


What does the new schools Bill mean for independent schools?

16 January 2025  Vicky Wilson

This article is part of our series of briefings on [The Children's Wellbeing and Schools Bill](#)

The Children's Wellbeing and Schools Bill contains a section dedicated to independent educational institutions ("IEI"). In this briefing we explore the proposals and what these means for IEIs.

A new legal test for IEIs is proposed, as well as new powers for the Secretary of State, including to temporarily suspend registration if standards are being breached or students are exposed to a risk of harm. There are alterations to the material change application regime as well as new powers regarding the suitability of proprietors of IEIs.

Expanding the scope of regulation

At present, there is a definition of an IEI which expressly includes independent schools and other institutions providing "part-time education" for students. The focus for IEIs has been on what constitutes part-time education and the fact that the institution would be an independent school but for the fact that provision is only part-time.

The proposed new legal definition of an IEI in England adopts elements of the existing definition of "independent school" with a focus on full-time rather than part-time education. An IEI will be any institution which provides full-time education for at least five children of compulsory school age, or at least one child of compulsory school age who is looked after by a local authority or who has special educational needs.

Full time education

The "full-time education" analysis will be case specific and depend on factors including the number of hours per week, weeks per year and time of day when children are expected to attend. Further guidance is expected from the Government to assist in understanding how these factors interact to constitute full-time education.

The new definition will cover all independent schools and will broaden the definition of IEI to include more educational settings deemed to be providing full-time education. Previously, some settings would not be required to register if they were offering a narrow curriculum or did not meet the criteria for registration as an IEI or independent school.

Adhering to the Independent School Standards

The amendment is designed to ensure that any setting providing all of or the majority of a child's education, regardless of curriculum breadth or supervision specifics, must register with the Secretary of State, adhere to the Independent School Standards (ISS), and undergo regular inspection.

The aim is to ensure quality and safeguarding across all full-time educational settings, aligning them with the standards currently applied to registered independent schools. Proprietors unwilling to register and meet these standards will be required to either adjust to part-time operation (allowing for a child to receive education elsewhere) or cease entirely, with continued operation without registration constituting a criminal offence.

IEI standards

The regulatory framework for IEIs is being enhanced to ensure high standards of education and safety. There are a number of changes here, but the key ones to mention are:

1. Fit and proper proprietors:

Proprietors of IEIs are required to ensure that the ISS are met at all times. Currently, the Secretary of State conducts “due diligence” checks on prospective proprietors consisting of identity checks, DBS checks and s128 prohibition checks.

Revised standards may be introduced to require that any individual proprietor (or someone with control or responsibility for a proprietary body) must be deemed by the Secretary of State as a fit and proper person to participate in the management of an Independent Educational Institution (IEI).

This will add a flexible and subjective element to the process of approving those responsible for running IEIs, which may be difficult to appeal when the original decision is made “in the opinion of the Secretary of State”.

2. Obligation to register:

All IEIs must register with the Secretary of State, and it will remain a criminal offence to operate an unregistered IEI. This standard will apply to more full-time educational settings moving forward.

3. Suspension of registration:

Currently, the only real option available to the Secretary of State in response to a breach of standards is deregistration. There is a proposed new power to enable the Secretary of State to temporarily suspend IEI registration for up to 12 weeks where there is evidence that there is a risk of harm to students.

The suspension period is designed to allow a proprietor a window of opportunity to make the necessary changes and improvements to meet the standards. A suspension may be issued without notice to the IEI in some circumstances.

The IEI will effectively need to close for the period of the suspension, but if standards are met sooner than the end date of the suspension notice, then it can be lifted sooner.

Material changes

We can expect further regulations to clarify the future process for making a material change application to the Secretary of State. For now, the main changes to note are the introduction of new material change categories and the basis on which applications are to be determined.

The three new categories of material change are summarised as:

1. Change of the buildings occupied by the institution and made available for student use (for a period of at least six months).
2. Change to whether the institution is a special institution.
3. In the case of a special institution, a change to the type or types of special educational needs for which it makes provision.

These changes may be linked to the increasing demand for and national shortage of places for special education provision. The intention of this legislation is to ensure that all full-time education providers fall within the definition of IEI, and that expectations and standards are consistent across the board.

These additional material change applications are likely to assist in the monitoring and inspection of special education provision, as well as intending to provide greater clarity and transparency to parents when choosing IEIs for their children.

The basis on which material change applications are determined is also set to change. A material change application may be approved if the standards are being met at the time of the application and are likely to continue to be met going forwards.

In addition, an application must also be approved if the standards are not being met at the time of the application but are likely to be met immediately if the change is made (or within a reasonable period of the change being made) and that, in the interim, the change is beneficial overall to the education, welfare or safety of students. This gives an element of discretion when approving material change applications and recognises that standards may be met at a point in the future.

New powers for the Secretary of State

New powers are being woven into the fabric of regulation for IEs in attempt to improve the educational landscape and raise standards.

- Deregistration by agreement: the Secretary of State will have an express power to remove an IEI from the register where this is agreed with the proprietor or deregistration is requested by the proprietor in writing.
- Imposition of relevant restrictions: there will be a new power to impose a relevant restriction on the proprietor where there is an unapproved material change. These restrictions are likely to be proportionate and directly relevant to the material change concerned; for example, in relation to restricting the admission of students of a certain age if a change to the age range of students has not received prior approval.
- Entry and investigation: powers will be afforded to the Chief Inspector where there is reasonable cause to believe that a relevant offence, such as conducting an unregistered IEI, is being or has been committed. This power enables Ofsted to apply for a warrant for entry to the school site to carry out inspection of the premises, take copies of documents, and gather other information which may evidence a relevant offence. This will not be a routine approach; however, it will make it more difficult for proprietors to prevent the discovery of evidence. These powers, akin to those held by the police, aim to help enforce compliance with all legal standards.
- Application of schools provision to IEs: there will also be a power for the Secretary of state to make any other legislation that currently applies to independent schools also applicable to IEs.

Things to be thinking about

The Bill introduces some significant updates for IEs, which underscores the commitment to safeguarding educational quality as well as the safety and wellbeing of students in independent settings.

We await further guidance on what will constitute full-time education under the new legislation, but the impact of the new IEI definition could be extensive.

Any unregistered organisation should consider whether it could be deemed to be providing full-time education under the new IEI definition and therefore required to register. This may include alternative provision providers; faith schools; charities providing education or training to those of compulsory school age; and organisations offering vocational skills or training.

Registered institutions and schools should:

- Consider whether any of the new material change categories might apply to them, including the change of buildings used and/or any change to the provision of special education provision.
- Note the potential alterations to the material change application process and consider whether this will be relevant to any future applications they may be intending to make.
- Ensure that all Independent School Standards are being met and note the potential for registration to be suspended in the future if standards are not being met.

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