

THE INSPECTION OF PUBLICLY FUNDED SCHOOLS WITH A RELIGIOUS CHARACTER IN ENGLAND (THOSE SCHOOLS SUBJECT TO INSPECTION UNDER BOTH SECTIONS 5 AND 48 OF THE EDUCATION ACT 2005)¹

PROTOCOL FOR INSPECTORS AND INSPECTORATES

Background

1. Maintained schools and academies are subject to inspection by Ofsted under section 5 of the Education Act 2005 ("a section 5 inspection"). In schools designated as having a religious character, the remit of this inspection is limited in certain respects, as these schools are also subject to a religious or denominational inspection under section 48 of the same Act ("a section 48 inspection").
2. Section 5 and 48 inspections together constitute the complete inspection regime in schools with a religious character. This complementary regime is the latest manifestation of the settlement between the State and the churches and other religious bodies in the nineteenth century. In particular, the settlement is set out in correspondence in 1847 providing that the State's inspectors would "examine and report upon the secular instruction only" while it would rely on the declaration of the appropriate ecclesiastical authority that the religious elements were satisfactory. Accordingly, both inspection frameworks are entitled to parity of esteem.
3. Ofsted has no statutory remit in respect of section 48 inspections. This protocol is designed to clarify the manner in which section 5 and section 48 inspections relate to each other, to assist the overall delivery of a complete and competent picture of each school with a religious character.
4. In this protocol, unless the context requires otherwise, "school" includes all maintained schools and academies (including free schools) with a religious

¹ From 2016 Catholic dioceses will carry out non-statutory denominational inspections in Catholic sixth form colleges in a similar way to s.48 inspections of schools. This protocol will be observed with respect to the relationship between those diocesan inspections and Ofsted inspections of catholic sixth form colleges under the Common inspection framework 2015 and part 8 of the Education and Inspections Act 2006 *mutatis mutandis*.

character, and "governing body" includes the board of directors of an academy trust company. The "appropriate religious authority" means the body specified in relation to the school in the Education (School Inspection) (England) Regulations (2005) No 2038.

5. This protocol governs the relationship between Ofsted and the appropriate religious authority and/or its inspectorate for religious education. It serves to ensure that:
 - a. appropriate arrangements are in place for the independent scheduling of section 48 inspections;
 - b. the scope and remit of the respective parties and the relationships between them are clearly defined and understood;
 - c. if section 5 and section 48 inspections occur simultaneously, inspectors co-operate while remaining within the statutory requirements of each inspection, including the provision of separate reports; and
 - d. there is a good working relationship between Ofsted, the appropriate religious authority and the signatory to this protocol.

6. This version of the protocol is between Ofsted and the Catholic Education Service.

The Legal Framework

7. Schools have a religious character if they are designated by the Secretary of State under section 69(3) of the School Standards and Framework Act 1998. In these schools, section 5(7) of the Education Act 2005 provides that denominational religious education and the content of collective worship may not be inspected under section 5, but are to be inspected under section 48. The funding agreements of academies (including free schools) provide that denominational religious education and the content of collective worship are to be inspected under section 48 in the same way as maintained schools. These inspections have the same character and status as section 48 inspections.

8. Section 5 inspections must therefore not extend to a judgment of, nor may section inspectors comment on, denominational education or the content of collective worship and assemblies.

9. The governing body of a school (or foundation governors in the case of a voluntary controlled school) is responsible, after consultation with the appropriate religious authority, for setting up the section 48 inspection and for appointing that inspector.
10. Section 5 inspections are generally carried out by a team, one member of which is designated the lead inspector. This designated lead inspector may be one of Her Majesty's Inspectors (HMI). Section 48 inspections are generally carried out by one or two inspectors, approved by the appropriate authority. Where an inspection is carried out by a single inspector, the term "lead inspector" is used to describe this inspector in this protocol.

Scheduling the section 48 inspection

11. Section 48 inspections and section 5 inspections are scheduled separately and independently from each other. Each prescribed inspection authority is able to determine the timing of these inspections as long as they occur within the statutory timescales.
12. A separate arrangement with the DfE allows for a grant to be made payable in accordance with the DfE policy requirements for section 48 inspection.
13. No school is exempt from section 48 inspection, which must always occur within five years of the end of the school year in which the school last received a section 48 inspection.²
14. Ofsted will inform the appropriate religious authority and the signatory organisations to this protocol of the names of relevant schools designated as having a religious character to be inspected on the day the school itself is informed.

