



# Education Act 2002

## 2002 CHAPTER 32

### PART 10

#### INDEPENDENT SCHOOLS

#### CHAPTER 1

##### REGULATION OF INDEPENDENT SCHOOLS

##### *Standards*

#### **157 Independent school standards**

- (1) For the purposes of this Chapter, regulations shall prescribe standards about the following matters—
  - (a) the quality of education provided at independent schools;
  - (b) the spiritual, moral, social and cultural development of pupils at independent schools;
  - (c) the welfare, health and safety of pupils at independent schools;
  - (d) the suitability of proprietors of and staff at independent schools;
  - (e) the premises of and accommodation at independent schools;
  - (f) the provision of information by independent schools;
  - (g) the manner in which independent schools handle complaints.
- (2) In this Chapter, “independent school standards” means the standards for the time being prescribed under this section.

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### *Requirement of registration*

#### **158 The registers**

- (1) There shall continue to be—
  - (a) a register of independent schools in England, and
  - (b) a register of independent schools in Wales.
- (2) The register of independent schools in England shall be kept by the Secretary of State.
- (3) The register of independent schools in Wales shall be kept by the National Assembly for Wales.

#### **159 Unregistered schools**

- (1) A person who conducts an independent school which is not a registered school is guilty of an offence.
- (2) A person guilty of an offence under subsection (1) is liable on summary conviction to—
  - (a) a fine not exceeding level 5 on the standard scale, or
  - (b) imprisonment for a term not exceeding six months,or to both.
- (3) No proceedings shall be instituted for an offence under subsection (1) except with the consent of the registration authority.
- (4) Where the Chief Inspector has reasonable cause to believe that an offence under subsection (1) is being committed on any premises, he may at any reasonable time—
  - (a) enter and inspect the premises, and
  - (b) inspect and take copies of any records or other documents which he has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (5) Section 42 of the School Inspections Act 1996 (c. 57) (computer records) applies in relation to the inspection of records or other documents under subsection (4)(b).
- (6) It is an offence wilfully to obstruct the Chief Inspector in the exercise of his functions under subsection (4).
- (7) A person guilty of an offence under subsection (6) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

### *Registration procedure*

#### **160 Applications for registration**

- (1) An application to enter an independent school in the register must—
  - (a) contain the prescribed information, and
  - (b) be made to the registration authority by the proprietor of the school in the prescribed manner.

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- (2) The information prescribed under subsection (1)(a) shall include information as to the following matters relating to the school—
  - (a) the age range of pupils;
  - (b) the maximum number of pupils;
  - (c) whether the school is for male or female pupils or both;
  - (d) whether the school provides accommodation for pupils;
  - (e) whether the school admits pupils with special educational needs.
- (3) Where the proprietor of an independent school makes an application to the registration authority under this section, the authority shall notify the Chief Inspector.
- (4) The Chief Inspector shall then inspect the school and report to the registration authority on the extent to which the independent school standards are met, and are likely to continue to be met, in relation to the school.

## **161 Determination of applications for registration**

- (1) Where a school has been inspected under section 160, the registration authority shall, taking into account—
  - (a) the report of the Chief Inspector under that section, and
  - (b) any other evidence relating to the independent school standards,determine whether those standards are met, and are likely to continue to be met, in relation to the school.
- (2) The registration authority shall notify the proprietor of a school of any determination made by the authority under this section in relation to the school.
- (3) If the registration authority determines under this section that the independent school standards are met, and are likely to continue to be met, in relation to a school, the authority shall enter the school in the register.
- (4) An entry in the register for a school shall include —
  - (a) the name and address of the school,
  - (b) the name of the proprietor of the school, and
  - (c) the information supplied pursuant to section 160(2)(a) to (e).

### *Enforcement of standards after registration*

## **162 Changes to registered details**

- (1) The registration authority may remove a school from the register if—
  - (a) there is a material change in relation to the school, and
  - (b) the change has not been approved under this section or section 167.
- (2) For the purposes of subsection (1), “material change”, in relation to a school, means—
  - (a) a change of proprietor,
  - (b) a change of address, or
  - (c) a change to the school in respect of any of the matters referred to in section 160(2)(a) to (e).

