



Department
for Education

Independent Educational Institutions – Enforcement

Schools Bill Factsheet

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Schools Bill Factsheet: Independent Educational Institutions – Enforcement

What is the government’s policy objective?

The government’s aim is that all students receive a safe and broad education. The new enforcement powers would allow the government to suspend the operation of settings where there is a very clear risk of harm to children at the setting. For example, such action may be taken where the school has failed to recognise and/or take appropriate action to address significant risks to its pupils. This could include failures by the leadership and staff at the school to properly supervise pupils in a manner which creates significant risks, health and safety risks created by a failure to maintain buildings or a failure to address other risks that pupils may be exposed to when attending the school. Such robust action against independent educational institutions with very serious safeguarding failings will keep children safe.

What does this measure do?

The government is responsible for registering and regulating independent educational institutions in England and these functions are carried out through the Department for Education. Independent educational institutions, which includes independent schools, are required to meet the independent school standards (and where applicable the Early Years Foundation Stage) at all times. Failure to meet either of these sets of standards may result in regulatory and/or enforcement action being taken against the proprietor of such an institution. The government has a published policy statement on its regulatory and enforcement role.

This measure creates a power for the government to suspend registration of an institution temporarily, where it is satisfied that there are breaches of either of these sets of standards and has reasonable cause to believe that, because of this, there is a risk of harm to children. The period of suspension may be extended. During any period of a suspension, the proprietor would commit a criminal offence if the institution remained open with children continuing to be educated or accommodated there. This will have the effect of removing children from the risks of harm presented at the setting for the period that it is suspended.

Why is legislation needed?

Currently, the only measure that the government has available to immediately address risks at an institution with serious safeguarding failings is the emergency power under s.120 of the Education & Skills Act 2008. Under this section, the government may apply to a Magistrates’ Court for:

- an order imposing a relevant restriction on the proprietor, or
- 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 types of situations where a section 120 application is typically appropriate, issues relating to an institution seldom boil down to a specific concern about its operation or part of its premises. An institution will be likely failing badly with a widespread set of failings. In such circumstances, a relevant restriction is unlikely to be appropriate. Any relevant restriction that could be imposed, under section 120, could not require the institution to completely close and therefore address the risk of harm that remains for any pupils not impacted by the restriction and continuing on at the institution. Therefore, often practically, an application under section 120 needs to be for de-registration but given its impact on the proprietor, staff, pupils and parents, because it means permanent closure, de-registration is a severe option, which it may not be appropriate to order.

However, de-registration under section 120 might not also be appropriate, for example where an institution has the capacity to improve quickly (but there is currently a real risk of harm to pupils). An institution might defend a case by saying that it proposes to take certain types of action and might either give an undertaking to the court (only enforceable through civil contempt proceedings) or voluntarily close making it considerably more difficult to justify the making of an order but creating an ambiguous situation where an institution could re-open while it was still unsafe which creates a more unclear situation and greater uncertainty for the students and their parents.

The new powers will allow the government to suspend registration of an institution for a set period, with the ability to extend that period, where there is a risk of harm to students attending the institution.

What is the effect of the legislation?

The effect of suspended registration is that it would no longer be possible to provide full-time education to five or more children of compulsory school age or to a child of that age with an Education, Health and Care (EHC) plan.

The pre-conditions for the exercise of the power are that it is only to be exercisable if the Secretary of State:

- a) is satisfied that one or more of the independent educational institution's standards (i.e. any of the standards prescribed under section 94(1) of the 2008 Act or any of the requirements in the Early Years Foundation Stage) is or are not being met
- b) has reasonable cause to believe that a student at the institution will or may be exposed to the risk of harm as a result of failure(s) against these standards

During the period of a suspension, the proprietor would commit a criminal offence if the institution remained open with activities being carried on there that registration permits.

This new offence would be a summary offence and punishable by up to six months imprisonment and/or an unlimited fine.

It is possible that an institution that is subject to a suspension is not able to improve and closes while subject to a suspension either through financial failing or a decision by the proprietor that they cannot continue. Cases where this power is exercised will involve institutions with the most substantial failings and closure may be in the best interests, long-term, of the students present.

This will provide an alternative approach to deal with very serious safeguarding issues where currently the government's only feasible option is to apply to a magistrate for a permanent closure order which would deny the setting the opportunity to improve.

How will this work in practice?

The government will be able to suspend the registration of a registered independent educational institution by notice to the proprietor of an institution. The suspension of the registration is to take effect the day after notice of the suspension is received by the proprietor. The notice of suspension will include:

- (a) the failure of those standards which give the Secretary of State reason to believe that a student at the institution may or will suffer harm
- (b) why the Secretary of State considers it appropriate that registration should be suspended
- (c) seek representations from the proprietor unless it is inappropriate to do so (i.e. providing such an opportunity would be inappropriate given the urgency of the situation or the delay resulting from affording such an opportunity would increase the risk of harm
- (d) inform the proprietor of their appeal rights

Any suspension will be, in the first place, for a period up to a maximum of 12 weeks. The initial period of up to 12 weeks should in most cases give a proprietor adequate time within which to address any failings.

