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▼ Menu

[Home](#) > [Education, training and skills](#) > [Inspections and performance of education providers](#)

> [Inspection and performance of schools](#) > [Inspection of independent schools](#)

> [Memorandum of understanding: independent schools](#)



Corporate report

# Memorandum of understanding: independent schools

Updated 21 December 2023

**Applies to England**

[Contents](#)

[Introduction](#)

[Role of the DfE and Ofsted](#)

[Cooperation](#)

[Information-sharing](#)

[Operational delivery](#)

[Handling concerns and complaints about independent schools received by Ofsted](#)

[Handling concerns and complaints about independent schools received by the DfE](#)

 [Print this page](#)

## 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 early years foundation stage and the national minimum standards for boarding schools or residential special schools.

The DfE regulates independent schools under [Part 4 of the Education and Skills Act 2008](#) (the Act). The functions relating to material changes are set out in the Education Act 2002. These functions are carried out by the DfE within the Independent Education Unit. All references to the DfE in this MOU relate specifically to this unit.

Ofsted and the DfE will continue to monitor the operation of the MOU and review as necessary. The next review is due by July 2024.

## Role of the DfE and Ofsted

The DfE is responsible for regulating independent schools in England.

Ofsted regulates and inspects to achieve excellence in the care of children and learners. 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 Ofsted to carry out an inspection of an independent school [\[footnote 1\]](#)

that is normally inspected by the Independent Schools Inspectorate. This MOU also applies to these inspections.

## 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 Act](#), Ofsted must inspect an independent school when directed to do so by the Secretary of State.<sup>[[footnote 2](#)]</sup> The purpose of the inspection is to advise the Secretary of State 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 114 to 118 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](#), within the timeframe requested by the DfE in the inspection commissioning form, and issue the subsequent report to the DfE within 30 working days of the end of the on-site inspection.<sup>[[footnote 3](#)]</sup> If the report is delayed, for any reason, Ofsted will keep the DfE informed of the expected publication date.

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 will carry out these inspections under [section 162\(4\) of the Education Act 2002](#) within the timescale requested by the DfE in its inspection commissioning form.<sup>[[footnote 4](#)]</sup> [The Education and Skills Act 2008 \(Commencement No. 11 and Saving and Transitory Provisions\) Order 2014](#) keeps section 162(4) in force. Ofsted will issue the subsequent report to the DfE within 30 working days of the end of the on-site inspection.<sup>[[footnote 5](#)]</sup> If the report is delayed, for any reason, Ofsted will keep DfE informed of the expected publication date.

## Inspection of boarding or residential provision

The legal basis for welfare inspections of boarding provision in independent boarding schools and residential provision in independent 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](#).<sup>[[footnote 6](#)]</sup>

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 His Majesty's Chief Inspector (HMCI) to take such steps as are reasonably practicable to enable them to determine whether children and learners' welfare is

adequately safeguarded and promoted while accommodation is provided for them at school.

HMCI determines the frequency of inspections of boarding provision in independent boarding schools and residential provision in independent residential special schools. HMCI will consult with the DfE before making any changes to the frequency. HMCI also determines whether to inspect the provision following receipt of any complaint or concern, or when Ofsted has concerns for the welfare of children accommodated at a school.

Under section 87, HMCI may inspect the boarding provision in independent boarding schools and residential provision in independent residential special schools without a commission from the DfE. However, Ofsted will inform the DfE about such an inspection within 5 working days of the inspection being scheduled.

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 of residential or boarding provision under [section 87\(3A\) of the Children Act 1989](#). Ofsted will provide DfE with the advice within 3 working days.

### **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 or 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.

Ofsted's guidance, '[Registering school-based provision](#)', sets out circumstances in which early years provision 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 learners' welfare is at the centre of any decision-making
- endeavour to improve understanding about their different roles
- work together to ensure the 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 the safeguarding of children, promote the welfare of children and protect them from harm
- 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 the 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
- refer all routine communications 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
- refer all urgent communications from the DfE directly to the appropriate Ofsted officials at the earliest opportunity
- 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:

- scope all commissions for routine and additional inspections in their region<sup>[\[footnote 7\]](#)</sup>

- follow agreed national processes and ensure a consistent approach across Ofsted regional teams, by notifying the DfE if Ofsted's investigation into any complaints about an inspection will delay the publication of the inspection report

Ofsted will also send the DfE a list, every calendar month, of all [formal complaints](#) about independent school inspections that Ofsted is still investigating, where the report is yet to be published.

