



Department
for Education

Independent inspectorates: regulations and advice

Government consultation response

August 2014

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Introduction

On 28 March 2014 the Department for Education published an online consultation on draft regulations and advice for the approval of inspectorates other than Ofsted to inspect independent schools. The draft regulations prescribe 13 matters that the Secretary of State must take into account when considering approval or withdrawal of approval. The draft advice aims to set out the Departmental policy underpinning the regulations. It is produced mainly for existing independent inspectorates and for any bodies that may consider seeking approval as an independent inspectorate.

The consultation closed on 16 May 2014 and attracted 22 responses. The Secretary of State has considered the responses received and will shortly make and lay the regulations and publish revised advice in the light of comments received, to come into force in September 2014.

We sought the opinions of key groups including currently approved independent inspectorates, independent school organisations and other representative bodies. We received responses from the following:

Inspectorates	3
School membership organisations	6
Schools	5
Other*	8
Total	22

*Those which fell into the 'other' category included professional associations (trade unions), national bodies and individuals.

Summary of responses received and the government's response

This section summarises the main findings question by question, and where appropriate, details the main changes made to the advice document in the light of consultation responses. The advice does not cover matters which relate to business decisions in which the Department does not have the remit to intervene, such as inspectorates' right to set their inspection fees.

Question 1a) Do you agree with the narrative approach to the size of inspectorate?

There were 17 responses to this question. 14 respondents agreed and two disagreed with the narrative approach to the size of the inspectorate. Key issues were:

- inspectorates should have most but not all of the characteristics
- the characteristics proposed should lead to inspectorates of a suitable size but should be taken alongside other criteria for ensuring suitability
- criteria based on size and range may prevent new inspectorates from entering the market, as it might be expected that new inspectorates would start small and build up their business over time.

Question 1b) Do you think the advice should set a minimum number for the number of schools that an inspectorate should inspect?

There were 17 respondents to this question, of whom 10 did not think that advice should set a minimum number of schools that an inspectorate should inspect. Four respondents were unsure. The main points raised by respondents were:

- the need to have a range of school sizes, types, curriculum approaches, ethos and geographical coverage
- consistency of inspection within and between inspectorates
- the overarching goal must be for any approved inspectorate to have the capacity and capabilities to provide a high quality inspection for a wide range of schools
- setting a minimum number of schools may limit diversity and be anti-competitive.

Question 1c) If you consider that we should set a number, what number should be set as a minimum?

There were 7 responses to this question. Only one respondent offered a minimum number, and suggested that an inspectorate could operate with 50 schools.

Question 1d) Do you agree with the proposed range of characteristics?

There were 16 responses to this question, of which 9 agreed with the proposed range of characteristics and 5 were unsure. The main points raised were:

- the criterion for a range of religious and philosophical ethos, including schools of a secular background, should also apply to current inspectorates
- the broader the range of characteristics required, the more difficult it becomes to recruit inspectors with the necessary experience and skill to cover the full range of inspections, and the greater the risk of compromising the quality and consistency of inspections.

Question 1e) If yes, should DfE insist on all inspectorates covering all the characteristics, or would most suffice?

All 8 respondents to this question agreed that all inspectorates should cover most or all characteristics. Comments included:

- coverage of all characteristics would ensure a broad perspective
- all criteria as listed should apply and should not be seen as a menu from which inspectorates can choose

Question 1f) In particular, should we insist on all inspectorates covering schools that do not have an ethos associated with a particular religion or belief?

There were 19 responses to this question. Eight respondents thought we should insist on all inspectorates covering schools with no religious ethos, and seven thought we should not. The main issues raised were:

- could be challenged in the future, and could be seen as potentially discriminatory
- coverage of inspectorates seems secondary to the quality of the inspection framework and the subsequent quality of the inspections.
- it would preclude inspectorates developing a particular expertise in one area

- it is important that inspectors themselves are able to see beyond the specific characteristics, whilst being cognisant of them
- keen to see independent schools with a religious ethos better scrutinised given that they represent the fastest growing sector of independent schools
- concerns that the growth in number of such schools may prove to be detrimental to future community cohesion, and increase the potential for radicalisation of young people
- a focus on any particular type of school would be detrimental to the quality of inspections

As a result of the consultation, we have amended the advice. In order to ensure an inspectorate has a broad perspective it should inspect both primary and secondary schools over a broad geographical area, with a range of sizes, school ethos types and approaches to curriculum provision, unless National Curriculum is used extensively. We do not propose to set a minimum number of schools that an inspectorate should inspect. We are not specifically requiring that inspectorates inspect schools with no religious ethos.

