

EXPLANATORY MEMORANDUM TO

**THE FURTHER EDUCATION INSTITUTIONS (EXEMPTION FROM
INSPECTION) (ENGLAND) REGULATIONS 2012**

2012 No. 2576

1. This explanatory memorandum has been prepared by the Department for Business, Innovation and Skills and is laid before Parliament by command of her Majesty.

2. Purpose of the instrument

2.1 These Regulations prescribe the categories of further education institutions which are exempt from routine inspection by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") under chapter 3 of part 8 of Education and Inspection Act 2006 ("the EIA 2006") and the circumstances in which those further education institutions will be exempt.

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

3.1 None.

4. Legislative Context

4.1 Chapter 3 of part 8 of EIA 2006 sets out the duty of the Chief Inspector to inspect further education institutions. Section 124(2) provides that inspections are conducted at such intervals as may be specified by the Secretary of State.

4.2 Section 42 of the Education Act 2011 amends chapter 3 part 8 of EIA 2006. Section 125(1A) provides that the Chief Inspector's duty at section 125(1) of EIA 2006 to inspect all further education institutions need not apply to prescribed categories of institution in prescribed circumstances. The institutions to which section 125(1) of EIA 2006 Act does not apply by virtue of regulations under section 125(1A) are to be known as "exempt institutions" (under section 125(1B)).

4.3 Section 125(1A) was inserted into EIA 2006 Act with the intention that further education institutions that were judged outstanding in their most recent inspection under section 125(1) might be exempt from routine inspection. These are the first Regulations to be made under the new power at section 125.

4.4 Under section 126 of the EIA 2006 Act, the Chief Inspector may inspect a further education institution in circumstances where he is not required to do so under section 125. In practice, the Chief Inspector inspects under section 126 when looking to provide general advice on matters within his remit. Section 126(1A) provides that the Chief Inspector must inspect an exempt institution if required to do so by the Secretary of State. The Secretary of State may direct the Chief Inspector to inspect an exempt institution where concerns have been raised regarding its quality and

performance.

4.5 The categories of institution that are prescribed for the purposes of section 125(1A) of the 2006 Act are—

4.5.1 those falling within section 91(3) of the Further and Higher Education Act 1992; and

4.5.2 16 to 19 Academies.

5. Territorial Extent and Application

5.1 These Regulations apply in relation to England.

6. European Convention on Human Rights

6.1 As these Regulations are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Department wants to recognise and reward further education institutions that have demonstrated the strongest performance, and to concentrate inspection where it is most needed. The intention is to give the best further education institutions the power to manage their own performance and to be more accountable locally to their communities, rather than to central government.

7.2 The Chief Inspector will continue to inspect exempt further education institutions if requested to do so by the Secretary of State under section 126 of the EIA 2006.

7.3 Of the further education institutions judged outstanding and inspected more than once since 2005, over 90% have remained either outstanding or good at their latest inspection. The Chief Inspector will conduct annual risk assessment of all exempt further education institutions. He will consider the whole range of evidence in deciding whether the further education institution should be re-inspected and there will not be any tick box triggers.

7.4 During the passage of the Education Act 2011 through Parliament, there was concern that, since the categories of further education institutions to be exempt were not on the face of the Bill, and the regulations which would prescribe the exemptions were subject to negative procedure alone, the Secretary of State could choose to exempt, for example, other further education institutions without proper parliamentary scrutiny. As a result, a Government amendment was laid which set out that any subsequent changes to the first set of regulations made under the new power would require parliamentary approval through the draft affirmative procedure.

8. Consultation outcome

8.1 The Government set out its intention to introduce powers around freedoms and flexibilities in the consultation “Skills for Sustainable Growth” in 2010. Additionally, this issue was fully debated during the passage of the Education Act 2011 through Parliament and indicative regulations were issued to Parliament. Therefore we consider that this matter has received thorough scrutiny.

9. Guidance

9.1 We do not intend to issue guidance on this issue.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil. This will reduce inspection requirements for many of the best further education institutions.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument but one was prepared as part of the Education Act 2011 and the relevant page is attached at annex A.

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

We will review annually to see how many outstanding further education institutions are subject to routine inspection.

13. Contact

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