

EXPLANATORY MEMORANDUM TO

THE EDUCATION (INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND) (INSPECTION FEES) REGULATIONS 2009

2009 No. 1607

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to set out arrangements for the payment of inspection fees for independent educational institutions (“institutions”) in England that are inspected by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“Ofsted”). The instrument also introduces a fee for a first inspection for the purpose of following-up an inspection where an institution’s previous inspection reported regulatory failings and there is a need to check that failings have been addressed. The instrument revokes the Education (Independent School Inspection Fees and Publications) (England) Regulations 2008 so far as they deal with fees for inspections.

3. Matters of special interest to the Joint Committee on Statutory Instruments *or* the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Inspection fees for institutions in England that are inspected by Ofsted were introduced for the first time in September 2003. The Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 (“the 2008 Regulations”) replaced regulations of 2003 to increase fees for inspections in order to reduce the public subsidy of institutions by better reflecting the cost to Ofsted of carrying out inspections. The 2008 Regulations also introduced arrangements for a lower rate of fee for an inspection (a reduced tariff inspection) of a good school that has been meeting the regulatory standards in place for institutions. In addition, the 2008 regulations introduced payment of inspection fees by annual instalment in order to aid institutions to budget. This was because proposals to introduce an annual inspection fee had to be put on hold pending the introduction of primary legislation in the Education and Skills Act 2008 (“the Act”). These regulations now put this into effect on the commencement of section 111 of the Act.

4.2 These regulations also implement proposals to charge fees for first follow up inspections to bring them more into line with the cost to Ofsted and further reduce public subsidy of institutions inspected by Ofsted.

5. Territorial Extent and Application

5.1 This instrument applies England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 These regulations do not increase the rate of full inspection fees. They introduce an annual fee which will further improve budgeting for the institutions as the fee will be payable on a date that is not linked to the time of the inspection, ie institutions will pay an annual fee towards the cost of an inspection rather than having to pay following an inspection.

7.2 The amount charged for institutions with fewer than 150 pupils will be more equitable than previously as it will be linked to pupil numbers as stated on the annual return for that calendar year. These institutions will also continue to pay less than the full recovery costs as agreed in 2003 when inspection fees were first introduced.

7.3 The annual fee will be due no later than 28 days after the date on which payment is requested by the Chief Inspector. Ofsted expect to send out invoices in order to receive payment on 1 October each year or as soon as possible thereafter.

7.4 The regulations introduce a fee of 2/3 of the annual fee for a first follow up inspection, although the rate of 1.5 times the annual fee for subsequent follow up inspections is equivalent to the current rate of 25% of the 6 yearly fees. Currently, a large institution subject to a full inspection fee of £10,000 does not pay for a first follow up inspection to check that previously reported failings have been addressed. Subsequent follow up inspection fees for large institutions are charged at the rate of 25% (£2500.00) of the full inspection fee. Under the new regulations a large institution paying an annual fee of £1666 will be charged £110.00 (2/3rd of the annual fee) - for a first follow up inspection and £2499.00 (1.5 times the annual fee) for subsequent inspections. This will encourage poorly performing institutions to improve quickly and also allow Ofsted to go further toward meeting Government requirements, set out in 2006, that public sector inspectorates reduce expenditure by about a third over the medium term. Ofsted has confirmed that these charges do not exceed costs.

7.5 The current inspection cycle for institutions inspected by Ofsted commenced on 1 April 2008. Institutions that were inspected between 1 April 2008 and 31 August 2008 had to pay the entire fee within 13 months of the inspection. The regulations make provision to enable the annual fee in respect of these institutions to be waived by an equal amount, where Ofsted thinks it is unreasonable for the institution to be required to pay the annual fee. For example, a large institution that paid an inspection fee of £10,000 in June 2008, and would be due to pay an annual fee of £1666 in autumn 2009 in respect of its next inspection, will not start paying the annual fee until it needs to pay in respect of the inspection due in or around 2014.

7.6 Institutions that have paid an instalment since the introduction of the 2008 regulations in September 2008 will also receive a waiver equal to that amount. For example, a large institution that was inspected in October 2008 and paid an instalment in November 2008 based on 1/6 of the full fee of £10,000 will not have to start paying the annual fee until 2010.

