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Guidance

Unregistered school inspection handbook

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Applies to England

Contents

This publication is available at https://www.gov.uk/government/publications/inspections-under-section-97-of-the-education-and-skills-act-2008-handbook-for-inspectors/unregistered-school-inspection-handbook

Introduction

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

- carrying out inspections under section 97 of the Education and Skills Act 2008 (https://www.legislation.gov.uk/ukpga/2008/25/section/97) (the 2008 Act)
- investigating criminal offences under section 96 of the 2008 Act (https://www.legislation.gov.uk/ukpga/2008/25/section/96)

2. It should be used with the Department for Education (DfE)'s 'Policy statement: prosecuting unregistered independent schools' (https://www.gov.uk/government/publications/regulating-independent-schools).

Legal basis for inspection

3. Under section 96 of 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.

4. Under section 463 of the Education Act 1996 (https://www.legislation.gov.uk/ukpga/1996/56/section/463), an 'independent school' is defined as a school that is not maintained by a local authority, is not a non-maintained special school, and at which full-time education is provided for either:

- 5 or more pupils of compulsory school age, or
- at least 1 pupil:
  - for whom an education health and care (EHC) plan is maintained
  - for whom a statement of special educational needs is maintained[footnote 1]

- who is looked after by a local authority[footnote 2]

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' (https://www.gov.uk/government/publications/independent-school-registration).

5. Conducting an unregistered independent school is a summary offence. Under section 281(5) of the Criminal Justice Act 2003 (https://www.legislation.gov.uk/ukpga/2003/44/section/281), it currently carries a maximum penalty of 6 months' imprisonment or an unlimited fine, or both. A summary offence is a criminal offence that is only triable in the magistrates' court, without the right to a trial by jury.

6. Under section 97 of the 2008 Act, if His 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.

7. 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.

Roles and definitions

8. Throughout this handbook, we will refer to:

- an independent educational institution that is the subject of investigation, inspection and/or prosecution under section 97 of the 2008 Act as 'the institution'
- the person who is the subject of investigation or prosecution as 'the suspect'

9. An 'investigator' is any person carrying out a criminal investigation into an unregistered school.

10. The 'lead investigator' is the person in charge of the inspection, and is also responsible for directing any criminal investigation. The lead investigator will be the single point of contact for all aspects of the investigation. The lead investigator 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.[footnote 3]

11. 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 investigator should appoint a person to act as the disclosure officer.

12. The ‘material’ is anything that is obtained or inspected during an investigation and may be relevant to the investigation. This includes material coming into the possession of investigators (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 investigator or a disclosure officer considers that it has some bearing on any offence or person under investigation, or on the circumstances surrounding the case.

13. Ofsted will have regard to the Police and Criminal Evidence (PACE) Act 1984 (https://www.legislation.gov.uk/ukpga/1984/60/contents), the PACE codes of practice (https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice), the Criminal Procedure and Investigations Act 1996 (CPIA) (https://www.legislation.gov.uk/ukpga/1996/25/contents) and the CPIA code of practice (https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-1996-section-231-code-of-practice) in criminal investigations, 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.

Before the inspection

Actions on receiving information

14. We may receive information about possible unregistered independent schools from a variety of sources, such as the DfE, parents, local authorities the police or Ofsted staff.

15. 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.

16. 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.gov.uk

Website: www.gov.uk/independent-school-registration

17. The 'Memorandum of understanding between Ofsted and DfE: independent schools' (https://www.gov.uk/government/publications/memorandum-of-understanding-independent-schools) sets out our information-sharing arrangements.

18. If, during the pre-inspection investigation, an investigator finds evidence that is cause for concern about the safeguarding and/or welfare of children at an institution, they will contact the appropriate local authority as soon as possible. The investigator 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.

19. 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.

20. We 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.

21. 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 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.

22. 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

23. If the lead investigator 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.

24. 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.

25. 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[footnote 4]
- early years provision, our unregistered schools team will notify the regional early years team to discuss next steps

26. Based on the information available, we will decide whether support from the relevant local authority, police and/or any other agency will be required. We may request their attendance during an inspection, for example when investigators believe that there is a potential risk of harm to children or Ofsted staff at the premises.