## **Inspections of boarding and residential provision**

Ofsted's regional directors are responsible for inspection and quality assurance processes within their own regions. They will ask those with responsibility for inspections of independent boarding schools and independent residential provision to:

- arrange inspections of all independent residential special schools under [section 87 of the Children Act 1989](#) on an annual basis, and carry out other inspections of independent residential special schools or monitoring visits as Ofsted considers appropriate
- arrange inspections of all independent boarding schools under section 87 every 3 years, and carry out other inspections or monitoring visits as Ofsted considers appropriate
- at the first opportunity, share in full with the DfE all complaints and concerns received by Ofsted about independent boarding and independent residential provision, and advise the DfE of any subsequent 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 an independent residential special school or independent 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 an aligned inspection or, for additional inspections, an integrated inspection, where compliance with specific independent school standards and national minimum standards is inspected and no overall graded judgement is given.

In an aligned inspection, the inspection of boarding or residential provision and the school inspection run concurrently. Ofsted will publish 2 separate reports, with separate judgements, within 38 working days of the end of the on-site inspection. [\[footnote 8\]](#) One report will cover the education provision and the other will cover the boarding or residential provision. At the same time, Ofsted will also publish a summary report of the findings of both inspections. If either report is delayed, for any reason, Ofsted will keep the DfE informed of the expected publication date.

In a commissioned integrated inspection, the inspection of boarding or residential provision will be integrated with the school inspection of education provision. Ofsted will publish one inspection report covering both the boarding or residential provision and the school provision within 38 working days of the end of the on-site inspection. [\[footnote 9\]](#) If the report is delayed, for any reason, Ofsted will keep the DfE informed of the expected publication date. Ofsted does not make qualitative judgements in integrated inspections. It 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.

## 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
- where a school is failing some of the independent school standards that require an action plan to be put in place, an evaluation of the action plan is made after the inspection to determine the school's likelihood of success in rectifying the failings, and this is returned to the DfE within 20 working days
- they contact Ofsted's independent schools policy team in order to inform the DfE if they consider that a pupil at the institution is suffering or is likely to suffer significant harm. This should happen by no later than the end of the on-site inspection
- where inspectors judge that there are concerns about safeguarding or serious weaknesses, they will send an early notification form within one working day of the on-site inspection

If inspectors consider, on any type of inspection, that a pupil at the institution is suffering or is likely to suffer significant harm, Ofsted has responsibility for ensuring that:

- inspectors join a case conference with the DfE and submit an early notification form within one working day of the end of the on-site inspection
- inspectors provide advice and input within 2 working days of the end of the on-site inspection if the DfE is considering taking enforcement action against the school known as a 'section 120 notice'[\[footnote 10\]](#)
- inspectors provide a witness statement to the DfE, within the timeline agreed, following the end of the on-site inspection. The timeline for the witness statement is subject to the DfE's providing the necessary guidance to Ofsted
- inspectors are available to give evidence, including at tribunal hearings

The DfE agrees that:

- it will keep Ofsted informed of the structure of the Independent Education Unit and share all contact details
- the Independent Education Unit 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 His Majesty's Inspectors (HMIs) with specific experience to be deployed
- if it is considering urgent or non-urgent regulatory or enforcement action, it will request the information required from Ofsted to assist in the decision-making process within 5 working days of the case being reviewed; it will also make Ofsted aware within 5 working days if a school makes an appeal against regulatory or enforcement action
- 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)
- it will send a copy of any restriction or de-registration decision within 3 working days of its becoming available

## Handling concerns and complaints about independent schools received by Ofsted

Ofsted agrees that:

- it will refer any complaint it receives about an independent school to the DfE at the first opportunity<sup>[footnote 11]</sup>
- it will pass any complaint it receives about a school that is normally inspected by the Independent Schools Inspectorate to the DfE at the first opportunity
- it will prioritise for referral to the DfE, as well as to the relevant local authority children's services, any complaint it receives that gives rise to a concern about the welfare of a child or children
- in respect of independent boarding or independent residential provision, it will notify the DfE of any complaints it receives at the first opportunity, and will set out what action Ofsted intends to take, including an immediate inspection, if necessary
- it will refer to the relevant Ofsted team 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 DfE to consider the concerns raised about the school's education provision, and to the local authority designated officer and/or the police if there are safeguarding concerns

It is the responsibility of the DfE to assess complaints about independent schools. Consequently, 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 that are relevant to the commission for the inspection or the inspection framework. Ofsted will report back to the DfE when the DfE has specifically commissioned Ofsted to do so.

The regional Senior His Majesty's Inspector from the relevant Ofsted region will inform the DfE whenever an inspection of a registered early years provision within an independent school, or an



independent residential special school also registered as a children's home, takes place as a result of a complaint. This is in case the DfE needs to take any further action.

When the DfE commissions an inspection as a result of a complaint about a school, by way of an agreed inspection commissioning form, Ofsted will treat this as a priority. If an inspection is commissioned, Ofsted and the DfE will discuss and agree the scope of the inspection. 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 an independent boarding or independent residential special school has failed to safeguard the children in boarding and residential provision, Ofsted will notify the DfE at the first available opportunity following a case review. Ofsted will submit an early notification form – '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 that require Ofsted action, within 5 working days
- 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 within 5 working days using the agreed inspection 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 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 about independent schools received by the DfE

The DfE agrees that:

- it will refer to Ofsted within 5 working days any complaint it receives about a non-association independent school that requires Ofsted action
- 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 and, where appropriate, will pass the complaint to the relevant local authority children's services, the local authority designated officer and/or the police
- 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, where appropriate, pass the complaint to the local authority children's services, the local

authority designated officer and/or the police, if there are concerns about the welfare of a child or children

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

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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. 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. [↪](#)
  3. The regional SHMI for independent schools may seek the DfE's agreement to adjust the timing of the inspection, in which case the DfE will issue a revised inspection commissioning form.

If a complaint has been submitted by a school in relation to the inspection, the publication of the report may be delayed. Ofsted will provide the report to DfE within 30 working days of the end of the complaints process. [↪](#)

4. [The Education and Skills Act 2008 \(Commencement No. 11 and Saving and Transitory Provisions\) Order 2014](#) keeps Section 162(4) in force.

The regional SHMI for independent schools may seek the DfE's agreement to adjust the timing of the inspection, in which case the DfE will issue a revised inspection commissioning form. [↪](#)

5. If a complaint has been submitted by a school in relation to the inspection, the publication of the report may be delayed. Ofsted will provide the report to DfE within 30 working days of the complaints process ending. [↪](#)
6. Section 87 has been amended, including by the [Care Standards Act 2000](#), the [Education and Inspections Act 2006](#) and the [Education Act 2011](#). [↪](#)
7. Ofsted carries out the following additional inspections of independent schools if requested by the DfE: 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](#). [↪](#)
8. If a school has submitted a complaint in relation to the inspection, this may delay the publication of the report. Ofsted will provide the report to the DfE within 38 working days of the end of the complaints process. [↪](#)
9. If a school has submitted a complaint in relation to the inspection, this may delay the publication of the report. Ofsted will provide the report to the DfE within 30 working days of the end of the complaints process. [↪](#)
10. A section 120 notice is emergency enforcement action which results in a relevant restriction being imposed on the proprietor of a registered independent educational institution, or the institution being removed from the DfE's register of schools. [↪](#)
11. 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 of Ofsted, it will be forwarded to the DfE in an anonymised form to protect their identity.

Complaints about schools received by Ofsted are assessed and prioritised based on level of severity, so reporting times to the DfE can vary. [↩](#)

[Back to top](#)

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