

Memorandum of understanding: independent schools

The Office for Standards in Education, Children's Services and Skills (Ofsted) and the Department for Education (DfE)

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Introduction

1. This memorandum of understanding (MOU) explains how Ofsted and the Department for Education (DfE) will work together to exercise their respective functions in relation to independent schools.
2. This MOU is intended to provide a framework for Ofsted and the DfE to cooperate and communicate constructively with each other about inspections of independent schools.
3. This is to benefit children and learners attending independent schools, because effective inspections can drive the improvements needed to make sure that schools meet the independent school standards and, where applicable, the national minimum standards for boarding schools or residential special schools.
4. This MOU does not cover pre-registration or any other type of inspections of academies and free schools, or inspections and advice about maintained schools or non-maintained special schools. This MOU also does not cover inspections of unregistered independent schools under section 97; these inspections are covered under a separate MOU.
5. Ofsted and the DfE will continue to monitor the operation of the MOU and review as necessary. The next review is due by July 2019.

Role of the Department for Education and Ofsted

6. The DfE is a department of the UK government. It is responsible for issues affecting young people in England up to the age of 19, including child protection and education, and in particular, it regulates independent schools in England.
7. 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 apart from institutions in the higher education sector. 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 education, work-based further education and skills training, adult and community learning and education and training in prisons and other secure establishments. It inspects local authority children's services.
8. The functions within the scope of this MOU are the inspection of:
 - registered non-association independent day, boarding and residential special schools in England¹

¹ Residential provision offered by academies, maintained and non-maintained boarding and residential special schools is outside the scope of this MOU.

- residential provision in residential special schools that belong to the Independent Schools Council associations (whose education provision is inspected by the Independent Schools Inspectorate)²
 - early years provision for children aged 0 to 2 (in non-association independent schools) that does not form part of the school's registration with DfE and must be registered with Ofsted.
9. Occasionally, the DfE may commission Ofsted to carry out inspection of an independent school that is normally inspected by one of the approved independent inspectorates.³ This MOU also applies to such inspections.

Inspection under Education and Skills Act 2008 (and the Education Act 2002 for material change inspections)

10. Under section 109(1) and (2) of the Education and Skills Act 2008 (the Act),⁴ Ofsted must inspect an independent school when directed to do so by the Secretary of State, the purpose of which inspection is to advise the Secretary of State for Education of the school's compliance with the independent school standards. These reports may be used by the DfE to inform decisions on regulatory and/or enforcement action.^{5,6}
11. Proprietors wishing to open a new school must apply to the DfE for registration, under section 98 of the Act.⁷ When the DfE is satisfied that the application from a proposed new school to enter the school on the register is complete, it will commission Ofsted to conduct a pre-registration inspection of the proposed school. Ofsted will carry out the pre-registration inspection under section 99 of the Act.⁸

² Ofsted monitors the work of the other inspectorates approved by the Secretary of State to inspect independent schools in England (Independent Schools Inspectorate), and the approved independent overseas inspection providers for British schools overseas. This monitoring work is outside of the scope of this MOU, and is covered in the following published protocols: Memorandum of understanding (MOU) for Ofsted's monitoring of the independent inspectorates for independent schools in England; www.gov.uk/government/publications/independent-schools-approved-inspectorates.

Protocol between Ofsted and the approved independent overseas inspection providers for British schools overseas (100254), Ofsted, 2012; www.ofsted.gov.uk/resources/100254.

³ Under section 109(1) of the Education and Skills Act 2008, the Secretary of State may at any time direct the Chief Inspector to inspect a registered independent educational institution specified in the direction. Under section 87(3A) of the Children Act 1989 the Secretary of State may at any time (including when the duty under section 87(3) is suspended by virtue of section 87A) direct Ofsted to carry out an inspection of the boarding/residential provision in an independent school that is normally inspected by one of the approved independent inspectorates under section 87A.

⁴ Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/contents.

⁵ Section 96 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/96.

⁶ Section 97 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/97

⁷ Section 98 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/98.

⁸ Section 99 of the Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/section/99.

12. Proprietors wishing to make changes to their registration status must apply to the DfE for a material change to their registration. Where appropriate, the DfE commissions Ofsted to conduct a material change inspection for these schools. These inspections are conducted under section 162(4) of the Education Act 2002.^{9,10}
13. The DfE regulates independent schools under Part 4 of the Education and Skills Act 2008. The functions relating to material changes are set out in the Education Act 2002. These functions are undertaken within the Independent Education and Boarding Team.

