

Memorandum of understanding: independent schools

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

Age group: All ages

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Introduction

1. This memorandum of understanding (MOU) explains how Ofsted and the Department for Education (DfE) will cooperate with each other in order to exercise their respective functions in the delivery of inspections of independent schools.
2. This MOU provides a framework for Ofsted and the DfE to cooperate and communicate constructively so as to carry out their independent roles and separate functions.
3. This cooperation and communication benefits all children and learners attending independent schools by driving improvement to ensure 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 inspections of academies and free schools, or inspections and advice in respect of non-maintained special schools.
5. Ofsted and the DfE will continue to monitor the MoU's operation and review as necessary. The next review is due by September 2016.

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, within this, 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. It regulates and inspects childcare and children's social care, and inspects the Children and Family Courts Advisory and Support Service (Cafcass), schools, colleges, initial teacher training, work-based further education and skills training, adult and community learning and education and training in prisons and other secure establishments. It assesses local authority children's services and inspects services for looked after children, safeguarding and child protection.
8. The functions in regard to this MOU are in the inspection of:
 - non-association independent day, boarding and residential special schools in England¹
 - boarding and residential provision in independent schools that belong to the Focus Learning Trust, that are part of the Cognita Group where they do not

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

belong to an Independent Schools Council association, and the Steiner Waldorf Schools Fellowship, whose education provision is inspected by the School Inspection Service; and residential provision in residential special schools that belong to ISC associations, whose education provision is inspected by the Independent Schools' Inspectorate.²

9. Occasionally, the DfE may commission Ofsted to carry out an inspection of a school that is normally inspected by one of the approved independent inspectorates. This MOU also applies to such inspections.

Statutory responsibilities

10. Under section 109(1) and (2) of the Education and Skills Act 2008 (the Act)³, Ofsted has a statutory responsibility for the inspection of independent schools when requested to do so by the DfE, the purpose of which is to advise the Secretary of State for Education about the school's compliance with the independent schools standards and its suitability for continued registration as an independent school.
11. A person who conducts an independent school⁴ that is not registered is guilty of an offence under section 96 of the Act. Under section 97 of the Act, if Ofsted has reasonable cause to believe that an offence under section 96 is being committed, it has the power to enter and inspect the premises.^{5,6}
12. Proprietors wishing to open a new school must apply to the DfE for registration, under section 98 of the Act.⁷ When the DfE has checked that the application from a proposed new school to enter on the register is complete, it will commission Ofsted to conduct a pre-registration inspection of the proposed

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 School Inspection Service), 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 Education and Skills Act 2008; www.legislation.gov.uk/ukpga/2008/25/contents.

⁴ Independent schools are defined by s463 of the Education Act 1996 as amended, as any school at which full time education is provided for five or more pupils of compulsory school age, or one or more such pupils with an EHC plan or a statement of special educational needs or who is "looked after" by the local authority, and is not a school maintained by a local authority or a non-maintained special school.

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.



school. Ofsted will carry out the pre-registration inspection under section 99 of the Act.⁸

13. The DfE regulates schools in line with powers set out under Part 4 of the Education and Skills Act 2008. These functions are undertaken within the Independent Education and Boarding Team.
14. The legal basis for inspections of children and young peoples' welfare in boarding and residential special schools is set out in section 87 of the Children Act 1989, as amended by the Care Standards Act 2000 and The National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002.^{9,10}

Cooperation

15. 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 complementary and consistent approaches, so far as they are consistent with their independent roles
 - 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 any issues that might have significant implications for either organisation
 - share (for comment) at an early stage draft documents (such as standards, frameworks, consultation papers and briefings) that may have an impact on the other's functions.

Information sharing

16. Ofsted and the DfE (Independent Education and Boarding Team) agree that for matters relating to individual inspections, concerns and complaints they will:

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

⁹ The Care Standards Act 2000; www.legislation.gov.uk/ukpga/2000/14/contents.

¹⁰ The National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002; www.legislation.gov.uk/uksi/2002/552/contents/made.

- disclose and share information that would be of assistance in advancing each department's operational objectives¹¹
- use secure email routes for communicating such information
- 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
- discuss, where appropriate, the scope of commissioned inspections, to ensure that the most appropriate type of inspection is conducted.

