

Handbook for conducting inspections under section 97 of the Education and Skills Act 2008

Guidance for inspectors

This handbook sets out Ofsted's policies and procedures for conducting inspections under section 97 of the Education and Skills Act 2008.

Published: September 2015

Reference no: 150109



Corporate member of
Plain English Campaign
Committed to clearer communication

361

The Office for Standards in Education, Children's Services and Skills (Ofsted) regulates and inspects to achieve excellence in the care of children and young people, and in education and skills for learners of all ages. It regulates and inspects childcare and children's social care, and inspects the Children and Family Court Advisory and Support Service (Cafcass), schools, colleges, initial teacher training, further education and skills, adult and community learning, and education and training in prisons and other secure establishments. It assesses council children's services, and inspects services for looked after children, safeguarding and child protection.

If you would like a copy of this document in a different format, such as large print or Braille, please telephone 0300 123 1231, or email enquiries@ofsted.gov.uk.

You may reuse this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication is available at www.gov.uk/government/organisations/ofsted.

Interested in our work? You can subscribe to our monthly newsletter for more information and updates: <http://eepurl.com/iTrDn>.

Piccadilly Gate
Store Street
Manchester
M1 2WD

T: 0300 123 1231
Textphone: 0161 618 8524
E: enquiries@ofsted.gov.uk
W: www.gov.uk/government/organisations/ofsted

No. 150109

© Crown copyright 2015



Contents

Purpose of inspection, legal basis and inspection policy	4
Roles of Ofsted and the Department for Education	4
Deciding whether an inspection will be conducted	5
Initial information supplied to Ofsted	5
Deciding whether there is reasonable cause to believe that an offence under section 96 is being committed	6
Deciding whether an inspection will go ahead	8
New information received by Ofsted	9
Conducting an inspection	9
Before the inspection	9
During the inspection	10
After the inspection	12
Re-inspections	13
Annex A. Legislation – Education and Skills Act 2008	14
Requirement of registration	14
Registration procedure	15
Annex B. Contact details	16
Independent schools registration authority	16
Police	16
Local authorities – Directors of Children’s Services	18

Purpose of inspection, legal basis and inspection policy

1. A person who conducts an independent school¹ that is not registered is guilty of an offence under section 96 of the Education and Skills Act 2008.²
2. Under section 97 of the Act, if Her Majesty's Chief Inspector (HMCI) has reasonable cause to believe that an offence under section 96 is being committed, he has the power to enter and inspect the premises.³
3. The purpose of the inspection is to inspect the premises and to inspect and take copies of any records or other documents that HMCI has reasonable cause to believe may be required for legal proceedings in relation to an offence.
4. When Ofsted is provided with information that suggests that an independent school which is not a registered school is being conducted it must first investigate whether it has reasonable cause to believe that an offence under section 96 is being committed.
5. If Ofsted determines that it has reasonable cause to believe that this is the case, it will then decide whether an inspection of the premises under section 97 will be carried out. Ofsted will not automatically carry out an inspection.
6. The term 'premises' is taken from the legislation. It means all premises being used for a purpose that may meet the definition of an independent school (including an independent boarding or residential special school, where Ofsted has reasonable cause to believe that the premises may also be being used by children and young people in a boarding capacity).

Roles of Ofsted and the Department for Education

7. The purpose and arrangements for conducting an inspection under section 97 are very different to inspections of independent schools that are registered with the Department for Education (DfE). Registered independent schools are inspected by Ofsted (or an inspectorate approved by the DfE), at the direction of the DfE, which is the registration authority.⁴
8. The DfE does not direct Ofsted to carry out inspections under section 97, and an inspection is not automatically conducted at the request of the DfE.
9. Ofsted may receive information about a premises that appears to be operating as an unregistered independent school through any means. The DfE will often be the initial source of information.

¹ See paragraph 19 of this handbook for the definition of an independent school.

² Section 96 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/96.

³ Section 97 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/97.

⁴ Part 4, Chapter 1 of the Education and Skills Act 2008 provides the legal basis for a register of independent schools, inspections of registered schools, and the approval of independent inspectorates; www.legislation.gov.uk/ukpga/2008/25/part/4/chapter/1.