Question 2 Do you agree with the wording of matter (b), and the related advice?

There were 20 responses to this question, of which 16 agreed and two disagreed with the wording of matter (b) - the extent of an inspectorate's independence from the schools it inspects - and the related advice. The main issues raised were:

- no employee should have any close personal or business relationship or any financial interest
- suggested rewording to remove reference to 'employee'. As currently worded it would restrict the ability of the inspectorate to employ, even in a capacity completely unrelated to inspection, any individual who has a personal connection with a school within the remit.

We have amended the wording to clarify that no employee *directly involved in an inspection* should have *or have recently had* any close personal or business relationship *or any financial interest* with any school inspected.

Question 3 Do you agree with the wording of matter (c), and the related advice?

There were 19 responses to this question, of which 15 agreed and two disagreed with the wording of matter (c) - the extent of an inspectorate's independence from the body which established it - and the related advice. The main issues raised were:

- there should be ‘no connection, including financial investment or interest with inspected schools
- legal independence from the schools is not sufficient. Legal independence from the body or bodies representing independent schools is also required

We have changed the wording to include independence from any association representing the schools that an inspectorate inspects as well as the schools themselves. We have also added a requirement that they must have no financial investment or interest with inspected schools, or the body/ies which established the inspectorate.

Question 4 Do you agree with the wording of matter (d), and the related advice?

There were 16 responses to this question, of which 11 agreed and four were not sure about the wording of matter (d) - administrative, financial and insurance arrangements - and the related advice. The main issues raised were:

- as independent inspectorates receive their income predominantly from charities, inspection fees should be proportionate and not excessive
- it is not clear what Code of Conduct is being referred to. It would be preferable for particular requirements to be set out comprehensively in this departmental advice rather than cross-referring to Ofsted manuals.
- there should be no question of any conflict of interest between board members and the schools being inspected.

In the light of a result of consultation comments we have removed the requirement for inspectorates to work to a Code of Conduct consistent with that used by Ofsted. We have also clarified that the Board is aware of best *education and inspection* practice.

Question 5a) Do you agree with the wording of matter (e), and the related advice?

There were 17 responses to this question, of which eight disagreed and five agreed with the wording of matter (e) - procedure and selection criteria for appointing inspectors - and the related advice. The main issues raised were:

- the requirement for experience of inspecting a wide range of schools, including schools outside an individual inspectorate, would limit the supply experienced and skilled lead inspectors, and ultimately the effectiveness of the inspectorate to deliver the highest quality outcomes
- it is unlikely that inspectors will have knowledge and understanding of all schools.

- QTS should not be used as a proxy for having the skills and experience required to robustly inspect a school.
- inspectors should have sufficient experience, capability, integrity and independence to command the support and respect of those whom they inspect and the general public.
- quality should be the test for the suitability of inspectors

Question 5b) Do you think we should require education lead inspectors to have qualified teacher status?

There were 16 responses to this question, of which nine disagreed and six agreed that we should require education lead inspectors to have qualified teacher status. The main issues raised were:

- appropriate that a suitably qualified Lead Inspector should judge the performance of teachers and leaders who are professionally qualified
- the requirement for lead inspectors to have QTS seems unnecessary and counterproductive. Experience of senior leadership and high quality teaching and learning are the key requirements, as are the skills to lead inspections
- there is no correlation between QTS and inspection capability
- legislation does not require independent school teachers to have QTS
- far more sensible to phrase the requirements for lead inspectors in the same flexible way as for all inspectors, that is, to require that they have appropriate qualifications and relevant experience
- the requirement for all lead inspectors to have experience of inspecting schools outside an individual inspectorate could be difficult to achieve and potentially reduce the independence of some inspectorates

Question 5c) Do you think we should require boarding lead inspectors to have a social work qualification?

