

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INVESTIGATION OF PARENTS' COMPLAINTS)
REGULATIONS 2007

2007 No. 1089

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 The Regulations describe the areas of complaint which Ofsted may investigate using new discretionary powers provided for the Chief Inspector in section 160 of the Education and Inspections Act 2006. Section 160 is concerned with complaints by parents about their child's school and the areas prescribed in regulation 3 of the Regulations are in line with Ofsted's school inspection remit.
 - 2.2 The Regulations also describe exceptions to a complaint being one suitable for investigation. In particular, a complaint does not qualify for investigation where there is a specific alternative statutory route through which the complaint can be considered.
 - 2.3 In addition the Regulations prescribe a condition which complainants must meet before their complaint qualifies for investigation. Specifically, the complainant must first have exhausted the school's complaints procedure. The Regulations give the Chief Inspector discretion to waive this condition.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**

The Regulations are the first use of the powers under section 160 of the Act.
5. **Extent**

This instrument applies to England.
6. **European Convention on Human Rights**

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

7. Policy background

- 7.1** The White Paper ‘Higher Standards, Better Schools for All’, published in October 2005 proposed a new statutory power for Ofsted to investigate complaints from parents about schools, alongside a range of other measures designed to enable parents to be more engaged with the school system. Subsequently, the proposal was developed in close co-operation with Ofsted and taken forward in the Education and Inspections Bill 2006. It is now covered in section 160 of the Education and Inspections Act 2006.
- 7.2** Despite the previous lack of a statutory reference, parents have always been able to complain to Ofsted about provision in their child’s school. However, Ofsted’s ability to investigate and respond to complaints has previously been limited since its powers, for example in relation to access to information, have been confined to an inspection event. Section 160 addresses this. At its heart lie new discretionary powers to enable Ofsted to investigate complaints from parents about their child’s school in a way in which it could not previously. For example, the section provides Ofsted with the right to obtain information from schools and local authorities, and the right to call a meeting between inspectors and parents outside of an inspection event. These new powers facilitate the investigation, enabling a more proportionate and helpful response to complaints.
- 7.3** The new powers are intended to deal with complaints about general matters relating to Ofsted’s school inspection remit rather than specific matters relating to an individual child. This is bolstered by the prescription in regulation 3 as to the areas in which a complaint can be made. Further, section 160 provides for investigations by Ofsted for the purpose of deciding whether to inspect a school rather than to resolve a complaint itself. Inspection enables the matter complained about to be investigated and judgements made about the school’s effectiveness. However, neither section 160 nor the Regulations prevent a complaint about provision for an individual child from qualifying for investigation. This is because it is envisaged that many parents are likely to describe their initial concerns primarily in relation to their own child’s experiences.
- 7.4** Regulation 4 prevents complaints falling within the remit of other statutory complaints mechanisms from qualifying for investigation, to avoid duplication. Examples of such mechanisms include those concerning the admission or exclusion of individual pupils. However, Ofsted would, for example, have powers to consider a school’s exclusion policy and its implementation in general terms. Regulation 4 does allow for the consideration of complaints that have already been considered in a procedure implemented under section 29(1)(a) of the Education Act 2002 which is the requirement for the governing body of a maintained school to set up a complaints procedure for all complaints relating to the school where there is no other statutory procedure.

- 7.5** Regulation 5 requires that parents seek to resolve their concerns locally i.e. through the school and, in some cases, the local authority, before approaching Ofsted, thus encouraging early resolution and avoiding unnecessary approaches by Ofsted to schools. However, Regulation 6 gives the Chief Inspector discretion to waive this requirement. The purpose here is to avoid restrictions on Ofsted's ability to act swiftly where this is appropriate e.g. where Ofsted considers that a complaint raises serious concerns about children's safety or well-being.
- 7.6** In February and March 2006 the Department undertook a qualitative consultation which included coverage of the proposed policy on parental complaints (including the matters covered by the Regulations). An initial event was held in Westminster and there were additional events held in Lewisham, Hereford and Manchester. In total, 145 parents were involved. Some of the participating parents had 'dual stakes' in the consultation as they were, for example, also teachers or governors or representatives of parenting groups. Participants were generally supportive of the proposals. There was particular support for the notion of the parents' meeting with inspectors, and there was general acknowledgement that it would not be appropriate or practical for Ofsted to investigate complaints related to individual cases. A strong message from participants was that early and where possible, informal, resolution of concerns was preferable. This view is consistent with Regulation 5 which sets the general rule that complaints cannot be considered by Ofsted until local procedures have been exhausted.
- 7.7** Draft Regulations were submitted to the Delegated Powers and Regulatory Reform Committee during the passage of the Education and Inspections Bill. In addition, copies were sent to opposition spokespersons and members of the House of Commons Committee, and placed in both Libraries of the House at that time. No concerns about the content of the draft Regulations were raised at that time.
- 7.8** Between January and March 2007, the Department and /or Ofsted have discussed the policy on parental complaints to Ofsted with Teaching Unions (including representatives of the National Association of Headteachers, the Association of School and College Leaders, the National Association of Schoolmasters and Union of Women Teachers, the National Union of Teachers and the Association of Teachers and Lecturers) and other stakeholders including the National Parent Partnership, National Confederation of Parent Teacher Associations, the Advisory Centre for Education (the independent advice centre for parents and carers), the National Governors Association and the Local Government Association.
- 7.9** The meeting with the teacher unions resulted in a request to include an informal discussion between Ofsted and schools prior to a formal request for information using Ofsted's new powers. Ofsted has taken this on board. Meetings with parents groups provided feedback on Ofsted's draft guidance and advice about how Ofsted might provide a good service. A number of these groups agreed to provide advice and advocacy for complaints that Ofsted

was not in a position to investigate.