10. Where the initial information is provided by another source, Ofsted will normally share the information with the DfE before deciding whether it has reasonable cause to believe that an offence under section 96 is being committed. This is because an application to register the premises as an independent school may have been made to the DfE or, if not, because the DfE may have additional intelligence about the premises.
11. Ofsted will always inform the DfE of its decisions about whether an offence under section 96 is being committed, and whether an inspection under section 97 will be carried out. Under paragraph 8 of schedule 13 to the Education and Inspections Act 2006, Ofsted will always provide the advice note from such inspections to the DfE.⁵
12. These information sharing agreements are set out in the 'Memorandum of understanding between Ofsted and DfE: independent schools'.⁶
13. It is Ofsted's view that it is the responsibility of the DfE, as the registration authority for independent schools, to take the final decision about whether the premises is being operated as an unregistered independent school, based on Ofsted's inspection findings. It is also Ofsted's view that the DfE must decide whether to take steps to require the premises to register as an independent school or to proceed with prosecution.⁷

Deciding whether an inspection will be conducted

Initial information supplied to Ofsted

14. Information about a premises that appears to be operating as an unregistered independent school may come to Ofsted's attention through any means.

Where the initial information is supplied by the Department for Education

15. The DfE will provide information about the premises to Ofsted in a 'section 97 form'. The form will contain such information as the DfE has to assist Ofsted in considering whether there is reasonable cause to believe that an offence under section 96 is being committed and the source of the information.

⁵ Schedule 13 of the Education and Inspections Act 2006;
www.legislation.gov.uk/ukpga/2006/40/schedule/13.

⁶ *Memorandum of understanding between Ofsted and DfE: independent schools*;
www.gov.uk/government/publications/memorandum-of-understanding-independent-schools.

⁷ Although Ofsted is not precluded under the Education and Skills Act 2008 provisions from being the prosecuting body, Ofsted's view is that it would not be appropriate for Ofsted to take on that role, given that Ofsted is not the registration authority.

Where the initial information is supplied by any other source

16. Where the information is provided by a source other than the DfE, for example through the whistleblowing process, from a local authority or the media, Ofsted will transfer the information to a section 97 form.
17. Ofsted will pass the section 97 form to the DfE, as explained in paragraph 10 of this handbook. The DfE will annotate the form with any information or intelligence it holds about the premises and return it to Ofsted.

Deciding whether there is reasonable cause to believe that an offence under section 96 is being committed

18. Whether the DfE or another source supplied the information about the premises, Ofsted will take all reasonable steps to check or corroborate the information in a timely fashion. This is to determine whether it has reasonable cause to believe that an independent school which is not a registered school is being conducted on the premises. Ofsted will consider whether the premises appears to meet the definition of an independent school.

Definition of an independent school

19. An independent school is defined in section 463 of the Education Act 1996, as amended.⁸
 - (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.
20. This definition of 'independent school' applies to section 92(1)(a) of the Education and Skills Act 2008 and forms part of the definition of 'an independent educational institution' for the purpose of the 2008 Act.

⁸ Section 463 of the Education Act 1996, as amended;
www.legislation.gov.uk/ukpga/2002/32/part/10/chapter/2.

21. The DfE's policy position with respect to full time education is contained within Part A of the departmental advice 'Registration of independent schools',⁹ as follows.

There is no legal definition of 'full time'. However, we would consider an establishment to be providing full-time education if it is providing education which is intended to provide all or substantially all, of a child's education.

It is unlikely that a school operating for fewer than 18 hours per week will be able to meet the standards and register as an independent school and we anticipate that schools offering teaching of around 20 hours per week or more will be providing full-time education and will therefore need to register.

Ofsted may inspect a school it considers is operating as an unregistered independent school. In such cases, Ofsted will assess whether the school meets the definition of an independent school, which will include assessing whether or not the school is providing all or substantially all of a child's education, taking into account any other forms of education that might be provided from other sources.

22. Section 87 of the Children Act 1989, as amended by section 105 of the Care Standards Act 2000, concerns school boarding or residential accommodation.¹⁰

(1) 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.

(2) Subsection (1) does not apply in relation to a school or college which is a children's home or care home.

(3) Where accommodation is provided for a child by any school or college the appropriate authority shall take such steps as are reasonably practicable to enable them to determine whether the child's welfare is adequately safeguarded and promoted while he is accommodated by the school or college.

23. Ofsted will make all reasonable enquiries to inform the decision on whether the premises appears to meet the definition of an independent school. In doing so, Ofsted will seek and be open to further information from any source, for example the police.

⁹ *Registration of independent schools: departmental advice for proprietors and prospective proprietors of independent schools in England*, DfE, July 2015;
www.gov.uk/government/publications/independent-school-registration.

¹⁰ The Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/part/XII.

