



Department  
for Education

# Removal of the outstanding exemption

**Government consultation**

**Launch date 10 January 2020**

**Respond by 24 February 2020**

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## Introduction

This consultation document seeks views on the exemption from routine inspection that applies to some outstanding schools, colleges and other organisations delivering publicly-funded education and training. Our proposal is that the exemption should be removed. We would like to hear your views.

## Who this is for

- Head teachers, teachers and governing boards<sup>1</sup> in maintained nursery schools, maintained schools and academy trusts, including nursery schools, infant schools or first schools, middle schools, junior schools, special schools, Pupil Referral Units (PRUs), studio schools, UTCs, City Technology Colleges, City Colleges for the Technology of the Arts and free schools.
- Principals/ CEOs, their staff and those responsible for governance in General FE colleges, Sixth Form colleges, designated institutions, 16 – 19 academies, independent learning providers (including employer providers), not for profit providers, independent specialist colleges, Higher Education Institutions (HEIs) delivering FE or apprenticeships and local authority providers.
- Local authorities
- Dioceses and other religious authorities
- Parents
- Students
- Employers
- Any other interested individuals or organisations

## Issue date

The consultation was issued on 10 January 2020.

## Enquiries

Email: [outstandingexemption.consultation@education.gov.uk](mailto:outstandingexemption.consultation@education.gov.uk)

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<sup>1</sup> The board should be taken to mean the accountable body for the school or group of schools: in local authority (LA) maintained schools, this will be the governing body and in an academy trust this will be the board of trustees (committees to whom the board has delegated functions should take account of guidance to *the board*, in so far as the relevant function has been delegated to them).

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: [Consultations.Coordinator@education.gov.uk](mailto:Consultations.Coordinator@education.gov.uk) or by telephone: 0370 000 2288 or via the [DfE Contact Us page](#).

## **Additional copies**

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

## **The response**

The results of the consultation and the Department's response will be [published on GOV.UK](#) in spring 2020.

## About this consultation

Some schools, colleges and other organisations delivering publicly-funded education and training<sup>2</sup> that were rated outstanding by Ofsted at their last inspection are legally exempt from further routine Ofsted inspection. This consultation seeks views on the removal of the exemption. We would like to hear your views.

## Respond online

To help us analyse the responses please use the online system wherever possible. Visit [www.education.gov.uk/consultations](http://www.education.gov.uk/consultations) to submit your response.

## Other ways to respond

If for exceptional reasons, you are unable to use the online system, for example, because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

### By email

[outstandingexemption.consultation@education.gov.uk](mailto:outstandingexemption.consultation@education.gov.uk)

### By post

Megan Tilby  
3<sup>rd</sup> Floor, Department for Education  
Sanctuary Buildings  
Great Smith Street  
London  
SW1P 3BT

## Deadline

The consultation closes on 24 February 2020.

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<sup>2</sup> Funded by the Education Skills Funding Agency (ESFA)

# Removal of the outstanding exemption

## Background

1. Most schools, colleges and other organisations delivering publicly-funded education and training are inspected by Ofsted at regular published frequencies. This is not the case for some:

- a. state-funded mainstream primary schools;
- b. state-funded mainstream secondary schools;
- c. colleges and other organisations delivering publicly-funded education and training

that were judged outstanding by Ofsted at their last inspection. They are legally exempt from any further routine inspection.<sup>3</sup>

2. The exemption, which has been in place since 2012, currently applies to around 3,600 outstanding schools and around 60<sup>4</sup> outstanding colleges and other organisations delivering publicly-funded education and training.

3. Although Ofsted cannot routinely inspect these, it can, and does inspect them in particular circumstances.<sup>5</sup> An inspection may take place, for example, where a complaint or Ofsted's risk assessment process identifies concerns. The proportion of exempt schools, colleges and other organisations delivering publicly-funded education and training visited each year varies. Last year 10% were visited.

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<sup>3</sup> The Education Act 2011 inserted new powers into the Education Act 2005 and the Education and Inspections Act 2006 for regulations to provide that prescribed classes of schools and institutions within the FE sector and 16-19 academies could be exempt from routine inspection under section 5 of the Education Act 2005 and section 125 of the Education and Inspections Act 2006 respectively in specified circumstances. These are known as "exempt schools" and "exempt institutions".

Under the Education (Exemption from School Inspection) (England) Regulations 2012 (SI 2012/1293) (the School Exemption Regulations), voluntary, community and foundation schools and academy schools, City Technology Colleges and City Colleges for the Technology of the Arts qualify for exemption on the basis of having been judged outstanding by Ofsted at their last full inspection under section 5 of the Education Act 2005. For academy schools that have not been inspected under s.5, the exemption applies where the predecessor school(s) were awarded outstanding in their last s.5 inspection.

