to address non-compliance.

## Part G: Other information

### Prohibition from the management of an independent school

Section 128 of the Education and Skills Act 2008 gives the Secretary of State (as an “appropriate authority”) the power to direct that a person may not take part in the management of an independent school, either at all, or may only do so in specified circumstances or subject to specified conditions. The Independent Educational Provision in England (Prohibition on Participation in Management) Regulations 2014, which are principally made under s.128 and 129 of the 2008 Act, set out the grounds on which a decision to give such a direction may be based, and the procedure for giving a direction, and also the basis on which appeals to the First-tier Tribunal, or applications to the Secretary of State for revocation or variation of a direction, may be made.

### Schools with a religious ethos

The application form for registration will ask whether or not the school has a religious ethos, and details of any religious *ethos* declared will be recorded on GIAS. Independent schools registered as having a religious *ethos* are able to admit pupils and provide, to pupils, education and access to other aspects of school life on religious grounds. Such discrimination is generally prohibited by the Equality Act 2010, but a specific exemption exists for independent schools registered as having a religious ethos.

### Schools designated by order as having a religious character

In addition, the Religious Character of Schools (Designation Procedure) (Independent Schools) (England) Regulations 2003 as amended, allow the Secretary of State to make an order designating an independent school as having a religious character where the requirements set out in the regulations are met.

Independent schools designated as having a religious *character* can:

- discriminate on the basis of religion in admitting pupils and provide, to pupils, education and access to other aspects of school life on religious grounds;
- give preference in connection with the appointment, promotion and remuneration of teachers on religious grounds;
- take into account conduct incompatible with the precepts or tenets of the religion in appointing or terminating the employment of teachers.

The Equality Act 2010 is not breached by doing anything listed above as permitted as a result of religious *designation*.

However, these freedoms which are granted in relation to schools which have a religious designation (and the ones listed above for independent schools registered as having a religious ethos) do not constitute a discriminatory free for all. They only relate to discrimination on religious grounds and they do not permit such schools to discriminate (in doing the things in question) on grounds of gender, race, sexuality, and so on.

The proprietor of a registered independent school, or a proprietor planning to open an independent school, can apply for designation of the school as a school with a religious character. Full details and an application form will be sent on request or at the time of registration. A school can also seek designation at any time after opening.

## **Equality Act 2010**

The department has produced advice to help schools to understand how the Equality Act 2010 affects them and how to fulfil their duties under the Act.

## **Exam results**

The Education (School Performance Information) (England) Regulations 2007, as amended, provide for the supply of information which the Secretary of State can publish to assist parents in choosing schools for their children and increase public awareness of the quality of education provided by schools. Information may be required from independent schools on examination results as well as general information about the school. The information will be published alongside comparable information about maintained schools.

## **Other legislation**

It should be noted that independent schools are bound by the relevant provisions of the Health and Safety at Work etc. Act 1974, as well as relevant provisions of business/charity and employment law. Independent schools are subject to the Data Protection Act 2018, but are not bound by the Freedom of Information Act 2000.

## **Teachers' Pension Scheme**

Once an independent school has achieved registration, it may apply to participate in the Teachers' Pension Scheme, which is administered on behalf of the department by Capita. Enquiries should be made to:

<https://www.teacherspensions.co.uk/public/contact-us.aspx>



## **Personal information**

We will take all reasonable steps to update or correct personal data in our possession that you submit. You have a right to ask to see details of any information that we hold about you. If you wish to do so, please use the contact details shown at the end of this document.

