

2009 No. 1607

EDUCATION, ENGLAND

**The Education (Independent Educational Provision in England)
(Inspection Fees) Regulations 2009**

<i>Made</i>	- - - -	<i>1st July 2009</i>
<i>Laid before Parliament</i>		<i>3rd July 2009</i>
<i>Coming into force</i>	- -	<i>1st September 2009</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 162B(6) and 210(7) of the Education Act 2002(a) and sections 111, 140(2) and 166(6) of the Education and Skills Act 2008(b):

Citation, commencement, application and interpretation

1.—(1) These Regulations may be cited as the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 and come into force on 1st September 2009.

(2) These Regulations apply to independent educational institutions in England which are independent schools, and in these Regulations “school” means an independent school.

(3) In these Regulations—

“the 2002 Act” means the Education Act 2002;

“the 2008 Act” means the Education and Skills Act 2008;

“large school” means a school which, in the calendar year in question, has more than 150 pupils who have attained the age of three;

“small school” means a school which, in the calendar year in question, has 150 or fewer pupils who have attained the age of three.

(4) In these Regulations a reference to an inspection—

(a) where it takes place before the date on which sections 108 and 109 of the 2008 Act come into force for all purposes in relation to independent schools, is to an inspection conducted under section 162A(1)(a) of the 2002 Act;

(b) where it takes place on or after that date, is to an inspection—

(i) under section 108 of the 2008 Act, in the case of an inspection to which regulation 2 applies, or

(a) 2002 c.32; see section 212(1) for the definitions of “prescribed” and “regulations”. Sections 162A and 162B were inserted by paragraph 2 of Schedule 8 to the Education Act 2005 (c.18) and were amended by paragraphs 73 and 74 of Schedule 14 to the Education and Inspections Act 2006 (c.40). The sections are repealed by paragraph 18 of Schedule 1 to the Education and Skills Act 2008.

(b) 2008 c.25; see section 168(1) for the definitions of “prescribed” and “regulations”. There are transitory provisions in respect of section 111 in the Education and Skills Act 2008 (Commencement No. 3) Order 2009, S.I. 2009/1513 (C. 78); amended by S.I. 2009/1606 (C. 84).

- (ii) under section 109 of the 2008 Act, in the case of an inspection to which regulation 6 applies.

(5) In these Regulations a reference to the number of pupils of a school who have attained the age of three in relation to a calendar year is a reference to the number of registered pupils at the school who—

- (a) attained that age during the period of 12 months ending with the 31st August immediately preceding the calendar year in question; and
- (b) are registered pupils at the school on the annual return date for the school for the calendar year in question.

(6) In paragraph (5)—

“annual return” means the annual return required by regulations under section 168 of the Education Act 2002(a);

“annual return date” means the date to which the annual return is to be made up.

Fees for inspections by the Chief Inspector and time at which fees must be paid

2.—(1) The proprietor of a school must pay three fees to the Chief Inspector in respect of an inspection to which this regulation applies.

(2) A fee payable under this regulation—

- (a) must be paid no later than 28 days after the Chief Inspector gives the proprietor a notification requesting payment of the fee, and
- (b) may be required to be paid before the inspection to which it relates takes place.

(3) Only one fee payable under this regulation is required to be paid in any calendar year.

(4) This regulation applies in respect of an inspection of a school which takes place on or after 1st September 2009 and which is not—

- (a) an initial inspection;
- (b) an inspection prompted by concerns arising from a complaint about that school; or
- (c) an inspection prompted by a request by the Tribunal in relation to an appeal to the Tribunal in relation to that school.

(5) An initial inspection is the first inspection of a school which takes place after the school is entered on the register.

(6) For the purposes of paragraph (5), the reference to a school being entered on the register—

- (a) where the school has been entered on the register of independent schools referred to in section 158(1)(a) of the 2002 Act, is to it being entered on that register; and
- (b) in any other case, is to it being entered on the register kept under section 95(1) of the 2008 Act.

Amount of fee in respect of an inspection to which regulation 2 applies

3.—(1) The amount of a fee to be paid by virtue of regulation 2(1) is determined in accordance with the following provisions of this regulation.

(2) A fee payable in respect of an inspection to which regulation 2 applies is determined in accordance with the following Table:

(a) At the time of making these Regulations the relevant regulations were the Education (Provision of Information by Independent Schools) (England) Regulations 2003, S.I. 2003/1934, amended by S.I. 2004/3373.

