

# Unregistered school inspection handbook

Guidance for inspectors and investigators

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This handbook sets out Ofsted's policies and procedures for:

- carrying out inspections under section 97 of the Education and Skills Act 2008
- investigating criminal offences under section 96 of the Education and Skills Act 2008.

It should be used with the Department for Education's 'Policy statement: prosecuting unregistered independent schools'.

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**Published:** August 2020

**Reference no:** 160043



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## Legal basis for inspection and definition of roles

1. Under section 96 of the Education and Skills Act 2008 (the 2008 Act), in England, a person must not 'conduct an independent educational institution' unless it is registered. A person who conducts an unregistered independent school is guilty of a criminal offence.<sup>1</sup>
2. Under section 463 of the Education Act 1996, an 'independent school' is defined as a school that is not maintained by a local authority or non-maintained special school and at which full-time education is provided to either:
  - five or more pupils of compulsory school age
  - at least one pupil:
    - for whom an education health and care (EHC) plan is maintained
    - for whom a statement is maintained<sup>2</sup>
    - who is looked after by a local authority.<sup>3</sup>

There is no legislative definition of full-time education. The guidance issued by the Secretary of State for Education on full-time education is contained in Part A of 'Registration of independent schools'.<sup>4</sup>

3. The offence is a summary offence and currently carries a maximum penalty of six months' imprisonment or an unlimited fine or both.<sup>5</sup>
4. Under section 97 of the 2008 Act, if Her Majesty's Chief Inspector (HMCI) or any person to whom HMCI's functions have been delegated has reasonable cause to believe that an offence under section 96 of the 2008 Act is being committed on any premises, they may enter and inspect the premises. They may then inspect and take copies of any records or other documents that they have reasonable cause to believe may be required for the purposes of proceedings in relation to such an offence.
5. Under section 97(4) of the 2008 Act, it is a criminal offence to intentionally obstruct a person carrying out their duties relating to the inspection.
6. Throughout this handbook, we will refer to:
  - an independent educational institution subject to investigation, inspection and/or prosecution under section 97 of the 2008 Act as 'the institution'

<sup>1</sup> Section 96 of the Education and Skills Act 2008; [www.legislation.gov.uk/ukpga/2008/25/section/96](http://www.legislation.gov.uk/ukpga/2008/25/section/96).

<sup>2</sup> Under section 324 of the Education Act 1996; [www.legislation.gov.uk/ukpga/1996/56/section/324](http://www.legislation.gov.uk/ukpga/1996/56/section/324).

<sup>3</sup> Within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014.

<sup>4</sup> 'Registration of independent schools: departmental advice for proprietors and prospective proprietors of independent schools in England, Department for Education, August 2019; [www.gov.uk/government/publications/independent-school-registration](http://www.gov.uk/government/publications/independent-school-registration).

<sup>5</sup> Section 281(5) of the Criminal Justice Act 2003; [www.legislation.gov.uk/ukpga/2003/44/section/281](http://www.legislation.gov.uk/ukpga/2003/44/section/281).

- the person who is the subject of investigation or prosecution as 'the suspect'.

## Roles and definitions

7. An 'inspector' is any person carrying out a criminal investigation into an unregistered school.
8. The 'lead inspector' is the person in charge of the inspection and is also responsible for directing any criminal investigation. The lead inspector will be the single point of contact for all aspects of the investigation. The lead inspector is also responsible for following the processes, procedures and legal duties in place for recording and retaining any information or other material that Ofsted obtains during a criminal investigation, including inspections under section 97 of the 2008 Act.<sup>6</sup>
9. The 'disclosure officer' is the person responsible for examining material found during the investigation. They will:
  - reveal the required material to the prosecutor during the investigation and any criminal proceedings resulting from it
  - certify that they have done this
  - disclose material to the defendant at the request of the prosecutor.

The lead inspector should appoint a person to act as the disclosure officer.

