

# SCHOOL INSPECTION: GUIDE TO THE LAW

## PART 1:

### THE STATUTORY BASIS FOR INSPECTION

#### Guidance on the law relating to the inspection of schools

This guide is on the Ofsted website for use by school inspectors. It does not represent a comprehensive guide to the law and should not be relied on as such. The law is constantly changing and legislation is updated regularly, so users are advised to always check the most up to date legislation.

The DfES publishes a *Guide to the Law for School Governors* which has fuller information than this brief reference document:

<http://www.governornet.co.uk/publishList.cfm?topicAreald=26>

Suggestions for corrections or revisions to any part of this guide should be sent to the Complaints and Legal Team, Institutional Inspections Frameworks Division, Ofsted.

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## 1. Introduction to school inspection: a guide to the law

- 1.1 The education system in England is governed by a number of Acts of Parliament. These are the Education Acts (EA), the School Standards and Framework Act 1998 (SSFA) and the Learning and Skills Act 2000. This document sets out those provisions directly relevant to school inspection and the framework within which it functions. It is intended for reference when required by HMI and additional inspectors carrying out school inspections, and by other staff in Ofsted and the regional and national inspections service providers. It was first published in December 1996 and revised in 1997, 1999, 2003 and, substantially, in 2005 to incorporate changes in legislation.
- 1.2 Within the current legislation, the Secretary of State for Education and Skills has the power to make Statutory Instruments (regulations and orders) embodying more detailed legal requirements. The Department for Education and Skills (DfES) also offers guidance both on the law and on general policy, which can be found on the DfES web site, [www.dfes.gov.uk](http://www.dfes.gov.uk).
- 1.3 The text is not a definitive statement of the law, nor a legal interpretation of the provisions of any Act or regulation; those are exclusively matters for the Courts. It offers a selective overview of the main legislation that determines the work and inspection of schools and should be read in conjunction with the revised Ofsted framework, *Inspecting Schools* and accompanying guidance for inspectors. Inspectors should also be familiar with the publications *School Governors: A Guide to the Law* published by the DfES.
- 1.4 The guide is in two parts: part 1, 'The statutory basis for inspection', details the duties and responsibilities of Ofsted, and part 2, 'Aspects of the governance and operation of schools' contains sources of legislation and guidance on schools' responsibilities. Inspectors are not expected to carry the detail in their heads. Nevertheless, inspectors need to assure themselves as occasions arise, that headteachers, governors and LEAs are operating within current legal requirements. They may also need to know where to find a statement of the legal basis of an aspect of a school's operation or governance where difficulties or divergent interpretations have come to light during an inspection.
- 1.5 Any comments on this guide are welcome and should be sent to the Complaints and Legal Team, Institutional Inspections and Frameworks Division, Alexandra House, 33 Kingsway, London WC2B 6SE.

## 2. The statutory basis for inspection

- 2.1 This section is based closely on the wording of the relevant legislation, but does not always quote the section of the Act referred to in full.

### **The duties and responsibilities of the Chief Inspector of schools and those carrying out school inspections on his behalf**

- 2.2 Part one of the Education Act 2005 (School Inspections and other Inspections by School Inspectors), due to commence on 1 September 2005, provides for the regular inspection of all state-funded schools in England. The School Inspections Act 1996 will be repealed from that date.

### **HMCI's duties**

- 2.3 It is the duty of Her Majesty's Chief Inspector of Schools (HMCI) to inspect every school in England to which section 5 applies, at such intervals as may be prescribed, and to make a report of the inspection in writing [EA 2005, s5(1)].
- 2.4 The intervals prescribed require the Chief Inspector to inspect each school to which section 5 applies by 1 August 2009 and, following that inspection, thereafter to inspect each school within 3 school years from the end of the school year in which the last inspection of the school took place. [Education (School Inspection) (England) Regulations 2005]
- 2.5 The schools to which section 5 inspections apply are detailed in section 5(2) of the Act. They are as follows:
- a) community, foundation and voluntary schools
  - b) community and foundation special schools
  - c) maintained nursery schools
  - d) Academies
  - e) city technology colleges
  - f) city colleges for the technology of the arts, and
  - g) special schools which are not community or foundation special schools but are for the time being approved by the Secretary of State under section 342 of the Education Act 1996 (approval of special schools).
- 2.6 Section 5 inspections also apply to pupil referral units [Education (Pupil Referral Units) (Application of Enactments) Regulations 1994 and 1996 - **being revised**].
- 2.7 Section 5 does not apply to any school which is a closing school and in respect of which HMCI has decided, having regard to the date on which the closure is to take effect, that no useful purpose would be served by the school being inspected under that section [EA 2005, s.5(3)].

