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Corporate report

# Memorandum of understanding: independent schools

Updated 8 October 2021

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## Introduction

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.

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 inspections can lead to 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.

This MOU does not cover: pre-registration or any other type of inspections of academies and free schools; inspections and advice about maintained schools or non-maintained special schools; boarding or residential provision offered by academies, maintained and non-maintained boarding and residential special schools; or inspections of unregistered 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 2022.

## 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 training, adult and community learning and education, and training in prisons and other secure establishments. It inspects local authority children's services.

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 Schools Council associations (whose education provision is inspected by the Independent Schools Inspectorate)
- 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 [\[footnote 1\]](#) Ofsted to carry out an inspection of an independent school that is normally inspected by the Independent Schools Inspectorate. This MOU also applies to these inspections. [\[footnote 2\]](#)

Ofsted [publishes an annual letter on any collaborative work carried out with the Independent Schools Inspectorate](#), which has been approved by the Secretary of State to inspect certain independent schools in England. Ofsted also publishes an annual letter on the inspections carried out by [approved independent overseas inspection providers for British schools overseas]

(<https://www.gov.uk/government/publications/inspection-of-british-schools-overseas-annual-ofsted-report-letters>), when such quality assurance activity has been undertaken. These annual letters are outside of the scope of this MOU.

## 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. [\[footnote 3\]](#) 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.

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 pre-registration inspection under [section 99 of the Act](#).

Proprietors wishing to make changes to their registration status must apply to the DfE for a material change to their registration. If appropriate, the DfE will commission Ofsted to carry out material change inspections for these schools. Ofsted carries out these inspections under [section 162\(4\) of the Education Act 2002. The Education and Skills Act 2008 \(Commencement No. 11 and Saving and Transitory Provisions\) Order 2014](#) means section 162(4) is still in force.

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 carried out within the Independent Education and Boarding Team. All references to the DfE in this MOU relate specifically to this team.

## **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 [section 87 of the Children Act 1989](#) and supplemented by the [National Care Standards Commission \(Inspection of Schools and Colleges\) Regulations 2002](#).

Section 87 has been amended, including by the [Care Standards Act 2000](#), the [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 of any children accommodated by the school.

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 whether to inspect following receipt of any complaint or concern or when Ofsted has concerns for the welfare of children accommodated at a school.

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

### **Inspection of early years 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 foundation stage](#).

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.

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 inspection.

## **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 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

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 particular inspection, they will:

- share information that would assist in advancing each department's operational objectives (Ofsted will share such information with the DfE under [section 118\(3\) of Education and Inspections Act 2006](#). This gives HMCI 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')
- 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
- where appropriate, discuss and support each other in dealing with any external requests for information relating to inspection
- appropriately protect sensitive information in accordance with the latest central government requirements or guidance
- discuss, when appropriate, the scope of commissioned inspections, to ensure that the most appropriate type of inspection is carried out.

## Operational delivery

### Education inspections

Ofsted's regional directors are responsible for inspection and quality assurance processes within their own regions. They will ask those with responsibility for inspecting 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 [\[footnote 4\]](#)

- scope all commissions for routine and additional inspections in their region. [\[footnote 5\]](#)

## Welfare inspections

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 [section 87 of the Children Act 1989](#) on an annual basis and carry out other inspections of residential special schools or monitoring visits as Ofsted considers appropriate
- 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 concerns.

### **Directed inspections of welfare and/or education and carrying out aligned and integrated inspections**

The DfE may commission Ofsted to carry out an inspection of the education provision in a residential special school or boarding school. The relevant Ofsted regional director, regional director's delegate or other appropriate decision maker may decide that, due to concerns about the school's residential or boarding provision, Ofsted should inspect the welfare provision at the same time. The inspection is then considered either an aligned inspection or, for additional inspections, an integrated inspection.

In an aligned inspection, the inspection of boarding/residential provision and the school inspection run concurrently. Ofsted will publish 2 separate reports, with separate judgements: 1 will cover the education provision and 1 will cover the boarding/residential provision. Ofsted will also publish a summary report of the findings of both inspections from autumn term 2022.

In an integrated inspection, the inspection of boarding/residential provision will be integrated with the school inspection. Ofsted will publish 1 inspection report covering the boarding/residential and school provision. Ofsted does not make qualitative judgements in integrated inspections, but reports on whether the relevant independent school standards and national minimum standards are met.

For standard inspections, the regional director, regional director's delegate or other appropriate decision maker may arrange for an aligned inspection to take place. If the DfE commissions an additional inspection, the relevant decision maker may arrange for either an integrated inspection or an aligned inspection. Ofsted will liaise with the DfE to ensure that appropriate arrangements are in

place.

