

EXPLANATORY MEMORANDUM TO
THE EDUCATION (SCHOOL INSPECTION) (ENGLAND) (CORONAVIRUS)
(AMENDMENT) REGULATIONS 2021

2021 No. 845

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.

2. Purpose of the instrument

- 2.1 To provide a short term extension to the prescribed interval for (1) routine Ofsted¹ inspections² of most state-funded schools and (2) inspections of collective worship and denominational education in voluntary-aided and foundation faith schools³, to take account of a period in which such inspections were suspended due to the coronavirus (COVID-19) pandemic. The extensions provide the necessary time and flexibility to enable an effective resumption of inspections following the suspension.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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)

- 3.2 Not applicable.

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 only.

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 Ofsted is required to inspect state-funded schools at prescribed intervals⁴. For most state-funded schools, the prescribed interval is approximately every five years⁵.

¹ The duty under section 5(1) of the Education Act 2005 is placed on the Chief Inspector of Education, Children's Services and Skills, referred to as Ofsted for ease of reference.

² A "section 5 inspection" as defined in regulation 2(1) of S.I. 2005/2038 or a "relevant section 8 inspection" as defined in regulations 3(7) and 3A(3) of S.I. 2005/2038.

³ A voluntary or foundation school in England which has been designated by the Secretary of State as having a religious character under section 69(3) of the School Standards and Framework Act 1998.

⁴ Section 5(1)(a) of the Education Act 2005.

⁵ See regulations 3 and 3A of the Education (School Inspection) (England) Regulations 2005 (S.I. 2005/2038).

- 6.2 The governing body of a voluntary-aided or foundation faith school must arrange an inspection of the school's collective worship and denominational education at prescribed intervals⁶. The prescribed interval is approximately every five years⁷.
- 6.3 On 17 March 2020, the Secretary of State announced the temporary suspension of Ofsted's routine inspections in light of the pandemic. Inspections of collective worship and denominational education in voluntary-aided and foundation faith schools were also suspended. These suspensions were formalised from 1 May 2020 with the relevant inspection duties being disapplied through monthly notices using powers in the Coronavirus Act 2020⁸.
- 6.4 The duty on Ofsted to routinely inspect state-funded schools at prescribed intervals⁹ was disapplied on a monthly basis between 1 May 2020 and the end of 27 April 2021.
- 6.5 The duty on governing bodies of voluntary-aided and foundation faith schools to routinely inspect collective worship and denominational education in their schools at prescribed intervals¹⁰, has been disapplied continuously on a monthly basis since 1 May 2020. The disapplication remains in place.

This instrument

- 6.6 For state-funded schools that last received a routine inspection between 1 August 2014 and the end of 27 April 2021 (i.e. in the five years prior to the pandemic and before the coronavirus (COVID-19) inspection suspension was lifted), the instrument provides a short term two year extension of the prescribed five year interval. The extension applies to Ofsted's first routine inspection after 1 September 2021, and is to take account of inspections missed as a consequence of the coronavirus (COVID-19) inspection suspension. Subsequent routine inspections will revert to the normal five year interval.
- 6.7 The instrument does not affect the first inspection of formerly exempt 'outstanding' schools for which separate arrangements apply¹¹.
- 6.8 For voluntary-aided and foundation faith schools that last received a routine inspection between 1 August 2014 and end of 31 July 2021, the instrument also provides a short term three year extension of the prescribed five year interval for the next routine inspection of collective worship and denominational education in those schools to be carried out, for the same reasons. Subsequent routine inspections will revert to the normal five year interval.

7. Policy background

What is being done and why?

- 7.1 Most schools are inspected by Ofsted at regular intervals and within a five year window. Ofsted's routine, graded inspections were suspended in March 2020 in light of the coronavirus (COVID-19) pandemic.

⁶ Section 48(3) of the Education Act 2005.

⁷ See regulation 10 of S.I. 2005/2038.

⁸ Section 38(1) of, and paragraph 5 of Schedule 17 to, the Coronavirus Act 2020.

