

12. Under this system, there was no provision for a school to be assessed before it was registered. If a school was found to be failing, there was no efficient mechanism for closing it. As originally enacted, there were also no express provisions in relation to safeguarding.

13. The regulatory system remained largely unchanged until it was updated in 2002 to take account of recommendations made by Sir William Utting, in his report on the safeguards for children living away from home, and those of the Waterhouse Report into child abuse in Children's Homes in North Wales. Although both of these reports addressed boarding schools or homes, the reforms addressed all independent schools, including day schools. The provisions in the Education Act 2002 included measures to prevent inadequate schools from registering by requiring schools to be inspected and, in effect, to meet the independent school standards prior to registration. The Act also specified the matters which were so significant that prior approval had to be sought from the Secretary of State if the proprietor wished to change them. These "material changes", as they are called, included adding boarding provision and changing the gender mix of a school.

14. Regulations made under the 2002 Act set out the Independent School Standards in more detail, which covered:

- the quality of education;
- the spiritual, moral, social and cultural development of pupils;
- the welfare, health and safety of pupils;
- the suitability of proprietors and staff;
- the premises and accommodation;
- the provision of information; and
- the handling of complaints.

15. Although schools were left with considerable freedoms in relation to how they met the regulations, parents and carers had a clearer picture of the curriculum offered by the school.

Greater transparency was introduced by requiring schools to provide parents with copies of inspection reports.

16. The Education Act 2002 also contained new powers for dealing with failing schools. Section 165 provided (unless the power was exercised to deregister the school because of a risk of serious harm to the welfare of pupils – see below) for a notice to be served on a school which was failing to meet one or more of the standards, requiring an action plan. The Secretary of State could then commission a further inspection to check progress. Timing for the production of the action plan and for further inspections was not specified in legislation, but left to the discretion of the Secretary of State. Where an action plan was either not submitted, was submitted but rejected, or was submitted and approved but subsequently not complied with, the Secretary of State could take further action against the school by way of either de-registering the school (which would mean it would have to close), or making an order to restrict the school's operation. The 2002 Act also introduced a power to remove a school from the register without requiring an action plan, if the Secretary of State were satisfied that there was a risk of serious harm to the welfare of pupils. Generally, any action to remove a school from the register or impose an order was subject to appeal to the First-tier Tribunal (previously the Care Standards Tribunal), and schools could continue to operate (as normal) pending determination of an appeal. However, where the Secretary of State had exercised the power to remove a school from the register on the ground of a risk of serious harm to the welfare of pupils, the Tribunal (provided it considered there was such a risk) could order that the school be regarded as not registered, meaning that the school could not operate at all until the appeal was determined.

17. The Education and Skills Act 2008 ["the 2008 Act"] re-enacted with a number of changes the provisions in the Education Act 2002 relating to independent schools but these new provisions relate to such schools in England only. Importantly:

- a new duty was imposed on the Secretary of State to make standards relating to the quality of leadership in and management of schools;
- a new power to take enforcement action was introduced to cover circumstances where (a) the proprietor of a school has been required to produce an action plan at least two

years before the decision to take enforcement action is made, (b) at least one further inspection has taken place since the action plan was required, and (c) the Secretary of State has at no point since the action plan was required been satisfied that all of the standards are being met in relation to the school;

- the emergency closure power was changed, with jurisdiction being conferred on a justice of the peace to make an order, on the application of the Secretary of State, to impose a relevant restriction or to require that a school is removed from the register. The grounds for making an order are that it appears to the justice of the peace that a student at the school in question is suffering or likely to suffer significant harm. Finally, an order has effect as soon as copy of it is served on the proprietor, and even if it is appealed by the proprietor to the First-Tier Tribunal.

18. It is a criminal offence, under section 96(2) of the 2008 Act, for anyone to conduct an unregistered independent school in England.

19. The provisions in the 2008 Act relating to independent schools in England (to be found in Chapter 1 of Part 4) were largely commenced before January 2015, although approvals for material changes are still handled under the 2002 Act.

20. The current school standards relating to independent schools in England were made by regulations under the 2008 Act, and came into force in January 2015. These are the Education (Independent School Standards) Regulations. Paragraph 7 of the Schedule to the 2014 Regulations provides that the relevant welfare, health and safety standard is met if the proprietor of the school makes arrangements to safeguard or promote the welfare of pupils, and that these arrangements have regard to any guidance given by the Secretary of State.

21. The 2014 Regulations include a quality of leadership and management standard, which (amongst other things) requires that the proprietor of a school ensures that persons with leadership and management responsibilities at the school actively promote the well-being of pupils. Inspectors have been inspecting against this standard since it came into force.

22. These standards, like other independent school standards, are enforceable by enforcement action under section 116 of the 2008 Act. Enforcement action consists of either a decision to deregister a school or a decision to impose a relevant restriction on the proprietor by, for example, prohibiting the admission of new pupils, restricting use of part of a school's premises or requiring part of its operations to close. Once a school is taken off the register of independent schools in England, it will be an offence to continue operating it. In addition, it is an offence for a proprietor to breach a relevant restriction (under section 118(2) of the 2008 Act).

23. Enforcement action under section 116 may only be taken where the proprietor of the school has been required to submit an action plan under section 114 of the 2008 Act. This is a plan specifying the steps which will be taken, and the time within which the steps will be taken, to rectify failings to meet the standards that have been identified by the Secretary of State. In addition, before taking enforcement action the Secretary of State must be satisfied that there is a breach of the independent school standards.

24. Section 87(1) of the Children 1989 Act provides that:

*"Where a school or college provides accommodation for any child, it shall be the duty of the relevant person to safeguard and promote the child's welfare."*

25. Section 87(4) provides that, where the Chief Inspector for England is of the opinion that there has been a failure by an independent school to comply with its duty under s. 87(1), he shall notify the Secretary of State. There are separate, but similar, provisions in respect of schools in Wales.

26. The 1989 Act also amended the intervention powers of the Minister under the Education Act 1944. Following implementation of the 1989 Act in 1991, it became possible for the Secretary of State to intervene in relation to the welfare of children who were accommodated in independent schools, where a school was failing to meet its duty under section 87 of the 1989 Act.