

## **NAHT response to the Department for Education consultation on the removal of the outstanding exemption**

### **Introduction**

1. NAHT welcomes the opportunity to respond to the Department for Education consultation on removal of the outstanding exemption.
2. NAHT is the UK's largest professional association for school leaders. We represent more than 30,000 head teachers, executive heads, CEOs, deputy and assistant heads, vice principals and school business leaders. Our members work across: the early years, primary, special and secondary schools; independent schools; sixth form and FE colleges; outdoor education centres; pupil referral units, social services establishments and other educational settings.
3. In addition to the representation, advice and training that we provide for existing senior leaders, we also support, develop and represent the senior leaders of the future, through NAHT Edge, the middle leadership section of our association. We use our voice at the highest levels of government to influence policy for the benefit of leaders and learners everywhere.
4. We set out our response to each of the relevant consultation questions in turn, below.

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

NAHT response: **Yes**

5. NAHT welcomes the Department for Education's proposal to end exemption from inspection for previously outstanding schools, and its commitment that in future Ofsted will be required to inspect **all** schools on a transparent cycle of inspection. This represents a positive step towards improving the system through which schools are held to account.
6. The recommendations of NAHT's 2018 Accountability Commission made clear that all schools should be subject to regular routine inspection, without exception. Our members accept that there should be a fair and transparent system of school accountability that provides public assurance about the quality of education provided by state-funded schools.
7. The existing exemption arrangements are confusing to parents, who question the relevance of a historical judgement about a school that may have been last

inspected more than a decade ago. Exemption has become increasingly unpopular with school leaders, some of whom say that the lack of a current inspection report, based on the latest inspection framework and inspection format, makes it difficult for parents to draw comparisons when choosing a school for their child.

8. New head teachers taking on a post in an outstanding school report that its outstanding 'status' can act as a brake on development, creating resistance to change and impeding innovation; while leaders of Special schools, maintained nursery schools, and pupil referral units (PRUs), whose schools do not fall within the ambit of the exemption regulations, have felt justifiably aggrieved at their schools' unequal treatment.
9. NAHT's qualitative evidence also indicates that recruitment to school leadership positions, and specifically to head teacher posts, can be particularly problematic for outstanding schools. It appears that a school's outstanding status acts in combination with the well recognised disincentives associated with high-stakes inspection, creating a barrier to recruitment.

*An opportunity to make further progress with inspection reform*

10. Given the strong evidence that a school's ability to achieve an outstanding grade is significantly influenced by its cohort, a school's overall effectiveness judgement can be as much a reflection of the social advantage of parents and the quality of wider community services and early years settings, as the quality of education provided within a school.
11. With this in mind, our Commission concluded that the inspectorate had neither the capacity, resource nor expertise to arrive at a reliable determination of excellent practice in individual schools, leading to the conclusion that Ofsted should focus on providing stronger diagnostic insight to schools that are struggling, while adopting a lighter touch approach for the majority of schools.
12. The emerging, but predictable, issues over the inspectorate's new attempt to judge the quality or *substance* of a school's curriculum underlines this difficulty. A brief snap-shot inspection is simply unable to reliably identify excellent practice or provide a diagnostic analysis that is sufficient to inform school improvement activity. Our soon to be published report<sup>1</sup>, *A change for the better?*, which summarises our emerging findings from the first three months of the new inspection arrangements serves to illuminate this point.
13. NAHT believes the removal of the exemption regulations offer a window of opportunity to take further steps towards reform of the inspection system by **removing the outstanding judgement altogether** and replacing it with a more robust system for identifying specific excellence within individual schools.
14. We recognise the good intention that was associated with the establishment of the outstanding judgement but, fifteen years on, NAHT believes that there are

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<sup>1</sup> NAHT has shared pre-publication copies with both the Department for Education and Ofsted

better ways to drive ambition and improvement across the school system. What's needed is a mechanism which precisely identifies specific areas of excellence within individual schools that is clear about the context in which excellence was achieved. Such a system has real potential to foster collaboration, deliver greater agency and impact positively on school improvement.

15. What's required is a carefully managed transition through which the profession itself begins to take responsibility for the identification and dissemination of excellence within the school system. This has the potential to act as a lever to increase the take up of highly effective, evidence-based practice. Our recent publication *The principles of effective peer-to-peer review* contributes to the discussion on how to arrive at a shared understanding of excellence that is shaped and agreed by the profession itself, in order that English schools can realise government's ambition to rival the highest performing systems internationally.
16. Moreover, there remains a pressing need to tackle the well-evidenced unintentional consequences and perverse incentives that accompany the current high-stakes, hit-or-miss inspection system, which drives both unnecessary workload and good people from the profession. The collapsing supply of those willing to work in, and lead, the nation's schools make this a pressing policy imperative. Further inspection reform should focus on delivering greater agency for the profession and accompanying responsibility, which in turn has potential to bolster the Department's recruitment and retention strategy.