10. The 'material' is anything that is obtained or inspected during an investigation and that may be relevant to the investigation. This includes material coming into the possession of inspectors (such as documents copied during the inspection) and material generated by them (such as interview records). Material may be considered relevant to an investigation if an inspector or a disclosure officer considers that it has some bearing on any offence or person under investigation or on the circumstances surrounding the case.
11. Ofsted will have regard to the Police and Criminal Evidence Act 1984 (PACE), the PACE Codes of Practice, the Criminal Procedure and Investigations Act (CPIA) and the CPIA Code of Practice in criminal investigations,<sup>7</sup> in so far as these are applicable to criminal investigations carried out by non-police investigators. At all stages, we will gather and retain evidence in accordance with the '[Evidence](#)' section of this handbook and with regard to the CPIA and to the CPIA Code of Practice.

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<sup>6</sup> A 'criminal investigation' is defined in paragraph 2.1 of the CPIA Code of Practice, March 2015; [www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice](http://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice).

<sup>7</sup> See paragraph 1.1 of the CPIA Code of Practice, March 2015; [www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice](http://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-code-of-practice).

## Before the inspection

### Actions on receiving information

12. We may receive information about possible unregistered independent schools from a variety of sources, such as the Department for Education (DfE), parents, local authorities or the police.
13. If we receive initial information from a source other than the DfE, we will inform the DfE about the possibility of there being an unregistered independent school. We will also ask the DfE whether the institution has made a valid application to register as an independent school and whether the DfE has additional information about it.
14. The registration authority for independent schools is the DfE.

Independent Education and Boarding Team (IEBT)  
Department for Education  
Mowden Hall  
Staindrop Road  
Darlington  
DL3 9BG

Telephone: 01325 735 304

Email: [registration.enquiries@education.gsi.gov.uk](mailto:registration.enquiries@education.gsi.gov.uk)

Website: [www.gov.uk/independent-school-registration](http://www.gov.uk/independent-school-registration)

15. The 'Memorandum of understanding between Ofsted and DfE: independent schools' sets out our information-sharing arrangements.<sup>8</sup>
16. If, during the pre-inspection investigation, an inspector finds evidence that is cause for concern about safeguarding and/or welfare of children at an institution, they will contact the appropriate local authority as soon as possible. The inspector may check to see whether the local authority holds information about the institution and request disclosure of this information. They will record any information in line with the '[Evidence](#)' section of this handbook.
17. Ofsted and/or the DfE may also check with the police and/or any other relevant third party to determine whether they hold information about the institution.
18. Ofsted may try to find out who owns the premises where the business of the institution is conducted and who is listed as a director or member of any board for any institution allegedly operating from there.
19. If we conclude that there is no reasonable cause to believe that an offence under section 96 of the 2008 Act is being committed at the premises

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<sup>8</sup> 'Memorandum of understanding: independent schools', Ofsted, January 2014;  
[www.gov.uk/government/publications/memorandum-of-understanding-independent-schools](http://www.gov.uk/government/publications/memorandum-of-understanding-independent-schools).

concerned, but we have safeguarding concerns about the institution or concerns about the education received by any of the children there, we will inform the DfE and the relevant local authority.

20. If we receive new information about an institution that gives us reasonable cause to believe that an offence under section 96 of the 2008 Act is being committed, we may decide to re-open a closed criminal investigation.

## **Decision to inspect**

21. If the lead inspector concludes that there is reasonable cause to believe that an offence under section 96 of the 2008 Act is being committed, they may decide to arrange an inspection of the institution under section 97. They will inform the DfE of this decision and record the reasons behind it.
22. The size of the inspection team will be influenced by the number of sites involved and the nature of the information that we have received about the institution.
23. If we conclude that there is reasonable cause to believe that the institution is providing:
  - accommodation for a child, our unregistered schools team will notify our regional social care team to discuss next steps<sup>9</sup>
  - early years provision, our unregistered schools team will notify the regional early years team to discuss next steps.
24. Based on the information available, we will decide whether the relevant local authority, police or other agency support will be required. In appropriate cases, we will request their attendance during an inspection, for example when inspectors believe that there is a risk of harm to children at the premises.

## **During the inspection**

### **Arrival at the institution**

25. Inspections under section 97 may be carried out at any reasonable time, without notice.
26. On arrival, inspectors will enter and inspect the premises. The inspector will explain that the inspection is being carried out under section 97 of the 2008 Act because they have reasonable cause to believe that an unregistered independent educational institution is being conducted at the premises.