## Delegation of functions to HMI and Additional Inspectors

2.8 School inspections, as with any other functions authorised or required to be done by the Chief Inspector, may be done by:

- a) any of Her Majesty's Inspectors of Schools in England,
- b) any other member of his staff, or
- c) any additional inspector,

who is authorised generally or specially in that behalf by the Chief Inspector. [EA 2005, Schedule 1, para 5(1)].

2.9 An additional inspector acting within the authority conferred on him by the Chief Inspector has all the powers of one of Her Majesty's Inspectors of Schools in England. [EA 2005, Schedule 1, para 2(7)].

2.10 The Chief Inspector may not authorise an additional inspector to conduct an inspection of a school under section 5 unless:

- a) the inspection is to be supervised by an HMI; or
- b) the additional inspector has previously conducted an inspection under that section under the supervision of an HMI ("the supervising inspector") to the satisfaction of the supervising inspector.

[EA, 2005, Schedule 1, para 2(8)]

*(See also paragraph 59 below for further provisions relating to additional inspectors).*

## Section 5 inspections

2.11 It is the general duty of the Chief Inspector (and, therefore, any HMI or additional inspector conducting an inspection on his behalf), when conducting an inspection under section 5, to report on:

- a) the quality of the education provided in the school,
- b) how far the education provided in the school meets the needs of the range of pupils at the school,
- c) the educational standards achieved in the school,
- d) the quality of the leadership in and management of the school, including whether the financial resources made available to the school are managed effectively,
- e) the spiritual, moral, social and cultural development of the pupils at the school, and
- f) the contribution made by the school to the \*well-being of those pupils.

\* "well-being", in relation to pupils at a school, is a reference to their well-being having regard to the matters mentioned in section 10(2) of the Children Act 2004. Those are:

- (a) physical and mental health and emotional well-being;
- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being.

[EA 2005, s.5(5); CA 2004, s.10(2)]

- 2.12 School inspections are relevant assessments of children's services for the purposes of s.21 of the CA 2004, and are therefore governed by the statutory Framework for the Inspection of Children's Services. [CA 2004, s.21]
- 2.13 In conducting an inspection of a school under section 5, the matters to which the Chief Inspector must have regard include any views expressed to him by any of the following persons:
- a) the head teacher,
  - b) in the case of a maintained school, the governing body,
  - c) in the case of any other school, the proprietor of the school,
  - d) any persons the school is required to notify of the inspection (see next para),
  - e) members of the staff of the school,
  - f) registered pupils at the school, and
  - g) the registered parents of registered pupils.

[EA 2005, s.7].

### **School's duty to notify parents of inspection**

- 2.14 The school has a duty, where it has been notified of an inspection, to take such steps as are reasonably practicable to notify parents (and others prescribed in regulations) of the time when the inspection is to take place. The notification must include a statement inviting parents to inform the inspectors of their views of matters relating to the school. [EA 2005, s.6; *Draft* Education (School Inspection) (England) Regulations 2005].

### **Section 8 inspections**

- 2.15 Section 8 allows the Chief Inspector to inspect any school in England, in circumstances where he is not required to do so under section 5, or under section 2(2)(b) (request of the Secretary of State). [EA 2005, s.8].

### **Power to treat other inspections as section 5 inspections**

- 2.16 The Chief Inspector can elect to treat an inspection under section 8 or under section 2(2)(b) as if it were an inspection under section 5, for the purposes of section 5(1) (see para 7 above) and Chapter 2 of the Act (schools causing concern and destination of reports – described in paras 28-44 below). [EA 2005, s.9].

