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independent schools

Corporate report

Updated 4 February 2021 Introduction Contents Introduction

Memorandum of understanding:

Role of the DfE and Ofsted Cooperation

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Information sharing

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. This is to benefit children and learners attending independent schools. Effective

to independent schools.

independent school standards and, where applicable, the national minimum standards for boarding schools or residential special schools. This MOU does not cover: pre-registration or any other type of inspections of academies

special schools; boarding or residential provision offered by academies, maintained and

non-maintained boarding and residential special schools; or inspections of unregistered

inspections can lead to the improvements needed to make sure that schools meet the

This memorandum of understanding (MOU) explains how Ofsted and the Department

for Education (DfE) will work together to exercise their respective functions in relation

and free schools; inspections and advice about maintained schools or non-maintained

independent schools under section 97 of the Education and Skills Act 2008. Ofsted and the DfE will continue to monitor the operation of the MOU and review as necessary. The next review is due by July 2021. Role of the DfE and Ofsted

The DfE is responsible for issues affecting young people in England up to the age of 19, including child protection and education. As part of this, it regulates independent schools in England. 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

secure establishments. It inspects local authority children's services.

training, adult and community learning and education, and training in prisons and other

The functions within the scope of this MOU are the inspection of:

• registered non-association independent day, boarding and residential special schools in England • residential provision in residential special schools that belong to Independent

• 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 the DfE and must be registered with Ofsted 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. [footnote 1] This MOU also applies to these inspections. Ofsted monitors the work of the Independent Schools Inspectorate, which has been

Inspection under the Education and Skills Act 2008 (and the Education Act 2002 for material change inspections) Under sections 109(1) and 109(2) of the Education and Skills Act 2008 (the Act),

Ofsted must inspect an independent school when directed to do so by the Secretary of

State. The purpose of the inspection is to advise the Secretary of State for Education of

the school's compliance with the independent school standards. The DfE may use these reports to inform decisions on regulatory and/or enforcement action, as outlined in section 96 and section 97 of the Act.

Inspection of boarding or residential provision The legal basis for welfare inspections of boarding provision in boarding schools and residential provision in residential special schools is set out in <u>section 87 of the Children</u> Act 1989 and supplemented by the National Care Standards Commission (Inspection of Schools and Colleges) Regulations 2002.

Education and Inspections Act 2006 and the Education Act 2011. Section 87 imposes a

duty on the proprietor of an independent school to safeguard and promote the welfare

Section 87 also imposes a duty on Her Majesty's Chief Inspector (HMCI) to take such

steps as are reasonably practicable to enable them to determine whether children and

young people's welfare is adequately safeguarded and promoted while accommodation

is provided for them at school. HMCI determines the frequency of inspections and

concerns for the welfare of children accommodated at a school.

whether to inspect following receipt of any complaint or concern or when Ofsted has

Ofsted will determine the frequency of inspections and will consult with the DfE before

Section 87 has been amended, including by the Care Standards Act 2000, the

making any changes. The 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 the Children Act 1989 of residential or boarding provision.

Under section 49 and section 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

Cooperation Ofsted and the DfE agree that they will: work together to ensure that children and young people's welfare is at the centre of

endeavour to improve understanding about their different roles

consistent with their respective statutory functions

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

• 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

Early years provision for children aged 2 and above that is managed directly by the school's proprietor/governing body forms part of the school's registration as an independent school. Ofsted will inspect this provision as part of the whole-school

particular inspection, they will:

Information sharing

implications for either organisation

• use secure email for communicating 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

• discuss, when appropriate, the scope of commissioned inspections, to ensure that

education provision to: • liaise with the DfE about inspections of, and all complaints and concerns about, independent schools • notify the DfE of all complaints and concerns about, and inspections of, independent schools

• scope all commissions for routine and additional inspections in their region

Ofsted's regional directors are responsible for inspection and quality assurance

processes within their own regions. They will ask those with responsibility for inspecting

