

Regulatory Triage Assessment

Title of measure	Independent Schools Fees Regulations revision
Lead Department/Agency	DfE
Expected date of implementation	July 2019
Origin	Domestic
Date	October 2018 (revised March 2019)
Lead Departmental Contact	Stephen Bishop
Departmental Triage Assessment	Self-certification

Rationale for intervention and intended effects

At present, the rate of cost recovery for Ofsted inspections of independent schools is very low. This is despite HM Treasury policy that inspection activity should recover as close to full cost as possible. Since fees charged for such inspections are set in regulations, government intervention is needed to change this situation.

The policy objective is to move closer to full cost recovery whilst achieving a reasonable transition period for schools faced with higher fees, with increases that are affordable by the schools concerned. However, even at the proposed level of increase for 2019, fee income would still meet only 37% of Ofsted's costs.

Viable policy options (including alternatives to regulation)

The options which have been considered are:

1. leaving fee levels at those set in the current (2018) regulations;
2. raising fee levels as described below.

It is not considered that there is any practicable alternative to regulation. Ofsted has no power to charge fees for inspection of independent schools except under the relevant regulations and schools would not pay any increase unless obliged to do so.

Initial assessment of impact on business

This policy change will increase costs in three areas:

1. Standard inspections (these check compliance with all the prescribed standards, and are normally carried out every three years on a schedule set by Ofsted)
2. Progress monitoring inspections (these are to check whether standards previously found to be not met at an earlier inspection, are now met)
3. Pre-registration inspections (these are carried out to determine whether a proposed new school is likely to meet the standards once it is open)

The annual additional cost to schools for 2019-20 will be £455k. We believe there will no associated one-off cost to schools.

There will continue to be no cost to schools for emergency inspections (at present the cost of these is borne by Ofsted; under the proposals the cost is to be borne by DfE). There will also continue to be no cost to schools for material change inspections since there is no power in primary legislation to charge for these.

Results of consultation

A public consultation on the proposals was held from 22 November 2018 to 16 January 2019. Only 60 responses were received, mostly from independent schools. Comments made by respondents were mostly about the impact of higher fees on the operation of schools, especially small schools. The consultation document had acknowledged that higher fees added to schools' costs, and that the percentage increase in fees was greatest for smaller schools. It also noted however that the percentage of costs recovered would remain lower for small schools than for larger ones so they still benefitted from a higher rate of subsidy than larger schools for inspection costs.

Ministers have decided not to amend their proposals as a result of consultation in any way which affects costs.

Rationale for Triage rating

This measure qualifies for self-certification. The proposed changes are unlikely to place significant burdens on independent schools, with the estimated impact falling well below the +/- £5m threshold in the most expensive year.

Departmental signoff (SCS): Peter Swift

Date: 10 May 2019

Economist signoff (*senior analyst*): Andrew Mellon Date: 21 March 2019

Better Regulation Unit signoff: Viv Clowes

Date: 21 March 2019

Supporting evidence

1. The policy issue and rationale for Government intervention

At present HMT rules require that fees charged by government bodies for inspections should be sufficient to recover the full cost of those inspections. However, although the actual cost of independent school inspection by Ofsted is around £4.95m per annum (2017), only around £1.5m of this cost will be recovered from fee income when the 2018 increases have been in effect for a full year (data from unpublished Ofsted papers supplied to DfE). In 2018-19, because of a delay in implementing 2018 increases, DfE having to fund £313k of that £1.5m.

This gap between fees and costs is compounded by the fact the great majority of schools inspected by Ofsted are relatively small. The median size of the schools in scope is only 31 pupils (mean size 83) as at September 2018 and it is the smallest schools for which the gap between fee income and cost recovery is greatest.

The government's Spending Review 2015 settlement for Ofsted included making savings by moving towards full cost recovery, but moving too rapidly towards that would unduly increase the financial pressure on schools and make it less likely that they could successfully cope with the increases by – for example – passing them on to parents. This might result in more schools falling behind with fee payment instalments. At present only a small number of schools fall into that situation each year. A school that does not pay its inspection fees can be removed from the register of independent schools and if that happened, would have to close.

