

Who makes the decisions?

It can be difficult to understand the relationship between the Department for Education and the Independent Schools Inspectorate. This table seeks to address common areas of misapprehension.

		Decision maker	Legal power	Comment/further reading
1	Who determines the regulatory system for independent schools?	Secretary of State for Education (SoS) under powers delegated by Parliament.	Education and Skills Act 2008, Part 4	The SoS exercises powers through the DfE which administers the regulatory system. References to the DfE in this document include the SoS.
2	Who determines which schools ISI inspects?	SoS	Section 106 Education and Skills Act 2008	<p>Legislation gives the SoS the power to approve a body to inspect independent schools. A letter from time to time from the DfE, or SoS personally, confirms that approval. The current letter is available on the ISI website. It approves ISI to inspect independent schools which are or whose heads are in membership of the professional associations which form the Independent Schools Council. Other independent schools are inspected by Ofsted or the School Inspection Service.</p> <p>The SoS has the power to change the letter or write other concurrent letters at any time.</p>
3	Who determines what ISI inspects (as a minimum)?	DfE	Section 109(3) Education and Skills Act 2008	The purpose of independent school inspections, as

				<p>determined by statute, is to report to the Secretary of State on the extent to which any relevant standard is being met in the school.</p> <p>The Independent School Standards are set by the DfE in regulations. They incorporate the National Minimum Standards for Boarding Schools and The statutory framework for the Early Years Foundation Stage and refer to various statutory guidance documents such as those shown below and also to</p> <ul style="list-style-type: none"> • Keeping Children Safe in Education (KCSIE) • Working Together to Safeguard Children (WT).
4	Who sets the standards which must be met by independent schools in order to be registered?	DfE	Section 94 Education and Skills Act 2008 , section 87A(4A) Children Act 1989 and the Education (Independent School Standards) Regulations 2014 (ISSR)	The Independent School Standards and other regulations are set by the DfE and incorporate various other documents (set out above).
5	Who determines the contents of statutory guidance such as - Keeping children safe in education (KCSIE), - Working Together to safeguard children (WT),	DfE	The DfE's power to provide guidance about safeguarding (KCSIE/WT) is underpinned by section 94 Education and Skills Act , also para 7(b) ISSR (and others powers).	

	<ul style="list-style-type: none"> - NMS for boarding, - statutory framework for the EYFS ? 		<p>The DfE power to set minimum standards for boarding schools (NMS for boarding) is underpinned by section 87C(1) of the Children Act 1989 as amended by the Care Standards Act 2000 and the Education Act 2011.</p> <p>The power to set standards for the EYFS is underpinned by section 39 Childcare Act 2006</p>	
6	Who sets the standards for British Schools Overseas?			<p>This is a non-statutory voluntary scheme. The DfE determines the standards that must be met to be recognised as a British School Overseas (BSO).</p> <p>Further reading: Standards for British Schools Overseas</p>
7	Who determines the interpretation of DfE's requirements for independent schools or BSOs ?	ISI/DfE		<p>ISI interprets requirements to mean what it says on page, and otherwise applies normal legal principles of construction which may draw on common law principles, case law, the Human Rights Act. Inspectorates and DfE also work together through professional dialogue and debate and at regular meetings to develop a common understanding across inspectorates.</p>

				DfE is the ultimate arbiter of interpretation (subject to the courts, where relevant) as a) the author of the requirements and b) in consequence of its legal power to approve ISI as an inspectorate or remove approval.
8	Who determines the timing of publication of DfE documents (such as those named above)?	DfE		ISI has no control or influence over the timing of publication by the DfE of DfE documents.
9	Who determines the nature and frequency of changes to legal requirements and DfE documents?	DfE		As above, ISI must inspect against the current guidance published by DfE. DfE controls the nature and frequency of changes to the requirements they set, subject to statutory processes.
10	Who determines the process for changing the requirements on independent schools?	DfE, subject to Parliamentary approval for changes in primary or secondary legislation.		Substantive changes to statutory requirements must be consulted on. Differing consultation periods may be set according to the impact on stakeholders of the proposed changes. Further reading: The government's statement of consultation principles.
11	Who determines the inspection framework (eg inspector tariff, amount of notice) ?	ISI/DfE		ISI designs frameworks to meet DfE requirements at any time. ISI frameworks are subject to approval by DfE.