- 7.10** Ofsted recently carried out a web based consultation about its plans for handling parental complaints. The consultation received approximately 1000 responses, of which around half were from head teachers, with other respondents consisting mainly of parents or teachers. The response to the consultation was largely positive. However, concerns were expressed, particularly by headteachers, that Ofsted should encourage complainants to exhaust local channels. This is addressed in Regulation 5.
- 7.11** Ofsted also intends to carry out an ongoing evaluation of the service, which will incorporate further consultation with key stakeholders, to help refine and improve its processes.

8. Impact

A Regulatory Impact Assessment was prepared to support the Education and Inspections Bill. An extract from the RIA is attached at annex A.

9. Contact

John Malynn at the Department for Education and Skills Tel: 020 7925 6572 or e-mail: john.malynn@dfes.gsi.gov.uk can answer any queries regarding the instrument.

Annex A

Extract from Regulatory Impact Assessment – parental complaints to Ofsted:

Objective

21. To establish Ofsted as a clear and accessible route for parents to register complaints where they have exhausted local complaints procedures, i.e. they have followed the procedure set out in the school's complaints policy and where appropriate have taken the complaint to the local authority. The complaints that Ofsted will consider should relate to the work of the school as a whole. Whilst such complaints might stem from a parental concern in relation to their child, Ofsted's role will be to consider the implications for the quality and standards of education and well-being of all pupils at the school and decide whether to take any further action. In doing so, they may well resolve the issues raised by individual parents.

21.1. However, their remit is not to resolve individual grievances or adjudicate on the school's investigation of, and response to, a complaint. The action Ofsted takes will be dependent on the circumstances. It may involve seeking additional information about the issue raised, e.g. through a meeting with parents at the school; passing on intelligence to inform the next scheduled routine inspection of the school; bringing forward an inspection if it is considered that the issue represent an increased risk; if Ofsted has major concerns, an immediate inspection may be conducted. Individual issues may be addressed as a result of recommendations made by Ofsted on any school wide issues, e.g. in an inspection report.

21.2. To enable Ofsted to handle complaints more effectively, it is intended that the Chief Inspector of Schools will be given a new power to gather additional information as part of following up a complaint. This could involve consulting the school, or the local authority if appropriate, as well as consulting other parents at the school. Ofsted, through the Chief Inspector, will be given a new power to call a meeting of parents at a school, where it is considered necessary to seek views from parents generally about the issue that has been raised.

Background

21.3. At present, Ofsted has no formal and recognised role in investigating complaints from parents. A small number of parents (between 100 and 200) do complain to Ofsted each year on matters relating to their children's schools. However, Ofsted has no power, other than its power to inspect a school, to intervene. Causing the inspection of a school is not appropriate or proportionate as a response for many of these complaints. As a result parents can be left frustrated when they attempt to raise issues with a school or local authority and fail to resolve the issue through those routes.

21.4. Although schools are now inspected on a three year cycle and parents views are routinely sought during inspections, there could be some issues that parents might have which are of sufficient concern to warrant being brought to Ofsted's attention before the next inspection is due.

21.5. The objective is to establish Ofsted as a clear and accessible route for parents to register complaints where they have exhausted local complaints procedures. The complaints that Ofsted will consider should relate to the work of the school as a whole. Whilst such complaints might stem from a parental concern in relation to their child, Ofsted's role will be to consider the implications for the quality and standards of education and well-being of all pupils at the school rather than to resolve individual grievances.

Rationale for government intervention

21.6. The majority of parents are not aware that they can complain to Ofsted, as this is not set out as a formal route for parental complaints. As a result, many parents with legitimate concerns may be missing this opportunity to raise concerns that they have not been able to resolve through other channels.

21.7. At present, Ofsted's powers are limited to inspecting a school. This means that it has to decide between taking no action, or calling an inspection. By formalising the role Ofsted has in handling complaints from parents, it is possible to give the inspectorate additional powers to enable it to act in a more proportionate manner in responding to complaints. For example, it is intended that Ofsted will be able to gather additional information or evidence by calling a meeting of parents at the school. It would then be in a better position to make an informed decision about whether the issue was sufficiently serious to warrant inspection of the school.

CONSULTATION

Within government

21.8. Proposals have been developed through close consultation with Ofsted.

Public Consultation

21.9. There has been no separate consultation yet on these proposals. They form part of the proposals that were published in the White Paper 'Higher Standards, Better Schools for All'. Ofsted has been fully involved in the development of the proposals. Families Division, which works closely with parents and parent groups, have been involved in the development of this and we know from what they tell us that these arrangements will be broadly welcomed. However, during February and March, as part of planned consultation with parents on all policies in the Bill that are of particular relevance to parents, there will be four parental group events. The proposals for Ofsted's role in complaints will be considered at each of these events.