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<sup>9</sup> For more information about inspections of residential provision, see: 'The framework for inspecting boarding and residential provision in schools', Ofsted, November 2019; [www.gov.uk/guidance/social-care-common-inspection-framework-sccif-boarding-schools](http://www.gov.uk/guidance/social-care-common-inspection-framework-sccif-boarding-schools).

## Powers of entry

27. Section 97 provides a right of entry to all types of premises, including a private house, to carry out an inspection.<sup>10</sup>
28. If any inspector is unable to gain entry to any part of the premises, they may arrange for assistance from the police or re-schedule the inspection.

## Conduct of the inspection

29. Inspectors will gather evidence as part of the investigation into the suspected offence under section 96 of the 2008 Act. Inspectors will take copies of documents and records that may be required for proceedings in relation to the offence, other than documents and records that meet the criteria of legally privileged material as specified in section 9(2) of the PACE Act 1984. Inspectors may also record footage of the inspection using body-worn video cameras.
30. If inspectors identify possible unregistered childcare provision or if there is any uncertainty about the registration of childcare provision at the premises, they must report this promptly to our applications, regulatory and contact team.<sup>11</sup>
31. Inspectors will establish whether overnight accommodation is provided for any child at the premises concerned. Inspectors will take prompt action to inform the relevant local authority of any safeguarding or health and safety issues.
32. Inspectors will record the necessary evidence in line with the '[Evidence](#)' section of [this handbook](#). If inspectors are concerned about harm or possible harm to a child, they will contact the local authority or the police immediately and will inform Ofsted's relevant regional director and regional regulatory teams.

## Cautioning suspects

33. As soon as an inspector identifies a person who may have been or may be committing an offence, the inspector will caution that person in line with Code C of the PACE Codes of Practice. The wording of the caution is as follows:

'You do not have to say anything, but it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence.'
34. The caution advises a person about their rights, if asked to explain their actions or omissions in any criminal proceedings. The caution is there to protect the suspect who has been cautioned.

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<sup>10</sup> Section 97 of the Education and Skills Act 2008; [www.legislation.gov.uk/ukpga/2008/25/section/97](http://www.legislation.gov.uk/ukpga/2008/25/section/97).

<sup>11</sup> Full details of how Ofsted deals with compliance are set out in: 'Compliance, investigation and enforcement handbooks', Ofsted, November 2013; [www.gov.uk/government/collections/ofsteds-compliance-investigation-and-enforcement-handbooks](http://www.gov.uk/government/collections/ofsteds-compliance-investigation-and-enforcement-handbooks).

35. When cautioning someone, the inspector should confirm that the suspect understands the caution and, where necessary, explain it to the suspect in different terms. The inspector should record in their notebook:
- the time that the caution was read out
  - any further explanation that was required
  - any questions the suspect asks, and the responses given
  - any other persons present at the time of the caution being read out
  - those present when any comments are made by a suspect.
36. Inspectors should write down in their notebook any significant statements made in relation to the offence being investigated. They should ask the suspect to sign the page(s) to confirm that they made the statement as recorded. A significant statement is defined in PACE Code C as one that: 'appears capable of being used in evidence against the suspect, in particular a direct admission of guilt'.

## Welfare concerns

37. Inspectors may find evidence that is relevant to Ofsted's duty to have regard to the need to safeguard and promote the rights and welfare of children and young people.<sup>12</sup>
38. Inspectors will record this evidence in line with the '[Evidence](#)' section of [this handbook](#) and will contact the relevant local authority, the police and the DfE. We refer all concerns about health and safety of children to the local authority and other relevant agencies, such as the police, fire and rescue service, environmental health and The Charity Commission.

## Safeguarding concerns

39. We are committed to ensuring that the providers we regulate and inspect have effective procedures for keeping children and vulnerable adults safe from abuse, neglect and exploitation. This is set out in our safeguarding policy.<sup>13</sup> We do not hold a statutory responsibility for child protection matters, but we work together with other statutory agencies by sharing information we hold to protect the welfare of children and young people.
40. If inspectors are concerned that a child or children might be at risk of neglect or abuse, we will refer the concerns to the children's social care department of the relevant local authority and, if necessary, to police. If we become aware of

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<sup>12</sup> Under section 117(2)(a) of the Education and Inspections Act 2006; [www.legislation.gov.uk/ukpga/2006/40/section/117](http://www.legislation.gov.uk/ukpga/2006/40/section/117).