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- (3) Applications for approval under this section must be made in writing and, in the case of approval of a change of proprietor, must be made by the proposed new proprietor.
- (4) Where an application for approval is made under this section, the registration authority may require the Chief Inspector to—
  - (a) inspect the school, and
  - (b) report to the authority on the extent to which, if the change is made, any relevant standard is likely to continue to be met in relation to the school.
- (5) In subsection (4), “relevant standard” means any of the independent schools standards specified by the authority for the purposes of that subsection.
- (6) The registration authority shall, where an application for approval is made under this section—
  - (a) approve the change, if the condition in subsection (7) is satisfied, and
  - (b) in any other case, refuse to approve it.
- (7) The condition in this subsection is that the authority is satisfied that, taking into account—
  - (a) any report under subsection (4), and
  - (b) any other evidence relating to the independent school standards, those standards will continue to be met in relation to the school.

### **163 Power to inspect registered schools**

- (1) The registration authority may at any time—
  - (a) require the Chief Inspector to inspect any registered school, or to secure its inspection by one or more registered inspectors, or
  - (b) arrange for the inspection of any registered school by a body approved by the registration authority for the purposes of this subsection.
- (2) The inspection of a school under this section shall relate to—
  - (a) such of the independent school standards as are, at the time of the inspection, specified by the authority for the purposes of this section in relation to any category of school into which that school falls, or
  - (b) if the authority so determines, such of the independent school standards as the authority may specify in relation to that school.
- (3) A person who conducts an inspection under this section shall—
  - (a) make a report to the registration authority on the extent to which the school meets the standard or standards to which the inspection relates, and
  - (b) if the registration authority so requires, arrange for the publication of the report in the prescribed manner.
- (4) A report published under subsection (3) is privileged for the purposes of the law of defamation unless the publication is shown to be made with malice (but without prejudice to any privilege subsisting apart from this subsection).

### **164 Inspections: supplementary**

- (1) This section applies to the inspection of a school which is conducted by the Chief Inspector or a registered inspector under section 163(1)(a).

- (2) If the inspection is conducted by a registered inspector—
  - (a) he may, by agreement with the Chief Inspector, be assisted by the Chief Inspector, and
  - (b) he may be assisted by such one or more persons enrolled in the list kept under paragraph 3A of Schedule 3 to the School Inspections Act 1996 (c. 57) as he may determine, subject to paragraph 3(5) of that Schedule and subsection (3) below.
- (3) If the Chief Inspector so requires, a registered inspector shall be assisted by at least one person enrolled in the list referred to in subsection (2)(b)—
  - (a) who is without personal experience in the management of any school or the provision of education in any school (otherwise than as a governor or in any other voluntary capacity, and disregarding any experience which it is reasonable to regard as insignificant), and
  - (b) whose primary function in the inspection is not that of providing financial or business expertise.
- (4) If the inspection is conducted by a registered inspector, it may be monitored by the Chief Inspector.
- (5) The person conducting the inspection, any person assisting him pursuant to subsection (2) or (3) and any person monitoring the inspection shall have at all reasonable times—
  - (a) a right of entry to the premises of the school, and
  - (b) a right to inspect and take copies of any records kept by the school and any other documents containing information relating to the school which are required for the purposes of the inspection.
- (6) Section 42 of the School Inspections Act 1996 (c. 57) (computer records) applies in relation to the inspection of records or other documents under subsection (5)(b).
- (7) It is an offence wilfully to obstruct a person in the exercise of his functions in relation to the inspection.
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (9) The proprietor of the school shall pay the Chief Inspector, in respect of the inspection, a fee of such amount, and by such time, as may be specified in or determined under regulations.
- (10) Where the proprietor fails to comply with subsection (9), the registration authority may remove the school from the register.
- (11) The Chief Inspector shall pay the amount of any fee received under subsection (9) into the Consolidated Fund.

## **165 Failure to meet standards**

- (1) This section applies where, taking into account—
  - (a) a report under section 163 in respect of a registered school, or
  - (b) any other evidence in respect of a registered school,

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the registration authority is satisfied that any one or more of the independent school standards is or are not being met in relation to the school.