Following the increase in fees made in 2018, the level of fees charged to independent schools for inspections carried out by Ofsted is now set in The Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018¹. The fee levels can only be changed via secondary legislation. The fee charging power is section 111 of the Education and Skills Act 2008.

The driver for increasing the fees for standard inspections is the move towards full cost recovery, which is balanced against an understanding that schools will require time to absorb the increases. Given the disparity between full cost recovery and existing fees, the percentage increase for the smallest schools would be very high indeed if full cost recovery was to be the immediate aim.

However, the consequence of making only a gradual change towards full cost recovery with increased fees for standard inspections means that in order to meet the expectations underlying the settlement for Ofsted in Spending Review 2015, it is necessary to use other methods to achieve a higher overall recovery rate than the current one. This will be achieved by also increasing fees for progress monitoring inspections (which were not increased in the 2018 round), and for pre-registration inspections, a charge for which was introduced for the first time in 2018. These categories of inspection arise only because of actions taken by the proprietor of the

¹ <http://www.legislation.gov.uk/uksi/2018/205/contents/made>

school, so are seen as justified on that account. Charges to schools are not being introduced for emergency inspections, because the Department for Education decides whether they are needed. Under the proposals, the Department for Education would meet the cost of the fee, rather than Ofsted.

2. Policy objectives and intended effects

The policy objective is to move closer to full cost recovery within a reasonable transition period, so that the public purse is not subsidising the maintenance of standards in the independent schools sector - through not charging full cost inspection fees- any more than is necessary for the continued viability of the sector. The transitional time will enable schools to budget appropriately. Many schools are small businesses and might not be able to absorb larger increases immediately. Schools may decide whether to absorb the inspection fee increases themselves; pass them on to parents through charging higher fees; or by increasing the fees charged to the local authorities for pupils placed with the schools by them. Increases are proposed to commence in 2019-20.

The intended effect is to achieve a higher overall recovery rate to meet the expectations underlying the settlement for Ofsted in Spending Review 2015, which envisaged that in 2019-20 fee income would rise from £1.5m to £1.83m. Reaching that income figure will require DfE to pay the fee for emergency inspections.

The higher level of fees to be charged would change the proportion of costs recovered from schools from 30% to 37%. This is relatively modest progress but the department believes it represents an appropriate balance between the overall aim of full-cost recovery and the financial circumstances of the schools concerned, given their small size. One of the major aims of the consultation on the proposed fee levels was to gather evidence as to whether that assessment of the appropriate balance was correct. The department has noted that there were only 60 responses to the consultation, out of over 1,000 affected schools. Although many of the 60 respondents were not in favour of the additional costs that would arise, especially for smaller schools, the department believes that this relatively low-level response from schools demonstrates that the sector as a whole recognises that the intended level of cost-recovery is still highly favourable for schools – and the level of cost recovery is much lower for small schools than larger ones, placing them in a more favourable position.

3. Policy options considered, including alternatives to regulation

The first option is to leave the current level of fees unchanged. This would not allow Ofsted to recover a greater proportion of the cost of inspections and meet the expectations in the settlement for the 2015 Spending Review.

The second option would be to implement fee increases. This would result in an increase in the costs recovered by Ofsted, without an excessive burden on Independent schools.

No change in the proposals affecting costs is being made after the conclusion of public consultation

4. Expected level of business impact for the second option

Standard inspections

These take place every three years but are paid for in annual instalments, which are charged for in bands according to school size. The current and proposed fee levels are as follows:

Fee bands, current and proposed

NOR of Schools	Current annual fees		Proposed annual fees	
	Fixed Charge element of Fee paid per year	Variable Fee Charged per Pupil per year	Fixed Charge element of Fee paid per year	Variable Fee Charged per Pupil per year
1 to 99	£300	£12	£400	£16
100 to 150 (to 149 proposed)	£1,475	£12(a)	£2,200	£10(a)
151 to 399 (from 150 proposed)	£1,999		£2,500	
400 plus	£2,232		£2,750	

(a) Only charged for pupils on roll above 120 in number.