Special schools (including special academies), Pupil Referral Units and maintained nursery schools are not exempted from inspection.

Under the Further Education Institutions (Exemption from Inspection) (England) Regulations 2012 (the FE Exemption Regulations), FE colleges, Sixth Form colleges, designated institutions and 16 -19 academies qualify for exemption on the basis of having been judged outstanding by Ofsted at their last full inspection. Other colleges and other organisations delivering publicly-funded education and training, including independent learning providers, employer providers and not for profit providers have also been deemed not subject to routine inspection under Ofsted's own policy, treating those in line with the colleges and other organisations delivering publicly-funded education and training within the FE sector and 16-19 academies. Independent specialist providers, local authority providers and higher education institutions delivering FE and apprenticeships continue to be subject to inspection 'within six years from the date of publication of their previous inspection report'.

<sup>4</sup> There are approximately 60 outstanding colleges and other organisations delivering publicly-funded education and training exempted by the FE Exemption Regulations. There are approximately a further 60 colleges and other organisations delivering publicly-funded education and training that have been exempted from routine inspection as a matter of Ofsted policy (see para 18 for further information).

<sup>5</sup> Ofsted has the power to inspect exempt schools under s.8 of the Education Act 2005 and exempt colleges and other organisations delivering publicly-funded education and training under section 126 of the Education and Inspections Act 2006.

4. Despite this, the exemption means that some schools, colleges and other organisations have not been inspected by Ofsted since 2006/07. Around 1,000 exempt schools and 22 exempt colleges and other organisations have not been inspected by Ofsted for a decade or longer.

5. On 1 September 2019, the Government announced its intention to remove the exemption for outstanding schools, subject to consultation and parliamentary approval.

6. Subject to the outcome of this consultation, we intend to remove the exemption from routine inspection for outstanding schools, and for outstanding colleges and other organisations delivering publicly-funded education and training, with effect from September 2020.<sup>6</sup> Regulations, which need to be approved by Parliament, are required to revoke the School and FE Exemption Regulations and changes will also need to be made to the Education (School Inspection) (England) Regulations 2005.<sup>7</sup>

## Consultation on removing the outstanding exemption

7. The exemption was intended to recognise and reward high performing schools, colleges and other organisations, allowing them to continue to focus on providing excellence with less intervention, and concentrating inspection where it was needed most. That principle remains important but must be balanced against the need to ensure that inspection arrangements offer an appropriate level of assurance to parents, students, employers, schools, colleges and other organisations delivering publicly-funded education and training, and the public more generally.

8. Many exempt schools, colleges and other organisations delivering publicly-funded education and training have not been inspected for many years – in some cases over a decade. Many of these were inspected under previous Ofsted inspection frameworks, which placed different expectations on them. In some cases, they will have been inspected two or three frameworks ago.

9. In September 2019, Ofsted introduced a new Education Inspection Framework, with a stronger focus on having a broad, balanced and ambitious curriculum for all pupils and students. The new framework evaluates schools, colleges and other organisations' strength against what research and evidence says are the most important factors in pupils' and students' education and training.

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<sup>6</sup> With respect to non-exempt colleges and other organisations delivering publicly-funded education and training that have been exempted from routine inspection as a matter of Ofsted policy, it is proposed that they too will then be subject to routine inspection in the same way, by means of a change in Ofsted policy, as set out below.

<sup>7</sup> SI 2005/2038

10. We believe the exemption is starting to lead to a loss of confidence in the outstanding grade and that parents, students, employers, schools, colleges and other organisations are missing out on having an up to date independent assessment of quality and performance. This can only be addressed by lifting the exemption, and the time is right to make that change.

11. Subject to the outcome of this consultation, we propose to remove the exemption so that all outstanding schools, colleges and other organisations delivering publicly-funded education and training are again inspected in a regular inspection window by Ofsted.

### **Re-introducing regular inspection for outstanding schools, colleges and other organisations delivering publicly-funded education and training**

12. The proposals for re-introducing regular inspections for exempt outstanding schools, colleges and other organisations delivering publicly-funded education and training in this consultation document have been developed in partnership with Ofsted.

13. There are a number of principles underpinning the proposals. The new inspection arrangements should:

- achieve an appropriate balance between focusing inspection activity where it can add the most value and providing assurance that high performance is maintained;
- be proportionate, particularly when compared to the inspection arrangements that apply to schools, colleges and other organisations currently judged good;
- recognise that most schools,<sup>8</sup> colleges and other organisations are inspected within a five year window of their previous inspection;
- be fair to those directly affected by the change, and the wider sector;
- recognise that some institutions have not been inspected for a considerable time;
- respond to the needs of parents, students and the outstanding institutions, ensuring they have access to up to date independent information; and
- be deliverable and efficient.