During the inspection

Arrival at the institution

27. Inspections under section 97 may be carried out at any reasonable time, without notice.

28. On arrival, investigators will enter and inspect the premises. The investigator 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.

29. The lead investigator will provide the responsible person with a ‘notice of inspection’, which sets out details of the legal basis for inspection.

Powers of entry

30. Section 97 provides a right of entry to all types of premises to carry out an inspection. Investigators may at any reasonable time enter and inspect premises, which includes dwellings and private residences, if there is reasonable cause to believe that an offence is being committed under section 96 of the 2008 Act.

31. If any investigator 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

32. Investigators will gather evidence as part of the investigation into the suspected offence under section 96 of the 2008 Act. Investigators 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 (https://www.legislation.gov.uk/ukpga/1984/60/section/9). Investigators may take photographs and record footage of the inspection using body-worn video cameras.

If investigators 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. [footnote 5]

33. Investigators will establish whether overnight accommodation is provided for any child at the premises concerned. Investigators will take prompt action to inform the relevant local authority of any safeguarding or health and safety issues.

34. Investigators will record the necessary evidence in line with the ‘Evidence’ section of this handbook. If investigators are concerned about harm or possible harm to a child, they will contact the local authority and/or the police immediately and will inform Ofsted’s relevant regional director and regional regulatory teams.

Cautioning suspects

35. As soon as an investigator identifies a person who may have been or may be committing an offence, the investigator 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.”

36. 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.

37. When cautioning someone, the investigator should confirm that the suspect understands the caution and, where necessary, explain it to the suspect in different terms. The investigator should record in their notebook:

- the time that the caution was read out
- any further explanation that was required
- any questions the suspect asked, and the responses given
- any other persons present at the time of the caution being read out
- those present when any comments were made by a suspect

38. Investigators 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

39. Investigators may find evidence that is relevant to Ofsted’s duty under section 117(2)(a) of the Education and Inspections Act 2006 (https://www.legislation.gov.uk/ukpga/2006/40/section/117) to have regard to the need to safeguard and promote the rights and welfare of children and young people.

40. Investigators 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 the 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

41. 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 (https://www.gov.uk/government/publications/ofsted-safeguarding-policy). We do not hold a statutory responsibility for child protection matters, but we work together with other statutory agencies – by sharing information with them – to protect the welfare of children and young people.

42. If investigators 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 the police. If we become aware of 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

43. At the end of the inspection, the lead investigator will normally be able to decide, based on the available evidence gathered at that time, whether they have reasonable cause to believe that an unregistered independent school is being conducted on the premises. In some cases, it may be necessary to carry out further investigation before reaching this decision.

44. At the end of the inspection, the lead investigator will not provide to any representative of the institution an outcome of the investigation that is being carried out. This is because the inspection is one part of the ongoing criminal investigation and not the conclusion of the investigation.

45. The lead investigator will not provide advice to any representative of the institution on the matter under the investigation. It is a matter for the responsible person to decide to seek independent advice.

Warning notice

46. If the lead investigator 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. The warning notice outlines the implications of continuing to operate an unregistered independent school.

47. They may also issue warning notices to any other suspects, even if they are not present on the day of the inspection.

48. The lead investigator may also issue a warning notice at any time after the inspection if they have reasonable cause to believe that an unregistered independent school is being conducted.

Further inspection

49. If necessary, the lead investigator may consider carrying out a further inspection or inspections at the same premises or associated sites.

Voluntary interviews under PACE conditions

50. Following an inspection, we may formally invite a suspect to attend one or more voluntary interviews under caution in accordance with the PACE Act 1984 and accompanying PACE codes of practice (https://www.gov.uk/guidance/police-and-criminal-evidence-act-1984-pace-codes-of-practice) in so far as these provisions are applicable to non-police criminal investigators.

51. Suspects will be notified, in writing, about 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 will invite an appropriate representative of the legal entity to an interview.

52. 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 referred to the Crown Prosecution Service (CPS) for consideration of prosecution.

Evidence

Gathering evidence

53. Investigators must inform the person(s) believed to be responsible for conducting the institution of the powers that they are using to enter the premises and inspect. Investigators will record evidence appropriately, for example by taking photographs.

54. Investigators may also make notes about any evidence that they identify at the time.

55. Under section 58 of the Education Act 2005 (https://www.legislation.gov.uk/ukpga/2005/18/section/58), investigators 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.

