

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND)
(INSPECTION FEES) (AMENDMENT) REGULATIONS 2010

2010 No. 1002

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of the instrument is to correct a defect in the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 (“the 2009 Regulations”).
3. **Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments**
 - 3.1 Yes. The Joint Committee on Statutory Instruments requested a memorandum from the Department about the 2009 Regulations. The Committee reported the Department for defective drafting (see the 24th report for the 2008-2009 session).
4. **Legislative Context**
 - 4.1 The level of fee paid by independent education institutions (“institutions”), which are independent schools in England, for an inspection by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“Ofsted”), depends (in part) on whether the institution is a “large school” or a “small school”. Those terms are defined in regulation 1(3) of the 2009 Regulations. These Regulations substitute those definitions so that (a) the number of pupils is determined by reference to the age of the pupils on the date in the year on which the institution makes its annual return to the Secretary of State, and (b) pupils who are within the description in regulation 1(5) (as substituted) on the date in question, or who are older than that, are included when determining whether an institution is “large” or “small”.
 - 4.2 Schools with fewer than 151 pupils aged three and over pay a flat rate of £200 per year plus £9 per pupil per year for a standard inspection (ie an inspection not on the reduced tariff). Schools with 151 pupils or more pay a capped fee per year of £1666. The effect of the defect in the 2009 Regulations is that the size of a school is determined with reference to the number of pupils who attained the age of three during the preceding academic year rather than the total number of pupils. As a result, a school with fewer than 151 such three year olds, but more than 150 pupils in total, would still be classed as a small school and pay the per capita fee. At 163 pupils the capped fee would be exceeded resulting in an overcharge for schools.
 - 4.3 The defect has not been applied by Ofsted so the vast majority of schools have not been overcharged. However, 5 schools with between 151 and 162 pupils have been charged the standard capped inspection fee of £1666 per year which is more than the per capita fee would be for these pupil numbers (the amount of the overcharge

ranges from £33 to £80). Whilst this is in line with the policy intent and schools expectations it is, in fact, an unlawful overcharge. Action has been taken to refund the relevant amount to these schools.

5. Territorial Extent and Application

5.1 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 See the policy background in paragraph 7 of the Explanatory Memorandum to the 2009 Regulations attached to this Memorandum.

8. Consultation outcome

8.1 There has been no consultation on this amending instrument because it achieves the policy upon which there was consultation (see paragraph 8 of the Explanatory Memorandum to the 2009 Regulations attached to this Memorandum).

9. Guidance

9.1 These regulations are being issued free of charge to all known recipients of the 2009 Regulations. Independent schools that are inspected by the Chief Inspector will receive a copy with a covering letter explaining the amendment.

10. Impact

10.1 See the impact assessment attached to the Explanatory Memorandum to the 2009 Regulations on the website of the Office for Public Sector Information.

11. Regulating small business

11.1 See paragraph 11 of the Explanatory Memorandum to the 2009 Regulations attached to this Memorandum

12. Monitoring & review

12.1 See paragraph 12 of the Explanatory Memorandum to the 2009 Regulations attached to this Memorandum

13. Contact

Margaret Pattinson at the Department for Children, Schools and Families (tel: 01325 392172 or e-mail: margaret.pattinson@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.

EXPLANATORY MEMORANDUM TO
THE EDUCATION (INDEPENDENT EDUCATIONAL PROVISION IN ENGLAND)
(INSPECTION FEES) REGULATIONS

2009 No. 1607

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to set out arrangements for the payment of inspection fees for independent educational institutions (“institutions”) in England that are inspected by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“Ofsted”). The instrument also introduces a fee for a first inspection for the purpose of following-up an inspection where an institution’s previous inspection reported regulatory failings and there is a need to check that failings have been addressed. The instrument revokes the Education (Independent School Inspection Fees and Publications) (England) Regulations 2008 so far as they deal with fees for inspections.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Inspection fees for institutions in England that are inspected by Ofsted were introduced for the first time in September 2003. The Education (Independent School Inspection Fees and Publication) (England) Regulations 2008 (“the 2008 Regulations”) replaced regulations of 2003 to increase fees for inspections in order to reduce the public subsidy of institutions by better reflecting the cost to Ofsted of carrying out inspections. The 2008 Regulations also introduced arrangements for a lower rate of fee for an inspection (a reduced tariff inspection) of a good school that has been meeting the regulatory standards in place for institutions. In addition, the 2008 regulations introduced payment of inspection fees by annual instalment in order to aid institutions to budget. This was because proposals to introduce an annual inspection fee had to be put on hold pending the introduction of primary legislation in the Education and Skills Act 2008 (“the Act”). These regulations now put this into effect on the commencement of section 111 of the Act.

