

April 2020

Regulating independent educational institutions: NSS consultation response

Submitted by email to: IndependentSchools.CONSULTATION@education.gov.uk and via online survey¹

1. This submission is made by the National Secular Society (NSS). The NSS is a not-for-profit non-governmental organisation founded in 1866, funded by its members and by donations. We advocate for separation of religion and state and promote secularism as the best means of creating a society in which people of all religions and none can live together fairly and cohesively. We seek a diverse society where all are free to practise their faith, change it, or to have no faith at all. We uphold the universality of individual Human Rights, which should never be overridden on the grounds of religion, tradition, or culture.
2. Our interest in the independent school regulatory system relates to our work ensuring that pupils attending independent schools do not have their rights undermined based on the religion or belief of the school authorities; and that independent faith and non-faith schools are held to the same standards.

7. Do you agree that any full-time setting providing education to children ought to be regulated and that what is “full-time” ought to be defined more clearly?

3. Yes.
4. We strongly agree that any full-time setting providing education to children ought to be regulated. We also agree that what is “full-time” and “school” ought to be defined more clearly.
5. As expressed in our answers to Qs 8-12, even with clear definitions, care will need to be taken to stop unregistered schools from using loopholes to avoid registration with the Department for Education. For this reason, any definition of an independent school for the purposes of registration needs to be flexible and holistic.
6. The NSS has spent many years campaigning against unregistered independent educational institutions that break the law and undermine the education, well-being and safety of children. In many cases, these institutions deliberately choose to avoid registration because they exist to indoctrinate children into an extremely narrow religious worldview. They severely limit children’s secular curriculum, teach ideology that is incompatible with the Independent School Standards, the Equality Act 2010 and the duty to promote ‘fundamental British values’, and censor any information that contradicts their religious values. They may also fail to hire instructors with recognised qualifications and certifications, favouring instructors who can espouse religious doctrine.

¹ <https://consult.education.gov.uk/school-frameworks/regulating-independent-education-institutions/consultation/intro/>

Their aim is to ensure children do not deviate from the religious lifestyle in which they are raised, sometimes to the extent of preventing children from attaining skills and qualifications necessary to succeed in wider UK society.

7. As a result, unregistered faith schools can be strongly motivated to obfuscate their existence and to deceive the DfE. We have heard accounts of staff at unregistered schools telling children to hide from inspectors visiting neighbouring registered schools to avoid detection. This is why it is essential that the DfE does not leave any loopholes in its school registration regulations that can be exploited by religious institutions attempting to avoid registration.
8. The harm caused by unregistered institutions should not be underestimated. We know that thanks to their years spent in unregistered institutions, there are generations of people in this country who speak no English, have little to no secular education, no qualifications, and very few prospects of living outside their extremely small and insular religious communities. This can have lifelong impacts on the individual and wider society.
9. For example, among the Jewish community of Hackney where there is known to be a large concentration of unregistered schools, 44% of those over 16 have no recognised qualifications, compared with 20% of the general population over 16 overall. This can lead to difficulties accessing employment and support services, increased poverty and marginalisation. This is a community whose employment rate is 10% lower than the general population.²
10. We also know that at many of these institutions, there is extremely poor provision for the welfare of the children. Many staff employed in unregistered schools have not been subject to the usual background checks such as a DBS check. Unhygienic and dangerous environments are not uncommon in unregistered schools, and in some cases, children are subject to physical punishment. In 2018, a BBC investigation produced footage of children being hit by instructors at an unregistered institution.³
11. Where an institution operating as a school is deliberately unregistered to avoid scrutiny, there is a clear danger it is also promoting extremist ideology which fosters intolerance and hatred. However, a narrow focus on violent extremism can lead to an overly securitised approach. The approach to unregistered schools must be centred on children's rights. Beyond the individual level, there are significant societal harms when children are denied their right to an education, even where there are no concerns over extremism.
12. We recommend watching this account by Izzy Posen, a man who was raised in a Charedi Jewish community and attended unregistered 'schools' throughout his childhood.⁴
13. Finally, we do not believe it is possible to effectively tackle unregistered education institutions without effective regulation of elective home education (EHE). We have consistently supported proposals, including from the DfE, for registration of EHE as a lack of registration leaves children vulnerable to enrolment in unregistered schools without local authorities' knowledge.⁵

² All figures from 2011 Census

³ <https://www.bbc.co.uk/news/uk-43126598>

⁴ https://youtu.be/iq66V_H5JaM

⁵ <https://www.secularism.org.uk/uploads/children-not-in-school-nss-consultation-response.pdf>

14. Without a register it is only possible to guess how many children who are claimed (or thought by relevant authorities) to be in EHE are in fact enrolled in unregistered educational settings, or how often an institution which claims (or is genuinely intended) to be providing a supplement to EHE, is in fact acting as the primary educational provider.
15. Better regulation of unregistered education settings would also provide support and clarity to home educating families who supplement EHE with attendance at study centres and other part time institutions. This would also provide assurances and clarity for such institutions over when they should be registered.
16. This view is in line with that held by Hackney Council, which has experienced considerable problems regarding unregistered schools within Charedi communities. In its 2018 investigation report into unregistered educational settings in Hackney, Hackney Council recommended that new legislation to tackle the issue should “improve regulation around home schooling, specifically making it a legal requirement for parents to notify the local authority if their child is being electively home educated, and additional powers for the local authority to ensure the quality of education where children are home schooled.”
17. The recommendations came after the investigation found: “...parents can exploit lax regulations around elective home education to mask attendance at unregistered educational settings and prevent authorities from knowing the whereabouts of children. In addition, those children that never attend a registered school effectively remain hidden from authorities, which limits any enforcement action that can be taken.”

