



Equalities Log: Regulating independent educational institutions - proposals for legislation

This document examines the proposals in the context of the protected characteristics listed in the Equality Act 2010. It examines separately each of the three proposals, ie amending the definition of independent educational institution, amending the basis on which certain appeals are heard, and altering the material change regime.

Under s.149(1) of the Equality Act 2010 ('the 2010 Act') the decision-maker, must have due regard to the need to:

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;*
- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;*
- (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.*

The department does not believe that the first aim of s.149 is meaningfully engaged by any of these proposals either because some of the changes made will be required by an Act of Parliament or because some will result in the conferral of a new (or the extension of) a statutory power, which will need to be exercised, on a case by case basis, and in a way which does not constitute discrimination, harassment, victimisation or other conduct that is prohibited by or under the 2010 Act.

In addition, whilst it appears that the first and second proposals are likely to particularly impact on people of particular faiths and beliefs and races (see below), in our view any impact is for a legitimate aim and proportionate. The underlying purpose of the two proposals is to ensure that children attending settings full-time have their welfare, health and safety properly protected, get a quality of education that is assured to a minimum standard and become capable of integrating themselves into society. In the case of the first proposal, it is considered proportionate because, for example, parents or carers will still have a right to educate their children after school and at weekends in accordance with their religious convictions or home educate their children to the required standard. In the case of proprietors, they will be free to either continue to provide full-time education but in accordance with the required standards, reduce the hours of operation so that

settings are no longer treated as full-time, or take up another business. As regards the second proposal, appeals will only be determined on a judicial review basis in circumstances where the proprietor is well aware of the school's failings and the potential consequences, has had a number of opportunities to put them right but has failed to do so; and has been consulted before enforcement action is taken.

The other two aims are discussed in more detail below in terms of each of the three proposals.

1. Amending the definition of independent educational institution

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

Part 1

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Characteristics:

Faith or belief

Race

Persons:

Those persons of Ultra-Orthodox Jewish faith; and less so, persons of the Muslim faith and some variants of the Christian faith.

Those persons of racial groups most likely to adhere to the faiths listed above.

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Yes, in that the overall intended effect of the proposals will be to place settings which are not currently within a regulatory framework, within one, and improve the quality of the provision made in those settings. The vast majority of the settings affected are likely to be wholly or predominantly attended by children with the same stated characteristics. The affected settings are most likely, to be yeshivas serving those of the Jewish faith although some others (eg some madrassas for those of Muslim faith) may also be affected if attendance at them is full-time.

A good and safe education for the affected children will advance their equality of opportunity because it will bring their educational attainments closer to parity with others living in the UK, and because an inadequate education is an inherent disadvantage.

Will there be a negative impact on people with the protected characteristics identified above?

Possibly, as the proposals may lead to settings being closed because they cannot meet regulatory standards or are prosecuted for operating when not registered. Such settings are most likely to be attended by children who share the stated characteristics. In consequence such children may end up being educated at home and although there are legal standards relating to that, there can be no certainty that those would be adhered to, and therefore, the children concerned may not get a suitable quality of education.

This would involve disruption to the education of children attending those settings (even if it is ultimately intended to secure them better education), to the families of such children if they need to make alternative arrangements for that education (some possibly involving sending children abroad), and to the owners and staff of such settings, most of whom will share the same faith and race characteristics. For the children concerned, there will still be the opportunity to attend settings that are compliant with the regulatory standards – but if they are home educated, if they are provided with a relatively poor standard of education then that would affect their equality of opportunity as it would not be on a par with others living in the UK.

If the settings are not closed but continue in being by meeting the regulatory standards in whatever form is prescribed, then the children may not be educated in the way their parents would wish if their beliefs do not coincide with the standards in question.

Conclusion and justification of analysis

Even though there are potential negative effects these are likely for most children to be more short-term than the positive effects which are sought. In any event as a matter of public policy it is not acceptable to continue with a situation in which children of compulsory school age are attending full-time settings in which neither the quality of education nor the welfare of children is under any meaningful or regular scrutiny in order to ensure that proper and safe education is provided. Although there are potential negative impacts on parents, owners and staff as well, the interests of the children concerned are more important. In addition, whilst the affected children may end up being home educated, and that home education may not be adequate to prepare the child to share in the opportunities provided for adult life or may put them at the disadvantage of having a poor education, education in an unregulated setting is likely to be worse or similarly no better.

Therefore the proposals should go ahead.

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Characteristics:

Faith or belief

Race

Persons:

Those persons of Ultra-Orthodox Jewish faith; and less so, the Muslim faith and some variants of the Christian faith.

Those persons of racial groups most likely to adhere to the faiths listed above.

