

DFE CONSULTATION: REGULATING INDEPENDENT EDUCATIONAL INSTITUTIONS



Response from Humanists UK, May 2020

ABOUT HUMANISTS UK

At Humanists UK, we want a tolerant world where rational thinking and kindness prevail. We work to support lasting change for a better society, championing ideas for the one life we have. Our work helps people be happier and more fulfilled, and by bringing non-religious people together we help them develop their own views and an understanding of the world around them. Founded in 1896, we are trusted to promote humanism by over 85,000 members and supporters and over 100 members of the All Party Parliamentary Humanist Group. Through our ceremonies, pastoral support, education services, and campaigning work, we advance free thinking and freedom of choice so everyone can live in a fair and equal society.

We are an active member of many organisations working on education and children's rights. These include the Children's Rights Alliance for England (CRAE), the PSHE Association, the Sex Education Forum, and the Religious Education Council for England and Wales (REC), of which our Chief Executive is the Treasurer. We provide materials, resources, and advice to a range of education stakeholders including parents, governors, students, teachers, and academics.

We lead the national campaign for action on unregistered religious schools and work closely with former pupils of such settings, as well as current members of closed religious communities, to highlight their experiences and provide evidence to the authorities. We are motivated to do so because we recognise that children have a right to education and should be able to form their own opinions on matters of religion and belief. Further, as the UN Convention on the Rights of the Child states, their upbringing should prepare them for 'responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national, and religious groups'.

Our work in this area includes our whistleblowing website Faith Schoolers Anonymous (<https://faithschoolersanonymous.uk/>) and our apostate support programme Faith to Faithless (<https://www.faithtofaithless.com/>). Our work has generated substantial and significant media coverage on this issue, including features on *Newsnight* and *BBC News at Six and Ten*. This coverage prompted the creation of Ofsted's unregistered schools team; we were the first external group to meet with that team, and the first to introduce them to pupils who had attended such schools. It also prompted Hackney Council's own review of the issue in the local area. This work has led us to conclude that the law surrounding illegal schools needs to be overhauled in order to ensure that these schools can be shut down once and for all.

QUESTIONS FOR CONSULTATION

1. 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?

Yes. We strongly agree that all full-time settings require registration and that the lack of legal clarity with respect to what constitutes 'full-time' education currently means that settings



which very much ought to be subject to government regulation are able to operate without adequate oversight. This is problematic for two key reasons: first, it means that the current legislation fails to adequately safeguard children's rights and interests, including the right to an education, as enshrined by Article 2 of Protocol No. 1 to the European Convention on Human Rights (A2P1)¹ and Article 8 the UN Convention on the Rights of the Child (UNCRC).² Second, it limits the ability of Ofsted, local authorities, and the Department for Education to tackle the issue of unregistered places of religious instruction, some of which have been found to be operating in squalid, unsafe conditions, and where pupils may be exposed to physical violence and extremist content via narrowly religious curricula.

Many of the estimated 6,000³ children who attend unregistered schools like these are taught by unqualified teachers in appalling conditions where there is a total lack of safeguarding. When these schools have a religious character, the curriculum is focused on learning religious scripture (sometimes including extreme misogynistic and homophobic content) to the exclusion of other basic subjects such as English and Maths. Indeed, we have worked with former pupils from these schools who left unable to speak English and found themselves ill-prepared for life in modern Britain. As adults they now say the language barrier was 'deliberately implemented' as a way for community leaders to '[limit] contact between community members and outsiders'. Investigations we have conducted into the practices of illegal schools, including a joint investigation with *BBC News at Six and Ten*,⁴ have also found that corporal punishment and physical abuse is often the norm.⁵

As noted in the consultation document, the move to expand and more clearly define what educational institutions fall under the regulatory scheme outlined in the 2008 Education Act will serve to close one of the key legal loopholes that has enabled those running unregistered religious settings that provide all or most of their pupils' education to do so with impunity. Specifically, the loophole that means, because the curriculum in many such settings does not meet or attempt to meet (or even actively avoids) the independent school standards (which define in law what constitutes an independent school⁶), the unsuitability of the education these institutions offer serves to keep them out of the regulatory framework. This makes it impossible for Ofsted, local authorities and other regulatory bodies to adequately investigate and assess these settings, to compel them to provide the broad and balanced education children and young people require, or, even in the most extreme cases, to close them altogether.

¹European Court of Human Rights, *Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights: Right to Education* (2019) p.5 <https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_EN_G.pdf> [accessed 28 April 2020].