There will be a duty on the Secretary of State to lift the suspension if (in effect) within the 12-week period, the proprietor manages to rectify the failings or instead, where the Secretary of State no longer believes that there is a risk to students.

The suspension could be extended by up to 12 weeks if the risk of harm persists. It can be extended as many times as necessary until the risk of harm is removed or the school is permanently closed.

Key questions and answers

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

No, the new power of suspension will only apply where the government believes there is a risk of harm and that risk of harm is because of breaches in the standards that proprietors of these institutions have to comply with.

The only current emergency action open to the government is to apply, to the Magistrates' Court, for a permanent de-registration or a relevant restriction (under s120 of the 2008 Act). The power of suspension is more flexible, giving institutions with problems an opportunity to improve (and reopen), without being permanently de-registered in order to remove students from a source of risk.

We only expect to consider using this power in relation to the very small fraction of independent schools where we currently consider the application of s120 each year (c. 5 schools per year out of c. 2,350).

This measure addresses the Independent Inquiry into Child Sexual Abuse's concern in its residential school's investigation report that "There are also weaknesses in systems of enforcement in respect of schools which fail to meet requisite standards, including safeguarding."

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

Children will not be able to attend the school for the period of suspension. The government 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 will be available to those children, such as applying for a state school place, seeking a school place in a different independent school or choosing home education.

Suspension is a very serious step that will inevitably disrupt children's education. In deciding whether to suspend the registration of a setting, the effect of this disruption will need to be balanced against the risk of harm to children. The government will only use these powers in very serious cases.

Where children board at a setting, the government will work with relevant local authorities to ensure that children are able to return home safely. We will work with the relevant local authorities to source temporary accommodation for boarding students who might be displaced as a result of a suspension and a stop boarding requirement being imposed on an institution. We will work with local authorities and overseas parents to ensure those children are either accommodated and educated elsewhere in the United Kingdom in accordance with their parents' wishes or safely returned to their parents.

Once the suspension is lifted on the school, children can resume attendance if their parents wish.

How will you be sure that a school has made the necessary improvements to reopen?

The government will work closely with the relevant inspectorate (Ofsted or the Independent Schools Inspectorate) to test whether the school has made improvements before a suspension period is due to expire. The government will lift the suspension when there is no longer a risk to children. However, if the risk of harm persists, the suspension can be extended.

Alongside any suspension, the government may consider whether further action is necessary in relation to the school. In serious cases where insufficient improvement is observed, this could include de-registration.

Part 2: Additional detail on Delegated Powers

Failure to meet standards: suspension of registration

What does this delegated power do?

Under the Education & Skills Act 2008 (“the Act”), there are enforcement powers available to the Secretary of State for the purposes of enforcing the independent school standards. These powers are limited to either the Secretary of State imposing a relevant restriction or removing the institution from the register of independent educational institutions.

These additional powers give the Secretary of State the power to temporarily suspend the registration of an institution where there are breaches of the standards and the Secretary of State considers that, because of those breaches, there is a risk of harm to students at the institution. In addition, a power is also provided to the Secretary of State to impose a requirement on the proprietor of an institution that provides boarding to its students, to cease to do so (where its registration is also suspended), to impose what is called a “stop boarding requirement”.

The proprietor of an affected institution will be criminally liable where education is provided to students at an institution or where a stop boarding requirement is breached.

How does the government intend to use this power?

The powers are intended to add to the remedies which are available to the Secretary of State, to enable swifter and more appropriate action to be taken where there are breaches of the standards that give rise to a risk of harm to children. For instance, currently, before enforcement action may be taken under sections 115 and 116 of the Act, the Secretary of State must have first required a proprietor to produce an action plan. This will not be a requirement in the case of the new power.

In addition, where there is a perceived risk of harm to students, the Secretary of State may apply to the Magistrates’ Court for an order under section 120 of the 2008 Act. However, a court here can order de-registration which would mean permanent closure of an institution. That may be considered inappropriate where changes would be made relatively quickly at the institution to rectify the situation. Alternatively, the court might impose a relevant restriction, but that may not be a suitable remedy where there are widespread failings at an institution.

A power to suspend registration, or impose a stop boarding requirement, would provide greater flexibility to the Secretary of State to respond appropriately to breaches of the standards that put children at risk.

Other administrative decisions made by the Secretary of State under the 2008 Act are not subject to a Parliamentary procedure, such as under the current power to de-register in section 105 and the powers to de-register or impose relevant restrictions under sections 115 and 116. In addition, because of other amendments contained within the new powers, proprietors affected by a suspended registration or a stop boarding requirement will be able to appeal against them to the First-tier Tribunal.

It is the Department's view that power is not a legislative power but rather administrative in nature because it is a power to make decisions in respect of individual institutions.

Will there be any further consultation on this issue?

There are no plans for any further consultation.



Department
for Education

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