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<sup>8</sup> Education (School Inspection) (England) Regs 2005.



## Timing and implementation

### Timing of first inspections following the lifting of the exemption

14. Subject to this consultation and parliamentary approval, we intend to lift the exemption from September 2020, through amendments to secondary legislation and any necessary instructions from the Secretary of State to Ofsted.<sup>9</sup> Once the exemption is lifted it is proposed that Ofsted will aim to conduct the first inspection of all schools, colleges and other organisations delivering publicly-funded education and training that were exempt prior to that point within five academic years.

15. Within this period, it is proposed that Ofsted will prioritise schools, colleges and other organisations delivering publicly-funded education and training that have gone the longest since their last inspection, starting with those that have not been inspected for a decade or longer. It will also aim to organise scheduling so that, as far as possible, schools, colleges and other organisations that were last inspected since September 2015 are inspected again within five or six years of their previous inspection. Once this transitional cycle is over, we anticipate that outstanding schools, colleges and other organisations will routinely receive a section 8 inspection (in the case of schools) or a short inspection (in the case of colleges or other organisations), every four or five years.

## Proposed approach

### Current system for good schools, colleges and other organisations delivering publicly-funded education and training

16. Schools currently receive a section 5 or a section 8 inspection under the Education Inspection Framework (EIF).<sup>10</sup> On a section 5 inspection, inspectors evaluate the school against the full EIF framework and will give the school a grade (outstanding, good, requires improvement or inadequate) for its overall effectiveness, and for its performance against the four key judgements in the EIF. Most schools that were judged good overall, and all those non-exempt schools judged outstanding at their previous inspection, will receive a section 8 inspection instead of a section 5 inspection.<sup>11</sup> On a section 8 inspection, inspectors look at specific aspects of the EIF to confirm whether the school remains good, or outstanding in the case of non-exempt schools, and whether safeguarding is effective. Ofsted will either confirm this is the case

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<sup>9</sup> For detail, see footnote 2 above.

<sup>10</sup> [School Inspection Handbook](#), Part 2 and [School Inspection handbook – section 8](#), Part 2.

<sup>11</sup> Around 15% of previously good schools are inspected under section 5 on a risk assessed basis.

or, if there is evidence that the school has now improved or declined, will follow up (this can be immediately or up to two years later) with a section 5 inspection.<sup>12</sup>

17. Currently, colleges and other organisations delivering publicly-funded education and training can receive either a full or a short inspection depending on the overall effectiveness judgement at their previous inspection. In a full inspection, inspectors grade the overall effectiveness, the types of provision and the other key judgement areas in accordance with the criteria and grade descriptors found in the Further Education and Skills Inspection Handbook.<sup>13</sup> Colleges and other organisations judged good at their previous inspection will normally undergo a short inspection (though they may undergo a full inspection if information suggests that this is the most appropriate way forward; for example, if the institution's performance has declined). A short inspection will determine whether the college or other organisation continues to be good for overall effectiveness.

18. Outstanding organisations delivering publicly-funded education and training have been exempted from routine inspection as a matter of Ofsted policy, in alignment with the approach set out in the FE Exemption Regulations. These include outstanding independent learning providers, employer providers and not-for-profit providers. It is proposed that they too will then be subject to routine inspection in the same way as the organisations previously exempted under the regulations. This will be achieved by means of a change in Ofsted policy.

### **Proposed approach for inspections of currently exempt outstanding schools, colleges and other organisations delivering publicly-funded education and training**

19. We propose an approach based on that which applies to schools, colleges and other organisations delivering publicly-funded education and training that are judged good. For schools, Ofsted's approach is that each school receives a section 8 inspection usually every 4 years.<sup>14</sup> This will mean in most schools, there will be at least one inspection during the period that a pupil is attending that school. Colleges and other organisations delivering publicly-funded education and training receive a short inspection within 5 years of the publication date of the last inspection report.

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<sup>12</sup> Ofsted has the power to convert a section 8 inspection into a section 5 inspection under s9 EA 2005.

<sup>13</sup> [Further Education and Skills Inspection Handbook](#), page 9.

<sup>14</sup> Regulation 3 of the Education (School Inspection) (England) Regulations 2005 sets out the required intervals for inspections in schools.

## **Schools, colleges and other organisations delivering publicly-funded education and training inspected within the last five years**

20. Where schools or colleges or other organisations delivering publicly-funded education and training have been inspected and judged outstanding within the last five years,<sup>15</sup> we propose that the first inspection should normally be a section 8 inspection (in the case of schools) or a short inspection (in the case of colleges or other organisations), which seeks to confirm whether the school, college or other organisation remains outstanding.<sup>16</sup> Where the inspection confirms this, the next inspection will normally be a further section 8 inspection or short inspection within the next four to five academic years.