- Directed inspections of welfare and/or education and carrying out aligned and integrated inspections 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
- high standards expected • inspectors provide timely advice and contributions to tribunal cases and, if the DfE is considering regulatory or enforcement action, involve Ofsted lawyers and policy officials at an early stage, as appropriate • inspectors are available to give evidence at tribunal hearings

• it will organise the Independent Education and Boarding Team into 2 territorial teams

(Unregistered Schools) and a team dedicated to enforcement and other complex

cases (Coordination and Complex Casework Unit) and it will share contact details

• the Independent Education and Boarding Team will commission all inspections to

boarding or residential special school will take place following receipt of any

complaint or concern or when Ofsted has concerns for the welfare of children

accommodated at a school. Before this happens, Ofsted will inform the DfE)

• it will be clear about the purpose and focus of the inspection in all inspection

(Regulation North and Regulation South), a team dedicated to unregistered schools

which this MOU relates (except when HMCI determines that a welfare inspection of a

commissioning and will specify where it would like HMI with specific experience to be

• if it is considering urgent or non-urgent regulatory or enforcement action, it requests

promptly the information required to assist in the decision-making process (such as evidence bases and witness statements) • it will send all communications in respect of tribunal cases to the lead Senior HMI in the relevant region in order to schedule inspectors' time and it will also copy these communications to the Ofsted legal team (legal.services@ofsted.gov.uk)

Complaints may form part of the information that inspectors review when they plan for inspection, and inspectors may consider the issues raised by a complaint during an inspection. The relevant Ofsted regional director will inform the DfE whenever a registered early years provision/or a residential special school also registered as a children's home

Ofsted will not investigate any complaints made about an independent school.

Handling concerns and complaints received by the DfE

• it will refer any complaint it receives about a non-association independent school to

concern about the welfare of a child or children, as well as the relevant local authority

• it will prioritise for referral to Ofsted any complaint it receives that gives rise to a

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Schools Council associations (whose education provision is inspected by the Independent Schools Inspectorate)

- approved by the Secretary of State to inspect certain independent schools in England. Ofsted also monitors the <u>approved independent overseas inspection providers for</u> British schools overseas. This monitoring work is outside of the scope of this MOU.
- Proprietors wishing to open a new school must apply to the DfE for registration, under section 98 of the Act. 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

carry out a pre-registration inspection of the proposed school. Ofsted will carry out the

Proprietors wishing to make changes to their registration status must apply to the DfE

Ofsted to carry out material change inspections for these schools. Ofsted carries out

Skills Act 2008 (Commencement No. 11 and Saving and Transitory Provisions) Order

The DfE regulates independent schools under Part 4 of the Education and Skills Act

2002. These functions are carried out within the Independent Education and Boarding

2008. The functions relating to material changes are set out in the Education Act

Team. All references to the DfE in this MOU relate specifically to this team.

these inspections under section 162(4) of the Education Act 2002. The Education and

for a material change to their registration. If appropriate, the DfE will commission

pre-registration inspection under <u>section 99 of the Act</u>.

2014 means section 162(4) is still in force.

of any children accommodated by the school.

Inspection of early years provision

foundation stage.

inspection.

any decision-making

functions

Ofsted must register any early years or childcare provision managed directly by the school's proprietor/governing body. This includes care for children under 2 years old or where no child attending is a pupil of the school. Provision registered in this way is not inspected as part of an inspection of the school.

 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

Ofsted and the DfE agree that for matters relating to individual inspections, including concerns and complaints about independent schools and those that may arise out of a disclose and share information that would assist in advancing each department's

118(3) of Education and Inspections Act 2006. This gives HMCI the power to:

activities within the Chief Inspector's remit as are specified in the request')

operational objectives (Ofsted will share such information with the DfE under section

'provide the Secretary of State with information or advice on such matters relating to

Education inspections

the most appropriate type of inspection is carried out

government requirements or guidance

Operational delivery

Welfare inspections

concerns

publish 2 separate reports.

The DfE agrees that:

with Ofsted

deployed

by Ofsted

Ofsted agrees that:

timely manner

children's services

immediate inspection, if necessary

accommodated in their welfare provision.

