

EXPLANATORY MEMORANDUM TO
THE EDUCATION (EXEMPTION FROM SCHOOL INSPECTION) (ENGLAND)
REGULATIONS 2012

S.I. 2012 No. 1293

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by command of her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations prescribe the categories of schools which may be exempt from routine inspection by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") under section 5 of the Education Act 2005 ("the 2005 Act") and the circumstances in which those schools will be exempt.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 4.1 Section 5 of the 2005 Act sets out the duty of the Chief Inspector to inspect schools at such intervals as may be prescribed. The Education (School Inspection) (England) Regulations 2005, which are made under section 5, currently provide that the maximum interval between school inspections under section 5 of the 2005 Act is 5 years.
 - 4.2 Section 40 of the Education Act 2011 inserted a new section 5(4A) into the 2005 Act. Section 5(4A) provides that the Chief Inspector's duty at section 5 of the 2005 Act to inspect all schools need not apply to prescribed categories of schools in prescribed circumstances. Those schools to which section 5 of the 2005 Act does not apply by virtue of regulations under section 5(4A) are to be known as "exempt schools" (under section 5(4B)).
 - 4.3 Section 5(4A) was inserted into the 2005 Act with the intention that schools that were judged outstanding in their previous inspection under section 5 might be exempt from routine inspection. These are the first Regulations to be made under the new power at section 5(4A).
 - 4.4 Regulation 3 prescribes, therefore, the categories of schools which may become exempt schools. They are: (a) community, foundation and voluntary schools; (b) Academy schools; (c) city technology colleges; and (d) city colleges for the technology of the arts.
 - 4.5 Academy schools which are designated as "special" academies (as described in section 1A(2) of the Academies Act 2010) are not a prescribed category and

cannot, therefore, be exempt schools even if they receive an “outstanding” inspection grading. This is consistent with the position on maintained special schools.

4.6 Regulation 4 prescribes the circumstances which must apply to the categories of schools prescribed under regulation 3 in order to become exempt schools. These prescribed categories of schools will become exempt schools if they received the highest grading in their latest inspection by the Chief Inspector under section 5 of the 2005 Act (currently, that is an “outstanding” grading). If an Academy school which has never been inspected under section 5 has one or more predecessor schools, it will be an exempt school if each predecessor received the highest grading in its last inspection.

4.7 Under section 8 of the 2005 Act, the Chief Inspector may inspect a school in circumstances where he is not required to do so under section 5. In practice, the Chief Inspector inspects under section 8 when looking to provide general advice on matters within his remit, for example when undertaking surveys of curriculum subjects. Section 9 of the 2005 Act provides that the Chief Inspector may treat an inspection under section 8 in certain circumstances as an inspection under section 5. The effect of regulation 4(4)(a), therefore, is that an ‘outstanding’ grading in an inspection under section 8, which is subsequently deemed by the Chief Inspector to be an inspection under section 5, qualifies a school within a prescribed category for exemption.

5. Territorial Extent and Application

5.1 These Regulations apply in relation to England.

6. European Convention on Human Rights

As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Department wants to recognise and reward schools that have demonstrated the strongest performance, and to concentrate inspection where it is most needed. The intention is to give the best schools the power to manage their own performance and to be more accountable locally to their communities, rather than to central government.

7.2 The Chief Inspector will continue to visit exempt schools as part of his focused programme of subject and thematic reviews under section 8 of the 2005 Act, so it will still be possible to learn from the best. The exemption will be subject to the school maintaining its high standards. The Chief Inspector will regularly risk assess all exempt schools – if performance deteriorates significantly or if parents lose confidence or register specific concerns, he will be able to re-inspect the school under section 8 of the 2005 Act and may choose to treat that inspection as an inspection under section 5 (see paragraph 4.7 above).

7.3 Of the schools judged outstanding and inspected more than once since 2005, over 90% have remained either outstanding or good at their latest inspection. The Chief Inspector will conduct annual risk assessment of all exempt schools and colleges. He will consider the whole range of evidence in deciding whether a school should be re-inspected and there will not be any tick box triggers. The evidence will include the outcome of any survey visits carried out under section 8 of the 2005 Act and any relevant complaints. Risk assessment will normally start 3 years after the last inspection. However, where there is a change in head teacher within three years, the Chief Inspector will commence risk assessment earlier.