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Yes, in that the overall intended effect of the proposals will be to place settings which are not currently within a regulatory framework, within one, and improve the quality of the provision made in those settings. The vast majority of the settings affected are likely to be wholly or predominantly attended by children with the same stated characteristics. The affected settings are most likely, to be yeshivas serving those of the Jewish faith although some others (eg some madrassas for those of Muslim faith) may also be affected if attendance at them is full-time.

The children attending them should receive as a consequence broader education which will enable them to more easily take a proper place in British society rather than be isolated through a narrower education, thus enhancing their relations with others in the UK.

Will there be a negative impact on people with the protected characteristics identified above?

Possibly, as the proposals may lead to settings being closed because they cannot meet regulatory standards or are prosecuted for operating when not registered. Such settings are in the vast majority of cases likely to be attended by children with the same stated characteristics.

This would involve disruption to the education of children attending those settings (even if it is ultimately intended to secure them better education), to the families of such children if they need to make alternative arrangements for that education (some possibly involving sending children abroad, or by providing home education), and to the owners and staff of such settings, most of whom will share the same faith and race characteristics. This might, at least in the short term lead to a view amongst those affected that they are being unfairly singled out for their faith and potentially lead to poorer relations with other groups in the UK.

Conclusion and justification of analysis

Even though there are potential negative effects in terms of fostering good relations between persons who share a relevant protected characteristic and those who do not share it, these are likely to be more short-term than the positive effects which are sought. In any event as a matter of public policy it is not acceptable to continue with a situation in which children of compulsory school age are attending full-time settings which isolate them from mainstream society both incidentally and to some extent as a deliberate rejection of that society's values. The longer-term interests of the children concerned are the most significant.

Therefore the proposals should go ahead.

2. Amending the basis on which certain appeals are heard

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

Part 1

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Characteristics:

Faith or belief

Race

Persons:

Those persons of Ultra-Orthodox Jewish faith, the Muslim faith and some variants of the Christian faith.

Those persons of racial groups most likely to adhere to the faiths listed above.

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Yes, in that the intended effect of the proposals is that settings which over a significant period consistently fail to meet the regulatory standards should be closed more easily, thus preventing the children attending them from, amongst other things, receiving a poor education for many years. Such settings have been, in the past, often been predominantly or entirely attended by children with the same stated characteristics. If the children concerned receive a better education than would otherwise have been the case that is likely to increase the scope and depth of their opportunities in later life relative to other groups, making their position more equal. Furthermore, it would mean that they are less likely to suffer from the disadvantages that arise from a poor education.

To some extent the proposal should also have a deterrent effect. With the knowledge that they have a lesser chance of succeeding on appeal against de-registration, proprietors of such schools will be encouraged to make more effort sooner to

improve and consistently meet the standards. That would have the same ultimate positive effect in terms of equality of opportunity.

Will there be a negative impact on people with the protected characteristics identified above?

Possibly, as the proposals may lead to more settings being closed, which are wholly or predominantly attended by children with the same stated characteristics, because they cannot meet regulatory standards. Closure would involve disruption to the education of children attending those settings (even if it is ultimately intended to secure them better education), to the families of such children if they need to make alternative arrangements for that education, and to the owners and staff of such settings, most of whom will be likely to share the same faith and race characteristics.

For the children concerned, there will still be the opportunity to attend settings that are compliant with the regulatory standards – but if they are home educated, just as if they remained in unregulated full-time settings, if they are provided with relatively poor standard of education then that would affect their equality of opportunity as it would not be on a par with others living in the UK.

If the deterrent effect mentioned above works in some cases, then in those instances this negative effect would be less likely to arise.

Conclusion and justification of analysis

Even though there are potential negative effects these are likely for most children to be more short-term than the positive effects which are sought in terms of the education the children concerned would receive over their whole time at school. In the longer term the better education received should advance equality of opportunity for the children concerned compared with other groups in society. It is also unacceptable that a regulatory system which is designed to secure improvement should be subverted over significant periods by schools deliberately not meeting the standards, and in doing so disadvantage the children affected, or potentially put them at risk.

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Part 1

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Characteristics:

Faith or belief

Race

Persons:

Those persons of Ultra-Orthodox Jewish faith, the Muslim faith and some variants of the Christian faith.

Those persons of racial groups most likely to adhere to the faiths listed above.

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Yes, in that the intended effect of the proposals is that settings which over a significant period consistently fail to meet the regulatory standards should be closed more easily, thus preventing the children attending them from receiving a poor education for many years. Such settings have often in the past been predominately or entirely attended by children with the same stated characteristics. If the children concerned receive a better and broader education than would otherwise have been the case; that is likely to make it easier for them to take a proper place in British society and enjoy good relations with those of other groups in society.