8. Do you think that the department’s suggestion of 18 hours is the appropriate threshold for registration (and therefore regulation)? If not, what number of hours should be used or should there be no specified threshold?

18. No.
19. 18 hours is a good ‘yardstick’ and will provide clarity to many parents and institutions where they are genuinely unsure whether a setting should be registered. However, we have concerns that rigidly defining the threshold for registration as 18 hours a week may not take into account that bad actors, including some unregistered schools, will almost certainly attempt to find ways around this. Examples could include teaching for only 17 hours, combined with splitting the teaching week over two or more linked institutions.
20. In our view, any service providing a significant element (25% or more) of the equivalent education of a child attending an otherwise registered school, may need to be registered. This would likely not cover study centres etc. which are merely supporting EHE or other out-of-school settings they are simply attending. Such services may however wish to opt in.
21. In 2018, a BBC investigation uncovered an unregistered school in which pupils were hit by staff. The synagogue where the school was based argued that it was not a school, because claimed to be operating within the 18-hour limit. Only observations by the BBC revealed the school to be operating beyond 18 hours.⁶

⁶ <https://www.bbc.co.uk/news/uk-43126598>

22. Because of this, the definition of an independent school for the purposes of registration needs to be flexible and holistic. One way of assessing a setting suspected to be an unregistered school may be to measure the number of days it is open during school hours over the course of a normal school year. While not every setting can or should have such scrutiny, local authorities and inspectors should have the resources necessary to follow up on concerns and check the actual operation of suspected unregistered settings.

9. Do you agree that any hours threshold should be linked to attendance rather than a minimum amount of time spent on tuition (education would have to be provided for at least some of the time attended)?

23. Yes.
24. We agree in principle. However, we are concerned that unregistered schools will try to stretch the definitions.
25. As referenced in previous answers, some institutions can be strongly motivated to stay unregistered and may find ways to produce misleading figures on pupil attendance in order to avoid crossing the hours threshold. For example, children could attend more than one unregistered school per day. This is particularly likely in areas and communities with a high concentration of unregistered schools and other settings. Charedi Jewish communities in Stamford Hill have been identified as one such concentration. It is also not difficult for unregistered schools to falsify or simply fail to keep attendance records.

10. Do you think that registration should only be required if the provision takes place at least partially in usual school hours?

26. Yes.
27. We agree in principle that whether a provision is operating at least partially in usual school hours is a good yardstick to determine whether registration is required. The intention should not be to capture genuinely supplemental education.
28. However, as discussed in previous answers, the DfE must remain aware that schools with a strong motivation to avoid registration will try to exploit loopholes or provide misleading or incomplete information.

11. The department's proposal is to treat 'usual school hours' as being 9am to 3pm, Monday to Friday. If a 'usual school hours' criterion were to be used, what hours do you think should be defined as being 'usual school hours' – as proposed above or a different set of times?

29. Yes.
30. We agree that the definition of 'usual school hours' as being 9am to 3pm, Monday to Friday, is a good yardstick.
31. However, as discussed in previous answers, the DfE must remain aware that schools with a strong motivation to avoid registration will try to exploit loopholes or provide misleading or incomplete information.

12. Do you agree that the registration requirement should encompass any setting providing education and/or instruction to children of the specified age, and operating full time and during the specified hours, irrespective of the subject matter of what is taught?

32. Yes.

33. We agree with this proposal if the setting is acting as significant part of a child's education.

34. We note that in its 2018 investigation report into unregistered educational settings in Hackney, Hackney Council recommended that new legislation to tackle unregistered schools should "extend the definition of a school, or a part-time school, to include settings where only religious studies are taught and this is a child's main educational experience".⁷

13. Which settings do you think should be expressly excluded on the face of any legislation from the scope of the revised registration requirement for independent educational institutions?

35. We have no strong opinions on this. However, expressly excluding certain settings may give an additional 'backdoor' option for schools that wish to remain unregistered, as they may attempt to classify themselves as an excluded setting.

36. We are aware that in previous consultations over unregistered and supplemental educational settings concerns have been raised – in our view somewhat overblown – that this would lead to disproportionate registration and/or regulation of settings which should not reasonable be covered, Sunday schools, summer camps etc.

14. Do you agree that any revised version of the registration requirement in primary legislation should contain power for subsequent changes to definitions in that version to be made by secondary legislation? If so, which definitions?