<i>Type of the school in the calendar year in which the fee is payable</i>	<i>Whether the reduced tariff applies</i>	<i>Fee payable</i>
Large school	No	£1,666
Large school	Yes	£1,333
Small school	No	£200 + £9 per pupil
Small school	Yes	£200 + £7.50 per pupil.

(3) The Secretary of State has discretion to determine that a reduced tariff applies in respect of an inspection of a school to which regulation 2 applies, provided the inspection has not taken place at the time the determination is made.

(4) In the Table in paragraph (2), the reference to whether or not the reduced tariff applies is a reference to whether or not the Secretary of State has determined under paragraph (3) that a reduced tariff applies in respect of an inspection of the school.

Fee not to be refunded where inspection does not take place

4.—(1) If an inspection in respect of which regulation 2 applies does not take place because the school is no longer registered, any fee paid in respect of that inspection in accordance with regulation 2(1) is not to be refunded.

(2) Where a notification under regulation 2(2) has been given in relation to a fee in respect of that inspection the requirement to pay that fee is not affected by the fact that the inspection does not take place.

(3) In paragraph (1), the reference to a school being registered—

- (a) where the inspection is conducted under section 162A(1)(a) of the 2002 Act, is to the school being entered on the register referred to in section 158(1)(a) of that Act; and
- (b) in any other case, is to the school being entered on the register kept under section 95(1) of the 2008 Act.

Waiver of fees in respect of an inspection to which regulation 2 applies

5.—(1) A fee payable in respect of an inspection to which regulation 2 applies (“the current inspection fee”), or any part of such a fee, may be waived in the circumstances described in paragraph (2).

(2) The circumstances referred to in paragraph (1) are that—

- (a) the proprietor of a school has paid—
 - (i) a fee in respect of an inspection under section 162A(1)(a) of the 2002 Act which took place on or after 1st April 2008 but before 1st September 2008 and which the proprietor was required to pay by regulation 5 of the Education (Independent School Inspection Fees and Publication) (England) Regulations 2003(a); or
 - (ii) an instalment of a fee in respect of an inspection under section 162A(1)(a) of the 2002 Act which took place on or after 1st September 2008 but before 1st September 2009 and which the proprietor was required to pay by regulation 4(1) or 5(1) of the Education (Independent School Inspection Fees and Publication) (England) Regulations 2008(b); and
- (b) by reason of a payment referred to in sub-paragraph (a) the Chief Inspector considers it unreasonable for the proprietor to be required to pay the whole or part of the current inspection fee.

(a) S.I. 2003/1926; revoked by S.I. 2008/1801 with savings.

(b) S.I. 2008/1801; see regulation 6 in relation to payment by instalments.

Fees for follow-up inspections and time at which they must be paid

6.—(1) The proprietor of a school which is the subject of an inspection to which paragraph (2) or (3) applies must pay a fee to the Chief Inspector in respect of that inspection.

(2) This paragraph applies to an inspection of a school by the Chief Inspector which takes place on or after 1st September 2009 which is prompted by evidence, from an inspection (other than one to which this paragraph applies), that one or more of the independent educational institution standards is or are not being met in relation to the school.

(3) This paragraph applies to any inspection of a school by the Chief Inspector which takes place on or after 1st September 2009 which is prompted by evidence, from an inspection to which paragraph (2) applies, that one or more of the independent educational institution standards is or are not being met in relation to the school.

(4) A fee in respect of an inspection to which paragraph (2) or (3) applies must be paid no later than 28 days after a notification is given by the Chief Inspector requesting payment of the fee.

(5) For the purposes of this regulation, a reference to the independent educational institution standards—

(a) in relation to any time before the date on which regulations under section 94 of the 2008 Act come into force in relation to independent schools, is to—

(i) the standards for the time being prescribed under section 157 of the 2002 Act, and

(ii) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see section 39 of the Childcare Act 2006^(a));

(b) in relation to any time on or after that date, is to—

(i) the standards for the time being prescribed in relation to independent schools under section 94 of the 2008 Act, and

(ii) in relation to early years provision for children who have attained the age of three, the Early Years Foundation Stage (see section 39 of the Childcare Act 2006).

Amount of fees in respect of inspection to which regulation 6 applies

7.—(1) The fee in respect of an inspection to which regulation 6 applies is determined in accordance with the Table in paragraph (2).