				Further reading: Approval of Independent Inspectorates
12	Who sets the length of the inspection cycle (eg 3 yearly/ 6 yearly)?	DfE		The DfE sets the parameters for the inspection cycle. The power to do so flows from the power to approve/withdraw approval from the inspectorate.
13	How is the timing of routine inspections determined?	ISI		ISI sets the timing of routine inspections some years ahead of when they take place, according to a settled formula broadly agreed with DfE, and within the parameters required by the DfE.
14	Who decides whether a non-routine inspection is required in response to a situation/ information/complaint/ allegation (eg a no-notice, brought-forward, or progress monitoring visit) and, if so, the timing of the non-routine inspection?	DfE		Non-routine inspections take place at the behest of the DfE. Information received by ISI is passed to the DfE. If the DfE decides that the information indicates that a non-routine inspection is required, as part of commissioning the inspection the DfE specifies the time frame within which it should occur (eg: before the end of this term).
15	Who decides whether a school meets the independent school standards?	The Secretary of State on the basis of inspection reports and any other evidence available.		The statutory purpose of inspections of independent schools is to report to the DfE on the extent to which schools are meeting the standards in the view of the inspectorate. The judgements of inspectors are considered alongside other evidence (which could be supplied by the school or by a third party such as a local

				authority), and a final decision reached by the DfE.
16	Who determines the contents of individual inspection reports?	ISI inspectors		ISI inspection reports are written by ISI inspectors on the basis of a standardised template common across similar inspections. Draft wording is put through ISI quality assurance processes by ISI editors and is subject to the factual accuracy check process and complaints process. The DfE can query or challenge the contents of reports, but not dictate the wording. Reports may be subject to monitoring by Ofsted on behalf of the DfE. Ofsted provides periodic and annual letters to DfE reporting on the quality of ISI inspections.
17	Who determines whether to take regulatory action against an independent school such as issuing a decision to remove a school from the register, obliging it to close?	DfE	Sections 114 - 127 Education and Skills Act 2008 set out the enforcement process.	All enforcement action for independent schools is the prerogative of the DfE, subject to the right of schools to appeal to the First-tier Tribunal.
18	Who decides whether an inspection report should be published?	DfE		All reports must be published within a set timeframe, agreed with the DfE. Deviation from this can only be by agreement with the DfE.
19	Who determines whether a complaint may delay the	ISI/DfE		A complaint will not usually delay the publication of a report. A request from a school may be

	publication of an inspection report?			communicated by ISI to the DfE, who can over-ride a decision by ISI.
20	Who determines whether ISI is an approved inspectorate for the purpose of reporting against statutory requirements?	DfE	Section 106 Education and Skills Act 2008	
21	Who sets the requirements which must be met for the approval of independent inspectorates?	DfE	The Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014 Approval of Independent Inspectorates – DfE advice 2014	
22	Who decides whether ISI meets the requirements for continued approval as an independent inspectorate ?	DfE	Section 107 Education and Skills Act 2008	Ofsted monitors the work of ISI and reports to DfE annually – see also the Memorandum of Understanding between DfE/Ofsted and ISI about monitoring arrangements . The Secretary of State decides .
23	Who decides whether the inspection of a school can transfer from Ofsted or another independent inspectorate to ISI?	DfE/Ofsted		The letter of approval sets out some principles – schools may not transfer from Ofsted unless they have been judged by Ofsted to meet the independent school standards. Further reading: letter of approval .
24	Who decides the timing of publication by ISI of ISI documents (eg the <i>ISI Commentary on the Regulatory Requirements</i>) ?	ISI/DfE		Routine updating of ISI documentation occurs during the summer break in readiness for each new academic year. In addition, ISI inspections must keep up to date with material

				changes in DfE documents and other guidance at any other time – hence documents may also be updated at other times if necessary.
25	Who sets the inspection charge?	ISI		The annual inspection charge is agreed by the ISI board at a level to ensure effective delivery of ISI inspections and maintain ISI as a going concern. The inspection charge is payable annually by all schools inspected by ISI irrespective of the type or numbers of inspections they might receive that year, if any.

Other

Who decides whether a school meets the requirements of GDPR	Information Commissioner’s Office (ICO) subject to appeal to the First-tier Tribunal.
Who determines whether action should be taken against a school for breaching the requirements of GDPR	ICO

We are always interested in the thoughts of our stakeholders. Comments and questions and suggestions for other questions which should be included above can be addressed to support@isi.net