24. A discussion with the relevant local authority should be held when corroborating the information. This is to gather any information that it may have on the premises, including whether the children attending the premises receive home education.
25. Ofsted will also check the land registry website to find out the owner of the premises and any websites relating to the premises itself.¹¹
26. Ofsted will also check whether there is any registered early years or social care provision associated with the premises.
27. Ofsted will record all actions that have been taken, and the findings from each action, in the section 97 form. The decision whether the premises appears to meet the definition of an independent school, and therefore that an independent school which is not a registered school may be being conducted on the premises, will also be recorded in the form, with a clear statement explaining the reasons for the decision.

Concluding that there is not reasonable cause to believe that an offence under section 96 is being committed

28. Where Ofsted concludes that there is not reasonable cause to believe that an offence under section 96 is being committed, it will inform the DfE by sending a copy of the section 97 form to the DfE. Ofsted will store the section 97 form in line with its retention and disposal policy.¹²

Deciding whether an inspection will go ahead

29. Where Ofsted concludes that there is reasonable cause to believe that an offence under section 96 is being committed, it will next decide whether an inspection under section 97 will go ahead. The decision, and the reasons for it, will be recorded in the section 97 form.
30. Where Ofsted decides that an inspection will be conducted, it will inform the DfE by sending a copy of the section 97 form to the DfE.

Where an inspection will not go ahead

31. If Ofsted decides an inspection will not be carried out, it will inform the DfE by sending a copy of the section 97 form to the DfE. Ofsted will store the section 97 form in line with its retention and disposal policy.¹³

¹¹ The land registry; www.gov.uk/government/organisations/land-registry.

¹² *Retention and disposing of information*. This is an internal only document. Inspectors can access this through the engagement hub.

¹³ See footnote 12.

New information received by Ofsted

32. On occasion, further information may be made available to Ofsted after it has made a decision about whether there is reasonable cause to believe that an offence under section 96 is being conducted, or whether to carry out an inspection under section 97. In such cases, Ofsted will take the following actions.
- Remain open to any new information.
 - Corroborate all new information in line with the guidance in this handbook, to decide whether it has reasonable cause to believe that an independent school which is not a registered school may be being conducted on the premises.
 - Decide again whether there is reasonable cause to believe that an offence under section 96 is being committed.
 - Decide again whether an inspection under section 97 will go ahead.
 - Record the information, its source and the decisions arising in the section 97 form.

Conducting an inspection

Before the inspection

33. Ofsted will deploy one or more of Her Majesty's Inspectors (HMI) and/or Ofsted Inspectors to carry out the inspection. The size of the inspection team will be influenced by the number of sites that the premises comprise (see definition of premises in paragraph 6 of this handbook) and the nature of the information that Ofsted has received about the premises and is recorded on the section 97 form.
34. Where there is reasonable cause to believe that the premises are being used in a boarding capacity, a social care inspector may be deployed on the team.
35. Based on the information in the section 97 form, Ofsted will decide whether police support will be required for the inspector(s) and, if so, make arrangements for this. Contact details are provided in Annex B.
36. Generally, the lead inspector will be allocated one day to carry out the inspection and write the advice note. In line with section 97(1), the inspection will take place at any reasonable time.
37. Inspections are conducted at **no notice**. The inspector(s) will prepare for the inspection by reading the section 97 form and this handbook.

During the inspection

The start of the on-site inspection

38. On arrival on the premises, the lead inspector will inform the person(s) managing or operating the premises that the inspection is being carried out under section 97 of the Education and Skills Act 2008 because HMCI has reasonable cause to believe that an independent school which is not a registered school is being conducted on the premises.
39. The inspector should make the following points clear, under part 4, section 97 of the Education and Skills Act 2008.¹⁴
- (1) Where the Chief Inspector has reasonable cause to believe that an offence under section 96 is being committed on any premises, the Chief Inspector may at any reasonable time:
 - (a) enter and inspect the premises, and
 - (b) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
 - (2) Section 58 of the Education Act 2005 (c. 18) (computer records) applies in relation to the inspection of records or other documents under this section.
40. Furthermore, section 97(4) sets out that:
- (4) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
41. Section 97 provides a right of entry to all types of premises, including a private house.
42. A copy of the legislation is available at Annex A.
43. In the event of intentional obstruction, the inspector may contact the police to ask them to attend. Contact details are available at Annex B.
44. The inspector will explain to the person(s) involved with the premises the requirement for schools to register and provide them with the registration authority's contact details, which are available at Annex B.

¹⁴ Section 97 of the Education and Skills Act 2008;
www.legislation.gov.uk/ukpga/2008/25/section/97.

