

EXPLANATORY MEMORANDUM TO
THE EDUCATION (SCHOOL INSPECTION) (ENGLAND) (AMENDMENT) (NO. 2)
REGULATIONS 2015

2015 No. 1639

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, in certain specified circumstances, the interval between inspections for new schools which have a predecessor school which was awarded a grade of “good” or better at its last inspection under section 5 of the Education Act 2005.

2.2 This enables new schools, such as academy convertors, which have an inspection history of “good” or better to benefit from the new “short” school inspection regime which applies in relation to other “good” or better schools.

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

3.1 None.

4. Legislative Context

4.1 Section 5 of the Education Act 2005 provides that the Chief Inspector must inspect all schools to which that section applies at prescribed intervals. These intervals are specified in the Education (School Inspection) (England) Regulations 2005 as amended (“the 2005 Regulations”).

4.2 The 2005 Regulations were amended earlier this year by the Education (School Inspection) (England) Regulations 2015 to prescribe different intervals between inspections, depending on whether or not the school was awarded a grade of “good” or better by the Chief Inspector at its latest inspection under section 5. For schools which were not awarded a grade of “good” or better, the interval is a period not exceeding 5 school years from the end of the school year in which the last section 5 inspection took place. For schools which were awarded a grade of “good” or better, the interval is either: (i) a period not exceeding 5 years from the end of the school year in which the last inspection under section 5 takes place; or (ii) where the school receives a “relevant section 8 inspection”, 5 years from the end of the school year in which that section 8 inspection was carried out. A “relevant section 8 inspection” is one which is carried out under section 8(2) of the Education Act 2005 and in relation to which the conditions described at regulation 3(7) to (9) of the 2005 Regulations are satisfied.

4.3. These new Regulations create another category of school in relation to which a different interval between inspections applies. This new category consists of any new

school which had a predecessor school which was graded as “good or better” in its last section 5 inspection (or, if the school has more than one predecessor schools, all of which were “good or better”), provided that the new school has not already had a section 5 inspection and has had one or more “relevant section 8 inspections”. A “relevant section 8 inspection” is an inspection carried out under section 8(2) of the Education Act 2005 which concludes that the school would still be graded “good” or better if an inspection under section 5 were to be carried out. A “relevant section 8 inspection” must be carried out within 5 years of any previous such inspection. By using “good or better”, this includes “outstanding” pupil referral units, special schools and maintained nurseries. Such schools are not exempt from routine section 5 inspection.

4.4. For this new category of schools, the prescribed interval is 5 years beginning with the end of the school year in which the most recent relevant section 8 inspection was carried out.

5. Territorial Extent and Application

These Regulations apply in relation to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Over 70% of schools judged “good” by Ofsted retain or improve their grade at their next inspection under section 5 of the Education Act 2005. This means that resources are expended on full inspections in these cases to confirm that the schools are still “good”. The changes made earlier this year allow a more proportionate approach to the inspection of “good” schools, enabling Ofsted to not inspect within 5 years under section 5, where they undertake a short inspection (described in the 2005 Regulations as a “relevant section 8 inspection”).

7.2 Ofsted now, therefore, conduct less frequent full inspections of schools that were judged to be “good” at their last full section 5 inspection and carry out short inspections of these schools and those “outstanding” schools that are not exempt from section 5 inspection (maintained nursery schools, special schools and pupil referral units). This will determine when these schools might require a full section 5 inspection. These short inspections will be undertaken using the Chief Inspector’s general power to inspect a school under section 8(2) of the Education Act 2005.

7.3 In the case of new schools which have not had a section 5 inspection, the new Regulations link eligibility for short inspections to the predecessor school’s inspection outcome. This introduces parity with existing “good” schools, removing a potential disincentive for academy conversion. It will reduce inspection burdens for the 850 academy converters currently awaiting their first full inspection and those that convert in the future. It will also reduce inspection burden for other new schools with

predecessor “good” schools (for example, if a “good” maintained infant and “good” junior school amalgamate and open as a new maintained primary school).

7.4 Short inspections will be undertaken by one or more of Her Majesty’s Inspectors (HMI) and will take place around every three years. The purpose of these short inspections is to provide confirmation that the new school continues to perform effectively. Where this is the case, the summary letter giving details of the outcome of the inspection will confirm this. If there are areas for improvement which are not significant enough to suggest that a school is no longer “good” these will be noted in the letter. All letters for these inspections will be published by Ofsted.

7.5 Where the evidence obtained is insufficient to satisfy HMI that a school remains good, or if there are concerns, the short inspection will be converted into a section 5 inspection. Equally, if HMI consider there is sufficient evidence to indicate that a school may now be “outstanding”, the short inspection will be converted into a section 5 inspection. A decision to convert the inspection does not predetermine the outcome of the section 5 inspection.

8. Consultation outcome

8.1 Ofsted consulted on proposals for short inspections for “good” schools from 16 October to 5 December 2014 and received 4,400 responses. Overall, responses to the consultation were positive and more respondents agreed than disagreed with Ofsted’s proposals. Nearly seven in ten of all respondents to the questionnaire supported the proposal for short inspections.

8.2 The inspection of “good” schools that convert to academy status was one of the key questions asked of Ofsted at the Future of Education Inspection launch conferences, which were attended by around 2400 delegates. With the introduction of short inspections for “good” schools, delegates asked whether the first inspection after conversion for these academies as new schools would be a section 5 inspection or a short inspection under section 8. Delegates were keen that the benefits of the new short inspection methodology should be made available to academy converters straight away. Ofsted said that the first inspection would continue to be a section 5 inspection and explained that changes to regulation would be required to enable these academies to qualify for a short inspection. Delegates felt that it was inconsistent and unfair for these academies to have a section 5 inspection instead of a short inspection like all other “good” schools or academies. While they accepted that current legislation created a constraint on Ofsted in this respect, they asked whether action could be taken to remedy the situation and create a level playing field. These new regulations address this issue.

9. Guidance

We do not intend to issue guidance on this issue. Ofsted will make schools aware of the new position.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 This will reduce a burden on relevant academy and maintained schools.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

The legislation does not apply to small businesses.

12. Monitoring & review

We will monitor to see if there are any issues with the new arrangements.

13. Contact

Lesley Hollick at the Department for Education email:
Lesley.hollick@education.gsi.gov.uk can answer any queries regarding the instrument.