

Memorandum of Understanding between the Department for Education and Ofsted in respect of secure children's homes

This document outlines Her Majesty's Chief Inspector's support for the Secretary of State for Education's functions with regard to secure children's homes.

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Introduction

1. This memorandum of understanding outlines the ways in which the Department for Education (DfE) and the Office for Standards in Education, Children's Services and Skills (Ofsted) will cooperate to facilitate the discharge of the Secretary of State for Education's functions and DfE's wider responsibilities with regard to secure children's homes, so that they offer safe, good quality care to children. It is not intended to replace or alter any processes or obligations prescribed by legislation.
2. The DfE is responsible for government policy and for the Secretary of State's statutory functions with regards to secure children's homes. Brief details on these are set out in the Annex attached to this document. The DfE is supported in effective discharge of these functions by reliable information from suitably qualified and experienced professionals with an operational understanding of:
 - The Children's Homes (England) Regulations 2015
 - Guide to the Children's Homes (England) Regulations, including the quality standards concerning children's homes and how these apply to secure children's homes
 - the legal framework governing placement in secure children's homes on welfare and youth justice grounds
 - court and local authority processes
 - Ofsted's registration and inspection processes
 - child development and the needs of young people, especially those with complex and challenging needs, who are likely to be detained in secure accommodation on welfare or criminal justice grounds
 - children's rights.

In this respect, Ofsted assists the DfE by providing professional advice, expertise and information.

Her Majesty's Chief Inspector's legal obligations

3. Her Majesty's Chief Inspector has a general duty to keep the Secretary of State informed about:
 - the quality of activities within the Chief Inspector's remit, including (where appropriate) the standards achieved by those for whose benefit the activities are carried on
 - improvements in the quality of such activities and in any such standards
 - the extent to which such activities are user focused

- the efficient and effective use of resources in carrying out those activities and services.¹
4. The Chief Inspector must also provide information or advice to the Secretary of State when requested to do so on matters relating to activities within their remit.²
 5. There are three areas that the Secretary of State commonly requests information or advice on. These are:
 - approval of accommodation as a secure children's home
 - the placement of under 13s in secure children's homes
 - notifiable events.

Approval

6. The approval process will be incorporated into Ofsted's bi-annual inspections of secure children's homes.
7. Ofsted registers providers and managers of children's homes under the Care Standards Act 2000. Children's homes must be approved by the Secretary of State before they can be used to provide secure accommodation.³ Approval can only be given if the Secretary of State has the necessary information. This includes evidence that the proposed accommodation:
 - meets all the required standards
 - is fit for the purpose of detaining very vulnerable children
 - and can respond to these children's full range of welfare needs, while maintaining the necessary security.
8. Ofsted will produce an inspection report following every full and interim inspection of a secure children's home. The inspection report will outline how well the secure children's home meets the needs of the children living there. If the home fails to meet any of the statutory requirements, Ofsted will issue a compliance notice or statutory requirement for the provider to meet the relevant standard or obligation in the Children's Home (England) Regulations

¹ Under section 118(1) of the Education and Inspections Act 2006;
www.legislation.gov.uk/ukpga/2006/40/contents.

² Under section 118(3) of the Education and Inspections Act 2006;
www.legislation.gov.uk/ukpga/2006/40/section/118

³ Under regulation 3 of The Children (Secure Accommodation) Regulations 1991;
www.legislation.gov.uk/uksi/1991/1505/contents/made.

2015, and identify any areas for improvement that link directly to either the regulations or the Guide to Children's Homes (England) Regulations 2015.⁴

9. The methodology for inspecting in England is incorporated within Ofsted's framework for the inspection of children's homes.⁵ It makes clear that secure children's homes are primarily homes for children, regardless of their secure nature.
10. Before any new secure children's home is approved, Ofsted will follow its registration process under the Care Standards Act. Given the complexity of the building arrangements and the investment of public money, Ofsted may carry out additional visits to ensure that the proposed layout and design of the building is suitable for its purpose as a children's home approved by the Secretary of State to function as a secure children's home. The DfE will consider approval, taking into account Ofsted's decision to register the home.
11. The Secretary of State will consider the outcome of the inspection, and the approval period will reflect whether the secure children's home has improvements to make or conditions to meet. For homes with an existing approval from the Secretary of State, the DfE will review this at least every three years, based on Ofsted's inspection evidence and other information (such as that provided by the DfE's architectural advisers). Where requested by the DfE, Ofsted will contribute to the Secretary of State's evaluation and provide appropriate advice.
12. The DfE will maintain records of each approval given to secure children's homes, indicating when it should be reviewed, along with any conditions that must be met and the timescales in which they should be met.

Requests to detain children under 13 in secure children's homes

13. Local authorities must obtain the approval of the Secretary of State before placing a child under the age of 13 in a secure children's home.⁶ So that the Secretary of State can give these requests careful consideration, the DfE policy team, acting on behalf of the Secretary of State, may request information and advice from Ofsted. Ofsted can only provide information and advice during office working hours and will aim to do so with minimum delay.