To some extent the proposal should also have a deterrent effect. With the knowledge that there will be a lesser chance of succeeding on an appeal against de-registration, the proprietors should be encouraged to make more effort sooner and consistently to improve and meet the standards. That would have the same ultimate positive effect.

Will there be a negative impact on people with the protected characteristics identified above?

Possibly, as the proposals may lead to more settings being closed, which are wholly or predominantly attended by children which share same stated protected characteristics, because they cannot meet regulatory standards..This would involve disruption to the education of children attending those settings (even if it is ultimately intended to secure them better education), to the families of such children if they need to make alternative arrangements for that education, and to the owners and staff of such settings, most of whom will share the same faith and race characteristics. Such disruption may make those families and others affected feel that they are being unfairly singled out for such treatment, leading to poorer relations between them and other groups in British society.

If the deterrent effect mentioned above works in some cases, then in those instances this negative effect would be less likely to arise.

Conclusion and justification of analysis

Even though there are potential negative effects, in terms of the third aim in section 149 of the Equality Act 2010, these are likely to be more short-term than the positive effects which are sought in terms of the education the children concerned would receive over their whole time at school. In the longer term the better education received should enable the children concerned to take a more assured place in society and lead to better relations with others living in the UK. It is also unacceptable that a regulatory system which is designed to secure improvement should be subverted over significant periods by schools deliberately not meeting the standards, and in doing so disadvantage the children affected, or potentially put them at risk.

Material change regime

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

Part 1

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Disability (certain categories of special educational need amount to a disability within the meaning of the Equality Act 2010).

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Yes, in that the SEN aspect of the proposals should lead to better regulation of schools specially organised for SEN (for example, by allowing them to expand into other types of SEN provision only if they have suitable arrangements), to the benefit of prospective pupils. This would increase their equality of opportunity by making it more likely that their education will be suitable for their needs and [on a par with others living in the UK]

Will there be a negative impact on people with the protected characteristics identified above?

Yes, in that the proposals are likely to make the choice of school more restricted – but only if those schools are not making appropriate provision for SEN.

Conclusion and justification of analysis

Although the proposals might mean that some families are unable to have children attending the schools they wish, the department's view is that it is in children's long term interests that their special educational needs are met by schools properly organised to deal with their needs in order that their education is on par with others living in the UK; to better equip them for the opportunities they get from education and in adult life. .

Therefore, on that basis, the proposal should go ahead because it is not in the long term interests of children with SEN that they should attend schools which do not cater properly for the special needs of each child.

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Part 1

Will the outcome of this decision have a particular impact on any persons who share one or more protected characteristics (yes/no)

Yes

If yes, which protected characteristics and which persons?

Disability (certain categories of special educational need amount to a disability within the meaning of the Equality Act 2010).

Part 2

Will there be a positive impact on people with the protected characteristics identified above?

Not to any significant extent, although it could be argued that maximising the educational attainment of those children with disabilities would enable them to take a more secure place in British society and reduce the likelihood of poor relations with other people.

Will there be a negative impact on people with the protected characteristics identified above?

No.

Conclusion and justification of analysis

To the extent that there is any meaningful way in which this limb of s.149 is engaged, the effect is positive and therefore, the proposal should go ahead on that basis. In addition, it is not acceptable that relations between persons with the relevant protected characteristics and those without should be jeopardised by poor education of those with the relevant characteristics.

Date by which equality conclusion will be reviewed:

Review will take place after public consultation on proposals has taken place in 2019. The consultation will provide an opportunity to comment specifically on equalities issues, and comments will be taken into account in the review.



UNCRC assessment – Regulating independent educational institutions - legislation proposals

This preliminary assessment examines separately where necessary each of the three proposals, ie amending the definition of independent educational institutions, amending the basis on which certain appeals are heard, and altering the material change regime to provide more flexibility.

1. What likely impact will the policy/measure have on children and young people or their families/carers?

Amending the definition of independent educational institutions: the most likely outcome will be to bring under a regulatory system more full-time settings providing education, which currently will be predominantly settings providing faith-based education, and to set clear parameters for which institutions need registering, making it more difficult to evade regulation. This should be to the benefit of children attending the affected settings because there will be powers available to ensure a broad education of a minimum standard and to ensure the proper safeguarding of the children attending, and that is also a benefit to the parents and carers of such children. However the proposals may also result in the closure of such settings, leading to the children having disrupted education - as they move to other, already regulated settings or are instead home educated, and even in some cases being sent abroad to be educated. They may also result in children attending settings where in order to meet the standards prescribed, teaching is not wholly in accord with the beliefs of children or their parents/carers.