Gathering and recording evidence

45. The inspector(s) will attempt to enter and inspect the premises, including any boarding accommodation.
46. During the inspection, the inspector(s) will inspect and take copies of any hardcopy or electronic records or other documents:¹⁵
 - in respect of the fact that HMCI has reasonable cause to believe that an independent school which is not a registered school may be being conducted on the premises
 - that HMCI has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
47. Evidence is recorded on evidence forms.¹⁶
48. The inspector(s) will not check compliance with the independent school standards,¹⁷ make qualitative judgements or observe teaching for any length of time.
49. During the course of inspection, the inspector(s) may come across evidence that is relevant to Ofsted's duty to have regard to safeguarding and promoting welfare of children and young people. Section 117(2)(a) of the Education and Inspections Act 2006 sets out the following:
 - (2) In performing its functions the Office is to have regard to:
 - (a) the need to safeguard and promote the rights and welfare of children.
50. While such evidence is not applicable to the inspection conducted under section 97 of the Education and Skills Act 2008, the inspector(s) will record the evidence in line with Ofsted's duty.
51. In the event of safeguarding concerns or queries arising during the inspection, the Ofsted helpline is available to inspectors on: 0300 123 4234. The local authority designated officer for child protection and the DfE must also be contacted.

¹⁵ Section 97(1)(b) and (2) of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/part/4/chapter/1.

¹⁶ Evidence form; www.gov.uk/government/publications/evidence-form-for-school-inspections.

¹⁷ To be registered, independent schools must meet the requirements of The Education (Independent School Standards) Regulations 2014; www.legislation.gov.uk/uksi/2014/3283/contents/made.

After the inspection

Reporting the inspection findings

52. The lead inspector will report the inspection findings in an 'Advice note for conducting inspections under section 97 of the Education and Skills Act 2008'.¹⁸ The inspection does not result in a published report and the advice note is not published.
53. All hard copies and electronic copies of information and records taken by the inspector(s) under section 97(1)(b) and (2) will be included in the advice note.
54. Where the premises is known to be related to a previously registered school, or previously proposed new school that applied to the DfE to register as an independent school, this will be recorded in the advice note.
55. Where a premises has previously been inspected under section 97, or where Ofsted has attempted previously to carry out an inspection under section 97, this will also be reported in the advice note.
56. At the end of the advice note, the lead inspector will report whether, in light of the evidence gathered, they judge that an unregistered independent school is, or is not, being conducted on the premises. This is the overall outcome of the inspection.
57. The advice note will be subject to Ofsted's normal quality assurance procedures. The evidence base from the inspection will be retained in line with Ofsted's retention policy.¹⁹

Sharing the inspection findings

58. Under paragraph 8 of schedule 13 to the Education and Inspections Act 2006, Ofsted will always provide the advice note from an inspection under section 97 to the DfE (the registration authority for independent schools).²⁰
59. Under the same powers, but only where Ofsted deems necessary, Ofsted may also provide the advice note or relevant extracts from it to the relevant local authority and the police, for example where there is an urgent need to take action because children appear to be at risk.

¹⁸ The template 'Advice note for conducting inspections under section 97 of the Education and Skills Act 2008' is an internal-only document.

¹⁹ *Retention and disposing of information*. This is an internal only document. Inspectors can access this through the engagement hub.

²⁰ Under paragraph 8 of schedule 13 to the Education and Inspections Act 2006, Her Majesty's Chief Inspector, 'if he thinks it appropriate to do so, may provide advice or assistance to another public authority for the purpose of the exercise by that authority of its functions';

www.legislation.gov.uk/ukpga/2006/40/schedule/13.

60. Based on the evidence in the advice note, the DfE must decide whether to take steps to require the premises to register as an independent school or to proceed with prosecution.

Re-inspections

61. If inspectors were unable to gain entry to any part of the premises in attempting to conduct an inspection under section 97, the inspection will be re-scheduled.
62. Ofsted may consider carrying out a further inspection at the same premises where there is reasonable cause to do so, for instance where further information about the premises comes to light. Ofsted will corroborate any new information supplied in line with this handbook to decide whether it has reasonable cause to believe that an independent school which is not a registered school is being conducted on the premises. It will decide whether there is reasonable cause to believe that an offence under section 96 is being committed and whether an inspection under section 97 will go ahead. Ofsted will record the information, its source, the decisions arising and the reasons for them, in a new section 97 form.

Annex A. Legislation – Education and Skills Act 2008

Requirement of registration

95 The registers

- (1) The Secretary of State must keep a register of independent educational institutions.
- (2) The register is to be known as 'the register of independent educational institutions in England'.
- (3) The Secretary of State must publish the register in such manner, and at such times, as the Secretary of State considers appropriate.