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

NAHT response: **No**

17. While NAHT supports the removal of the outstanding exemption, we are extremely concerned about the inherent inequity of the approach described in paragraphs 19-27 of the consultation document.
18. The consultation document reprises the policy aim that exemption from inspection was originally predicated on the notion that high performing schools should be recognised and rewarded.
19. Government determined that outstanding schools should be allowed to focus on excellence. In other words, outstanding schools were to be trusted to deliver for their pupils in light of their track record. Implicitly, this recognised that the inspectorate's constantly shifting focus, through adjustments to its frameworks, evaluation criteria and grade descriptors, had the potential to limit the ambition and progress of these high-performing schools.
20. Safeguards were put in place to assure the continued quality of education in these schools. The inspectorate undertakes an annual risk assessment to check that an outstanding school is not exhibiting symptoms of decline and retains

powers to inspect where the Chief Inspector determines that there is cause to do so.

21. The clear message was that outstanding schools were freed from the strictures of maintaining constant vigilance for changes to Ofsted's inspection arrangements.
22. In bringing currently exempt schools within scope of routine inspection once again, it is incumbent on the Department to ensure through its regulations that all schools are treated fairly. The policy approach must therefore have equity at its heart, and a recognition that exempt status actively encouraged outstanding schools to focus less on compliance with Ofsted frameworks, and more on what best delivered for an individual school's pupils.
23. NAHT is therefore **strongly opposed** to the proposal that different inspection arrangements should apply to currently exempt schools, dependent on the length of time for which a school has been exempt.
24. All exempt schools are subject to the inspectorate's risk assessment process. Ofsted states that this is a rigorous and reliable process which commands public trust. The length of time for which a school has had exempt status is therefore irrelevant, since Ofsted monitors the annual performance metrics of every exempt school. The inspectorate is responsible for identifying indicators of possible decline and has powers to inspect in circumstances where it sees fit to do so.
25. Given that the inspectorate has monitored all exempt schools since the regulations became effective, the argument cannot be sustained that a school that became exempt before 2015 is at greater risk of decline than one that became exempt after 2015. If there are indicators of decline, a school would be recognised through Ofsted's risk assessment process regardless of the length of time that it has been exempt.
26. It is self-evidently true that schools that became exempt before 2015 have not been inspected under one or more of the preceding frameworks, because that was the exact purpose of the 2012 regulations. However, there is no logical case to argue that this means that these schools should be penalised for their situation by having to undergo a higher stakes inspection than those that became exempt after 2015.
27. The consultation proposes exactly that: a school that became exempt before 2015 would have to undergo a section 5 inspection, which **requires** inspectors to make an overall effectiveness judgement. This is therefore a higher-stakes inspection than is the case for a school that became exempt after 2015 where the proposal is to conduct a section 8 inspection, which **cannot** judge a school's overall effectiveness.
28. In fact, a school which became exempt after 2015 would be advantaged compared to its counterpart which had become exempt before 2015. In the case of the former any decline would result in the identification of points for improvement within the section 8 report, allowing the school to sharpen practice ahead of a future section 5 inspection, but with no change to its overall effectiveness judgement.

29. By contrast, the latter would have no such period of adjustment available to it. NAHT believes that this is simply not in the public interest. One school should not be treated more favourably than another on the sole criteria of the length of time for which it has been exempt.
30. Further, the inspectorate has monitored the performance of **all** exempt schools since the regulations came into force and had powers to inspect where concerns were identified.
31. Were the proposal to be implemented, schools that became exempt before 2015 would be subject to unfair and unequal treatment. It is not these schools' fault that Ofsted have changed their emphasis within inspection, nor that the policy of exempting schools from routine inspection is, rightly in NAHT's view, being changed.
32. NAHT believes that principles of **fairness and prudence** should be applied to mitigate the possible unintended consequences and perverse incentives that are likely to arise as a result of previously exempt schools coming within scope of inspection once again. The potential for the proposals to drive new workload, and workplace stress and ill-health, for both teachers and leaders in exempt schools are immense. We believe that it is a matter of public duty that steps should be taken to minimise the impacts on teachers and leaders resulting from the change in policy.
- 33. NAHT therefore believes that the most equitable and proportionate solution to achieve the re-integration of exempt schools within a cycle of routine inspection is for regulations to be made that all such schools should be scheduled to receive a section 8 inspection, regardless of the length of time which they have been exempt.**
34. For a previously exempt school, where an inspection finds no indicators of decline the inspection interval would be reset, as would be the case for a good school. The effect would be for the school to re-enter the normal inspection cycle. Future inspections would be determined according to regulations.
35. In other cases, following the section 8 inspection which identified possible concerns, a school would be scheduled for a section 5 inspection in accordance with the inspectorate's existing policy, as is the case for good schools. Of course, in urgent cases Ofsted has powers to treat a section 8 inspection as if it were a section 5 inspection, allowing inspectors to make the full range of judgements.
36. We recognise that an alternative approach could be to schedule all exempt schools for a section 5 inspection within a defined period. In NAHT's view this would constitute an equitable approach, but the additional resources required would not represent an effective use of public money. It would also further unnecessarily reinforce the high-stakes nature of inspection for schools which have demonstrably maintained their performance – had they not they would have been selected for inspection. Adopting such a policy would not, in NAHT's view, satisfy the test of fairness and prudence set out above.

37. NAHT reiterates our support for the removal of exemption regulations. We believe that this constitutes a positive step forward for the profession. We urge the Department to consider the practical solution set out in our response which we believe can maximise the gains from this very helpful policy change. We are keen to work with the Department to ensure that the removal of exemption delivers a positive impact for the profession as a whole, and works to support the ongoing development of DfE's recruitment and retention strategy; we would welcome the opportunity to engage in further discussion.

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

No response.