

Department for Education consultation: [Operating the Independent School regulatory System](#)

This consultation ran from 14th March 2018 – 5th June 2018.
Response submitted on 2nd June 2018

Introduction

1 What is your name?

Name: [REDACTED]

2 What is your email address?

Email: [REDACTED]

3 What is your organisation?

Independent Schools Inspectorate

Proposed advice for schools on the independent school standards - General

4 Do you agree that the government should issue a single document giving non-statutory advice on the independent school standards?

No

5 What general comments do you have on the draft advice document? You can make comments on sections of the advice document relating to individual Parts of the standards further on in this form

Comments:

Much of the document is helpful advice.

We agree with the concept but it would not be possible to issue a single advice document re the ISS unless that document reproduced all the guidance of KCSIE, relevant parts of WT and the Prevent statutory guidance, EYFS and NMS. ISI's experience in relation to our own Commentary on the standards (provided to inspectors but available to schools) which is largely a precis of DfE statutory and non-statutory guidance, is that some people do not then read other essential guidance such as KCSIE, even though it is clearly sign-posted.

More generally, a less narrative style with more separation of points into bullet points might assist the reader to locate relevant information.

Some passages betray that some time may have elapsed since the first draft of this document was prepared eg page 4 refers to the 2015 ISS as 'new'.

6 If you have comments on the relevance of the public sector equality duty (s.149 of the Equality Act 2010) or the UN Convention on the Rights of the Child to the proposed document, insert them here

PSED/UNCRC comments: Our understanding is that the PSED does not apply directly to independent schools because they are not in the public sector.

The ISS should be in line with the UNCRC and are a vehicle for the DfE to extend the UNCRC agenda where relevant. We do not usually find any need to refer to the UNCRC in this context, but an early

reference in this document to the possibility of using it as an aid to interpretation might be a useful reminder.

Comments on advice relating to Quality of Education standards (Part 1)

7 If you have comments on the advice in relation to the Quality of Education standard (Part 1), please insert them here

Quality of education comments:

Feedback from senior inspectors for the purpose of this consultation response has been positive. We would propose to work useful new statements/explanations of policy into the ISI Commentary.

Para 7 – Some feeding into this response have commented that this is more stringent than ISI's current approach. Is that intentional?

Para 10 - This interpretation is less stringent than ISI's. Experimentation in senior school science would be likely to be seen as non-negotiable, and the absence of music and art would be seen as a significant issue.

Para 17 - It might be useful to state when sex education will become a requirement shortly.

Para.s 18 - 20 - Would you expect the protected characteristics to be listed in curriculum documentation?

Para 23 - Re : "if the school meets the requirements of the EYFS it will automatically meet this standard" . This standard requires the drawing up of a curriculum policy supported by plans and work schemes, while the statutory framework for the EYFS does not. It has in the past been a topic for debate whether, or the extent to which, in addition to meeting the requirements of the EYFS the school was also obliged to describe the EYFS in its written curriculum document.

Para 27 - We note that although our discussions around the reporting of segregation have been centred on standard 3(j), the issue also appears here under 2(2)(i). However, it is not assumed or stated in para 27 that all segregation should lead to a finding of non-compliance under 2(2)(i) but correctly leaves that to the discretion of inspectors.

Para 28 - We are puzzled by the statement (last line) that the Teachers' Standards apply to teachers in independent schools. This does not seem to be in line with KCSIE 2018, footnote 4. Our understanding is that it is only Part Two of the Teachers' Standards which applies - see para 65 of this document and para 3 of the Teachers' Standards. ISI does not judge individual lessons.

Para 32 - The requirement for data tracking would be new; ISI inspectors allow some leeway for various methodologies as some independent schools do not present their data in this way.

Para 40 - 3(j) - To avoid wide spread confusion, this guidance needs to reflect the final text of the forthcoming stand-alone advice to schools, or vice versa. In our view, this version is the more correct - except that the second sentence is incomplete: the SEN and Disability chamber of the First Tier Tribunal can also make rulings about discrimination in the disability context. (We have identified elsewhere our concerns about the stand-alone guidance.)

It might assist schools to add some wording about the relevance of impact on education . Eg the sixth sentence might end with:

.... both boys and girls can be disadvantaged by a policy which prevents them from interacting with pupils of the opposite sex IF IT HAS A NEGATIVE IMPACT ON THEIR EDUCATION.