Inspection of boarding or residential provision

14. The legal basis for welfare inspections in boarding and residential special schools is set out in section 87 of the Children Act 1989 and supplemented by the National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002.^{11,12,13} Section 87 imposes a duty on HMCI to take such steps as are reasonably practicable to enable her to determine whether the children and young people's welfare is adequately safeguarded and promoted while accommodation is provided for them at the school. HMCI determines the frequency of inspections and whether to inspect following receipt of any complaint or concern or when Ofsted has concerns for the welfare of children accommodated at the school.
15. Ofsted will determine the frequency of inspections and will consult with the DfE prior to making any changes.
16. DfE may commission advice and information from Ofsted under section 118 of the Education and Inspections Act 2006 or direct HMCI to carry out an inspection under section 87(3A) of residential or boarding provision.

Inspection of early years provision

17. Under sections 49 and 50 of the Childcare Act 2006, Ofsted carries out regular inspections to evaluate the overall quality and standards of early years provision in line with the principles and requirements of the 'Statutory framework for the Early Years Foundation Stage'.

⁹ Section 162 of the Education Act 2002; www.legislation.gov.uk/ukpga/2002/32/part/10/chapter/1/crossheading/enforcement-of-standards-after-registration.

¹⁰ The Education and Skills Act 2008 (Commencement No. 7 and Transitory Provisions) Order 2010; www.legislation.gov.uk/uksi/2010/2906/contents/made.

¹¹ The Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

¹² The National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002; www.legislation.gov.uk/uksi/2002/552/contents/made.

¹³ Section 87 has been amended, including by the Care Standards Act 2000 and the Education Act 2011. Section 87 imposes a duty on the proprietor of an independent school to safeguard and promote the welfare of any children accommodated by the school.

18. Any early years or childcare provision managed directly by the school's proprietor/governing body, which includes care for children under two years old or where no child attending is a pupil of the school, must be registered by Ofsted.
19. Provision registered in this way is not inspected as part of an inspection of the school.

Cooperation

20. Ofsted and the DfE agree that they will:
 - work together to ensure that children and young people's welfare is at the centre of any decision making
 - endeavour to improve understanding about their different roles
 - work together to ensure a smooth delivery of their respective roles
 - seek to achieve best value for money when commissioning inspections
 - seek to achieve complementary and consistent approaches, so far as they are consistent with their respective statutory functions
 - meet and communicate regularly to discuss matters of mutual interest, including agreeing priorities for future inspections, taking appropriate account of Ofsted's resources
 - consult one another at an early stage on issues that might have significant implications for either organisation
 - share (for comment) at an early stage draft documents (such as standards, frameworks and consultation papers) that may have an impact on the other's functions.

Information sharing

21. Ofsted and the DfE (Independent Education and Boarding Team) agree that for matters relating to individual inspections, including concerns and complaints that may arise out of a particular inspection, they will:
 - disclose and share information that would assist in advancing each department's operational objectives¹⁴
 - use secure email routes for communicating information

¹⁴ Ofsted will share such information with the DfE under section 118(3) of Education and Inspections Act 2006. This gives the Chief Inspector the power to: 'provide the Secretary of State with information or advice on such matters relating to activities within the Chief Inspector's remit as are specified in the request'.

- route all information from the DfE through Ofsted's operational administrative team for independent provision, who will confirm receipt of information and pass it to the designated responsible person in a timely manner
 - appropriately protect sensitive information in accordance with the latest central government requirements or guidance
 - discuss, where appropriate, the scope of commissioned inspections, to ensure that the most appropriate type of inspection is conducted.
22. An update of inspection-related data will be shared between Ofsted and the DfE on a regular basis. The service level agreement for this, including the details of what is to be shared, is covered in Annex B.

Operational delivery

Education inspections

23. Ofsted's regional directors are responsible for inspection and quality assurance processes within their own regions and will deploy those with responsibility for inspecting education provision to:
- liaise with the DfE about inspections of, and all complaints and concerns about, independent schools through the DfE (Independent Education and Boarding Team)
 - notify the DfE (Independent Education and Boarding team) of all complaints and concerns about, and inspections of, independent schools
 - scope all commissions for routine and additional inspections in their region.

Welfare inspections

24. Ofsted's regional directors are responsible for inspection and quality assurance processes within their own regions and will deploy those with responsibility for welfare inspections to:
- arrange for welfare inspections of all residential special schools under section 87 on an annual basis and to undertake such other inspections of residential special schools or monitoring visits as Ofsted considers appropriate
 - arrange for the welfare inspections of all boarding schools under section 87 every three years and to undertake such other inspections or monitoring visits as Ofsted considers appropriate
 - notify the DfE (Independent Education and Boarding team) of all complaints and concerns received by Ofsted about independent schools and any action that Ofsted decides to take, following such complaints and concerns.