There were 18 responses to this question, of which 14 disagreed and two agreed that we should require boarding lead inspectors to have a social work qualification. The main issues raised were:

- essential for boarding lead inspectors to have relevant experience of working in boarding if they are to interpret the NMS appropriately

- many boarding inspectors have alternative qualifications, including nursing, pastoral care and many years' experience of managing residential settings, which are more relevant to a boarding school environment
- experience of educational leadership in a boarding school, combined with specific training in the National Minimum Standards, may be of more value than a social work qualification gained in a non-educational setting

Question 5d) Do you think that we should require the chief inspector of an inspectorate to have qualified teacher status?

There were 16 responses to this question, of which nine disagreed and five agreed that we should require the chief inspector of an inspectorate to have qualified teacher status. The main issues raised were:

- the role of Chief Inspector is more strategic and so, whilst preferable, QTS might not be essential if other important skills are demonstrated
- this does not give the Secretary of State sufficient flexibility
- there is no link between QTS and inspection capability.

We have taken on board the comments relating to specific qualifications - qualified teacher status for the chief inspector and education lead inspectors, and a social work qualification for boarding lead inspectors. We have removed the references to these qualifications; the advice will instead require appointees to these posts to have appropriate qualifications and professional expertise and experience.

Question 6 Do you agree with the wording of matter (f), and the related advice?

There were 16 responses to this question, of which 14 agreed and one disagreed with the wording of matter (f) - the terms on which the inspectorate appoints its inspectors - and the related advice.

Question 7 Do you agree with the wording of matter (g), and the related advice?

There were 18 responses to this question, of which 16 agreed and two were not sure about the wording of matter (g) - the training which the inspectorates provide - and the related advice. The main issues raised were:

- training should include safeguarding and child protection, enabling the identification of risks and harm

- training should include young people with experience of boarding (specific for inspectors who will inspect boarding or residential special schools)

In response to comments raised we have strengthened the requirements in relation to specific training on safeguarding, child protection and extremism. We have also introduced a requirement for annual training to keep inspectors informed of best practice and emerging regulatory changes, and regular refresher training.

Question 8a) Do you agree with the wording of matter (h), and the related advice?

There were 18 responses to this question, of which 12 agreed and 4 were not sure about the wording of matter (h) - the process inspectorates follow in carrying out inspections - and the related advice. The main points raised were:

- welcome the requirement to ensure consistent judgements and the proposed arrangements for quality assurance
- should include 'appropriate arrangements for seeing children directly and speaking with them individually'
- there also needs to be an emphasis on quality assurance for consistency and comparability.

We have retained the requirement that inspectors must not have worked at or given advice to a school they are scheduled to inspect or have inspected for a period of six years. In the light of comments raised we have inserted a new requirement that the inspection framework must set out appropriate arrangements for seeking the views of children.

Question 8b) Should we go further by requiring independent inspectorates to operate a framework that is in line with Ofsted's framework for inspection of independent schools?

There were 18 responses to this question, of which 12 disagreed and 4 were not sure that we should require independent inspectorates to operate a framework that is in line with Ofsted's independent schools inspection framework. The main points raised were:

- rigour of the inspection framework should be consistent, but diversity of the independent sector needs careful consideration
- to maintain public confidence and avoid confusion, it is essential that association and non-association schools are inspected against the same framework
- attempts to align both frameworks could unnecessarily limit the effectiveness of both types of inspection

- any changes to the framework should not be introduced without further consultation with independent schools
- Ofsted inspects only a very small number of independent schools that are similar in type or size to those found typically in the sector. Changes to Ofsted frameworks are understandably dominated by the needs of its broader remit.

We have decided that inspection frameworks must be agreed with the Department and must set out the code of conduct that inspectors will work to and the frequency of inspections. However we have decided not to make any requirements in relation to the use of Ofsted's framework and the advice does not make reference to it.