The view of the writer is that while this standard helpfully allows the DfE to take action on the basis of decisions by judicial bodies, the issue is not suitable for inspection as part of routine inspections due to time constraints and the level of specialist legal knowledge required. It asks inspectors to make legal judgements rather than the usual findings of fact. It might be useful to warn schools that

a finding of compliance on inspection would not protect them from an adverse tribunal or court ruling - due to the differential in the level of scrutiny the latter affords.

The example, which appeared in a previous draft, of girls being forced to sit at the back of the classroom has been removed. It might be useful to resurrect this as it may become relevant were some schools to seek to remove segregation by introducing other discriminatory practices.

Comments on advice relating to the SMSC standard (Part 2)

8 If you have comments on the advice relating to the SMSC standard (Part 2), insert them here

SMSC comments:

Generally this advice was found to be helpful by those who have fed back.

Para 65 - we believe this is correct in limiting the application of the Teachers' Standards to Part Two.

Comments on advice relating to the welfare, health and safety of pupils standards (Part 3)

9 If you have comments on the advice relating to the welfare, health and safety of pupils standards (Part 3), insert them here

Welfare, health and safety comments:

Para 75-86 - We fear this might be too vague to be helpful to schools for inspection purposes. They really need to know what they have to do in order to be considered to have 'made arrangements'. Eg what the policy should cover, an indication that some recruitment processes set out in KCSIE (eg references) are reported under the safeguarding standard.

Para 87 - Annex A needs to be referenced. According to KCSIE, it must be read by all staff who work directly with children (para 53 of draft KCSIE May 2018).

Para 89 - Some clarity about the meaning of 'makes arrangements to accommodate' might help particularly when there is an agent involved. We advise inspectors to consider whether the agent was agent for the parents or agent for the school. (The key tell-tale is generally who was paying the agent directly.) If you do not support this approach and wish to recommend an alternative approach, please let us know.

We are puzzled by the reference in the last sentence to boarding schools meeting "all the relevant parts of the NMS", which implies that some parts are not relevant.

Para 100 - From the itemised list (a), (c), (e) and (g) are commonly missing from the ambit of school risk assessment policies. ISI may need further guidance about the weight to place on this list on inspection.

Comments on advice relating to the suitability of staff, supply staff and proprietors standards (Part 4)

10 If you have comments on the advice relating to the suitability of staff, supply staff and proprietors standards (Part 4), insert them here

Suitability standards:

Our over-arching comment is that the section does not really deal with the cross over with recruitment advice in KCSIE and the link to paragraph 7.

Para 105 - The most difficult issue for school is identifying who is "staff". This guidance does not attempt to address that point but merely refers to a regulation.

The second most difficult issue relates to contractors and this is not addressed either here or under para 7.

Last sentence of 105 may cause confusion. We suggest adding:

... members of school staff who will not be engaging in regulated activity, BECAUSE THEY DO NOT HAVE OPPORTUNITY FOR CONTACT WITH CHILDREN, but often work ...

Para 106 - line at top of page 33 - suggests that teaching and management checks are undertaken as a matter of good practice. While we understand why it has been put like this (having highlighted the issue to you yourselves), we report it under para 7 as tantamount to a requirement by dint of having regard to KCSIE. So if our approach is not correct, and checking is merely good practice, we need to be informed so that we can stop failing schools on that account.

We find this formulation misleading:

"In some circumstances set out in the standard, the checks are not all required because they have been done for a previous post (see reg 18(4)). "

This only applies to criminal record checks from home and abroad. Apart from these, all checks are always required. (The department could think of imposing a threshold in the next iteration of the standards if it finds the current standard is unworkable.)

Para 106 - last line - The level of detail required in the confirmation , and whether the confirmation should be in writing, needs to be clarified.

Para 107 - People will be confused by the description "agency or other business" (although we agree that the defining issue is whether staff are supplied to work under the direction of school management). People apply it to the MoD and CofE and anyone. The issue is that schools cannot distinguish when to apply the provision for supply staff and when to deal with third parties as contractors. It would be well received if this guidance could address that distinction.