21. If, on the section 8 inspection, inspectors find evidence that the school is no longer outstanding, inspectors will return to conduct a section 5 inspection in the next year or so.

22. If the section 8 inspection identifies serious concerns about a school, Ofsted will convert the inspection to a section 5 inspection, usually within 48 hours.<sup>17</sup>

23. With respect to outstanding colleges or other organisations delivering publicly-funded education and training, if, following a short inspection, the inspection team has insufficient evidence to satisfy itself that the college or other organisation remains outstanding, or there are concerns arising from evidence gathered that the college or other organisation may not be outstanding, the short inspection will be extended to a full inspection within 15 working days.

## **Schools, colleges and other organisations delivering publicly-funded education and training not inspected within the last five years**

24. Outstanding schools, colleges and other organisations delivering publicly-funded education and training not inspected within the last five years have, as a result of the exemption, missed at least one framework of inspection. They have therefore missed out for a considerable time on the insight and information a section 5 or full inspection provides. We therefore propose that the first inspection of these (those that were last inspected before September 2015) should be a section 5 inspection (in the case of schools) or a full inspection (in the case of colleges and other organisations).

25. If the inspection judges overall effectiveness to be outstanding or good, the next inspection will normally be a section 8 (in the case of schools) or a short inspection (in

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<sup>15</sup> Academic year 2015/16 or later.

<sup>16</sup> A proportion of schools, colleges and other organisations delivering publicly-funded education and training will receive a section 5 or full inspection in the first instance based on Ofsted's risk assessment process.

<sup>17</sup> Section 9 of the Education Act 2005.

the case of colleges or other organisations delivering publicly-funded education and training), which will take place within the next four to five academic years. If the school is judged requires improvement or inadequate, Ofsted's approach will be that another section 5 inspection will take place within 30 months of the publication of the previous section 5 report. If the colleges or other organisation is judged requires improvement it will receive a full inspection within 12 to 30 months. If it is found to be inadequate, it will receive a full inspection within 15 months of the last inspection report (provided it continues to be funded).

### **Schools that inherited their exempt status from a predecessor school**

26. In the case of an exempt school that has never been inspected (because it inherited its exemption from a predecessor school), the date the predecessor school was last inspected will be taken to be the date for the purposes of determining what type of inspection the school will get and when.

### **16-19 academies that inherited their outstanding status from a predecessor sixth form college**

27. In the case of an outstanding 16-19 academy that has never been inspected (because its exemption has carried forward from its former status as an outstanding sixth form college), the date of the publication of the report of the last inspection of the predecessor sixth form college will be taken to be the date for the purposes of determining what type of inspection that academy will get and when.

### **Further support for schools, colleges and other organisations delivering publicly-funded education and training**

28. Ofsted has been running a series of curriculum roadshows designed to share the thinking underlying the education inspection framework (EIF) and the key points from the training that inspectors have received over the past two years. Ofsted recognises that the criteria for 'outstanding' have changed significantly. Ofsted therefore intends to run a further round of roadshows nationally, building on the existing curriculum events and focusing specifically on what it means to be outstanding in each of the judgements in the new framework. They propose to do this in the term prior to the exemption coming to an end.

## Questions for consultation

We welcome your views on whether we should remove the exemption for outstanding schools, colleges and other organisations delivering publicly-funded education and training. In particular we invite views on:

**Do you agree we should remove the exemption for outstanding schools, which currently means they are not routinely inspected?**

Yes

No

Don't know

Not applicable

Comments (optional)

**Do you agree we should remove the exemption for outstanding colleges and other organisations delivering publicly-funded education and training, which currently means they are not routinely inspected?**

Yes

No

Don't know

Not applicable

Comments (optional)

**Do you support our proposed approach for currently exempt outstanding schools set out in paragraphs 19-27?**

Yes

No

Don't know

Not applicable

Comments (optional)

**Do you support our proposed approach for currently exempt outstanding colleges and other organisations delivering publicly-funded education and training set out in paragraphs 19-27?**

Yes

No

Don't know

Not applicable

Comments (optional)

**Do you have any other comments on the proposals set out in this consultation?**

Comments

### **Equalities Impact Assessment**

This section asks for your help in identifying any potential impacts of our proposals on people sharing the protected characteristics of age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race (including ethnicity), religion or belief, sex, and sexual orientation.

### **Question on Equalities Impact Assessment**

Please provide any representations and/or evidence on the potential impact of our proposals on people sharing protected characteristics for the purposes of the Public Sector Equality Duty (under section 149 of the Equality Act 2010).



Department  
for Education

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