

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 of Education, Children's Services and Skills support for the Secretary of State for Education's functions with regard to secure children's homes.

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, including to facilitate the discharge of the Secretary of State for Education's functions and the DfE's wider responsibilities regarding 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 children's services policy and for the Secretary of State's statutory functions with regards to secure children's homes. Brief details of these functions are set out in Annex A. The DfE is supported in the effective discharge of these functions by reliable information from suitably qualified and experienced professionals in Ofsted with an operational understanding of:
 - The Children's Homes (England) Regulations 2015¹
 - the 'Guide to the children's homes regulations including the quality standards' (published in April 2015) and how these apply to secure children's homes²
 - the legal framework governing welfare and youth justice placements in secure children's homes
 - court and local authority processes
 - Ofsted's registration and inspection processes
 - child development and the needs of children, 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.
3. In this respect, Ofsted assists the DfE by providing professional advice, expertise and information. The DfE policy team will maintain effective communication with Ofsted, for knowledge and expertise to advise ministers about wider strategic issues relating to the welfare of children in secure accommodation.

¹ The Children's Homes (England) Regulations 2015; www.legislation.gov.uk/uksi/2015/541/made

² Guide to the Children's Homes Regulations, including the quality standards (April 2015); www.gov.uk/government/publications/childrens-homes-regulations-including-quality-standards-guide

Her Majesty's Chief Inspector's legal obligations

4. Her Majesty's Chief Inspector³ (HMCI) has a general duty to keep the Secretary of State informed about:
 - the quality of activities within HMCI's remit, including (where appropriate) the standards achieved by those for whose benefit the activities are carried out
 - 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.⁴
5. HMCI must also provide information or advice to the Secretary of State when requested to do so on matters relating to activities within HMCI's remit.⁵
6. The two main areas on which the DfE commonly requests information or advice are:
 - approval of accommodation in a children's home for use as secure accommodation
 - notification of a serious event.

Registration, approval and applications to vary conditions of registration

7. Children's homes in England must be approved by the Secretary of State before they can be used to provide secure accommodation.⁶ Approval can only be given if the Secretary of State has the necessary information. This includes evidence that the proposed accommodation:
 - meets required standards
 - is fit for the purpose of detaining very vulnerable children

³ Her Majesty's Chief Inspector of Education, Children's Services and Skills appointed under section 113 of the Education and Inspections Act 2006; www.legislation.gov.uk/ukpga/2006/40/section/113

⁴ Under section 118(1) of the Education and Inspections Act 2006; www.legislation.gov.uk/ukpga/2006/40/section/118

⁵ Under section 118(2) of the Education and Inspections Act 2006; www.legislation.gov.uk/ukpga/2006/40/section/118

⁶ Under regulation 3 of The Children (Secure Accommodation) Regulations 1991; www.legislation.gov.uk/uksi/1991/1505/contents/made. As amended by the Children and Social Work Act 2017; www.legislation.gov.uk/ukpga/2017/16/schedule/1

- can respond to these children's full range of needs, while maintaining the necessary security and safety.
8. Ofsted registers providers and managers of children's homes, including secure children's homes, and makes decisions on applications to vary conditions of registration under the Care Standards Act 2000.⁷
- Before an application is submitted to Ofsted to register a provider of or vary the conditions of a provider's registration for a secure children's home⁸, an applicant must contact the DfE about the requirements for the Secretary of State's approval, in accordance with paragraph 7 above.
9. Given the complexity of the building arrangements and the investment of public money, the DfE may request that Ofsted advises on a home's suitability to function as a secure children's home.
10. Before any new secure children's home⁸ can be approved by a deputy director of the DfE with the delegated authority of the Secretary of State, Ofsted will follow its registration process under the Care Standards Act 2000. When making registration decisions, Ofsted will seek and take into account advice from specialist architects contracted by the DfE who will visit the premises. For homes with an existing approval from the Secretary of State, the DfE will review the approval based on Ofsted's inspection evidence.
11. 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. DfE will share this information with Ofsted.

Inspection

12. 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. Secure children's homes must meet the statutory requirements of the Children's Homes Regulations (England) 2015 ('the Regulations').⁹ When they do not, inspectors identify clearly what they must do in the form of setting requirements or through enforcement action. The 'Guide to children's homes regulations including the quality standards' (the Guide)¹⁰ explains and supplements the regulations. Registered persons must have regard to the guide in interpreting and meeting the regulations.