The advice alludes to information that must be supplied but does not say what it is or where to find it. It advises that the person should not start work until the information is received. That ought to read "must" (not "should"). If a slackening of the requirement is intended, please provide us with some parameters to apply for consistency.

The draft omits to mention that the school must see the DBS certificate before the person starts work.

The requirement for the DBS check to be less than three months old unless the person has worked in a school - this does not work in practice as a requirement and does not appear to be readily inspectable. People may be with several agencies and one agency may not have a complete record of all their work placements.

Further, schools are not required to keep a record of the date of the check, but the date of the information being received from the agency.

This is generally a difficult provision to interpret and this explanation has not really tackled the areas of confusion. The provision itself may need to be rewritten.

Para 108 -109 - These paragraphs are not adequate to unpack the different types of proprietor (Chair, individual, member of a group) such that a person following this advice would know what to do to be compliant.

Para 110 - This should be clearly labelled as relevant only to academy conversions.

Para 111 - Advice on this level does not add anything to the existing body of knowledge. It might be better to limit this document to other parts, remove the advice about safeguarding and checking and refer to KCSIE instead.

Comments on advice relating to the premises of and accommodation at schools standards (Part 5)

11 If you have comments on the advice relating to the premises of and accommodation at schools standards (Part 5), insert them here.

Premises and accommodation comments:

Para 112 (c) - This section needs to cover site security.

Comments on advice related to the provision of information standards (Part 6)

12 If you have comments on the advice relating to the provision of information standards (Part 6), insert them here

Provision of information standards comments:

Para 114, 115, 117 - Although accurate, we believe that references to "regulations" will confuse because of the wide spread erroneous belief that each paragraph of the ISSR is a standalone regulation. That said, we approve as it would be good to gradually encourage better understanding.

Para 117 - Could this include advice about how long reports must stay on the website ie whether it is intended that a library of reports, past and present, will gradually accumulate on school websites.

Para 119 - This possibly highlights by omission that ISI does not have rights parallel to those of Ofsted to copy documents. We would not expect that implication to be widely picked up.

ISI inspects by consent and does not usually (knowingly) encounter any difficulty accessing necessary documents, but we presume that if this occurred the DfE's remedy would be to direct Ofsted to inspect.

Comments on advice relating to the manner in which complaints are handled standard (Part 7)

13 If you have comments on the advice relating to the manner in which complaints are handled standard (Part 7), insert them here

Complaints standard comments:

We find this section helpful.

Comments on advice relating to the Quality of leadership in and management of schools standard (Part 8)

14 If you have comments relating to the advice on the Quality of leadership in and management of schools standard (Part 8), insert them here

Leadership and management comments:

It would be helpful to inspectorates if this section could explicitly address the issue (which to us is a central issue) of whether Part 8 is automatically be failed every time there is a failure of another standard. Then all inspectorates will approach it in the same way.

Para 129 - It may be that it is implicit in the advice which begins "If it appears that a failure to meet other independent school standards is attributable, " that a Part 8 failure is not automatic.

This would suggest that Part 8 should not be failed when new management has just taken over a school and failings appear to be attributable to the previous leadership.

The explanation of 34(1)(c) is new. We agree with the approach described.

Para 130 - Part 8 should no longer be described as "new".

Proposed policy statement on regulatory and enforcement action in respect of independent schools

15 Do you agree that the department should replace the existing regulatory policy statement with one which also covers enforcement action?

Yes

16 Do you agree with the change in policy highlighted at paragraph 10 of the draft statement?

Yes

17 If you have comments on the policy statement in relation to regulatory action, insert them here

Regulatory action comments:

It is a helpful statement of responsibilities.

Note 9 - could be used to address the issue of non-payment of fees.

Note 17 - we read the underlined wording as addressing the issue of whether inspectors on a PMV should be inspecting against the standards or against the action plan, with the answer being that they should inspect against the standards.

You might consider addressing the position when new areas of non-compliance are noted on a PMV.

Note 20 - does the raising of the bar have any implications for the materiality threshold? Perhaps this can be discussed with the inspectorates.

If you have any further comments to make on matters covered by this consultation, or on the independent school regulatory system more generally, insert them here

Any further comments on the consultation or independent school regulatory system:

It has been good to have a period of stability but it might be good to address some of the anomalies in the standards in due course, say, the summer of 2019 in readiness for September 2019 implementation.