Aligned and integrated inspections

25. The DfE may direct Ofsted to carry out an inspection of the education provision in a residential special school or boarding school. The relevant Ofsted regional director may decide that, due to concerns in the school's residential or boarding provision, the welfare provision should also be inspected at the same time and will therefore arrange for an integrated inspection to take place. Ofsted will liaise with the DfE to ensure that appropriate arrangements are in place.
26. The Secretary of State may also direct Ofsted to inspect boarding or residential provision under section 87(3A).

All types of inspection

27. Each Ofsted region will have responsibility for ensuring that:
 - the inspections of independent schools comply with the relevant legal framework
 - all standard and additional inspections in their region are delivered on time to the high standards expected
 - inspectors provide timely advice and contributions to tribunal cases, involving Ofsted lawyers at an early stage, and are available to give evidence at tribunal hearings
 - Her Majesty's Inspectors (HMI) are deployed to specified inspections when requested by the DfE (Independent Education and Boarding Team).
28. The DfE agrees that:
 - the Independent Education and Boarding Team is to be organised on a regional basis and contact details will be shared with Ofsted
 - all inspections that this MOU relates to will be commissioned via the Independent Education and Boarding Team
 - all commissioning of inspections will be clear about the purpose and focus of the inspection and specify where the DfE would like experienced HMI to be deployed
 - all communications in respect of tribunal cases will be routed to the lead Senior HMI in the relevant region in order to effect the necessary scheduling of inspector time. These communications will also be copied to the Ofsted legal team through their mailbox: legal.services@ofsted.gov.uk.

Handling concerns/complaints received by Ofsted

29. Ofsted agrees that:
 - any complaint received by Ofsted about an independent school will be referred to the DfE in a timely manner

- any complaint received by Ofsted about a school that is normally inspected by one of the independent inspectorates will be passed to the DfE in a timely manner
 - any complaint received by Ofsted that gives rise to a concern about the welfare of a child or children will be prioritised for referral to the DfE, as well as the relevant local authority children's services. In respect of boarding or residential provision, Ofsted will notify the DfE of the complaint and set out what action they intend to take, including an immediate inspection if necessary.
 - any complaint received by Ofsted about an independent school that also raises concerns about a linked provision that is registered by Ofsted (registered early years provision or where an independent school is also registered as a children's home) will be referred to the relevant Ofsted team who will consider the concerns about the provision registered with Ofsted. The complaint will also be passed to the DfE who will consider the concerns raised about the school's education provision (and to the local authority designated officer, where there are safeguarding concerns).
30. The specific regional director and/or the Early Childhood Team will inform the DfE whenever an inspection of the registered early years provision/or a residential special school also registered as a children's home takes place as a result of a complaint, in case they need to take any further action.
31. Where the DfE commissions an inspection (education only) by way of an agreed commissioning form as a result of a concern, this will be scheduled as a priority. In the case of such emergency inspections, Ofsted and the DfE will discuss and agree the scope of the inspections. If they cannot agree the scope, Ofsted will advise the DfE accordingly in writing, and conduct the inspection within the scope determined by the DfE. In such circumstances, the report will be passed to the DfE (Independent Education and Boarding Team) in the timescales set out in Ofsted's published guidance 'Handbook for additional inspections of independent schools'.¹⁵
32. If Ofsted finds that a boarding or residential special school has failed to safeguard the children in the welfare provision, Ofsted will notify the DfE immediately following a case review and submit a 'Form A – initial advice to the registration authority that an independent school is not complying with the independent school standards' to advise the DfE of the failings.¹⁶
33. The DfE agrees that:

¹⁵ Handbook for additional inspections of independent schools (090060), Ofsted, 2018; www.gov.uk/government/publications/conducting-additional-inspections-of-independent-schools

¹⁶ Under section 87(1) of the Children Act 1989, boarding and residential special schools have a duty to safeguard and promote the welfare of children accommodated in their welfare provision; www.legislation.gov.uk/ukpga/1989/41/section/87.

- all complaints referred by Ofsted will be acknowledged in writing and in a timely manner
- where the outcome of a complaint is for the DfE to commission Ofsted to carry out an inspection of a school, this will be commissioned in a timely manner using the agreed commissioning form
- where a complaint shared with the DfE also raises concerns about provision registered with Ofsted (registered early years provision or where a school is registered as a children's home), the DfE will liaise with Ofsted
- complaints will be handled and accelerated in a timely manner; decisions about subsequent actions will be based on the seriousness of the complaint, the standards that the school may be failing to meet, and the school's inspection history.

Unregistered schools

34. For all guidance in relation to unregistered schools, please refer to the Unregistered Schools Memorandum of Understanding.



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