8. Consultation outcome

8.1 A public consultation was undertaken in 2007 on a range of proposals, including the payment of inspection fees, to revise the system for the registration and monitoring of independent schools. This consultation, which ran from 27 July 2007 to 19 October 2007, included these proposals. 329 responses were received from independent schools, independent school organisations, local authorities, individuals and other bodies e.g. teacher unions. Respondents were asked if they agreed with our proposals to raise the cost of inspection to better reflect their actual cost and for their views on introducing annual payments.

- 43 responses were received to the question of raising fees. 24 (56%) agreed, 11 (26%) disagreed and 8 (19%) were not sure.
- 39 responses were received to the question of the introduction of annual payments. 29 (74%) agreed, 4 (10%) disagreed and 6 (15%) were not sure.
- The summary of results to the consultation may be found at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1498&external=no&menu=3>

9. Guidance

9.1 All institutions inspected by Ofsted will be notified sent a copy of the regulations with a covering letter setting out the key changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies which are also institutions is beneficial as the regulations enhance existing budgeting opportunities for smaller schools by linking the amount of the fee to pupil. It is expected that increased follow up fees will encourage poorly performing institutions to improve their performance.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses that are also institutions.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that small institutions will continue to pay inspection fees that do not represent the full cost.

11.3 The basis for the final decision on what action to take to assist small businesses is that all institutions, including small institutions, were fully consulted in 2003 when inspection fees were first proposed and again in 2007 on these proposals. These institutions are more likely to be faith institutions and charge low fees. It was therefore agreed that full cost recovery would not apply to these institutions.

12. Monitoring & review

12.1 It is intended that full inspection costs will be recovered for large institutions over a 3 year period. The regulations will be reviewed in 2 years time and amended accordingly.

13. Contact

Margaret Pattinson at the Department for Children, Schools and Families (tel: 01325 392172 or e-mail: margaret.pattinson@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: DCSF	Title: Impact Assessment of The Education (Independent Educational Provision in England) (Inspection Fees) Regul	
Stage: Final	Version: 1	Date: 9 June 2009
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries: Stephanie Lidster

Telephone: 01325 392162

What is the problem under consideration? Why is government intervention necessary?

The Education (Independent School Inspection Fees) (England) Regulations 2008 now need amending to implement the further changes, for independent educational institutions (institutions) in England that are inspected by Ofsted, contained in in the Education and Skills Act 2008 and in a consultation held in 2007.

What are the policy objectives and the intended effects?

Our objective is to ensure a fairer inspection fee regime by requiring the payment of inspection fees via an annual fee rather than after inspection. For smaller institutions of 150 pupils or less this is based, in part, on annual pupil numbers. Fees for a first follow up visit to poorly performing institutions will increase to encourage these institutions to improve thereby raising standards and reducing public subsidy by recouping a realistic level of costs for Ofsted.

What policy options have been considered? Please justify any preferred option.

The preferred option is to make the necessary changes to the regulations to ensure smaller institutions benefit from an easier payment system; parents and pupils benefit from raised standards as institutions seek to avoid paying follow up inspection fees and public subsidy is reduced. (option A).

The other option is to do nothing which means that neither parents nor schools benefit (option B).

~~Following consultation we have decided to proceed with preferred option A and make the proposed~~

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? The Independent Education and Boarding Team will review the impact of the amendments with the sector in 2 years time

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Diana JohnsonDate: 2nd July 2009

Summary: Analysis & Evidence

Policy Option:	Description:
-----------------------	---------------------

COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Costs of carrying out follow up visits to ensure poorly performing schools are meeting required standards		
	One-off (Transition) Yrs			
	£ 0			
	Average Annual Cost (excluding one-off)			
	£ 35,000	Total Cost (PV)	£	
Other key non-monetised costs by 'main affected groups' None				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'		
	One-off Yrs			
	£ 0			
	Average Annual Benefit (excluding one-off)			
	£ 0	Total Benefit (PV)	£	
Other key non-monetised benefits by 'main affected groups' None				