## Further sources of information

[Register of schools \(GIAS\)](#)

[On-line registration form](#)

## Education Regulations

[The Education \(Independent School Standards\) Regulations 2014 \(SI 2014/3283\)](#)

[The Independent Educational Provision in England \(Provision of Information\) and Non-Maintained Special Schools \(England\) and Independent School Standards \(Amendment\) Regulations 2018 \(SI 2018/901\)](#)

[The Independent Educational Provision in England \(Inspection Fees\) and Independent School Standards \(Amendment\) Regulations 2018 \(SI 2018/205\)](#)

[The Education \(Pupil Registration\) \(England\) Regulations 2006 \(SI 2006/1751\)](#)

[The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2010 \(SI 2010/1725\)](#)

[The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2011 \(SI 2011/1625\)](#)

[The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2013 \(SI 2013/756\)](#)

[The Education \(Pupil Registration\) \(England\) \(Amendment\) Regulations 2016 \(SI 2016/792\)](#)

[Education \(School Performance Information\) \(England\) Regulations 2007 \(SI 2007/2324\)](#)

[Education \(School Performance Information\) \(England\) \(Amendment\) Regulations 2012 \(SI 2012/1274\)](#)

[Education \(Pupil Information and School Performance Information\) \(Miscellaneous Amendments\) \(England\) Regulations 2013 \(SI 2013/3212\)](#)

[Education \(School Performance Information\) \(England \(Amendment\) Regulations 2015 \(SI 2015/1566\)](#)

[The Education \(Prohibition from Teaching or Working with Children\) Regulations 2003 \(SI 2003/1184\)](#)

*(which have been amended by the following three statutory instruments):*

[The Education \(Prohibition from Teaching or Working with Children\) \(Amendment\) Regulations 2004](#)

[The Education \(Prohibition from Teaching or Working with Children\) \(Amendment\) Regulations 2007 \(SI 2007/195\)](#)

[The Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(SI 2008/2683\)](#)

[The Religious Character of Schools \(Designation Procedure\) \(Independent Schools\) \(England\) Regulations 2003 \(SI 2003/2314\)](#)

[The Religious Character of Schools \(Designation Procedure\) \(Independent Schools\) \(England\) \(Amendment\) Regulations 2004 \(SI 2004 /2262\)](#)

## **Education Acts**

[Education and Skills Act 2008](#)

[Education Act 2002](#)

[School Standards and Framework Act 1998](#)

[Education Act 1996](#)

## **Children Act 1989 and associated publications**

[Children Act 1989](#)

[Care Standards Act 2000](#)

[The Children's Homes \(England\) Regulations 2015](#)

[National Minimum Standards for Boarding Schools](#)

[National Minimum Standards for Residential Special Schools](#)

[Guide to the Children's Homes Regulations, including the quality standards](#)

## **Guidance/advice**

[The Independent School Standards Guidance](#)

[Independent Schools: Regulatory and Enforcement Action Policy Statement](#)

[Fire Safety Risk Assessment - Educational Premises](#)

[Fire Safety Risk Assessment – Sleeping Accommodation](#)

[Fire Safety Order](#) - guidance for businesses

[Keeping Children Safe in Education \(2018\)](#)

[Working Together to Safeguard Children \(2018\)](#)

[Ofsted Common Inspection Framework](#)

[Ofsted inspection documents for independent schools](#)

[ISI inspection framework](#)

[Health and Safety Advice for Schools](#)

[Preventing and Tackling Bullying](#)

[Use of Reasonable Force in Schools](#)

[Disclosure and Barring Service](#)

[Standards for Schools Premises](#)

[Early Years Foundation Stage](#)

[Equality Act 2010 - Advice for Schools](#)

[Gender-separation-in-mixed-schools](#)

[Privacy Policy](#)

## **Other relevant legislation**

[The Equality Act 2010](#)

[Protection of Freedoms Act 2012](#)

[The Regulatory Reform \(Fire Safety\) Order 2005](#)

[Health and Safety at Work etc Act 1974](#)

## Contact information

For further information on any points raised in this document, please contact the Independent Education and Boarding Team:

Email: [registration.enquiries@education.gov.uk](mailto:registration.enquiries@education.gov.uk)

Or write to:

The Independent Education and Boarding Team  
Department for Education  
Level 3  
Bishopsgate House  
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Department  
for Education

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write to Information Policy Team, The National Archives, Kew, London, TW9 4DU

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