



Regulating independent schools

1. DfE is the **regulator** for the independent schools in England. Reflecting their independence, these institutions are regulated in a different way from the arrangements that apply to state funded schools¹. The Department **registers** independent schools², sets **standards** that they must meet, **commissions inspections** against those standards, and acts where schools **fail to meet** the standards. Schools that do not meet the standards must improve so that they do meet them, or close. When a school subject to regulatory action fails to improve and still does not meet the standards, DfE can **take the school off the register**. It is a criminal offence to operate an unregistered school, so removal from the register would force the school to close, although it does have a **right of appeal**.
2. The purpose of regulation in this way is to protect the interests of the children. The purpose of regulation, and the standards, is to ensure that the children are safe and that the education is of at least an acceptable quality. The standards are set in [regulations](#) and cover eight aspects: the quality of education; pupils' spiritual, moral, social and cultural development; the welfare of pupils; the suitability of staff and proprietor; the premises; the provision of information (mainly to parents); the school's complaints procedures; and the quality of the school's leadership and management.
3. If a proprietor wishes to open a new independent school, he or she may [submit a registration application](#). There is [advice on how to register](#) on the DfE website. An institution must register if it meets the definition of an independent school: providing full time primary or secondary education to 5 or more children of compulsory school age. A definition of full time appears in the DfE advice on registration applications.
4. Registered schools are inspected on a regular cycle by Ofsted or one of two independent inspectorates³ approved by the Secretary of State, that cycle being decided by DfE. DfE can commission additional inspections whenever needed, for example in responding to a complaint or notification of a serious incident at the school. Inspection reports are published except for those of emergency inspections which find no unmet standards.
5. When an inspection report, or other evidence, indicates that a school is not meeting one or more of the standards, DfE can, and does, take regulatory action to require the school to improve so that it meets the standards. In most cases, the process is as follows:
 - a. DfE requires the school to prepare an action plan stating how it will address

¹ Academies and Free Schools are constituted as independent schools but as they are state funded they are subject to the terms of their Funding Agreement with the Secretary of State.

² The register is public and is subsumed within [Edubase](#), which contains information about all schools, both state funded and independent.

³ The independent inspectorates are the Independent Schools Inspectorate and the Schools Inspection Service. [More information on the inspectorates](#) is on the website.

the failings, and by when;

- b. The action plan is assessed by the relevant inspectorate, and then DfE approves it, rejects it, or approves it with modifications;
- c. The inspectorate is then commissioned to make a progress monitoring inspection to assess improvements towards meeting the standards.

6. Action plans must usually be submitted within one month; if the failings must be addressed very urgently, the DfE may require action plans to an earlier deadline. The date by which the steps in the action plan should be taken will depend on the nature of the failing. Generally, the Department will expect all the steps to be completed no longer than three months from the date of the request for the action plan. In some cases a longer period may be acceptable (for example if extensive training of staff is involved or if the plan includes building works). If the failing is very serious, particularly if it affects the welfare or safety of pupils, swifter action will be required.

7. In most cases, schools do improve, although sometimes the cycle of action plans and progress monitoring inspections has to be repeated before the school is fully meeting the standards. However in a small number of cases the improvement is slow or slight. Where a school has not improved and is still breaching the standards, DfE can and does take enforcement action. It can impose a restriction on the school – e.g. not admitting any new pupils or closing part of its operations, such as a boarding house – or it can take the school off the register, requiring it to close. The action that DfE takes in such a case will depend on the circumstances of the failure to meet the standards. The school has a right of appeal to the First-Tier Tribunal, and the enforcement action is suspended until the appeal is determined.

8. In exceptional cases, where there is a risk of serious harm to a child, DfE can apply to a JP to approve enforcement action immediately (closure or a restriction), without calling for an action plan. In these circumstances the school may appeal but the removal from the register or the restriction takes effect straight away.

9. As at December 2015, there are some 2360 registered independent schools in England and DfE took regulatory action against 104 schools in the academic year 2014/15. Of these, DfE is currently at the enforcement stage in two cases: in one a decision has been taken to impose a restriction that the school admits no more pupils until the standards are met; and in the other the decision was to remove the school from the register.

10. When a school is under a threat of closure it is possible for it to continue to improve, while the appeal is pending, so that it can successfully demonstrate to the Tribunal that it has now met the standards. If the school is able to improve to this extent, it may not need to close. One such case occurred in autumn 2015.

11. The ultimate regulatory sanction is removal from the register. Consequently the regulatory regime is founded on the integrity of the register and the fact that all schools must register. It is a criminal offence to operate an unregistered independent school and the Department is prepared to press for prosecution where the Secretary of State judges this appropriate. The Department's policy statement on the circumstances in which cases should be prosecuted is published separately. Where the Secretary of State has consented to a prosecution she will invite Ofsted to take the prosecution forward.

12. Teachers in independent schools are subject to the same regulatory controls, operated by the National College for Teaching and Leadership, that apply to state funded

schools. Similarly, bars on working with children operated by the Disclosure and Barring Service apply to staff working in independent schools in the same way as they apply to staff in state funded schools. Independent schools must check whether teaching staff are subject to NCTL prohibition orders and whether staff working in regulated activity are subject to DBS bars.

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