The scope and remit of each inspectorate and the relationship between them

15. It is the duty of a section 5 inspector, acting on behalf of Her Majesty's Chief Inspector of Education, Children's Services and Skills, to inspect and report on the quality of education and in particular :

² The Education (School Inspection) (England) (Amendment) Regulations 2009

- (a) the achievement of pupils at the school;
- (b) the quality of teaching in the school;
- (c) the quality of the leadership in and management of the school;
- (d) the behaviour and safety of pupils at the school.

In reporting on these areas, inspectors must consider—

- (a) the spiritual, moral, social and cultural development of pupils at the school;
- (b) the extent to which the education provided at the school meets the needs of the range of pupils at the school, and in particular the needs of—
 - (i) pupils who have a disability for the purposes of the Equality Act 2010, and
 - (ii) pupils who have special educational needs.”

In a section 5 inspection these are incorporated in the judgements on:

- effectiveness of leadership and management
- quality of teaching, learning and assessment
- personal development, behaviour and welfare
- outcomes for pupils.

Each of these areas receives a formal graded judgement which contributes to the overall effectiveness judgement on the school.

16. An inspection under section 5 must not extend to:

- a. denominational education, or
- b. the content of collective worship

17. Denominational education, including any judgment on teaching, learning and assessment and the content of collective worship, are to be inspected by the section 48 inspector alone.

18. Although a section 5 inspector cannot make a judgment on denominational education or the content of collective worship, a section 5 inspector may visit religious education lessons and acts of collective worship to help them to arrive at a whole-school judgement about:

- a. spiritual, moral, social and cultural education;
- b. behaviour for learning; and

c. pupils' welfare.³

19. Section 48 inspection reports shall not be subject to scrutiny by Ofsted for the purposes of quality assurance, and section 5 inspection reports shall not be subject to scrutiny by section 48 inspectors or the appropriate religious authority for the purposes of quality assurance.
20. The work under section 48 of the Education Act 2005 of any section 48 inspector who also inspects under section 5 shall not be admissible in support of her or his performance management by Ofsted.
21. The existence of a section 48 inspection report on a school shall be acknowledged in the *Information about the school* section of a section 5 inspection report.
22. The failure of the governing body of a school with a religious character to arrange a section 48 inspection within the prescribed period can be considered as part of the evidence for a section 5 inspection in relation to the assessment of leadership and management. Section 5 inspectors are required to consider the effectiveness of governors in discharging their core statutory functions.
23. Representatives of the appropriate religious authority are entitled to attend the final feedback meeting given by the lead inspector to the senior management and those responsible for the governance of the school.

Relationship between inspectors during concurrent inspections

24. If the independent scheduling of the section 48 inspection results in the section 5 and section 48 inspections being scheduled to occur on one or more of the same days, then it will be permissible for both inspections to happen simultaneously.
25. Where inspections take place concurrently, each lead inspector will, if requested, make available to the other lead inspector their evaluation schedule and any supporting guidance.
26. Section 5 and section 48 inspectors should jointly take steps to avoid over-inspection of particular teachers and to minimise the burden on the school.

³ School inspection handbook – August 2016- Annex

27. In the case of concurrent inspections, to support their understanding of the school and its standards and provision, section 5 and section 48 inspectors may discuss, within the terms of the Ofsted Code of Conduct for inspectors, inspection evidence and emerging judgements, providing that no inspector from either inspection shall seek to take part in decisions or influence judgements made by inspectors from the other.
28. Where inspections occur concurrently, feedback on both inspections may take place at the same meeting, with the agreement of those receiving feedback, and provided that the feedback and subsequent discussion are conducted under the terms of the Ofsted Code of Conduct for inspectors. The timing of the feedback should be agreed beforehand by the inspection teams and the school's leadership.
29. In cases where the inspections take place within the same term, the lead inspector on the later inspection should inform him or herself of any key issues raised at the earlier inspection but should not use its evidence in their own inspection.

Relationship between Ofsted and the signatory

30. Ofsted and the signatory to this protocol will:
- a. consult each other on drafts of any documents that will affect schools with a religious character;
 - b. hold meetings with each other on a regular basis, in proportion to the number of section 48 inspections covered by this protocol
 - c. respond in a timely manner to any concerns raised by the other in relation to inspection;
 - d. at all times work collaboratively and in a spirit of partnership for the common good of the education system as a whole.
31. This protocol will be subject to collective review and amendment by Ofsted and other signatories from time to time.

Signed and dated by:



9th September 2016

Faith Group representative
Catholic Education Service

Signed and dated by:



19th September 2016.

~~National Director Schools, Ofsted~~

National Director, Education, Ofsted.

Relevant parties to this agreement

Church of England National Society – representing diocesan authorities

Catholic Education Service – representing diocesan authorities

Pikuach – representing the Board of Deputies of British Jews

The Methodist Church;

The Association of Muslim Schools;

The Network of Sikh Organisations