Key Assumptions/Sensitivities/Risks None
--

Price Base Year 2005	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
-------------------------	-------------------------	-------------------------------------	---

What is the geographic coverage of the policy/option?	England
On what date will the policy be implemented?	1 September 2009
Which organisation(s) will enforce the policy?	DCSF
What is the total annual cost of enforcement for these organisations?	£ 0
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per year?	£ 0
What is the value of changes in greenhouse gas emissions?	£ 0
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro Small Medium Large
Are any of these organisations exempt?	No No N/A N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of £ NA	Decrease of £ NA	Net Impact £ NA

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

This impact assessment updates the original assessment published as part of the consultation process held between 27 July 2007 and 19 October 2007. The policy options were:

- a. To introduce an annual fee for the purpose of paying inspection fees, as opposed to the current system of payment following inspection, and introduce a fee for the first follow up visit following an inspection where serious failings were identified. (The purpose of the follow up inspection is to check that a school has addressed any failures identified in inspection reports.)

Or

- b. Do nothing

We decided on option a in order to ensure institutions benefitted from greater flexibility in the payment of inspection fees and parents and pupils benefit from raised standards as poorer institutions have an incentive to improve quickly.

Background

Inspection fees for independent schools in England were introduced for the first time in 2003. The fees remained unchanged until 1 September 2008 when the Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 were introduced.

Current arrangements

The current regulations increased the full inspection fee rate, introduced reduced tariff inspections for institutions that consistently met the great majority of the required standards and introduced payment by fixed instalments to aid institutions in budgeting for the cost of inspections. Plans to introduce an annual fee were put on hold pending the introduction of primary legislation in the Education and Skills Act 2008 as were plans already consulted on to increase follow up visit fees.

The changes

The new regulations do not increase the rate of full inspection fees. They introduce an annual fee that will further improve budgeting for the institutions as the fee will be payable on a date that is not linked to the time of the inspection, ie institutions will pay an annual fee towards the cost of an inspection rather than having to pay following an inspection.

Institutions with fewer than 150 pupils will continue to pay less than the full recovery costs as agreed in 2003 when inspection fees were first introduced. For these institutions the rate will vary each calendar year to take account of pupil numbers for that year.

The annual fee will be due within 28 days of the date on which payment is requested by the Chief Inspector. Ofsted expect to send out invoices in order to receive payment on 1 October each year or as soon as possible thereafter.

The new regulations introduce a fee of 2/3 of the annual fee for a first follow up inspection to check that previously reported failings have been addressed. The new rate of 1.5 times the annual fee for subsequent follow up inspections is equivalent to the existing rate. Currently,

a large institution subject to a full inspection fee of £10,000 does not pay for a first follow up inspection. Any subsequent follow up inspections attract a fee of 25% of the full inspection fee.

Under the new regulations a large institution will pay an annual fee of £1666 and will be charged 2/3 (£1110) for a first follow up visit. This will provide more of an incentive for poor institutions to improve quickly and also allow Ofsted to go to further toward meeting Government requirements, set out in 2006, that public sector inspectorates reduce expenditure by about a third over the medium term. Ofsted has confirmed that these charges do not exceed costs.

The current inspection cycle for institutions inspected by Ofsted commenced on 1 April 2008. Institutions that were inspected between 1 April 2008 and 31 August 2008 had to pay the entire fee within a year of the inspection. The regulations make provision to waive the annual fee in respect of these institutions by an equal amount. For example, a large institution that paid an inspection fee of £10,000 in June 2008, and would be due to pay an annual fee of £1666 in autumn 2009, will not start paying the annual fee until around 2014.

Institutions that have paid an instalment since the introduction of the current regulations last September will also receive a waiver equal to that amount. For example, a large institution that was inspected in October 2008 and paid an instalment in November 2008 based on 1/6 of the full fee of £10,000 will not have to start paying the annual fee until autumn 2010.