Operational delivery

17. In respect of operational delivery, Ofsted's regional directors are responsible for inspection within their own regions¹² and will deploy those with responsibility for education provision or for boarding/residential provision to:
- liaise with the DfE about all complaints and concerns about, and inspections of, independent schools (including boarding/residential provision of schools) through the DfE (Independent Education and Boarding Team)
 - scope all commissions for routine and additional inspections in their region.
18. As such, each 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
 - all standard and additional inspections in their region are reported accurately
 - where information about a premises that appears to be operating as an unregistered independent school is supplied to Ofsted by a means other than the DfE, the information is normally shared with the DfE before the region takes all reasonable steps to check or corroborate the information as set out in the 'Handbook for conducting inspections under section 97 of the Education and Skills Act 2008'¹³

¹¹ Ofsted will share such information with the DfE under section 118(2) of Education and Inspections Act 2006. This gives Ofsted 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'.

¹² Although quality assurance processes will be passed to regions on 1 April 2014.

- informing DfE whether or not a section 97 inspection will take place (where Ofsted decides that there is reasonable cause to believe that an unregistered school is being conducted)
- provision judged as inadequate is monitored and supported where necessary by the regions in order to secure improvement
- 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
- specialist inspectors are deployed to specified inspections when requested by the DfE (Independent Education and Boarding Team).

19. 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, except those conducted under section 97, 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 specialist inspectors to be deployed.

Handling concerns/complaints received by Ofsted

20. 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.
- 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).

21. The Ofsted Social Care team and/or the Early Childhood Team will inform the DfE whenever an inspection of the registered early years provision/the children's home takes place as a result of a complaint.

22. Where the DfE commissions an inspection 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 advice note and/or 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'.¹⁴.
23. The DfE agrees that:
- 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 has dual registration as a children's home), the DfE will liaise with Ofsted until any decision has been made as to whether inspection is required
 - 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

24. Ofsted and the DfE will work together to ensure that the scoping and undertaking of inspections of possible unregistered schools are undertaken safely, in a timely manner and with the interests of the children and young people at their core.
25. Ofsted agrees:
- that where the premises has registered or unregistered social care or early years provision, Ofsted will coordinate its inspection activity
 - to share any information with the DfE that suggests that an unregistered independent school is operating
 - to inform DfE whether or not an inspection will be carried out under section 97

¹⁴ *Handbook for additional inspections of independent schools* (090060), Ofsted, 2015;
www.gov.uk/government/publications/conducting-additional-inspections-of-independent-schools

- to inform the DfE of any independent school that is accommodating boarders without being registered
- any inspection under section 97 of the Education and Skills Act 2008 is carried out in a timely manner and with accurate information recorded in an advice note
- any evidence or copies of records taken under section 97 is stored securely and shared with the DfE and, at Ofsted's discretion, with the relevant local authority and the police, in a secure and timely manner
- any evidence taken under section 97 is recorded and held in a way to meet the criminal standards and therefore increase the likelihood of successful proceedings, should the case go to prosecution, and where necessary, further inspections are conducted to gather evidence to the required standard
- to provide inspectors as expert witnesses if required for the purpose of a prosecution under section 96.

26. The DfE agrees that:

- it will alert Ofsted to an unregistered independent school and any unregistered residential provision, providing timely and robust advice
- it will share any information about potential unregistered schools, particularly where a setting may pose a threat to the safety of Ofsted inspectors
- the Independent Education and Boarding Team will consult with Due Diligence and Counter Extremism Group colleagues where necessary
- it will provide Ofsted with such information as it has to enable Ofsted to consider whether there is reasonable cause to believe that an offence is being committed under section 96 of the Education and Skills Act 2008
- it will refer back to Ofsted any unregistered independent school that also appears to be operating as an unregistered children's home or unregistered early years provision.

Freedom of Information requests, press and correspondence

27. Where Ofsted and the DfE receive correspondence, press interest or requests made under the Freedom of Information Act 2000 concerning independent schools, both parties agree to consult each other so that the response is clear and transparent.