4.2 These regulations also implement proposals to charge fees for first follow up inspections to bring them more into line with the cost to Ofsted and further reduce public subsidy of institutions inspected by Ofsted.

5. Territorial Extent and Application

5.1 This instrument applies 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 These regulations do not increase the rate of full inspection fees. They introduce an annual fee which will further improve budgeting for the institutions as the fee will be payable on a date that is not linked to the time of the inspection, ie institutions will pay an annual fee towards the cost of an inspection rather than having to pay following an inspection.

7.2 The amount charged for institutions with fewer than 150 pupils will be more equitable than previously as it will be linked to pupil numbers as stated on the annual return for that calendar year. These institutions will also continue to pay less than the full recovery costs as agreed in 2003 when inspection fees were first introduced.

7.3 The annual fee will be due no later than 28 days after the date on which payment is requested by the Chief Inspector. Ofsted expect to send out invoices in order to receive payment on 1 October each year or as soon as possible thereafter.

7.4 The regulations introduce a fee of 2/3 of the annual fee for a first follow up inspection, although the rate of 1.5 times the annual fee for subsequent follow up inspections is equivalent to the current rate of 25% of the 6 yearly fees. Currently, a large institution subject to a full inspection fee of £10,000 does not pay for a first follow up inspection to check that previously reported failings have been addressed. Subsequent follow up inspection fees for large institutions are charged at the rate of 25% (£2500.00) of the full inspection fee. Under the new regulations a large institution paying an annual fee of £1666 will be charged £110.00 (2/3rd of the annual fee) - for a first follow up inspection and £2499.00 (1.5 times the annual fee) for subsequent inspections. This will encourage poorly performing institutions to improve quickly and also allow Ofsted to go further toward meeting Government requirements, set out in 2006, that public sector inspectorates reduce expenditure by about a third over the medium term. Ofsted has confirmed that these charges do not exceed costs.

7.5 The current inspection cycle for institutions inspected by Ofsted commenced on 1 April 2008. Institutions that were inspected between 1 April 2008 and 31 August 2008 had to pay the entire fee within 13 months of the inspection. The regulations make provision to enable the annual fee in respect of these institutions to be waived by an equal amount, where Ofsted thinks it is unreasonable for the institution to be required to pay the annual fee. For example, a large institution that paid an inspection fee of £10,000 in June 2008, and would be due to pay an annual fee of £1666 in autumn 2009 in respect of its next inspection, will not start paying the annual fee until it needs to pay in respect of the inspection due in or around 2014.

7.6 Institutions that have paid an instalment since the introduction of the 2008 regulations in September 2008 will also receive a waiver equal to that amount. For example, a large institution that was inspected in October 2008 and paid an instalment

in November 2008 based on 1/6 of the full fee of £10,000 will not have to start paying the annual fee until 2010.

8. Consultation outcome

8.1 A public consultation was undertaken in 2007 on a range of proposals, including the payment of inspection fees, to revise the system for the registration and monitoring of independent schools. This consultation, which ran from 27 July 2007 to 19 October 2007, included these proposals. 329 responses were received from independent schools, independent school organisations, local authorities, individuals and other bodies e.g. teacher unions. Respondents were asked if they agreed with our proposals to raise the cost of inspection to better reflect their actual cost and for their views on introducing annual payments.

- 43 responses were received to the question of raising fees. 24 (56%) agreed, 11 (26%) disagreed and 8 (19%) were not sure.
- 39 responses were received to the question of the introduction of annual payments. 29 (74%) agreed, 4 (10%) disagreed and 6 (15%) were not sure.
- The summary of results to the consultation may be found at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&consultationId=1498&external=no&menu=3>

9. Guidance

9.1 All institutions inspected by Ofsted will be notified sent a copy of the regulations with a covering letter setting out the key changes.

10. Impact

10.1 The impact on business, charities or voluntary bodies which are also institutions is beneficial as the regulations enhance existing budgeting opportunities for smaller schools by linking the amount of the fee to pupil. It is expected that increased follow up fees will encourage poorly performing institutions to improve their performance.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses that are also institutions.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is that small institutions will continue to pay inspection fees that do not represent the full cost.

11.3 The basis for the final decision on what action to take to assist small businesses is that all institutions, including small institutions, were fully consulted in 2003 when inspection fees were first proposed and again in 2007 on these proposals. These institutions are more likely to be faith institutions and charge low fees. It was therefore agreed that full cost recovery would not apply to these institutions.

12. Monitoring & review

12.1 It is intended that full inspection costs will be recovered for large institutions over a 3 year period. The regulations will be reviewed in 2 years time and amended accordingly.

13. Contact

Margaret Pattinson at the Department for Children, Schools and Families (tel: 01325 392172 or e-mail: margaret.pattinson@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.