### **Right of entry and access for section 5 and section 8 inspections**

- 2.17 When inspecting a school under section 5 or 8, the Chief Inspector has at all reasonable times:

- (a) a right of entry to the premises of the school,
- (b) a right of entry to any other premises on which, by virtue of arrangements made by the school, any pupils who-
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,
 are receiving part of their education from any person ("the provider"),
- (c) a right of entry to any premises of the provider used in connection with the provision by him of that education,
- (d) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he considers relevant to the discharge of his functions, and
- (e) a right to inspect and take copies of-
  - (i) any records kept by the provider relating to the provision of education for pupils registered at the school, and
  - (ii) any other documents containing information relating to the provision of such education by the provider,
 which the Chief Inspector considers relevant to the discharge of his functions.

2.18 It is an offence intentionally to obstruct the Chief Inspector in relation to the inspection of a school for the purposes of section 5 or 8. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale. [EA 2005, s.10]

2.19 The references to the Chief Inspector in this section include references to any person authorised to act on his behalf [EA 2005, Schedule 1, para 5(2)].

### **Rights of entry for section 2 advisory functions**

2.20 The Chief Inspector also has powers of entry for the purposes of any function conferred by or under section 2. These include the following advisory functions:

Section 2(2)(a) requires the Chief Inspector, when asked to do so by the Secretary of State, to give advice to the Secretary of State on such matters as may be specified in the Secretary of State's request; and

Section 2(4) says that the Chief Inspector may at any time give advice to the Secretary of State on any matter connected with schools, or a particular school, in England.

*(Note: these functions are the statutory basis for subject and survey work).*

2.21 The powers of entry are, at all reasonable times, in relation to any school in England:

- a) a right of entry to the premises of the school, and
- b) a right to inspect, and take copies of, any records kept by the school, and any other documents containing information relating to the school, which he requires for those purposes.

2.22 In addition:

- a) a right of entry to any premises (other than school premises) on which, by virtue of arrangements made by a school in England, any pupils who-
  - (i) are registered at the school, and
  - (ii) have attained the age of 15, or will attain that age in the current school year, but have not ceased to be of compulsory school age,are provided with part of their education by any person ("the provider"),
- b) a right of entry to any premises of the provider used in connection with the provision by him of that education, and
- c) a right to inspect and take copies of-
  - (i) any records kept by the provider relating to the provision of that education, and
  - (ii) any other documents containing information so relating, which the Chief Inspector requires for those purposes.

2.23 It is an offence intentionally to obstruct the Chief Inspector in the exercise of these rights. A person guilty of such an offence is liable on summary conviction to a fine not exceeding level 4 on the standard scale. [EA 2005, s.4]

2.24 The references to the Chief Inspector in this section include references to any person authorised to act on his behalf [EA 2005, Schedule 1, para 5(2)].

### **Publication of inspection reports**

2.25 The Chief Inspector may arrange for any report of an inspection carried out under any of the above functions to be published in such manner as he considers appropriate, including by electronic means. For the purposes of the law of defamation, any report so published is privileged unless the publication is shown to have been made with malice. [EA 2005, s.11]

### **Schools causing concern**

2.26 Special measures are required to be taken in relation to a school if-

- a) the school is failing to give its pupils an acceptable standard of education, and
- b) the persons responsible for leading, managing or governing the school are not demonstrating the capacity to secure the necessary improvement in the school.



2.27 A school requires significant improvement if, although not falling within subsection (1), it is performing significantly less well than it might in all the circumstances reasonably be expected to perform. [EA 2005, s.44]  
*(Note: see Guidance for Inspectors for amplification of the above and procedures to be followed. Where the lead inspector (HMI or AI) judges that one of these categories apply the judgement must be moderated according to the procedure in the guidance).*

2.28 For the purposes of Schedule 7 to the Learning and Skills Act 2000 (sixth forms requiring significant improvement) a school requires significant improvement in relation to its sixth form if:

- a) the school is failing to give its pupils over compulsory school age an acceptable standard of education, or
- b) in relation to its provision for pupils over compulsory school age, the school is performing significantly less well than it might in all the circumstances reasonably be expected to perform."