Question 9) Do you agree with the wording of matter (i), and the related advice?

There were 18 responses to this question, of which 16 agreed and one disagreed with the wording of matter (i) - the policy and procedures an inspectorate has in place to ensure objectivity of inspectors - and the related advice. The main points raised were:

- this is necessary if inspectorates are to maintain common professional standards and to reassure schools of this
- an explicit code of conduct for inspectors in regard to their own professional standards would be helpful.

We have amended the advice to ensure that and inspectorate's policies and procedures make provision for inspectors to raise concerns with the inspectorate about any flawed inspection practice or which is not in the best interests of children. This section also requires inspectorates to have a quality assurance process to cease to deploy inspectors where necessary.

Question 10) Do you agree with the wording of matter (j), and the related advice?

There were 17 responses to this question, of which 13 agreed and two disagreed with the wording of matter (j) - the arrangements for the provision and publication of inspection reports - and the related advice. The main points raised were:

- the definition of 'follow-up' reports and the requirements for their publication on an inspectorate's website are unclear
- the criteria for the publication of emergency inspection reports should be transparent and must be justified as being in the public interest
- concerns about the publication of emergency inspection reports that originate from unfounded vexatious complaints

We have reworded the advice to clarify the criteria for publication of emergency inspection reports, that is where the report shows failings which were not identified at the previous inspection, unless the Department requests that they are not published. The advice will also require regular cycle reports to be published in a timely manner.

Question 11) Do you agree with the wording of matter (k), and the related advice?

There were 15 responses to this question, of which six agreed and six disagreed with the wording of matter (k) - the complaints procedure - and the related advice. The main points raised were:

- DfE should receive and publish an outline of all complaints annually
- reference to Ofsted procedures should be removed and replaced with specific DfE requirements.
- the complaints procedure should be readily available on the website of each inspectorate.

We have changed the advice in the light of consultation comments. The advice no longer requires an inspectorate's complaints policy to be in line with that of Ofsted. Instead it will say that an effective policy must be agreed with the Department, published and implemented. In addition, the inspectorate must make arrangements to inform the Department annually about the number and nature of complaints considered at the formal stage of the process.

Question 12 Do you agree with the wording of matters (l) and (m), and the related advice?

There were 17 responses to this question, of which eight agreed and five were not sure about the wording of matters (l) and (m) and the related advice. These matters relate to: assessment made of the inspectorate by the Chief inspector; the extent to which the inspectorate's arrangements enable the Chief Inspector to carry out functions under section 107 of the Education Act 2008. The main points raised were:

- Ofsted's annual reports on the work of each inspectorate should be published on the Ofsted and the inspectorate websites, to ensure proportionality and public accountability
- some wording in the 'Continued approval' section appear to be about schools, not inspectorates
- monitoring arrangements should be appropriate to the operating model of the specific inspectorate

- monitoring arrangements should not impose additional bureaucratic burdens on inspectors or inspectorates that could compromise the quality of inspection delivery. Forms of monitoring should be subject to discussion and agreement and be based on a proper understanding of the inspectorate's operational frameworks.

The advice has been amended to include a new requirement on Ofsted to provide termly updates to the Department on their monitoring work and to clarify that Ofsted will conduct its monitoring work in line with a protocol jointly agreed between Ofsted, the independent inspectorates and the DfE. In the light of consultation comments, much of the wording in the continued approval section has been removed, as it referred to schools not inspectorates.

Question 13 Do you agree that the proposed regulations and guidance will lead to greater transparency in the work and approval of the independent inspectorates?

There were 10 responses to this question, of which six were not sure and three disagreed that the proposed regulations and guidance will lead to greater transparency in the work and approval of the independent inspectorates.

Conclusion

We are grateful to all those who responded to the consultation. We believe that the revised advice clearly sets out the general policy and expectations in relation to each of the matters specified in the regulations.

Next steps

Revised advice, taking account of consultation comments, has been published simultaneously with this report. The advice will be reviewed after September 2015.

Unamended regulations will be laid and will come into force in September 2014.



Department
for Education

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Reference: DFE-00543-2014



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