²*The United Nations Convention on the Rights of the Child* (1989), p.9 <https://downloads.unicef.org.uk/wp-content/uploads/2010/05/UNCRC_united_nations_convention_on_the_rights_of_the_child.pdf?_ga=2.44229666.740775225.1558368264-839010246.1552324729> [accessed 2 April 2020].

³Ofsted, 'New data shows illegal schools are a huge nationwide problem' (2019) <<https://www.gov.uk/government/news/new-data-shows-illegal-schools-are-a-huge-nationwide-problem>> [accessed 2 April 2020].

⁴Humanists UK, 'Joint BBC/Humanists UK investigation: abuse at illegal religious schools' (26 February 2018) <<https://humanism.org.uk/2018/02/26/joint-bbc-humanists-uk-investigation-abuse-at-illegal-religious-schools/>> [accessed 2 April 2020].

⁵ *ibid.*

⁶*The Education (Independent School Standards) Regulations 2014* <<http://www.legislation.gov.uk/ukxi/2014/3283/made>> [accessed 2 April 2020].



However, much as we support the overarching proposal to broaden the range of institutions that the regulations will cover, we are still somewhat concerned at the lack of detail with respect to how precisely this will be done. Not least because it means that there is likely to be a considerable delay between the close of this consultation and when the new regulations are implemented. We note that it has now been over six years since we first publicised the issue of unregistered religious schools, four since Ofsted's Unregistered Schools Team began investigating them. A child who entered reception class in one of these institutions at the beginning of this period would now be approaching secondary school age. To ensure that such children have the opportunity to get the broad and balanced education to which they are entitled in a safe environment, we would urge the Government to move swiftly or seriously risk jeopardising the life chances of thousands more children and young people.

To this end, we suggest that the new legislation must adopt a statutory definition of 'full-time' that is not only based upon a minimum time threshold as suggested, but which includes some reference to the extent to which the provision constitutes all or most of the pupils who attend the setting's overall education. On this basis, an ostensibly part-time setting should be required to register when it is responsible for providing a child's primary source of education. This task could be partially achieved by bringing into effect the provisions on the registration of some part-time settings that would be classed as independent schools but for the fact they provide only part-time education that are already in Part 4, Chapter 1 of the Education and Skills Act 2008.⁷ But reference to the role the institution plays in its pupils' wider education will still be necessary so as not to simply replicate the loophole pertaining to religious institutions at the part-time level.

We note that additional powers for Ofsted do not fall within the ambit of this consultation. However, here we should stress that the widening of registration requirements must be accompanied by enhanced powers for inspectors. This is particularly the case if the decision is made to exclude some or all forms of part-time settings from the legislation. The widening of registration requirements must be accompanied by enhanced powers for inspectors. These should include the power to investigate whether institutions that claim to be providing part-time education are genuinely doing so, as well as whether they represent the sole or primary source of their pupils' education.

2. 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?

No. As noted above, we firmly believe that part-time institutions, especially those that provide all or most of a child's education, ought to register. So, while 18 hours per week may be an adequate threshold for drawing a rough line between part-time and full-time provision, we do not think that it should mark the division between the type of institution that has to register and that which does not. If the Government determines that a time threshold is necessary to

⁷Education and Skills Act 2008, Part 4, Chapter 1, S.92 (1) b <<http://www.legislation.gov.uk/ukpga/2008/25/part/4>> [accessed 2 April 2020].



establish the kinds of part-time institutions that should be caught by the legislation, we would suggest that they look to the proposals laid out in the *Out of school education settings: call for evidence*⁸ conducted between November 2015 and January 2016, which recommended that settings that provide ‘intensive education’ should be regulated. In this context, ‘intensive’ constitutes more than 6–8 hours per week.

Possible objections to this lower threshold catching inappropriate settings (e.g. certain types of after school club, sport, or music tuition) under the regulations could be addressed through legal provision which, as outlined in the consultation document, expressly excludes particular types of setting (see response to question 7). In borderline cases, this could include a process by which settings may apply for an exemption to the register which would require some kind of oversight to determine whether exemption is appropriate and could be renewed on a regular basis. Alternatively, all settings providing more than 6 hours education/tuition could be required to register, with those in the categories mentioned above simply being explicitly excluded from additional oversight beyond basic registration.

A further difficulty with making hours of operation and/or attendance a key criterion for registration is that it opens the door to supposedly part-time institutions working together to provide full-time education to particular groups of pupils while avoiding registration. In our experience, the providers of unregistered religious schools are both determined to continue operating and adept at exploiting weaknesses in the law to do so. For this reason, we think it likely that some of these institutions will consider sharing pupils over the course of a day or week so that they are able to carry on providing only a narrowly religious curriculum without state oversight or censure and putting these pupils at continued risk.