Basis on which certain appeals are heard: the most likely outcome is the increased likelihood of a small number of institutions being closed – those that do not maintain compliance with all of the regulatory standards. There has historically been a greater likelihood that such institutions will be ones serving particular faith groups and/or BME backgrounds although that may reduce following publication of the department's enforcement policy statement depending on the failings at particular schools. There would be short-term disruption to the education of the children involved, as they move to new settings and/or are educated at home, and consequent stress on their families or carers; but the proposals are based on a view that such changes would be to the ultimate benefit of the children's education because it is better for them to be instead in institutions which are meeting minimum standards relating to their education and their health, safety, and welfare. Alternatively if the proposals have a deterrent effect on proprietors so that they are more ready to meet the standards on a consistent basis, that will lessen the chances that the schools will close and have the same ultimate benefit for children.

Material change: being measures which provide for more appropriate controls over when institutions cater for pupils with special educational needs and which permit for less onerous sanctions to be imposed on settings where unapproved material changes occur, the impact on family members' ability to play a full role in family life ought to be positive, or at worst neutral in most cases as it would tend to reduce disruption or increase parental choice of schools and thus make family functioning easier to manage.

2. What children's rights are likely to be affected by the policy/measure?

The most relevant articles are:

Article 3 (best interests of the child)

Article 4 (protection of rights)

Article 5 (parental guidance)

Article 6 (life, survival and development)

Article 17 (access to appropriate information – for example, from children's books and being able to distinguish what is accurate information)

Article 19 (protection from all forms of violence)

Article 28 (right to education)

Article 29 (goals of education)

Article 34 (sexual exploitation)

The effect of the proposals relating to the definition of independent educational institutions and the basis on which certain appeals will be heard, will be to either (a) bring settings within a regulatory regime, to the benefit of the children attending them because a minimum standard of education and safeguarding will be better assured; or (b) force the closure of such settings, which would be disruptive to children in the short term but intended in the longer term to be to the benefit of children's education because they would be attending better settings than before. In either case the ultimate aim of the articles listed above would be furthered.

The effect of the material change proposals would be less direct but in leading to increased choice in the independent sector should have a positive effect in relation to the above articles or one which is neutral at worst. The proposal is also relevant to Article 23 (children with a disability) in making it easier for schools to cater for SEN pupils but at the same time ensuring that where particular arrangements are made for specific categories of SEN pupils, these will be supported by compliance with the relevant standards before a school can admit the pupils in question.

The first and second proposals also have the potential to engage

Article 12 (respect for the views of the child)

Article 14 (freedom of thought, conscience and religion)

because of the fact that the proposals for the registration requirement and how appeal are determined may result in a situation where children cannot be educated at a full-time setting fully in accordance with their religion or beliefs (or indeed, fully in accordance with the religion or beliefs of their parents, even though parents would have the choice to educate the child at home and/or part-time settings). However, in the government's view the ultimate effect on the children of disrupting and closing the settings in question, or in ensuring that those settings which remain open meet certain minimum standards, would be beneficial to the children concerned because it would ensure their eventual education is better. The proposals promote certain rights under the UNCRC, and the UNCRC does not prohibit the government from regulating independent full-time settings that provide education to children.

We think that the material change proposals are neutral as regards the above two articles.

3. Are some children and young people more likely to be affected than others?

Yes. For the redefinition of independent educational institution the main impact will fall on a small number of settings serving fewer than 10,000 children, most of them from particular faith groups and/or BME backgrounds - especially those who attend yeshivas serving the Charedi community. That may also be the case for the settings most likely to be affected by the appeal hearing basis proposals - although that is now somewhat less likely following publication of the department's enforcement policy statement although that will depend on failings at each school. However the proposals are designed to improve the overall education and/or welfare of children even if there is also disruption to their current education.

The material change regime amendments may affect any independent school and thus the children attending those schools, who currently number just under 0.5m and children who might join their number in future years. However as a measure which gives more flexibility to deal with material change approval requests from schools, the impact on such children should overall be positive.

4. Do you need to engage with children and young people and/or their advocates and other stakeholders to seek their views?

Not directly. However, the consultation will be public and anyone may respond, including the children and parents of children attending settings most likely to be affected and groups representing their interests.

5. How does the policy/measure promote or impede the implementation of the UNCRC?

By seeking to improve the provision made in independent schools and analogous settings, it promotes implementation - or at worst does not obstruct it.

6. Next steps

A full UNCRC assessment which considers the responses to consultation and assesses impact of the policy in the light of those responses and the government's decision on how to take the proposals forward, will be published at the same time as the government response document.