- (2) If the registration authority considers that there is a risk of serious harm to the welfare of pupils at the school, the authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (3) Where the registration authority does not make a determination under subsection (2), it shall serve a notice on the proprietor of the school—
  - (a) identifying the standard or standards in question, and
  - (b) requiring the proprietor to submit an action plan to the authority before the date specified in the notice (or such later date as the authority may specify after service of the notice).
- (4) For the purposes of this section, an action plan is a plan specifying—
  - (a) the steps that will be taken to meet a standard or standards, and
  - (b) the time by which each step will be taken.
- (5) Where an action plan is submitted in accordance with subsection (3) the registration authority may—
  - (a) reject it, or
  - (b) approve it, with or without modifications.
- (6) Where an action plan is required under subsection (3) but is not submitted in accordance with that subsection, or is so submitted but rejected, the registration authority may—
  - (a) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine, or
  - (b) make an order under subsection (8).
- (7) Where an action plan has been approved under subsection (5), but any step specified in the plan is not taken by the date specified in the plan (whether as originally approved or as varied under paragraph (a)), the registration authority may—
  - (a) substitute a later date for the taking of that step,
  - (b) make an order under subsection (8), or
  - (c) determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (8) An order under this subsection is an order requiring the proprietor of the school to do one or more of the following no later than such date after the appeal period as may be specified in the order—
  - (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school's operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (9) If the proprietor of a school fails to comply with an order under subsection (8)—
  - (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and

- (b) the registration authority may determine that the school is to be removed from the register on such date after the appeal period as the authority may determine.
- (10) Where the proprietor of a school in respect of which an order is made under subsection (8) applies to the registration authority for the order to be varied or revoked, the authority shall—
- (a) vary or revoke the order as requested in the application, if it is satisfied that it is appropriate to do so because of any change of circumstance, and
  - (b) in any other case, refuse to do so.
- (11) The variation or revocation of an order under subsection (10) shall take effect as from the date on which the proprietor of the school is notified of it.
- (12) Where the registration authority has made a determination under this section to remove a school from the register on a particular date and no appeal is made against the determination under section 166, the authority shall remove the school from the register on that date.
- (13) For the purposes of this Chapter, the “appeal period” in relation to a determination or order is the period within which an appeal against it may be made under section 166.

## **166 Appeals**

- (1) The proprietor of a registered school may appeal to the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14) against—
- (a) a refusal under section 162 to approve a material change,
  - (b) a determination under section 165 to remove the school from the register,
  - (c) an order under section 165(8) requiring the taking of specified action, or
  - (d) a refusal under section 165(10) to vary or revoke such an order.
- (2) An appeal under subsection (1) must be made within the period of 28 days beginning with the day on which notice of the refusal, determination or order is served on the proprietor.
- (3) Where an appeal is made under subsection (1)(b) against a determination under section 165—
- (a) if the appeal is withdrawn or otherwise disposed of before it is determined by the tribunal under section 167, the registration authority may remove the school from the register on such date after the appeal period as it may determine, and
  - (b) in any other case the registration authority may only remove the school pursuant to the determination in accordance with section 167.
- (4) Where an appeal is made under subsection (1)(c) against an order under section 165(8), the order shall not have effect in relation to any time before the appeal is determined by the tribunal under section 167 or withdrawn or otherwise disposed of.
- (5) In the case of an appeal against a determination under section 165(2), if at any time the tribunal considers that there is a risk of serious harm occurring to the welfare of pupils before the determination of the appeal, it may by order provide that the school is to be regarded as not registered for the purposes of section 159 until the tribunal determines the appeal under section 167 (or revokes the order before so determining the appeal).

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## **167 Determination of appeals**

- (1) This section applies where an appeal is made under section 166 to the tribunal established under section 9 of the Protection of Children Act 1999 (c. 14).
- (2) In the case of an appeal against a refusal under section 162 to approve a material change, the tribunal may—
  - (a) uphold the refusal to approve, or
  - (b) itself approve the change.
- (3) In the case of an appeal against a determination under section 165 to remove the school from the register, the tribunal may—
  - (a) uphold the determination, or
  - (b) revoke the determination.
- (4) Where under subsection (3)(a) the tribunal upholds a determination, the registration authority shall remove the school from the register on such date as the tribunal may specify or, if it does not specify a date, on such date as the registration authority may determine.
- (5) Where under subsection (3)(b) the tribunal revokes a determination, it may order the proprietor of the school to do one or more of the following by such time as may be specified in the order—
  - (a) to cease using any part of the school premises for all purposes or purposes specified in the order;
  - (b) to close any part of the school's operation;
  - (c) to cease to admit any new pupils, or new pupils of a description specified in the order.
- (6) In the case of an appeal against an order under section 165(8) requiring the taking of specified action, the tribunal may—
  - (a) uphold the order,
  - (b) vary the order, or
  - (c) strike down the order.
- (7) In the case of an appeal against a refusal under section 165(10) to vary or revoke an order under section 165(8), the tribunal may—
  - (a) uphold the refusal, or
  - (b) if in any case it is satisfied that it is appropriate to do so because of any change of circumstance after the making of the order—
    - (i) vary the order in such manner as it thinks fit, or
    - (ii) revoke the order.
- (8) The tribunal may, on the application of the proprietor of a registered school, vary or revoke any order made by it under subsection (5) in relation to the school where it is satisfied that it is appropriate to do so because of any change of circumstance.
- (9) If the proprietor of a school fails to comply with an order of the tribunal under subsection (5)—
  - (a) he is guilty of an offence and liable on summary conviction to a term of imprisonment not exceeding six months, or to a fine not exceeding level 5 on the standard scale, or to both, and



