

## EXPLANATORY MEMORANDUM TO

### THE INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND (INSPECTION FEES AND SAVINGS PROVISIONS) REGULATIONS 2019

2019 No. 995

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 These Regulations set out the fees that may be charged by Her Majesty's Chief Inspector of Education, Children's Services and Skills ('Ofsted') for the inspection of independent schools.
- 2.2 In relation to inspection fees, these Regulations revoke and replace, subject to saving provisions, the existing Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018<sup>1</sup>.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This entire instrument applies only to England.
- 3.2 The fees for standard inspections are being increased above the rate of inflation as part of government policy that Ofsted fees should move towards full cost recovery for independent school inspections. This followed an increase in 2018, which was the first since 2009; the Explanatory Memorandum to SI 2018/205 explained that fees levels would be reviewed again for 2019, and these regulations give effect to the outcome of that review.

##### *Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)*

- 3.3 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

#### 4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

---

<sup>1</sup> SI 2018/205

## **5. European Convention on Human Rights**

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

## **6. Legislative Context**

- 6.1 When the Chief Inspector<sup>2</sup> has been notified that an institution has applied to be entered on to the register of independent educational institutions in England, under section 99 of the Education and Skills Act 2008 (c.25) ('the 2008 Act'), the Chief Inspector must inspect the institution and report to the Secretary of State. The Chief Inspector must also inspect a registered independent educational institution when directed to do so by the Secretary of State under section 109 of the 2008 Act. Section 111 of the 2008 Act provides the Secretary of State with the power to make regulations about fees for inspections. These regulations set out how fees are to be calculated, the fees payable and the period for which fees are payable in respect of a number of inspections. The increases in fees are in line with central government policy reflected in the Spending Review 2015 settlement<sup>3</sup>.

## **7. Policy background**

### *What is being done and why?*

- 7.1 Section 94 of the 2008 Act requires the Secretary of State for Education to make regulations prescribing independent school standards, which must be met by schools registered in accordance with section 95 of the 2008 Act. Under section 109 of the 2008 Act, the Secretary of State may direct Ofsted to inspect such schools and report on the extent to which they are meeting the standards. At an operational level inspections can take a number of forms. Standard inspections (routine inspections against all the relevant standards) are normally held every three years, or every two years for some schools in specified circumstances. Other types of inspection which may be directed under section 109 are emergency inspections (which are inspections in which only certain standards are inspected against), and progress monitoring inspections to check whether standards not previously met are now met. In addition, section 99 of the 2008 Act requires the Chief Inspector to inspect an establishment which has applied for registration as an independent school and report on whether it is likely to meet the standards once registered. Section 111 of the 2008 Act provides for regulations to be made specifying the fees payable by independent schools for inspections carried out under Chapter 4 of the 2008 Act (which contains sections 99 and 109). If such regulations are made, they must specify the fee to be paid and the time by which the fee is to be paid.
- 7.2 One of the principles underpinning the budgetary settlement made for Ofsted in the Spending Review 2015 was that it should continue moving towards full cost recovery for inspections of institutions which are not publicly funded. However, it has historically been the case that fees charged for the inspection of schools were set well below cost levels, especially for the smaller schools which form the majority of those inspected by Ofsted. Inspection fees in respect of some categories of inspection which

---

<sup>2</sup> Chief Inspector means Her Majesty's Chief Inspector of Education, Children's Services and Skills.

<sup>3</sup> See documents at <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents>

Copies in alternative formats can be obtained from Correspondence Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ.

are charged for (standard inspections, progress monitoring inspections) were not increased between 2009 and 2018, and charges for pre-registration inspections, first standard inspections, and third or subsequent progress monitoring inspections only began in 2018. At present, only 30% of the total costs incurred by Ofsted on inspection of independent schools are being recovered from fees charged to schools.