The DfE agrees that:

The DfE agrees that:

children's services

Ofsted in a timely manner

Ofsted's regional directors are responsible for inspection and quality assurance processes within their own regions. They will ask those with responsibility for welfare inspections to: • arrange welfare inspections of all residential special schools under <u>section 87 of the</u> Children Act 1989 on an annual basis and carry out other inspections of residential

• arrange welfare inspections of all boarding schools under section 87 every 3 years

and carry out other inspections or monitoring visits as Ofsted considers appropriate

• notify the DfE of all complaints and concerns received by Ofsted about independent

schools and any action that Ofsted decides to take following these complaints and

special schools or monitoring visits as Ofsted considers appropriate

decide that, due to concerns in the school's residential or boarding provision, Ofsted should inspect the welfare provision at the same time. They may, therefore, arrange for an integrated or aligned inspection to take place. Ofsted will liaise with the DfE to ensure that appropriate arrangements are in place.

In an integrated inspection, the inspection of boarding/residential provision will be

integrated with the school inspection. We will publish 1 inspection report covering the

boarding/residential and school provision. In an aligned inspection, the inspection of

boarding/residential provision and the school inspection run concurrently. We will

The Secretary of State may also direct Ofsted to inspect boarding or residential

Schools Inspectorate, where there are safeguarding or welfare concerns.

provision under section 87(3A) and in association schools, with the Independent

- All types of inspection 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
- Handling concerns and complaints received

• it will refer any complaint it receives about an independent school to the DfE in a

• it will prioritise for referral to the DfE any complaint it receives that gives rise to a

Independent Schools Inspectorate to the DfE in a timely manner

designated officer, if there are safeguarding concerns

• it will pass any complaint it receives about a school that is normally inspected by the

concern about the welfare of a child or children, as well as the relevant local authority

• in respect of boarding or residential provision, it will notify the DfE of any complaints

• it will refer any complaint it receives 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) to

the relevant Ofsted team. It will also pass the complaint to the DfE to consider the

concerns raised about the school's education provision, and to the local authority

it receives and will set out what action Ofsted intends to take, including an

inspection of a school, it will commission this in a timely manner using the agreed commissioning form if 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), it will liaise with Ofsted

• it will handle and accelerate complaints in a timely manner and it will base its

decisions about subsequent actions on the seriousness of the complaint, the

standards that the school may be failing to meet and the school's inspection history

If Ofsted finds that a boarding or residential special school has failed to safeguard the

review and submit a 'Form A – initial advice to the registration authority that an

the DfE of the failings. Under <u>section 87(1) of the Children Act 1989</u>, boarding and

children in the welfare provision, Ofsted will notify the DfE immediately following a case

independent school is not complying with the independent school standards' to advise

residential special schools have a duty to safeguard and promote the welfare of children

• it will acknowledge all complaints referred by Ofsted in writing and in a timely manner

• if the outcome of a complaint is for the DfE to commission Ofsted to carry out an

• it will prioritise for referral to Ofsted any complaint it receives 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). It will also pass the complaint to the local authority designated officer, if there are safeguarding concerns

one of the approved independent inspectorates under section 87A.

1. Under <u>section 109(1) of the Education and Skills Act 2008</u>, the Secretary of State

may at any time direct the HMCI 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 <u>section 87A</u>) direct Ofsted to carry out an inspection of the

boarding/residential provision in an independent school that is normally inspected by

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inspection takes place as a result of a complaint, in case the DfE needs to take any further action. When the DfE commissions an inspection (education only) by way of an agreed commissioning form as a result of a concern, Ofsted will treat this as a priority. In the case of these 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 in writing, if necessary, and carry out the inspection within the scope determined by the DfE. In these circumstances, Ofsted will pass the report to the DfE in the timescales set out in the Handbook for additional inspections of independent schools.

> Ofsted will not investigate any complaints made about an independent school. Complaints may form part of the information that inspectors review when they plan for inspection, and inspectors may consider the issues raised by a complaint during an inspection.

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