OPTIONS

Do Nothing

21.10. If the Government does not give Ofsted new powers as proposed, there will continue to be a situation where a small number of parents who have the confidence and the initiative to go to Ofsted with their concerns continue to do so, but most will not be aware that Ofsted has some powers to follow up complaints. In addition, with

Ofsted only able to use its inspection powers, the probability is that most complaints will not result in any action. Ofsted would still incur the cost of fielding complaints from parents, but there would be minimal benefits in terms of outcomes from the parents perspective, as triggering an inspection on the basis of a parental complaint alone will not be proportionate to risk unless there is substantial evidence of a major cause for concern. This could undermine many other aspects of the White Paper proposals relating to the role of parents. An important theme of the White Paper is parental involvement in improving standards and a better complaints procedure is a fundamental part of that.

Proposal to give Ofsted new power

21.11. This would allow Ofsted to consider complaints, seek additional information, and respond in an appropriate and proportionate manner. There will be a new duty on the school and on the local authority who maintain the school to provide any information that they hold which is requested by the Chief Inspector. The school and in some cases the local authority will be represented at the meeting with parents. For Ofsted to be able to seek information there will also need to be a duty on the school to convene a parents' meeting where this is considered necessary. Whilst this will generate a minor additional burden for a small proportion of schools, it will enable Ofsted to assess more fully the circumstances behind the complaint. In some cases, this will avoid the need for an inspection. Where a decision is subsequently taken to inspect, this will be a considered decision based on risk.

COSTS AND BENEFITS

Sectors and groups affected

21.12. These proposals relate to parents and also affect schools and local authorities.

Benefits

21.13. The purpose of this measure is to give parents and carers the opportunity to influence the standard of education received by their children, by enabling them to raise concerns with Ofsted where they have exhausted the local complaints procedures. Parents and carers are the prime beneficiaries of the proposals.

Costs

21.14. Schools are the other main group affected by this measure. Schools are already required to have their own complaints procedures and initial complaints from parents are expected to be routed through the school. Parents will contact Ofsted through a dedicated Complaints Manager. Ofsted will consider the complaint and will decide whether there is sufficient information to follow up the complaint. In some cases, the parent may be referred back to the school or to other specific procedures where the complaint relates to specific areas which have separate complaints or appeals processes, e.g. on admissions.

21.15. Whilst schools are likely to consider the new Ofsted role a burden, in practice allowing Ofsted to follow up complaints in the way that is proposed could mean that

some schools benefit by avoiding what might otherwise have resulted in an unscheduled inspection.

21.16. By having a system whereby schools know that Ofsted has a role in following up complaints from parents, this may serve as a prompt to schools to seek to resolve the matter to avoid the possibility of escalation.

21.17. Where Ofsted decides that the issues raised justify an inspection, this decision will not be taken lightly. Capacity to inspect is limited and will only be used where the circumstances warrant this. In some cases, where the issues raised do not indicate serious concern, Ofsted may simply log the issue and note it for when the school is due a routine inspection.

21.18. The cost to a school of setting up a meeting for parents will be minimal. There will be the administrative cost of notifying parents of the time, date and venue for the meeting. The meeting will take place in the school so there may be some additional costs, particularly if the meeting takes place outside normal school opening times. Finally, there would be the opportunity cost in terms of staff time (the school and local authority may be represented at the meeting), but again this would be minimal; the meeting would probably last for around an hour. The formalising of Ofsted's role in complaints will inevitably result in an increase in the number of complaints. However, we would expect this to level out and possibly reduce over time. One possible impact of these proposals is that schools will improve the way that they engage with parents, including the effectiveness of handling complaints, i.e. better local resolution results from a school knowing that Ofsted could get involved.

ENFORCEMENT, SANCTIONS AND MONITORING

21.19. Ofsted will have overall responsibility for enforcement and monitoring. The Chief Inspector has a general duty to keep the Secretary of State informed about matters within his remit and will report on progress. Where a complaint leads directly to an inspection or where the issues are logged for the next scheduled inspection for a school, the enforcement of any required actions will be through the inspection and reporting process. Schools are under a duty to report to parents on how they are taking forwards recommendations from an inspection. Where the school is judged to be causing concern, it will either be re-inspected after a year or will be subject to termly monitoring visits.

IMPLEMENTATION AND DELIVERY PLAN

21.20. Implementation will be the responsibility of Ofsted. The timescale for implementation will be subject to Parliamentary approval of the proposals. Detailed delivery plans are being drawn up by Ofsted taking into consideration the communication of the new arrangements and the resourcing and operating requirements for handling complaints and any follow up action.

POST-IMPLEMENTATION REVIEW

21.21. The effectiveness and impact of the proposals will be considered as part of the overall assessment of the impact of Ofsted's work.

Evaluation will draw on performance information and feedback from both parents/carers and schools.