<sup>13</sup> 'Ofsted safeguarding policy', Ofsted, February 2015; [www.gov.uk/government/publications/ofsted-safeguarding-policy](http://www.gov.uk/government/publications/ofsted-safeguarding-policy).



a concern about an adult's suitability to work with children, then we will make a referral to the local authority's designated officer.

## **Outcomes at the end of the inspection**

41. At the end of the inspection, the lead inspector will decide whether, based on the available evidence gathered at that time, they have reasonable cause to believe that an unregistered independent school is being conducted on the premises.
42. The lead inspector will share their conclusions with whoever appears to be the most senior person present representing the institution.

## **Warning notice**

43. If the lead inspector has reasonable cause to believe that an unregistered independent school is being conducted, they will issue the persons suspected of conducting the unregistered independent school with a warning notice before leaving the premises. The warning notice outlines the implications of continuing to operate an unregistered independent school.
44. We also issue warning notices to any other suspects, even if they are not present on the day of the inspection.

## **Further inspection**

45. If necessary, the lead inspector may consider carrying out a further inspection at the same premises.

## **Voluntary interviews under PACE conditions**

46. Following an inspection, if the inspection team reasonably believes that a person may have committed a relevant offence, we may formally invite the suspect to attend one or more voluntary interviews under caution in accordance with the PACE Act 1984 and accompanying Codes of Practice.<sup>14</sup>
47. Suspects will be notified in writing how we will store the records of their interview and how they can access a copy of the recording. If a suspect is a legal entity other than an individual, we must invite an appropriate representative of the legal entity to an interview.
48. A member of the unregistered schools team trained in carrying out PACE interviews must be present throughout the interview. If a person fails to attend an interview under caution or refuses to attend an interview, this does not prevent them from being prosecuted.

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<sup>14</sup> PACE Codes of Practice, Home Office; June 2020; [www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice](http://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice).

## Evidence

### Gathering evidence

49. Inspectors must inform the person(s) believed to be responsible for conducting the institution of the powers they are using to enter the premises and inspect. Inspectors must ensure that material is recorded as appropriate (for example, by taking photographs).
50. Inspectors should record notes about any evidence that they identify at the time, confirming where and when it was identified. This includes any copies of documents that they take.
51. Inspectors have the right to access, inspect and take copies of any hard-copy or electronic records (including on computers) or other documents that they have reasonable cause to believe may be required for proceedings or for the purpose of the inspection.<sup>15</sup>
52. Inspectors may also use body-worn video cameras to record footage for the purpose of gathering evidence during section 97 inspections. Inspectors will inform individuals that they encounter that they are using body-worn video cameras. They will also direct them to Ofsted's unregistered schools privacy notice, which details the legal basis and purposes of the cameras' use, individual's rights and the relevant retention and storage periods.<sup>16</sup>
53. Inspectors will make notes as contemporaneously as possible during the inspection.
54. A record of inspection will be provided to any suitable person at the end of the inspection.

### Storing material

55. We store securely, and record the location of, any material that may be relevant to the investigation, including footage from body-worn video cameras.
56. We will mark exhibits appropriately. Any person accessing material throughout the investigation must complete an activity log.

### Surveillance

57. Under the Regulation of Investigatory Powers Act 2000,<sup>17</sup> Ofsted is authorised to carry out directed surveillance for the purpose of preventing or detecting a

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<sup>15</sup> Section 58 of the Education Act 2005, computer records; [www.legislation.gov.uk/ukpga/2005/18/section/58](http://www.legislation.gov.uk/ukpga/2005/18/section/58).

<sup>16</sup> 'Schools: privacy notice', Ofsted, January 2020; [www.gov.uk/government/publications/ofsted-privacy-notices/schools-ofsted-privacy-notice#unregistered-schools](http://www.gov.uk/government/publications/ofsted-privacy-notices/schools-ofsted-privacy-notice#unregistered-schools).

<sup>17</sup> Regulation of Investigatory Powers Act 2000; [www.legislation.gov.uk/ukpga/2000/23/contents](http://www.legislation.gov.uk/ukpga/2000/23/contents).

criminal offence. We may use these powers in the investigation of unregistered schools.