Public Consultation

1. An extensive consultation was undertaken on a range of proposals to revise the system for the registration and monitoring of independent schools. This consultation, which ran from 27 July 2007 to 19 October 2007, included these proposals. 329 responses were received from independent schools, independent school organisations, local authorities, individuals and other bodies e.g. teacher unions. Respondents were asked if they agreed with our proposals to raise the cost of inspection to better reflect their actual cost and their views on introducing annual payments.

2.

3. 43 responses were received to the question of raising fees. 24 (56%) agreed, 11 (26%) disagreed and 8 (19%) were not sure.

4.

39 responses were received to the question of the introduction of annual payments. 29 (74%) agreed, 4 (10%) disagreed and 6 (15%) were not sure.

A summary of the full response to this consultation may be found at:

<http://www.dcsf.gov.uk/consultations/conResults.cfm?consultationId=1498>

Costs and benefits

Benefits

Smaller institutions will benefit from an annual fee payment that reflects their pupil numbers for that year. Parents and pupils will benefit from higher standards as poorer institutions improve in order to avoid increased costs for follow up visits. The public subsidy of inspection fees will be reduced.

Costs

Increased costs will be incurred by poorer institutions that do not meet the standards and do not move quickly to address any failings. It is not possible to provide concrete figures but we estimate that about 50 institutions require a follow up visit each year. Based on a mix of pupil numbers the costs amount to approximately £35,000 per annum for the sector or an average

of £700 per institution inspected. It is hoped that charging fees will result in a reduction of the number of visits.

Small Firms Impact Test

Around 600 institutions have less than 100 pupils (i.e. 29% of the sector). Of these, 417 do not have charitable status and are therefore operating as small businesses (i.e. 19% of the sector). When independent schools were consulted in 2003, when the new registration and inspection fee arrangements were introduced, only 48 (12%) of schools that were operating as small businesses responded. Generally, schools indicated that the introduction of the arrangements brought benefits in terms of improving the quality of the education and care of pupils and by providing a clear framework for inspection purposes.

Competition Assessment

5. There are around 2,300 institutions in England of which about 50% are charities. Institutions vary in size depending upon the market they target. Some are small institutions catering for children with special educational needs with placements paid for by the local authority. Others are small institutions catering for pupils from minority faiths. Some 600 institutions have less than 100 pupils. No institution has more than a 10% market share. There will be no effect on the market structure as the proposals apply equally to all institutions.

Enforcement, sanctions and monitoring

6. The current systems for enforcement, sanctions and monitoring will continue to apply.

Implementation and delivery plan

7. All institutions, inspectorates and associations will be notified direct of the amending regulations.

Post-implementation review

8. To be carried out in 2 years' time.

Summary and Recommendation

9. That in light of a favourable response to the consultation the changes outlined above are made in the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	Yes/No
Small Firms Impact Test	Yes	Yes/No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

Annexes

10. Equality Screening Impact Assessment

11. Introduction

12. The Department has a duty to assess the likely impact on gender, minority ethnic groups, those with disabilities and human rights of legislation that we propose to introduce. Everyone should have an equal opportunity to meet their aspirations, realise their full potential and improve their life chances.

13. Context – Inspection fees and equality and diversity

14. Institutions in England are inspected against standards in order to ensure a satisfactory level of provision in institutions in the following areas:

15. The quality of the education provided;

16. The spiritual, moral, social and cultural development of pupils;

17. The welfare, health and safety of pupils;

18. The suitability of proprietors and staff;

19. School premises and accommodation;

20. The provision of information; and

21. The manner in which complaints are handled.

22.
23. The payment of inspection fees goes some way towards meeting the costs incurred by Ofsted which would otherwise fall to the public purse.

24.

25. The current regulations containing these standards may be found at:

26. <http://www.legislation.hmsso.gov.uk/si/si2003/20031910.htm>

27. In addition, during inspection accessibility plans as required by the Disability Discrimination Act 1995 will be examined.

28. These standards support the Every Child Matters initiative and are fully inclusive of all registered institutions and their pupils, regardless of their ethnicity, culture, religion or belief, home language, family background, disability or special educational need, gender or ability.

29. The cost of inspections do not impact more heavily on one group than another and nor do they infringe any human rights.