96 Unregistered independent educational institutions: offence

- (1) A person must not conduct an independent educational institution unless it is registered.
- (2) A person who conducts an independent educational institution in contravention of subsection (1) is guilty of an offence.
- (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 51 weeks or to a fine not exceeding level 5 on the standard scale (or to both).
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003 (c 44), for '51 weeks' in subsection (3) substitute 'six months'.

97 Unregistered independent educational institutions: inspection

- (1) Where the Chief Inspector has reasonable cause to believe that an offence under section 96 is being committed on any premises, the Chief Inspector may at any reasonable time—
 - (a) enter and inspect the premises, and
 - (b) inspect and take copies of any records or other documents which the Chief Inspector has reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
- (2) Section 58 of the Education Act 2005 (c 18) (computer records) applies in relation to the inspection of records or other documents under this section.
- (3) This section does not confer power to inspect or take copies of anything of a kind specified in section 9(2) of the Police and Criminal Evidence Act 1984 (c 60) (legally privileged material etc.)

- (4) It is an offence intentionally to obstruct a person in the exercise of the person's functions in relation to the inspection.
- (5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Registration procedure

98 Applications for registration

- (1) The proprietor of an independent educational institution may apply to the Secretary of State for the institution to be entered on the register.
- (2) An application to enter an institution in the register must:
 - (a) contain the prescribed information, and
 - (b) be made in the prescribed manner.
- (3) The information prescribed under subsection (2)(a) must include information as to the following matters relating to the institution:
 - (a) whether the institution is –
 - (i) an independent school, or
 - (ii) an institution within section 92(1)(b)
 - (b) the age range of students
 - (c) the maximum number of students
 - (d) whether the institution is for male or female students or both
 - (e) whether the institution provides accommodation for students
 - (f) whether the institution is specially organised to make special educational provision for students with special educational needs
 - (g) in the case of an institution within paragraph (f), the type or types of special educational needs for which the institution is specially organised to make special educational provision.
- (4) The Secretary of State must notify the Chief Inspector of an application under this section.

Annex B. Contact details

Independent schools registration authority

The registration authority for independent schools is the Department for Education (DfE).

Independent Education and Boarding Team (IEBT)
 Department for Education
 Mowden Hall
 Staindrop Road
 Darlington
 DL3 9BG

Telephone: 01325 735 304

Email: registration.enquiries@education.gsi.gov.uk

Website: www.gov.uk/independent-school-registration.

Police

Website: www.police.uk/contact/alternative-non-emergency-numbers

Police force non-emergency telephone numbers:

Police force	Telephone number
Avon and Somerset Constabulary	01275 818340
Bedfordshire Police	01234 841212
British Transport Police	0800 405040
Cambridgeshire Constabulary	01480 456111
Cheshire Constabulary	01244 350000
City of London Police	020 7601 2222
Cleveland Police	01642 326326
Cumbria Constabulary	0845 3300247
Derbyshire Constabulary	0345 1233333
Devon & Cornwall Police	01392 420320
Dorset Police	01202 222222
Durham Constabulary	0345 6060365
Dyfed Powys Police	01267 222020
Essex Police	01245 491491
Gloucestershire Constabulary	01452 726920

Police force	Telephone number
Greater Manchester Police	0161 872 5050
Gwent Police	01633 838111
Hampshire Constabulary	01962 841534
Hertfordshire Constabulary	01707 354000
Humberside Police	01482 597600
Kent Police	01622 690690
Lancashire Constabulary	01772 614444
Leicestershire Police	0116 222 2222
Lincolnshire Police	01522 532222
Merseyside Police	0151 709 6010
Metropolitan Police Service	020 7230 1212
Norfolk Constabulary	01953 424242
North Yorkshire Police	01904 618691
Northamptonshire Police	03000 111 222
Northumbria Police	01661 872555
North Wales Police	0300 330 0101
Nottinghamshire Police	0115 967 0999
Police Scotland	01786 289070
Police Service of Northern Ireland	028 9065 0222
South Wales Police	01656 655555
South Yorkshire Police	0114 2196905
Staffordshire Police	0300 123 4455
Suffolk Constabulary	01473 613500
Surrey Police	01483 571212
Sussex Police	01273 475432
Thames Valley Police	01865 841148
Warwickshire Police	01926 415000
West Mercia Police	0300 333 3000
West Midlands Police	0345 113 5000
West Yorkshire Police	01924 375 222
Wiltshire Police	01380 735 735

Local authorities – Directors of Children’s Services

Please refer to the website of The Association of Directors of Children's Services Ltd (ADCS) for contact details.

The ADCS is the national leadership association in England for statutory directors of children’s services and their senior management teams.

Website: www.adcs.org.uk/contacts/dcs.html.