The Secretary of State may also direct Ofsted to inspect boarding or residential provision under section 87(3A) and in association schools, with the Independent Schools Inspectorate, where there are safeguarding or welfare concerns.

## 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 high standards expected
- lead inspectors urgently inform the DfE where they consider that a pupil at the institution is suffering or is likely to suffer significant harm, [\[footnote 6\]](#) or if they judge that there are concerns about safeguarding or serious weaknesses (that is, the school's failure to comply with the independent school standards gives inspectors cause for concern about pupils' welfare, health and safety, academic or personal development)
- 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

The DfE agrees that:

- it will organise the Independent Education and Boarding Team into 2 territorial teams (Regulation North and Regulation South), a team dedicated to unregistered schools (Unregistered Schools) and a team dedicated to enforcement and other complex cases (Coordination and Complex Casework Unit) and it will share contact details with Ofsted
- the Independent Education and Boarding Team will commission all inspections to which this MOU relates (except when HMCI determines that a welfare inspection of a 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 commissioning and will specify where it would like HMI with specific experience to be deployed
- if it is considering urgent or non-urgent regulatory or enforcement action, it will request 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](mailto:legal.services@ofsted.gov.uk))

## Handling concerns and complaints received by Ofsted

Ofsted agrees that:

- it will refer any complaint it receives about an independent school to the DfE in a timely manner
- it will pass any complaint it receives about a school that is normally inspected by the Independent Schools Inspectorate to the DfE in a timely manner
- it will prioritise for referral to the DfE any complaint it receives that gives rise to a concern about the welfare of a child or children, as well as the relevant local authority children's services
- in respect of boarding or residential provision, it will notify the DfE of any complaints it receives and will set out what action Ofsted intends to take, including an immediate inspection, if necessary
- 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 designated officer, if there are safeguarding concerns

It is the responsibility of the DfE to investigate complaints about independent schools. As such, Ofsted will not investigate complaints made about an independent school. Complaints may form part of the information that inspectors review when they plan for inspection. During an inspection, inspectors will normally consider the wider issues raised by a complaint which are relevant to the commission for the inspection or the inspection framework. Ofsted will report back to DfE when the DfE has specifically commissioned Ofsted to do so.

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 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](#).

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. 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.

The DfE agrees that:

- it will acknowledge to Ofsted in writing all complaints referred by Ofsted within 5 working days. The acknowledgement will set out the actions that the DfE has taken or plans to take in response to the complaint
- if the outcome of a complaint is for the DfE to commission Ofsted to carry out 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

## Handling concerns and complaints received by the DfE

The DfE agrees that:

- it will refer any complaint it receives about a non-association independent school to Ofsted within 5 working days. The referral will set out the actions that DfE has taken or plans to take in response to the complaint
- it will prioritise for referral to Ofsted any complaint it receives that gives rise to a concern about the welfare of a child or children, as well as the relevant local authority children's services
- 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

Ofsted will not investigate any individual complaints made about an independent

school. Complaints may form part of the information that inspectors review when they plan for inspection. During an inspection, inspectors will normally consider the wider issues raised by a complaint which are relevant to the commission for the inspection or the inspection framework. Ofsted will report back to DfE when the DfE has specifically commissioned Ofsted to do so.

1. In this document, an inspection ‘commissioned’ by the DfE means an inspection that HMCI is directed to carry out by the Secretary of State. [↵](#)
2. Under [section 109\(1\) of the Education and Skills Act 2008](#), the Secretary of State may at any time direct 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 [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. [↵](#)
3. In this document, an inspection that HMCI is directed to carry out by the Secretary of State may also be described as being ‘commissioned’ by the DfE. [↵](#)
4. The DfE is the correct statutory agency for complaints about independent schools, and so Ofsted will forward all such complaints to the DfE. If the complainant has requested that the complaint is not shared outside Ofsted, it will be forwarded to the DfE in an anonymised form to protect their identity. [↵](#)
5. Ofsted carries out additional inspections of independent schools if the DfE asks us to: emergency, progress monitoring, pre-registration and material change inspections. Guidance on these inspections is available in the ‘Handbook for additional inspections of non-association independent schools’. [↵](#)
6. The DfE may decide to use its powers under section 120 of the Education and Skills Act 2008, to a justice of the peace for an order imposing a relevant restriction on the proprietor of a registered independent educational institution, or an order that such an institution be removed from the register. [↵](#)

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