*(Note: This does not constitute a separate category of school causing concern: these are schools requiring significant improvement, where one or more of the areas for improvement are in the sixth form).*

### **Section 5 inspections: procedure where school causes concern**

2.29 If, on completion of a section 5 inspection of a school, the Chief Inspector is of the opinion:

- (a) that special measures are required to be taken in relation to the school, or
- (b) that the school requires significant improvement,

he must send a draft of the inspection report to the governing body (in the case of a maintained school, and in the case of any other school, to the proprietor of the school) and consider any comments on the draft that are made to him within 5 working days by the governing body or proprietor. If, having done so, the Chief Inspector is of the opinion that the case falls within paragraph (a) or (b) above, he must without delay give a notice in writing, stating that the case falls within paragraph (a) or (b):

- (i) to the Secretary of State,
- (ii) in the case of a maintained school, to the local education authority,
- and
- (iii) in the case of any other school, to the proprietor of the school,

and must state his opinion in the inspection report.

2.30 If a report of a section 5 inspection is made in circumstances where:

- a) in the latest report of an inspection of the school, the Chief Inspector stated that in his opinion special measures were required to be taken in relation to the school, but
- b) the Chief Inspector is of the opinion that special measures are not required to be taken in relation to the school,

he must state his opinion in the report (whether or not he is required also to state (see para 30) the opinion that the school requires significant improvement).

2.31 If a report of a section 5 inspection is made in circumstances where:

- a) in the latest report of an inspection of the school, the Chief Inspector stated that in his opinion the school required significant improvement, but
- b) the Chief Inspector is of the opinion that the school does not require significant improvement and that special measures are not required to be taken in relation to the school,

he must state his opinion in the report.

[EA 2005, s.13 and **(Draft)** Education (School Inspection) (England) Regulations 2005]

2.32 The making of an inspection report which states the opinion that special measures are required to be taken in relation to the school must be personally authorised by:

- (a) the Chief Inspector, or
- (b) an HMI who is authorised by the Chief Inspector for this purpose.

[EA 2005, Schedule 1, para 5(3)]

*(Note: The persons currently authorised by the Chief Inspector under paragraph (b) above are: the Director, Education; the Deputy Director, Education and the Divisional Manager, Institutional Inspections and Frameworks Division, in that order according to their availability).*

### **Destination of reports: maintained schools**

2.33 The Chief Inspector must ensure that a copy of the report of any section 5 inspection of a maintained school is sent without delay to the appropriate authority for the school, and that copies of the report are sent:

- (a) to the head teacher of the school
- (b) to whichever of the local education authority and the governing body are not the appropriate authority,
- (c) in the case of a school having foundation governors, to the person who appoints them and (if different) to the appropriate appointing authority, and

- (d) in such circumstances as may be prescribed, to such other persons (if any) as may be prescribed.
- (e) if the school provides full-time education suitable to the requirements of pupils over compulsory school age, to the Learning and Skills Council for England.

2.34 The appropriate authority must:

- (a) make a copy of the report available for inspection by members of the public at such times and at such place as may be reasonable,
- (b) provide a copy of the report, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), to any person who asks for one, and
- (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the report within 5 working days from the date of receipt of the report by the authority.

[EA 2005, s.14 and **(Draft)** Education (School Inspection) (England) Regulations 2005]

### **Measures to be taken by local education authority**

2.35 Where a section 5 report states that a maintained school requires special measures or significant improvement, the LEA must:

- (a) prepare a written statement of any action they propose to take in the light of the report, and the period within which they propose to take such action, or, if they do not propose to take such action, of their reasons for not doing so, and
- (b) send a copy of the statement to the Chief Inspector and, in the case of a voluntary aided school:
  - (i) to the person who appoints the foundation governors, and
  - (ii) if different) to the appropriate appointing authority.