(2) The Table referred to in paragraph (1) is as follows:

<i>Type of the school in the calendar year in which the inspection takes place</i>	<i>Whether the reduced tariff applies</i>	<i>Fee payable in respect of an inspection to which regulation 6(2) applies</i>	<i>Fee payable in respect of an inspection to which regulation 6(3) applies</i>
Large school	No	£1,100	£2,499
Large school	Yes	£888	£1,999
Small school	No	£133 + £6 per pupil	£300 + £13.50 per pupil
Small school	Yes	£133 + £5 per pupil	£300 + £10.75 per pupil.

(3) In the Table in paragraph (2), the reference to whether or not the reduced tariff applies is a reference to whether or not the Secretary of State has determined under regulation 3(3) that the reduced tariff applies in respect of an inspection of a school.

(a) 2006 c.21.

Notifications

8.—(1) A notification under regulation 2(2) or 6(4) may be sent to the proprietor by post or transmitted electronically.

(2) If the notification is transmitted electronically it is to be treated as given only if—

- (a) the proprietor had indicated to the Chief Inspector willingness to receive notification by electronic means and provided an address suitable for that purpose, and
- (b) the notification was sent to that address.

The Education (Independent School Inspection Fees and Publication) (England) Regulations 2008: revocation and saving

9.—(1) Regulations 4 to 7 of the Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 (“the 2008 Regulations”) are revoked subject to the saving in paragraph (2).

(2) Where—

- (a) a school was inspected on or after 1st September 2008 but before 1st September 2009; and
- (b) the proprietor was required to pay a fee in relation to that inspection,

regulations 4 to 7 of the 2008 Regulations continue to have effect in relation to any liability to pay an instalment of a fee in relation to that inspection where the liability to pay the instalment accrued before 1st September 2009.

1st July 2009

Diana Johnson
Parliamentary Under Secretary of State
Department for Children, Schools and Families

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision about fees to be paid by independent educational institutions under Chapter 1 of Part 4 of the Education and Skills Act 2008 (“the Act”). The fees are for inspections by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”). These Regulations are concerned with independent educational institutions that are independent schools within the meaning in section 463 of the Education Act 1996 but are not Academies, city technology colleges or city colleges for the technology of the arts. Independent schools are registered by the Secretary of State.

Regulation 2 contains the duty on the proprietor of a school to pay a fee for an inspection by the Chief Inspector. In respect of any inspection other than those described in the next sentence the proprietor will be required to pay a fee in each of three calendar years. The exceptions relate to the first inspection of a school after it has become registered, an inspection in response to a complaint and an inspection resulting from a request from the First-tier Tribunal. The fees may be payable in advance of the inspection. In any year the fee becomes payable 28 days after the proprietor is notified by the Chief Inspector requesting the fee (see also regulation 8).

The amount of the fee to be paid is determined under regulation 3. The fee varies depending on two factors. First, whether or not the school is a large school (more than 150 pupils) and secondly, whether or not the Secretary of State has exercised the discretion for the fee to be on the reduced tariff. Small schools pay a fee which is dependent, in part, on the number of pupils in the school.

Regulation 4 provides that a fee is not refundable if it has been paid in advance and the inspection does not take place because the school closes. It also provides that where payment of a fee has

been requested in relation to that inspection the requirement to pay the fee is unaffected by the fact that the inspection does not take place.

Regulation 5 confers a power to waive a fee in whole or in part. The power will be exercised in the circumstances set out, namely that the proprietor has paid in advance under regulations under the Education Act 2002 (“the 2002 Act”). In effect the provision allows for the fees under these Regulations to be abated to take account of payment already made.

Regulation 6 is concerned with fees for “follow-up” inspections, where a further inspection is carried out following an inspection which has ascertained that the school is not complying fully with the standards prescribed under the 2002 Act. Regulation 7 explains how the amount of those fees is to be determined.

Regulation 8 makes provision about how notifications from the Chief Inspector under regulation 2 or 6 are to be sent to proprietors. Regulation 9 contains revocations and savings.

An impact assessment of the effect this instrument will have on the costs of business and the voluntary sector is available from Margaret Pattinson, Department for Children, Schools and Families, Mowden Hall, Staindrop Road, Darlington DL3 9BG and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website (www.opsi.gov.uk).

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STATUTORY INSTRUMENTS

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