⁹ Section 5(1)(a) of the Education Act 2005.

¹⁰ Section 48(3) of the Education Act 2005.

¹¹ See regulation 3B of S.I. 2005/2038.

- 7.2 Since then Ofsted has been undertaking a phased return to inspections as the pandemic context has changed. In autumn 2020, it conducted a programme of non-graded visits to inadequate schools and a selection of other schools. In spring 2021, it conducted monitoring inspections, also non-graded, to inadequate schools and some schools that require improvement. During the 2021 summer term Ofsted is continuing to focus on monitoring inspections but, where appropriate, is conducting some graded inspections. For example, where inspectors conducting a monitoring inspection of a school that ‘requires improvement’ see that the school has improved significantly, they may return to the school to conduct a full, graded ‘section 5’ inspection, enabling an award of ‘good’ if appropriate to reflect the school’s current performance. It is not intended however that Ofsted will resume its full programme of graded inspections until September 2021.
- 7.3 Due to the pandemic, Ofsted has not carried out its normal inspection programme since March 2020, and will not resume that programme until September 2021, some 18 months on. It has missed inspections due to take place during this period. The two year extension of the statutory inspection interval period, which this instrument provides, is a short term measure designed to give Ofsted the flexibility to resume its programme of inspections in an appropriate way. Once a school has a first routine inspection after 1 September 2021, the interval for its next routine inspection will revert to the five year period.
- 7.4 For example, a school that would have been due a routine inspection by the end of the summer term 2020, would now require one before the end of the summer term 2022, and once that takes place its next routine inspection would be due by the end of the summer term 2027.
- 7.5 As set out in paragraph 7.2 a small number of schools will have received a graded inspection during the 2021 summer term, following the lifting of the coronavirus (COVID-19) inspection suspension from the beginning of 28 April 2021. For those schools, the next routine inspection will be due within five years as normal. The two year extension only applies to the next routine inspection of schools that were last routinely inspected by Ofsted between 1 August 2014 and the end of 27 April 2021.
- 7.6 There are a set of schools not covered by the instrument. Outstanding schools that were formerly exempt from routine inspection, require, through separate provisions¹², an initial inspection before 1 August 2026, and that remains the case.
- 7.7 While the legislative intervals for inspection are important in providing a maximum period in which school inspections must take place, Ofsted determines the precise timing of inspections within that period. As a matter of policy, Ofsted intends to inspect all state-funded schools at least once in the next five academic years (before 1 August 2026). Within this period, it will continue to prioritise schools most in need of inspection, particularly those with the lowest grades. It will also prioritise outstanding schools that were previously exempt from routine inspection that have gone the longest without a visit.
- 7.8 Inspections of collective worship and denominational education in voluntary-aided and foundation faith schools were also suspended in March 2020. It is intended that those inspections will resume in September 2021. The instrument provides a short term three year extension of the prescribed five year interval for inspections, which applies to the first inspection from September 2021. The instrument does not cover

¹² Regulation 3B of S.I. 2005/2038.

faith academies, but the extension will apply to those schools through provisions in their funding agreements with the Secretary of State. This is an additional year compared to Ofsted inspection, and reflects discussions with faith school representatives about the particular needs of the faith school sector in relation to inspection capacity and scheduling.

- 7.9 As with Ofsted school inspections, once a routine inspection of collective worship and denominational education takes place after 1 September 2021, the school's next inspection will revert to the standard five year interval.
- 7.10 For example, a school that would have been due an inspection of collective worship and denominational education in the summer term 2020 would now be due that inspection by the end of the summer term 2023. If that inspection takes place in summer term 2023, the school's next inspection would be due before the end of summer term 2028.
- 7.11 It is acknowledged that the proposed implementation of this instrument is not in line with the Ministerial commitment to the Secondary Legislation Scrutiny Committee (SLSC) that schools would be given a full term's notice of new instruments. The amendments to the prescribed periods for inspections have been subject to consultation with Ofsted and faith school representatives and decisions have been taken in consideration of the changing pandemic context. In allowing for this full consideration, based on the context, it was not possible to lay these Regulations in the spring.
- 7.12 The department has taken steps to ensure that schools have been given notice of the intention to return to a full programme of routine, graded inspections from September 2021, and this was set out by the Secretary of State on 29 March 2021. The statement can be viewed at <https://www.gov.uk/government/news/full-ofsted-inspections-expected-from-september>.
- 7.13 In addition, Ofsted's school inspection handbook was updated on 28 June¹³, to provide information to schools about the intended timing of inspections from September 2021.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