These represent increases of 33%, 46%, 25% and 23% in the ascending bands. The increases are smaller for the larger schools (of which there are very few) because they are already close to, or at, full cost recovery.

Ofsted's estimate of the full-year additional fee income from these increases based on NOR data for the schools it inspects is £340k, on top of the current income from standard inspection fees of £1m.

Progress Monitoring inspections (PMIs)

These are held after a school has been found to have not met some of the independent school standards and was required to produce an action plan. At present the fees for these are at two levels. A **first PMI** costs the school a single fee as follows:

NOR of Schools	Fixed Charge element of Fee paid per event	Variable Fee Charged per Pupil per event
1 to 150	£133	£6
150 +	£1,100	

Under the proposals, these would change to:

NOR of Schools	Fixed Charge element of Fee paid per event	Variable Fee Charged per Pupil per event
1 to 150	£300	£9
150 +	£2,000	

This would represent an average increase of 76% for those schools with 1 to 150 pupils and 82% for those with more than pupils (Ofsted data)

Second and subsequent PMIs are less frequent, but already carry a higher charge as follows:

NOR of schools	Fixed Charge element of Fee paid per event	Variable Fee Charged per Pupil per event
1 to 150	£300	£13.50
150+	£2,499	-

Under the proposals this would change to:

NOR of schools	Fixed Charge element of Fee paid per event	Variable Fee Charged per Pupil per event
1 to 150	£400	£15
150+	£3,000	-

However, this would represent a much smaller increase, of 18% and 20% respectively.

Ofsted's estimate for the additional fee income in a full year from this increase, based on current inspection volumes for PMIs and NOR data for recent PMIs (which would not be expected to change significantly), is £45k – the current full year income from PMIs is £85k

Pre-registration inspections

The charge for these would be increased from £1,792 to £2,500, payable in a single fee. Ofsted's estimate for the increased income from this in a full financial year is £70k, based on an expected 100 inspections per annum (a figure which matches DfE's data for the number of pre-registration inspections per annum). This compares with current full-year income of £175k.

Emergency inspections

There will be no cost to schools.

One-off familiarisation costs

We do not believe that these will arise to any measurable extent. Although fee levels are increasing, the fee-charging structure will be unchanged from 2018, as will the

categories of inspection for which fees are chargeable. Ofsted will continue to invoice schools in the same way, and before the revised regulations come into force DfE would write to each independent school setting out in summary form what the new fee levels are to be. Schools will have had prior notice of the intended changes in the consultation exercise which will be held before regulations are laid.

Overall additional costs

The total of the full year additional costs is therefore:

Standard inspections: £340k

This figure was supplied by Ofsted and is based on the current number of schools inspected each year, and the size profile for those schools.

PMIs: £45k

This figure was supplied by Ofsted and is based on the current number of schools inspected each year, and the size profile for those schools.

Pre-registration inspections: £70k

This figure was supplied by Ofsted and is derived from an expected volume of 100 inspections per annum and an increase in cost of £708 compared with the present level

Total: £455k

Compared with a total current full year income from fees of £1,260k.

Although there is a degree of uncertainty around the numbers of schools opening and closing at any one time, and the proportion of schools being inspected each year over the period of our appraisal, we are confident that the additional costs will fall well below £5m. Ofsted currently inspects a total of 1,076 schools out of a total of 2,323 (October 2018). For the EANDCB for this policy to reach £5m in the most expensive year, it would require a very large number of additional new schools to be registered and inspected - even if a further 1,000 schools were registered the additional costs per annum from standard inspection fee increases at a median size of 31 pupils would be only £224,000 per annum. Given that the total number of independent schools has remained fairly constant at between 2,300 and 2,400 during the current decade this is very unlikely to happen. Consequently, we are highly confident that the costs of this initiative fall below the *de minimis* threshold.

Nothing in responses made to the public consultation has led to any change in this view. The calculations behind the business impact calculation was contained within the consultation RTA. DfE believe that the EANDCB will not have changed much and is well below threshold so it is disproportionate to re-estimate the RTA at final stage.