7.4 During the passage of the Education Act 2011 through Parliament, there was concern that, since the categories of schools to be exempt were not on the face of the Bill, and the regulations which would prescribe the exemptions were subject to negative procedure alone, the Secretary of State could choose to exempt, for example, all academies or faith schools without proper parliamentary scrutiny. As a result, a Government amendment was laid which set out that any subsequent changes to the first set of regulations made under the new power would require parliamentary approval through the draft affirmative procedure.

8. Consultation outcome

8.1 The Government clearly stated its intention to introduce these powers in the White Paper, "The Importance of Teaching" in 2010. Additionally, this issue was fully debated during the passage of the Education Act 2011 through Parliament and indicative regulations were issued to Parliament. Therefore we consider that this matter has received thorough scrutiny. In addition, Ofsted conducted a public consultation in March 2011 on the proposed changes to the inspection arrangements. 60% of respondents to that consultation supported a risk-based approach to determining when schools should be inspected.

9. Guidance

9.1 We do not intend to issue guidance on this issue.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is minimal. This will reduce inspection requirements for many of the best schools.

10.3 A separate Impact Assessment has not been prepared for this instrument but one was prepared as part of the overall assessment for the Education Act 2011. The relevant extract from this is attached at annex A. We confirm that the costs are still accurate.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

We will review annually to see how many outstanding schools are subject to routine inspection.

13. Contact

John Malynn at the Department for Education email:
john.malynn@education.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Excerpt from enactment Impact Assessment for the Education Act 2011

Streamline Ofsted inspection

Rationale for Intervention

School inspection currently covers areas which go beyond schools' core responsibilities – its scope is wide and the number of areas assessed large, meaning that less time is available for inspectors to consider the quality of core areas. In future, school inspection will focus on four core areas: achievement; teaching; leadership and management; and behaviour and safety. The college framework for inspection is also being reviewed.

The current arrangements, whereby all schools and colleges are regularly inspected by Ofsted regardless of their performance, is not as proportionate to risk as it should be and does not give successful schools and colleges the autonomy they deserve. The system creates unnecessary burdens on schools, colleges and on Ofsted. To address this, we intend to free 'outstanding' schools from routine inspection, as long as they perform to expected standards and retain the confidence of parents and governors.

Costs

Ofsted will face a cost of £60,000 for redevelopment of its risk assessment procedures. Schools will need to inform themselves about the changes to Ofsted inspections, but this will bear relatively little additional cost.

Benefits

By slimming down and refocusing the areas that are evaluated as part of inspections, we will give inspectors more time to devote to the most important factors in pupil achievement. We expect this to lead to higher quality inspections that make a greater contribution to school and college improvement. We also expect these changes to influence schools' and colleges' behaviour, leading them to refocus their efforts around their core business, resulting in higher levels of achievement for pupils and students. Inspection offers greatest value for money when time is spent addressing, in some depth, a core range of aspects related to pupil achievement, rather than covering a wide range and number of aspects with less depth.

Exempting 'outstanding' state-funded mainstream primary and secondary schools, sixth form colleges and general FE colleges from routine inspection will benefit schools and pupils by freeing up staff time. Over ten years, the present value of this benefit is estimated at £6.5m. Other categories of outstanding schools i.e. special schools, pupil referral units and nurseries may be exempted in future, leading to greater projected savings.

The exemption of outstanding schools and colleges from routine inspection will also benefit the public purse by reducing the number of inspections Ofsted is required to conduct. The cost saving to Ofsted is estimated at £2.5m per year. This means the combined present value of the monetised benefits over ten years is estimated at £25m.

Risks and Assumptions

The cost savings estimated are conditional on the assumption that 185 exempted outstanding schools and colleges are identified through Ofsted's risk assessment as in need of re-

inspection each year. This is an indicative figure - if more are identified as needing re-inspection, then the savings would be reduced, and if fewer are identified, the savings would be increased. Ofsted will reinspect a minimum of 5% of outstanding schools and colleges each year. We will work to ensure the risk assessment process is sufficiently thorough and broad in its coverage so that falling standards do not go unnoticed in exempt schools and colleges.

Incorporating parental feedback into Ofsted's overall risk assessment process will also help in managing these risks.