

*These notes refer to the Education Act 2005 (c.18)
which received Royal Assent on 7 April 2005*

EDUCATION ACT 2005

EXPLANATORY NOTES

COMMENTARY

Part 1: School Inspections and Other Inspections by School Inspectors

Chapter 1 – School Inspectors and School Inspections: England

Section 1: Her Majesty’s Inspectorate of Schools in England

22. This section re-enacts section 1 of and Schedule 1 to SIA 1996 (which is repealed by section 60) without any changes. It establishes the office of Her Majesty’s Chief Inspector of Schools (subsequently referred to as the Chief Inspector) as a Crown appointment, and provides for HMI to be members of the Chief Inspector’s staff. It also sets out the terms of his appointment as being one of no more than five years in any one term, though a previous post-holder is not barred from reappointment.

Schedule 1: Her Majesty’s Chief Inspector of Schools in England

23. *Schedule 1* to SIA 1996 is re-enacted with changes, giving the Chief Inspector the authority to appoint staff in addition to HMI. The Chief Inspector may also arrange for additional inspectors to assist him in carrying out his functions. *Paragraph 5* of Schedule 1 to the Act provides that, subject to the following exceptions, any of the functions of the Chief Inspector under this Act or any other Act may be fulfilled by: any HMI; any other member of his staff; or any additional inspector. The exceptions are that a report concluding that special measures are required must be personally authorised by the Chief Inspector or an HMI specifically authorised to do so and that an additional inspector cannot take part in an inspection unsupervised by an HMI unless he has previously conducted an inspection to the satisfaction of an HMI.
24. The Schedule also provides that the Secretary of State will determine the remuneration and pension of the Chief Inspector, with the approval of the Minister for the Civil Service.
25. *Paragraph 2* provides for the appointment of additional inspectors to assist the Chief Inspector, as at present. Additional inspectors with specific skills or knowledge for a particular setting will continue to be used. In addition, the Chief Inspector will use additional inspectors to fulfil his duties under section 5. Where the Chief Inspector engages additional inspectors either directly or through an inspection service provider he must ensure that they have the necessary qualifications, experience and skills. He will fulfil this duty by publishing a statement of the qualifications and experience, standards and skills which such additional inspectors are required to have and shall ensure that any arrangements he makes with inspection service providers require that they ensure that additional inspectors meet the published requirements. Where using an inspection service provider he must also publish a list of names given to him by the inspection service provider of persons who may be used in future as additional inspectors. This will lead to an increase in the use of additional inspectors.

Section 2: Functions of Her Majesty's Chief Inspector of Schools in England

26. This section re-enacts section 2(1) to (6) of SIA 1996, with the exception of the duty on the Chief Inspector to maintain a register of inspectors and the regulatory duties related to the system of inspection by registered inspectors.
27. *Subsection (1)* adds four further elements to the matters listed in SIA 1996 section 2(1) about which the Chief Inspector must keep the Secretary of State informed. These are:
- i) the extent to which the education provided by schools in England meets the needs of the range of pupils (*subsection (1)(b)*);
 - ii) the contribution made by schools in England to the well-being of their pupils (*subsection (1)(f)*). Well-being is defined in section 11 having regard to the matters mentioned in section 10(2) of the Children Act 2004, namely:
 - a) physical and mental health and emotional well-being;
 - b) protection from harm and neglect;
 - c) education, training and recreation;
 - d) the contribution made by them to society;
 - e) social and economic well-being;
 - iii) the extent to which schools in England are developing rigorous internal procedures of self-evaluation; and
 - iv) the behaviour and attendance of pupils at schools in England.

Section 3: Annual and other reports to Secretary of State

28. This section re-enacts section 2(7) of SIA 1996 without any changes. It requires the Chief Inspector to make an annual report to the Secretary of State, who in turn must lay this report before Parliament. It gives the Chief Inspector authority to publish any report made by him under this section in whatever manner he sees fit.