56. Investigators may also use body-worn video cameras to record footage for the purpose of gathering evidence during section 97 inspections. Investigators will inform individuals they encounter that they are using body-worn video cameras. They will also direct them to our unregistered schools privacy notice (https://www.gov.uk/government/publications/ofsted-privacy-notices/schools-ofsted-privacy-notice#unregistered-schools), which details the legal basis and purposes of the cameras' use, the individual's rights and the relevant retention and storage periods.

A record of inspection, including details of any physical evidence given to investigators, will be given to a suitable person at the end of the inspection.

Storing material

57. We store securely, and record the location of, any material that may be relevant to the investigation, including footage from body-worn video cameras.

58. We will mark exhibits appropriately.

Surveillance

59. Under the Regulation of Investigatory Powers Act 2000 (https://www.legislation.gov.uk/ukpga/2000/23/contents), we are authorised to carry out directed surveillance for the purpose of preventing or detecting a criminal offence. We may use these powers in the investigation of unregistered schools.

Disclosure

60. The lead investigator is responsible for ensuring compliance with the processes for retaining evidence and unused material in a criminal investigation.

61. 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

62. The duty to retain material does not extend to subsidiary items, such as duplicate copies of records or reports.

63. We will retain evidence during an investigation and any prosecution or related court hearings that result from it. We will normally delete all video footage within 28 calendar days, unless the footage is necessary to be used for a criminal investigation or other purpose.

64. In accordance with our retention policy, we will keep securely all material that may be relevant at an Ofsted office or in a suitable location.

Unused material held by third parties

65. In accordance with the CPIA code of practice and the Attorney General's guidelines on disclosure (https://www.gov.uk/government/publications/attorney-generals-guidelines-on-disclosure), investigators have overall responsibility for pursuing all reasonable lines of inquiry. This may involve seeking disclosure from a third party.

66. When material is held by a third party, such as a local authority, social services department or the police, investigators may need to make enquiries of the third party.

67. Investigators 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.

68. Investigators will only make these enquiries if they believe that a third party may hold material that is relevant to the investigation. They will not make speculative enquiries.

After the inspection

Reporting the inspection findings

69. Following the inspection, the lead investigator will make a recommendation on next steps to the DfE.

70. We will provide the relevant local authority with information on pupils who may be attending unregistered independent schools within the local authority's area.

71. 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 (https://www.legislation.gov.uk/ukpga/1996/56/section/437). Under this provision, the local authority may serve a notice in writing to the parent of the child, requiring the parent to confirm 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.

72. When necessary, we will give 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.

73. 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 (https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted) and the Human Rights Act 1998 (https://www.legislation.gov.uk/ukpga/1998/42/contents).

74. We will inform the DfE if we have previously inspected, or attempted to inspect, the institution's premises under section 97.

75. The lead investigator will inform 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.

76. We may decide to refer any suspect(s) to the CPS for it to decide whether or not to institute criminal proceedings. In these cases, the lead investigator 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 charged.[footnote 6] 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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1. Under section 324 of the Education Act 1996 (http://www.legislation.gov.uk/ukpga/1996/56/section/324).
2. Within the meaning of section 22 of the Children Act 1989 or section 74 of the Social Services and Well-being (Wales) Act 2014.
3. A 'criminal investigation' is defined in paragraph 2.1 of the 'Criminal Procedure and Investigations Act 1996 (section 23(1)) code of practice' (https://www.gov.uk/government/publications/criminal-procedure-and-investigations-act-1996-section-231-code-of-practice), Ministry of Justice, November 2020.
4. For more information about inspections of residential provision, see: 'Social care common inspection framework (SCCIF): boarding schools and residential special schools' (https://www.gov.uk/government/publications/social-care-common-inspection-framework-sccif-boarding-schools-and-residential-special-schools), Ofsted, March 2022.
5. Full details of how we deal with compliance are set out in: 'Ofsted's early years and childcare enforcement policy' (https://www.gov.uk/government/publications/early-years-and-childcare-ofsteds-enforcement-policy), Ofsted, March 2022.
6. 'Code for Crown Prosecutors' (https://www.cps.gov.uk/publication/code-crown-prosecutors#section4), Crown Prosecution Service, October 2018.