3. 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)?

Unsure. Where an hours threshold for registration is introduced, it seems clear that it is preferable to link it to the amount of time a pupil actually spends at the setting rather than the amount of time he or she is actually receiving tuition. As the consultation makes clear, there are two key reasons for this: first, if a pupil is attending a setting, they are unable to attend any other setting at that time and this is the case irrespective of whether they are receiving tuition or not. Second, such a stipulation will mean that, settings where pupils are largely occupied in the (purportedly) independent study of religious texts to the exclusion of other types of learning are expected to register and comply with the Independent School Standards or cease operation.

Nevertheless, and as noted above, if too much weight is placed on attendance at one setting, this leaves open the possibility of pupils moving between settings without receiving the broad and balanced education to which they are entitled and without the institutions they attend being forced into the registration regime. One way around this would be to require registration

⁸Department for Education, *Out-of-school education settings: call for evidence* (November 2016), para 3.7 <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/480133/out_of_school_education_settings_call_for_evidence.pdf> [accessed 2 April 2020].



according to hours of operation alongside hours of pupil attendance with stipulated thresholds for both.

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

Unsure. As already stated, some of the providers of unregistered schools, particularly those with a religious character, are strongly motivated to exploit legal loopholes in order to evade state oversight of their activities. With this in mind, any stipulation that registration only applies to provision that takes place in usual school hours risks putting institutions that shift their timetables to avoid state oversight being placed outside of the regulatory regime. For this reason, we suggest that the time requirement and the extent to which it constitutes all or most of a pupil's education is of greater importance than when precisely that education takes place. That said, in order to exclude settings which are obviously not schools, we would be prepared to endorse the exclusion of those which only operate at weekends or during school holiday periods because, as outlined in the consultation document, such provision will not hamper the ability of the children and young people who make use of it to attend school or receive a broad and balanced education elsewhere.

5. 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?

As noted in our response to the previous question, the use of 'usual school hours' as a criteria for registration as an independent educational institution should be treated with caution. However, alongside a regulatory regime which requires the registration of settings that act as the main source of their pupils' education, one way to make it more difficult for providers to simply adjust their timetables so that they fall outside of the legislation would be to extend the stipulated hours from 8am until 4 or even 5pm. As previously stated, settings that only operate at weekends and holidays could also be excluded.

6. 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?

Yes. It is clear to us that any setting that teaches school age children full time, particularly (though not exclusively) when that teaching takes place during the normal school day and constitutes the primary or sole source of education for its pupils, should be registered. If, as is the case with many unregistered religious settings, this means that either the provision on offer must be broadened to meet the Independent School Standards or the institution must close, this is to be applauded.

For far too long, such settings have been permitted to treat the rights, needs, and interests of the children who attend them as secondary to their own wish to provide a narrow religious curriculum which fails to equip those exposed to it for life in modern Britain and stymies their ability to live or work outside their religious community should they wish to do so when they reach adulthood. Indeed, the current law effectively rewards unregistered religious settings for providing their pupils with this kind of unsuitable education by granting those who indulge in it continued permission to operate with impunity. It is vital that the law is changed to prevent this from happening and, as noted in our response to question 1, that this is done at the earliest



opportunity to protect the safety and educational development of thousands of children who are currently at risk in these settings.

7. 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?

As noted in our responses to questions 4 and 5, it would be appropriate to exclude settings that only operate at weekends and during holidays. In addition, it may be necessary to explicitly exclude settings that provide one form of tuition that is narrowly circumscribed (e.g. those solely offering training in one or more sporting activities, music, or language tuition). However, the precise nature of these exceptions should be made clear in the text of the legislation and should only apply to the extent that the provision does not interfere with the ability of those attending to receive a broad and balanced education elsewhere, e.g. because it exceeds the 6–8 hour threshold for intensive tuition on weekdays (see response to question 2). In the event that a setting represents a borderline case, it could be made possible for it to apply for an exemption from registration subject to Ofsted’s discretion and regular renewal.

8. 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?