Section 4: Powers of entry etc. for purposes of section 2

29. This section re-enacts section 2(8) to (10) of SIA 1996, updating some of the terms used but without any changes to the effect of the provisions in that section. It gives the Chief Inspector rights of entry to any school in England, and to other premises related to the education of pupils, to undertake the duties placed on him under section 2. It includes the right to inspect and take copies of relevant documentation. Under *subsection (3)* it is an offence intentionally to obstruct the Chief Inspector in carrying out his duties. *Subsection (4)* specifies the penalty for this offence.

Section 5: Duty to inspect certain schools at prescribed intervals

30. This section requires all schools previously covered by section 10 of SIA 1996 to be inspected at intervals to be prescribed in regulations. Section 10 of that Act requires the inspection of those schools to be carried out by a registered inspector; however section 60 repeals the SIA 1996, thereby removing the requirement for registered inspectors in England. This section transfers the responsibility for inspecting every school in England to the Chief Inspector. By virtue of paragraph 5 of Schedule 1 the inspections and the exercise of any functions required in administering and delivering them may be carried out by HMI, any additional inspector or any other member of the Chief Inspector's staff in the name of the Chief Inspector.
31. *Subsection (5)* requires inspection reports to cover the same four areas currently covered by reports under section 10 of SIA 1996, with the addition, in subsection (5)(b), of how

far the education provided meets the needs of the range of pupils and in subsection (5) (f) of the contribution made by the school to the well-being of its pupils.

Section 6: Duty to notify parents of section 5 inspection

32. This section re-enacts with modifications paragraph 6 of Schedule 3 to SIA 1996. The section carries forward the requirement for the governing body (or in certain circumstances the local education authority) or the proprietor of a school to take reasonable steps to notify all parents of all registered pupils at the school and such other persons as may be prescribed in regulations of the time of the inspection and to invite their views on matters relating to the school. It does not carry forward the further requirement that the school arrange a meeting between parents and the inspectors; this is likely to be impractical given the intention to reduce notice of inspections.

Section 7: Duty to have regard to views of certain persons

33. This section provides that in conducting a section 5 inspection the Chief Inspector must, among other things, have regard to the views of the head teacher; the governing body or proprietor; staff; pupils; parents; and any persons notified of the inspection, where those views are expressed.

Section 8: Inspection at discretion of Chief Inspector

34. This section replaces section 3(1) of SIA 1996 and gives the Chief Inspector the power to inspect any school at any time, even when not under a duty to do so under section 2(2) (b) or section 5. This allows the Chief Inspector to inspect any school where he may have cause for concern in respect of his general duty under section 2. It also enables the Chief Inspector to conduct inspections for a range of purposes, including monitoring visits by HMI to schools in special measures, visits to schools to aid him in keeping the Secretary of State informed under section 2, or to contribute to reports on, for example, the teaching in a single curriculum subject.

Section 9: Power of Chief Inspector to treat discretionary inspection as section 5 inspection

35. This section enables the Chief Inspector to treat an inspection conducted under his own power (section 8) or at the request of the Secretary of State (section 2(2)(b)) as though it were a section 5 inspection. This will mainly be used so that a school which is inspected, for whatever reason, under one of these other arrangements, does not have to have another inspection within the interval prescribed under section 5(1).
36. Where an inspection is deemed a section 5 inspection using this power, the section requires a written report to be made and the school to make the report available to parents in the usual way (see notes on section 6 and section 14).

Section 10: Power of entry etc. for purposes of inspection under section 5 or 8

37. This section replaces the powers of entry conferred by section 3(3) of, and paragraph 7 of Schedule 3 to, SIA 1996. It provides for rights of entry into schools and other premises for the Chief Inspector and those assisting him, such as HMI and additional inspectors. As in SIA 1996, the section provides that it is an offence, punishable by a fine, intentionally to obstruct the Chief Inspector in the conduct of an inspection under section 5 or 8.

Section 11: Publication of inspection reports

38. This section allows the Chief Inspector to publish any inspection report, and to do so by electronic means.