## Retaining material

58. The lead inspector is responsible for ensuring compliance with the processes for retaining any relevant material in a criminal investigation.
59. This duty also covers, in particular, retaining material:
  - that casts doubt on the reliability of a confession
  - that casts doubt on the reliability of a prosecution witness
  - provided by an accused person that indicates an explanation for, or defence of, the offence.
60. The duty to retain material does not extend to subsidiary items, such as duplicate copies of records or reports.
61. We will retain evidence during an investigation and any prosecution or related court hearings that result from it. We will ordinarily delete body-worn video camera footage 10 working days after the inspection on which it was filmed if no warning notice is issued.
62. In accordance with our retention policy, we will keep securely all material that may be relevant at an Ofsted office or other suitable storage facility.

## Unused material held by third parties

63. In accordance with the CPIA Code of Practice and the Attorney General's guidelines on disclosure, inspectors have overall responsibility for pursuing all reasonable lines of inquiry. This may involve seeking disclosure from a third party.<sup>18</sup>
64. When material is held by a third party, such as a local authority, social services department or the police, inspectors may need to make enquiries of the third party.
65. Inspectors may do this to assess and gather any material that might reasonably be considered capable of undermining the case for the prosecution or assisting the case for the defence. They will consider whether that material should be retained, recorded and, in due course, disclosed to the accused.
66. Inspectors will only make these enquiries if they believe that a third party may hold material relevant to the investigation. They will not make speculative enquiries.

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<sup>18</sup> 'Attorney General's guidelines on disclosure', Attorney General's Office; December 2018; [www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure-2013](http://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure-2013).

## After the inspection

### Reporting the inspection findings

67. The lead inspector will report the inspection findings to the DfE in writing.
68. We will provide the relevant local authority with information on pupils who may be attending unregistered independent schools within the local authority's area.
69. If we believe that a child may not be receiving a suitable education, we will also inform the relevant local authority. This is to enable local authorities to exercise their powers under section 437(1) of the Education Act 1996.<sup>19</sup> Under this, the local authority may serve a notice in writing to the parent requiring confirmation that the child is receiving a suitable education. This function allows the local authority to intervene if it appears that children are not receiving a suitable education.
70. When necessary, we will provide information from the investigation to the police, for example when there is an urgent need to take action because children appear to be at risk of harm.
71. We will only share information with other agencies if we consider that sharing the information is lawful and, in particular, in accordance with the Data Protection Act 2018 and the Human Rights Act 1998.<sup>20</sup>
72. We will report to the DfE if the institution is known to be related to a previously or currently registered independent school or an institution for which an application was unsuccessfully made to the Secretary of State to register as an independent school.
73. We will also report to the DfE if we have previously inspected, or attempted to inspect, the institution's premises under section 97.
74. The lead inspector will report to the DfE whether, in light of the evidence gathered, they believe that the offence of conducting an unregistered independent school is being, or has been, committed.
75. We may decide to refer the suspect(s) to the Crown Prosecution Service (CPS) for it to decide whether or not to charge someone for the offence in question. In these cases, the lead inspector is responsible for ensuring that all the relevant case materials are submitted to the CPS. The CPS will apply its 'full code test' and determine whether any person or other legal entity should be

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<sup>19</sup> Section 437(1) of the Education Act 1996, school attendance orders; [www.legislation.gov.uk/ukpga/1996/56/section/437](http://www.legislation.gov.uk/ukpga/1996/56/section/437).

<sup>20</sup> Data Protection Act 2018; [www.legislation.gov.uk/ukpga/2018/12/contents/enacted](http://www.legislation.gov.uk/ukpga/2018/12/contents/enacted); Human Rights Act 1998; [www.legislation.gov.uk/ukpga/1998/42/contents](http://www.legislation.gov.uk/ukpga/1998/42/contents).

charged.<sup>21</sup> No prosecution may take place unless consent is given by the Secretary of State in accordance with section 134 of the 2008 Act.

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<sup>21</sup> 'Code for Crown Prosecutors', Crown Prosecution Service, October 2018;  
[www.cps.gov.uk/publications/code\\_for\\_crown\\_prosecutors/codetest.html](http://www.cps.gov.uk/publications/code_for_crown_prosecutors/codetest.html).



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