- 9.1 This instrument amends the Education (School Inspection) (England) Regulations 2005 (S.I. 2005/2038). There are no plans to consolidate the regulations.

10. Consultation outcome

- 10.1 The department has consulted with Ofsted and representatives of various faith school representative groups as part of the development of the policies that this instrument implements. Ofsted has also consulted school sector representatives in determining its policy position on inspection timings, which are reflected in this instrument.

¹³ <https://www.gov.uk/government/publications/school-inspection-handbook-eif/schools-inspection-handbook-for-september-2021>

11. Guidance

- 11.1 Guidance for schools was updated on 6th July outlining the new expectations for when school inspections should take place. This guidance can be viewed at: <https://www.gov.uk/government/publications/actions-for-schools-during-the-coronavirus-outbreak>
- 11.2 Ofsted published updated inspection handbooks on 28th June <https://www.gov.uk/government/publications/school-inspection-handbook-eif/schools-inspection-handbook-for-september-2021> which set out its intended policy on the timing of school inspections from September 2021.

12. Impact

- 12.1 The instrument places requirements on both Ofsted and the governing bodies of voluntary-aided and foundation schools in England which have been designated as having a religious character. It does not place a direct duty or requirement on any business, charity or voluntary organisation, including faith groups.
- 12.2 The impact on the public sector is via maintained schools and academies and is also thought to be minimal. The instrument does not impose any new requirements on schools but facilitates the return of pre-pandemic school inspection activities that were in place prior to the suspension of school inspection in March 2020. Ofsted has been undertaking a phased return to inspections in a way that is fair and proportionate with a view to returning to a full programme of routine, graded inspections from September 2021. In support of this, Ofsted has published updated inspection handbooks which take account of the challenges raised by coronavirus (COVID-19). The short term extension of the prescribed period also takes into consideration the length of time that routine inspections were suspended.
- 12.3 Any indirect impact on businesses, charities or voluntary bodies is thought to be minimal and is mitigated by the instrument. It is recognised that, whilst the direct duties for the inspection of collective worship and denominational education in faith schools are placed on the governing bodies of voluntary-aided and foundation faith schools under section 48 of the Education Act 2005, some faith groups play a role in arranging and organising inspections of collective worship and denominational education in state-funded faith schools. The instrument does not impose new requirements but facilitates the resumption of the routine inspection activity that was in place prior to the suspension of inspections of collective worship and denominational education in faith schools in March 2020. Any indirect impact on these organisations is thought to be minimal and, following consultation with faith school representative groups, a short term extension of the prescribed interval for inspections of collective worship and denominational education of three years has been provided.
- 12.4 As these requirements relate to maintained schools and academies and there is no significant impact on business, charities, voluntary bodies or the public sector, a Regulatory Impact Assessment is not needed. The instrument does not impose new requirements but facilitates the resumption of the routine inspection activity that was in place prior to the suspension of school inspections in March 2020.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 The government will keep under review the operation of this legislation, including through regular engagement with Ofsted and faith school representatives.

15. Contact

- 15.1 Simon Hill (simon.hill@education.gov.uk) or Megan Tilby (megan.tilby@education.gov.uk) at the Department for Education can be contacted with any queries regarding the instrument.
- 15.2 Lesley Jones, Deputy Director for the Governance, Intervention, Faith and Accountability Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Rt Hon Nick Gibb MP, Minister of State for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.