⁴ Guide to the Children's Homes Regulations, including the quality standards; www.gov.uk/government/publications/childrens-homes-regulations-including-quality-standards-guide

⁵ Inspection of children's homes framework for inspection from 1 April 2015, Ofsted 2015; www.gov.uk/government/publications/inspecting-childrens-homes-framework

⁶ Secure children's homes: how to place a child aged under 13; www.gov.uk/guidance/secure-childrens-homes-how-to-place-a-child-aged-under-13

Notifications

14. Registered providers of children's homes (including secure children's homes) must notify Ofsted whenever a notifiable event has taken place, including the death of any child.⁷ The Prisons and Probation Ombudsman for England and Wales must also be informed of the death of a child in a home. The Secretary of State may also want to be informed of other notifiable events as appropriate. To facilitate this, Ofsted will assess the information received about each notifiable event and decide whether or not it should be shared, securely, with the DfE. Examples of such notifications would include a child absconding from the home or allegations against a member of staff or child or serious harm resulting in hospitalisation of a child.
15. To assess whether an event should be notified to the Secretary of State or not, an inspector may make additional enquiries, with the secure children's homes concerned, to check and verify the information received. Ofsted will arrange this, as and when required.

Support for the DfE capital programme

16. The DfE has an ongoing capital investment programme that supports the continued development and long-term sustainability of secure children's homes. Grants are awarded for major rebuilding work, alongside a wide range of minor works, to maintain the quality and security of the secure children's homes estate.
17. To achieve value for money, each grant application is scrutinised by the DfE to ensure the best use of public money. So that the DfE can do this with the necessary expertise, it may need independent architectural and other specialist advice. Ofsted's inspectors are able to advise on the suitability of building layout and design to meet the requirements of relevant regulations and the quality standards, so that the secure children's home provides a secure environment with the capacity to respond appropriately to the needs of detained children. Where appropriate (for example because of the costs or complexity of design), the DfE may seek Ofsted's input to confirm that new building work has been completed to the standard required to register with Ofsted.

General advice and information

18. The routine activities of Ofsted's inspectors give Ofsted an overview and understanding of the unique problems faced by each secure children's home and the sector as a whole.

⁷ As set out in regulation 40 of the Children's Homes (England) Regulations 2015; www.legislation.gov.uk/en/uksi/2015/541/regulation/40/made

19. The DfE policy team will maintain a strong working partnership with Ofsted. The Chief Inspector's knowledge and expertise may be sought to advise ministers about wider strategic issues relating to the sector's contribution to the welfare of children in secure accommodation.

Review

20. Working arrangements between the DfE and Ofsted will be reviewed, as required, and at least annually.

Annex A

Secretary of State functions in relation to secure children's homes

The Secretary of State has three statutory functions in relation to secure children's homes that are carried out on their behalf by policy officials:

- awarding capital grants for upgrades and improvements to secure children's homes
- approval of applications from local authorities to place a child under the age of 13 in a secure children's home
- approving secure children's homes as accommodation provided for the purpose of restricting the liberty of children and young people.

Capital grants for upgrades and improvements to secure children's homes

The Secretary of State has the power to make grants, under section 82(2) of the Children Act 1989 ('the Act'), to local authorities in respect of expenditure incurred by them in providing secure accommodation in community homes other than assisted community homes. Additionally, the Secretary of State may arrange for the provision, equipment and maintenance of homes other than community homes (including secure children's homes) where the facilities provided are unlikely to be readily available in community homes. Finally, the Secretary of State also has the power under section 82(3) of the Act to recover grants paid to local authorities, either in part or in full, should the secure children homes cease to provide secure accommodation.

Under 13s applications from local authorities

In addition to the need to apply to the Court for a Secure Accommodation Order, local authorities must obtain the approval of the Secretary of State before placing a child under the age of 13 in secure accommodation.

Section 25 of the Children Act 1989 sets out the criteria, which must be met, before a looked after child, including those under the age of 13, can be placed in secure accommodation, i.e. that:

- (a) (i) he has a history of absconding and is likely to abscond from any other description of accommodation; and (ii) if he absconds he is likely to suffer significant harm; or
- (b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

Although not a requirement under the Secretary of State approval process, DfE seeks a contributory professional view from relevant Ofsted inspectors as to whether an under 13 application meets the criteria set out in section 25 of the Act.

DfE officials are available out-of-hours should there be a very urgent need for approval to place a child under the age of 13 in a secure children's home, although Ofsted advice will not be available out-of-office hours. There is a designated telephone number to use during out-of-office hours. Guidance for local authorities setting out the process to follow when making an application is available on the GOV.UK website at:

www.gov.uk/secure-childrens-homes-how-to-place-a-child-aged-under-13.

Secure children's homes approvals

Secure children's homes are registered and inspected by Ofsted twice a year ('full' and 'interim' inspections). However, the homes must also be approved by the Secretary of State before they can provide secure accommodation, which restricts the liberty of children and young people.

Towards the end of any approval period, Ofsted will submit a recommendation to the DfE on whether the home should receive a renewed approval. Ofsted will also advise on how long the approval should be renewed for based on the inspection history of the home. A new Certificate of Approval is then issued on behalf of the Secretary of State.

The certificate contains a set of standard conditions that the secure children's homes must adhere to. Further conditions can be added based on recommendations received from Ofsted.

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.

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