- (b) the tribunal may, on the application of the registration authority, authorise the registration authority to remove the school from the register on such date as the tribunal may determine.

### *Supplementary*

#### **168 Provision of information**

- (1) Regulations may make provision for requiring the proprietor of a registered school to provide the registration authority, when the authority so requests, with such particulars relating to the school as may be prescribed.
- (2) Regulations under this section may in particular—
  - (a) require the provision of such information as is required by the local authority for the purposes of determining whether the school is a children’s home (within the meaning of the Care Standards Act 2000 (c. 14));
  - (b) provide for the registration authority to remove from the register any school in respect of which any requirement imposed by or under the regulations is not complied with;
  - (c) provide that a person who fails to comply with any specified provision of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

#### **169 Unsuitable persons**

The registration authority may remove a registered school from the register where it is satisfied that any person who, in relation to the school, carries out any work to which section 142 applies—

- (a) is carrying out that work in contravention of a direction under that section, or
- (b) is subject to an order under section 28 or 29 of the Criminal Justice and Court Services Act 2000 (c. 43) (disqualification from working with children).

#### **170 Service of notice etc.**

- (1) The registration authority must serve on the proprietor of a registered school notice of—
  - (a) any decision made by the authority under section 162 in relation to the school;
  - (b) any determination or order made by the authority under section 165 in relation to the school;
  - (c) any decision made by the authority under subsection (10) of that section in relation to the school.
- (2) For the purposes of this Chapter, any notice, order or other document required to be given to or served on the proprietor of a registered school may be given to or served on him by delivering it to the registered address of the school.

#### **171 Interpretation of Chapter 1**

In this Chapter—

“appeal period” has the meaning given by section 165;

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“Chief Inspector” means—

- (a) in relation to a school in England, Her Majesty’s Chief Inspector of Schools in England, and
- (b) in relation to a school in Wales, Her Majesty’s Chief Inspector of Education and Training in Wales;

“independent school standards” has the meaning given by section 157;

“the register” means—

- (a) in relation to a school in England, the register of independent schools in England, and
- (b) in relation to a school in Wales, the register of independent schools in Wales;

“registered” means entered in the register;

“registered inspector” means a person registered under section 7(1) or (2) of the School Inspections Act 1996 (c. 57);

“registration authority” means—

- (a) in relation to a school in England, the Secretary of State, and
- (b) in relation to a school in Wales, the National Assembly for Wales.

## CHAPTER 2

### CHILDREN WITH SPECIAL EDUCATIONAL NEEDS

#### **172 Alteration to definition of “independent school”**

For section 463 of the Education Act 1996 (c. 56) (meaning of “independent school”) there is substituted—

##### **“463 Meaning of “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 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),
 and which is not a school maintained by a local education authority or a special school not so maintained.
- (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.”

#### **173 Right of access of LEA**

In section 327 of the Education Act 1996 (c. 56) (local education authority to have access to certain schools to monitor provision made for child with special educational needs), in subsection (1)(b) (schools to which section applies), at the end there is inserted “or at an independent school”.

## **174 Consent to placement**

In section 347 of the Education Act 1996 (approval of independent schools as suitable to provide special education), in subsection (5)(b) (no child to be placed at an unapproved school unless the Secretary of State consents), after “Secretary of State” there is inserted “is satisfied that there is a place available for the child at the school and”.