The statement must be prepared within 10 working days from the date of receipt of the report by the local education authority; or, where, in the case of special measures, the Secretary of State is of the opinion that the urgency of the case requires it, such shorter period as the Secretary of State may direct. [EA 2005, s.15 and **(Draft)** Education (School Inspection) (England) Regulations 2005]

### **Destination of reports: non-maintained schools**

2.36 The Chief Inspector must ensure that a copy of the report of any section 5 inspection of a non-maintained school is sent without delay to the proprietor of the school.

- 2.37 In the case of a special school which is not a community or foundation special school, the proprietor must without delay send a copy of the report to any local education authority that are paying fees in respect of the attendance of a registered pupil at the school.
- 2.38 The proprietor of the school must:
- (a) make the report available for inspection by members of the public at such times and at such place as may be reasonable,
  - (b) provide a copy of the report, free of charge or in prescribed cases on payment of such fee as they think fit (not exceeding the cost of supply), to any person who asks for one, and
  - (c) take such steps as are reasonably practicable to secure that every registered parent of a registered pupil at the school receives a copy of the report within 5 working days from the date of receipt of the report by the proprietor.

[EA 2005, s.16 and **(Draft)** Education (School Inspection) (England) Regulations 2005]

### **Statement to be prepared by proprietor of school**

- 2.39 Where a section 5 report states that a school other than a maintained school requires special measures or significant improvement, the proprietor of the school must prepare a written statement of the action which he proposes to take in the light of the report, and the period within which he proposes to take it.
- 2.33 The statement must be prepared within 10 working days from the date of receipt of the report by the proprietor; or, where, in the case of special measures, the Secretary of State is of the opinion that the urgency of the case requires it, such shorter period as the Secretary of State may direct.
- 2.34 Where such a statement has been prepared by the proprietor of the school, he must, before the end of the prescribed period, send copies of it:
- (a) to the Chief Inspector, and
  - (b) in such circumstances as may be prescribed, to such other persons (if any) as may be prescribed.
- 2.35 In the case of a special school which is not a community or foundation special school, the proprietor of the school must, before the end of the prescribed period, send a copy of any such statement prepared by him to any local education authority that are paying fees in respect of the attendance of a registered pupil at the school. [EA 2005, s.17 and **(Draft)** Education (School Inspection) (England) Regulations 2005]

## **Inspection of computer records**

- 2.36 A person authorised by any provision to inspect records or other documents is entitled at any reasonable time to have access to, and inspect and check the operation of, any computer and any associated apparatus or material which is or has been in use in connection with the records or other documents in question, and may require:
- (a) the person by whom or on whose behalf the computer is or has been so used, or
  - (b) any person having charge of, or otherwise concerned with the operation of, the computer, apparatus or material,

to afford him such assistance as he may reasonably require (including, in particular, the making of information available for inspection or copying in a legible form). [EA 2005, s.59]

## **Combined reports**

- 2.37 Reports of school inspections made under the EA 2005, of childminding and day care under part 10A of the Children Act 1989, of nursery education under s.122 of the SSFA 1998 and of independent schools under the EA 2002, may be included in a single document (combined report). This provision also allows the substantive reports of those inspections to be combined where appropriate.
- 2.38 Where a combined report is made, any reference in the above Acts to the publication of a report, or to providing a copy of a report is to be read so far as necessary as referring to the combined report. The Chief Inspector may arrange for a combined report to be published in any manner he considers appropriate, but this does not limit any duty as to publication imposed by those Acts. [EA 2005, s.59]

## **Inspection of denominational religious education and collective worship**

- 2.39 Inspection under section 5 does not extend to:
- a) denominational education (as defined below)
  - b) the content of collective worship which falls to be inspected under section 48 of the EA 2005.
- 2.40 'Denominational education' is defined by section 47 of the EA 2005 as meaning any religious education which is required by section 80(1)(a) or 101(1)(a) of the EA 2002 to be included in the school's basic curriculum, but is not required to be given in accordance with an agreed syllabus. This applies to voluntary or foundation schools which have been designated by the Secretary of State under section 69(3) of the SSFA 1998 as having a religious character [EA 2005, s.48].