- 7.3 In the light of this, the Government has proposed that further fee increases, beyond those changes instituted in 2018, are necessary to continue moving towards full cost recovery, and indeed would reflect the assumptions made in the 2015 Spending Review settlement for Ofsted. The increases in fees provided for in these Regulations affect all sizes of school, but smaller schools would still pay a lower proportion of actual cost for standard and progress monitoring inspections than would larger schools. In recognition of the fact that in 2018 no increase was made in the level of fees for first and second progress monitoring inspections, the increase in fee for these in the 2019 Regulations is substantial. The justification for this is that these inspections also need to be moved further towards full cost recovery; and that a school which meets the standards consistently will not find itself incurring such costs anyway.
- 7.4 Inspections directed by the Department for Education as a result of complaints or concerns about a school do not incur a fee chargeable to the school, as a matter of policy, and this will continue to be the case under the 2019 Regulations.
- 7.5 The power in section 111 encompasses those inspections in respect of educational institutions which are carried out under Chapter 4 of the 2008 Act.
- 7.6 There is a very minor change in the banding used to calculate fees for standard inspections: one band has changed size by one pupil.
- 7.7 The full impact of the changes on Ofsted's budget will depend on the volume of inspections, but is unlikely to exceed £350k per annum, so there will continue to be a substantial shortfall in fee income relative to total costs; it is estimated that in a full year 37% of costs would be recovered rather than the current level of 30%. The level of fees in years beyond 2019-20 will be considered as part of the next Spending Review.

## **8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 Not applicable as this statutory instrument revokes and replaces the previous one.

## **10. Consultation outcome**

- 10.1 Following preparatory discussions with Ofsted, the Department for Education published a consultation on 2 November 2018, closing on 16 January 2019. 60 responses were received, 49 of them from proprietors or head teachers of independent schools and several others from staff at such schools. A separate government response document has been published which sets out details of the responses received. Copies of this are obtainable at the following link:

<https://www.gov.uk/government/consultations/independent-schools-ofsted-inspection-fees>

and may be obtained in alternative formats from the address given below<sup>4</sup>.

## **11. Guidance**

- 11.1 No guidance is necessary in relation to these Regulations. Schools will be notified by letter from the Department for Education when the Regulations are made and given an overview of their effect, together with a link to the electronic version. Thereafter, all invoicing and fee calculation matters will be dealt with by Ofsted in direct communication with schools.

## **12. Impact**

- 12.1 The impact on business, charities or voluntary bodies falls below the £5m per annum threshold for which a full impact assessment is required.
- 12.2 The impact on the public sector arises only in relation to the increased fee income accruing to Ofsted when the Regulations come into force.
- 12.3 An Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the [legislation.gov.uk](http://legislation.gov.uk) website.

## **13. Regulating small business**

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken has been to continue charging fees to smaller schools which are a smaller proportion of costs than those charged to larger schools.
- 13.3 The basis for the final decision on what action to take to assist small businesses was to continue with the same approach because having considered responses to consultation, it was decided that this represented the best balance between the overall policy of moving towards full cost recovery, and lessening to some extent the impact of that policy upon small businesses.

## **14. Monitoring & review**

- 14.1 The approach to monitoring of this legislation is to review annually the level and scope of fees chargeable for independent school inspection in the light of successive spending reviews, with amended Regulations brought forward if necessary.
- 14.2 In the light of this the Regulations do not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Lord Agnew has made the following statement: a review clause is undesirable for particular policy reasons, because review needs to be aligned with Spending Review timetables rather than a separate timetable specified in the Regulations.

## **15. Contact**

- 15.1 Stephen Bishop at the Department for Education, telephone: 01325 340440 or email: [registration.enquiries@education.gov.uk](mailto:registration.enquiries@education.gov.uk) can be contacted with any queries regarding the instrument.

---

<sup>4</sup> Copies in alternative formats can be obtained from Independent Education and Boarding Team, Department for Education, Bishopsgate House, Feethams, Darlington DL1 5QE.

- 15.2 Peter Swift, Deputy Director for independent education at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Lord Agnew at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.