Yes. Other than the lack of substantive investigative powers for Ofsted, one of the key reasons that unsuitable unregistered religious settings have been able to continue operating is the fact that the providers of these settings have consciously taken advantage of the loopholes in the law that permit them to do so. In some communities – notably the Charedi Jewish community based in and around the Stamford Hill area of London where many of the first illegal schools to be uncovered by investigations by Humanists UK and others are based – there is strong opposition to the very idea of oversight and regulation of religious schools.⁹ Indeed, some of the providers of unregistered settings have vowed to continue running them even in the face of prosecution.¹⁰

For this reason, it is imperative that there is a degree of flexibility in the legislation to enable the Government, Ofsted, and other relevant authorities to act if and when those who are determined to deny the children and young people in their care access to a suitable, broad, and balanced education that equips them for life in modern Britain, locate additional loopholes in the regulatory framework.

With this in mind, we think that, subject to Parliamentary scrutiny, the primary legislation pertaining to registration should make it possible to change the definitions of ‘full-time’, ‘part-time’, and ‘independent educational institution’ via secondary legislation.

⁹*Hackney Gazette*, ‘Tory councillor slammed for saying Jewish faith schools don’t need Ofsted ‘giving children ideas of homosexuality’ (22 January 2020) <<https://www.hackneygazette.co.uk/news/education/stamford-hill-tory-councillor-under-fire-for-comments-on-homosexuality-1-6478474>> [accessed 2 April 2020].

¹⁰Humanists UK, ‘Provider of illegal school vows to continue in spite of prosecution’ (October 17 2019) <<https://humanism.org.uk/2019/10/17/provider-of-illegal-school-vows-to-continue-in-spite-of-prosecution/>> [accessed 2 April 2020].



9. 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?

Yes. As noted in the consultation document, the current regulations facilitate 'repeated cycles of improvement and deterioration',¹¹ with some schools continuously making just enough progress for the Department to withdraw the threat of enforcement action before reverting back to poor practice. We agree that, by basing the appeals process in cases where inspections illustrate this has happened in three instances on the principles of judicial review rather than a full merits review, this proposal will better enable de-registration where it is necessary. It will also act as a strong incentive for schools wishing to stay on the register to maintain the improvements they make subsequent to a poor inspection outcome and thus ensure that the children attending such schools receive an education that is fully in line with the statutory independent school standards.

10. 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?

Yes. Although there should be scope for swifter action in the event of serious failings in health and safety or safeguarding. In this instance, it seems reasonable to suggest that the criterion relating to inspection cycles should be capped at two inadequate inspections and possibly even one in the most egregious cases of poor practice.

11. 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 of the categories (such as one or more of the types of standards specified in section 94(1) of the 2008 Act)? If the latter, which categories?

Yes. As our response to the previous question suggests, it is true that some of the independent school standards pertain to basic matters of pupil wellbeing and safety which are, in some respects, of more fundamental importance than the other standards. This could similarly be said of the quality of education on offer and the suitability of staff, proprietors, and premises. However, the fact that the standards listed in section 94(1) of the 2008 Act are all considered to be of sufficient importance to feature in the primary legislation in the first place should mean that a repeated failure to meet one or more of any one of them is considered sufficiently important to require enforcement action (up to and including de-registration).

12. 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)?

Yes.

¹¹Department for Education, *Regulating independent educational institutions: Government consultation* para. 3.6 <<https://consult.education.gov.uk/school-frameworks/regulating-independent-education-institutions/supporting-documents/Regulating%20IEI%20Consultation%202020%201.pdf>> [accessed 2 April 2020].



13. Do you think there is any possible different way in which appeals should be determined against deregistration, which would achieve the same policy aim?

No response. Falls outside of our policy remit.

14. Do you have any further comments on the general issue of appeal rights in relation to enforcement decisions?

No further comments.

15. Do you agree with the changes proposed for approval of material changes relating to provisions for pupils with SEN?

No response. Falls outside our policy remit.

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

No response. Falls outside our policy remit.

17. 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?

No response. Falls outside our policy remit.

18. Do you have any comments on the conclusions set out in the published equalities log, UNCRC assessment and family test document?

We firmly agree with the key conclusions of the equalities log, more specifically that, where there is scope for the proposals to have a particular impact on those who share one or more of the protected characteristics (most notably faith or belief and/or race) any negative effects will be vastly outweighed by the extent to which those same proposals will improve the quality of education, safeguarding and welfare in unregistered settings.

With respect to the UNCRC assessment, we similarly agree that the positive impact on the Convention rights of children that are likely to arise from the proposals outweigh any of the relatively minor consequences of the policy measures, for example, on religious parents who wish to deny their children access to a broad and balanced curriculum. While the views of parents should be taken into account, in this context, the rights, needs, and interests of children must be prioritised. In our view, these proposals strike precisely the right balance.

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