37. Yes.

38. We agree that a revised version of the registration requirement in primary legislation should contain power for subsequent changes to definitions to be made by secondary legislation. This is important in order to facilitate necessary changes as educational provision evolves.

15. Do you agree that in specified circumstances the hearing of an appeal against de-registration should be on the basis of judicial review principles rather than by way of a full merits review?

39. Yes.

40. We agree with this proposal. We agree with the point raised in 3.7 that this would help tackle the problem of schools going through repeated cycles of failure. Given that the standard of judicial review already provides protection for proprietors against unjust treatment, an additional full merits appeal can serve simply as an expensive delaying tactic and undermine confidence in existing oversight.

⁷ https://www.hackneycitizen.co.uk/wp-content/uploads/UES_report.pdf

41. We have long been concerned that too many independent schools repeatedly fail to meet independent school standards and yet continue to run for many years. In March we wrote to the Parliamentary Under Secretary of State for the School System expressing these concerns and highlighting examples of consistently failing independent schools whose most recent Ofsted report was published in 2020. They included:

- A. Bnois Jerusalem Girls School – Found failing to meet independent school standards during a September 2014 monitoring inspection. Continued to fail to meet standards until a monitoring inspection in April 2017, when it met all standards checked during that inspection. But it was then rated inadequate in an inspection in June 2018 and has failed to meet the standards since. Its most recent inspection took place in December 2019.⁸
- B. Bnei Zion Community School – Rated inadequate after a standard inspection in December 2016. It has failed to meet standards in all other inspections since then. Its most recent inspection was December 2019.⁹
- C. Lubavitch Senior Boys' School - This school opened in 2017. It has been rated inadequate since its first inspection in 2018. It has had a total of four inspections since opening, the most recent being in December 2019.¹⁰
- D. Redstone Educational Academy - This school had an emergency inspection in 2014, and a standard inspection in 2017 when it was rated inadequate (and has been so since). It had 4 inspections since the emergency inspection. Its most recent was in November 2019.¹¹
- E. Talmud Torah Chaim Meirim Wiznitz School – A “light touch” inspection in 2011 highlighted key failings, followed up by two monitoring inspections and then an emergency inspection in Jan 2014. It was rated inadequate in a June 2014 inspection, and has kept this rating ever since. It has had ten inspections since 2011, its most recent being in November 2019.¹²
- F. Wiznitz Cheder School – After an emergency inspection in 2016, this school was rated inadequate in a 2018 inspection. It had three additional inspections since then and remains inadequate. Its most recent inspection was in January 2020.¹³

16. If the way a court is to determine an appeal were to be modified as proposed, do you agree that the criterion relating to inspection cycles should be based on three inspections?

42. Yes.

⁸ <https://reports.ofsted.gov.uk/provider/27/100291>

⁹ <https://reports.ofsted.gov.uk/provider/27/137318>

¹⁰ <https://reports.ofsted.gov.uk/provider/27/144363>

¹¹ <https://reports.ofsted.gov.uk/provider/27/137560>

¹² <https://reports.ofsted.gov.uk/provider/27/100296>

¹³ <https://reports.ofsted.gov.uk/provider/27/137809>

43. In most cases judicial review should be the correct standard after three inspections rather than additional delay of a full merits appeal. While the three inspection cycle will be appropriate in most cases, there must be the option to expediate action after one or inspection in the case of sufficiently grave failings, or after two inspections if the school cannot demonstrate that they have or are likely to have the intention and capacity to improve.

17. Do you believe that the power to specify in regulations the particular standards used in applying the criteria should be unconfined, or instead be restricted to certain specific standards, or specific groups of the standards as specified in section 94(1) of the 2008 Act? If the latter, which categories?

44. We are concerned that if the power to specify in regulations the particular standards used in applying the criteria were restricted to certain specific standards or groups, this could ‘water down’ the inspection process.
45. We are particularly concerned about the point in 3.13 which states the latter option “would protect schools from the new provision being applied in cases where the standards being met were not those central to pupils’ education or wellbeing”. All standards are set to ensure pupils’ education and/or wellbeing is prioritised; a system that treats certain standards as less relevant in the regulations could lead to an overall decline in standards.

18. Do you agree that it is sufficient to give the proprietor an opportunity to make written representations, or do you believe that some further pre-decision requirement should be imposed to adequately protect the proprietor’s rights (in addition to the actual appeal process)?

46. Yes.
47. We agree that it is sufficient to give the proprietor an opportunity to make written representations. Further pre-decision requirements could add further complications to the appeals process and may give disreputable proprietors more opportunities to obfuscate the process.

22. Do you agree that the Secretary of State should be able to impose a relevant restriction for an unapproved material change?

48. Yes.
49. We agree with this proposal. Deregistration should not always be necessary, but the DfE needs the ability to impose penalties for such actions as they can frequently be attempts to evade scrutiny.

23. Do you agree that it should be possible for the Secretary of State to refuse approval for a material change, on the basis of other evidence about the school or proprietor, even if relevant standards are likely to be met by the school after the change is made?

50. Yes.
51. We agree with this proposal, provided the refusal is made on good grounds and there is a means of appeal against the refusal.