- 2.41 Under section 48(1), it is the duty of the governing body of a voluntary or foundation school which has been designated under section 69(3) of the SSFA 1998 by the Secretary of State as having a religious character to secure the inspection of the school's denominational education and the content of the school's collective worship at prescribed intervals (currently 3 years). [Draft Education (School Inspections) (England) Regulations 2005]

### **Section 48 inspections**

- 2.42 An inspection under this section is conducted by a person chosen by the foundation governors, in the case of a voluntary controlled school, and in other cases, by the governing body. [EA 2005, s.48(2)]
- 2.43 It is the duty of a person carrying out an inspection under section 48 to report on the quality of denominational education provided by the school for any pupils to whom it is given, and the content of the school's collective worship. Any such person may report on the spiritual, moral, social and cultural development of pupils at the school [EA 2005, s.48(4)].

### **The respective functions of Section 5 and Section 48 inspectors: amplification of the statutory basis**

- 2.44 A section 48 inspection is legally and administratively separate from a section 5 inspection conducted by Ofsted. The responsibility for arranging section 48 inspections falls to the school's governing body and not to Ofsted.
- 2.45 The secular curriculum of all schools is inspected under the arrangements set out in section 5 of the Act. There must be separate reports for section 5 and 48 inspections. In the case of a section 5 inspection of a school with foundation governors, Ofsted are required to send a copy of the section 5 report to the person who appoints the foundation governors and (if different) to the appropriate appointing authority [EA 2005, s14(2)]. The report of a section 48 inspection goes only to the governing body of the school [EA 2005, s.49(2)].
- 2.46 Where parents have withdrawn their children from religious education, or have requested religious education under an agreed syllabus, the arrangements for such children will be inspected under section 5.
- 2.47 If denominational education and the content of collective worship at a school fall to be inspected under section 48, a section 5 inspector may not inspect or report on these matters when carrying out a section 5 inspection. Although he would still have a duty to report on the spiritual, moral, social and cultural development of pupils, he must do so without inspecting denominational religious education and the content of collective worship.
- 2.48 The section 48 inspector also has the power (but not a duty) to report on the spiritual, moral, social and cultural development of pupils [EA 2005, s.48(4)].

## Independent schools

2.49 The routine inspection of independent schools is conducted under s.162A of the Education Act 2002, and is not covered by this document.

## Further requirements on Ofsted governing the use of Additional Inspectors

2.50 The Chief Inspector may arrange for such persons as he thinks fit to assist him in the discharge of his functions in relation to a particular case or class of case. Any person assisting the Chief Inspector under any such arrangements is to be known as an 'additional inspector'. The Chief Inspector must comply with the following requirements when arranging to use additional inspectors:

- (1) ensure that additional inspectors have the necessary qualifications, experience and skills to assist him in the effective discharge of his functions. In particular, he must publish in such manner as he thinks fit, and may from time to time revise, a statement of:
  - (a) the qualifications or experience (or both) that are to be required of additional inspectors who are not members of his staff, and
  - (b) the standards that such additional inspectors are to be required to meet in the exercise of their functions and the skills that they are to be required to demonstrate in the exercise of those functions.
- (2) Any arrangements which provide for assistance by persons who are not members of the Chief Inspector's staff must be made on terms that require the person with whom the arrangements are made to secure compliance with any requirements under (a) and (b) above.
- (3) If the Chief Inspector has entered into arrangements with persons who are not themselves additional inspectors ("inspection service providers") for the provision by the inspection service providers of the services of inspectors, the Chief Inspector must publish, at intervals of not more than 12 months, a list of the names of those persons who, as at a specified date, are currently notified to him by any inspection service provider as persons with whom the inspection service provider proposes to make arrangements for the carrying out of inspections on behalf of the Chief Inspector. [EA 2005, Schedule 1, paras 2(1)-(6)]  
*See also paragraphs 11-13 in relation to Additional Inspectors.*