⁷ Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/introduction

⁸ Includes secure schools

⁹ Children's Homes Regulations 2015; www.legislation.gov.uk/uksi/2015/541/introduction/made

¹⁰ Guide to the Children's Homes Regulations, including the quality standards, Department for Education (2015); www.gov.uk/government/publications/childrens-homes-regulations-including-quality-standards-guide

13. The methodology for inspecting children's homes, including secure children's homes in England, is incorporated within Ofsted's social care common inspection framework (SCCIF).¹¹ It makes clear that secure children's homes are primarily homes for children, regardless of their secure nature.
14. When requested by the DfE, Ofsted will contribute to the Secretary of State's evaluation of secure children's home's approvals and provide appropriate advice.

Notifications

15. Registered providers of children's homes (including secure children's homes) must notify Ofsted whenever a notifiable event has taken place under regulation 40 (notification of a serious event) of 'the Regulations',¹² including the death of any child.¹³ The Prisons and Probation Ombudsman for England and Wales must also be informed of the death of a child in a secure children's home.
16. Ofsted will inform the DfE when it receives notification of:
 - a. the death of a child
 - b. a child attempting suicide
 - c. a child absconding from the home or during mobility (approved visits into the community)
 - d. changes in leadership at a home
 - e. any other incident which, in the professional judgement of Ofsted inspectors, presents a serious safeguarding or operational risk.
17. Ofsted retains (in accordance with its retention of documents policy) records of the notifications it receives from secure children's homes and will seek to provide information about these to the DfE, if requested.
18. The DfE will seek to inform Ofsted of any relevant developments that could have an impact on a secure children's home reporting notifiable events.

¹¹ Inspection of children's homes framework for inspection from April 2017, Ofsted (2017); www.gov.uk/guidance/social-care-common-inspection-framework-sccif-children-s-homes-including-secure-children-s-homes

¹² Under regulation 40 of the Children's Homes Regulations 2015; www.legislation.gov.uk/ukxi/2015/541/regulation/40/made

¹³ As set out in regulation 40 of the Children's Homes (England) Regulations 2015; www.legislation.gov.uk/ukxi/2015/541/regulation/40/made

Support for the DfE capital programme

19. 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 other refurbishments to maintain the quality, safety and security of the secure children's homes estate.
20. To achieve value for money, the DfE scrutinises each grant application to ensure the best use of public money. So that the DfE can do this with the necessary expertise, it will need independent architectural and other specialist advice. Ofsted's inspectors may provide advice on the suitability of building layout and design to meet the requirements of 'the Regulations' and 'the Guide', so that secure children's homes provide a safe and secure environment with the capacity to respond appropriately to the needs of children.

Review

21. These working arrangements between the DfE and Ofsted will be reviewed as required.

Last reviewed: 11 March 2019

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 senior civil servants:

- awarding capital grants for upgrades and improvements in respect of 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 accommodation in children's homes for use as secure accommodation i.e. provided for the purpose of restricting the liberty of children.

Capital grants for upgrades and improvements in respect of secure children's homes

The Secretary of State has the power to make grants, under section 82(2) of the Children Act 1989¹⁴ (the Act), to local authorities for expenses incurred in providing secure accommodation in community homes other than assisted community homes. The Secretary of State also has the power under section 14 of the Education Act 2002¹⁵ to award grants to non-local authority providers of secure accommodation. 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 Act¹⁶ 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 Courts for a secure accommodation order under section 25 of the Act,¹⁷ local authorities must obtain the approval of the Secretary of State before placing a child under the age of 13 years in a secure children's home.

¹⁴ Under section 82(2) of the Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/section/2

¹⁵ Under section 14 of the Education Act 2002; www.legislation.gov.uk/ukpga/2002/32/section/14

¹⁶ Under section 82(3) of the Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/section/82

¹⁷ Under section 25 of the Children Act 1989; www.legislation.gov.uk/ukpga/1989/41/section/25

Section 25 of the Act sets out the criteria that must be met before a child, including those under the age of 13 years, can be placed in secure accommodation.

Secure children’s homes approvals

Children’s homes (including secure children’s homes) are registered and inspected by Ofsted. However, the accommodation in a children’s home must also be approved by the Secretary of State before the home can provide secure accommodation, which restricts the liberty of children.

Towards the end of any approval period, the DfE will request that Ofsted 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 all relevant information, including inspection findings. The DfE then issues a new certificate of approval on behalf of the Secretary of State.

The certificate contains a set of standard conditions that secure children’s homes must adhere to. Approval by the Secretary of State may be given subject to any terms and conditions that the Secretary of State thinks fit.¹⁸

¹⁸ Under regulation 3 of The Children (Secure Accommodation) Regulations 1991; www.legislation.gov.uk/uksi/1991/1505/made; as amended by the Children and Social Work Act 2017; www.legislation.gov.uk/ukpga/2017/16/schedule/1/enacted

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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