



Department
for Education

Independent school inspection fee regulations; and amendment of the independent school standards

Government consultation

Launch date 12 October 2017

Respond by 6 December 2017

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About this consultation

This consultation seeks the views of key stakeholders on proposed changes to the arrangements for the payment of fees for inspection of independent schools¹ including those that have applied to be entered on the register and changes in the level of fees payable as reflected in the draft Education (Independent Educational Provision in England) (Inspection Fees) (Miscellaneous Amendments) Regulations 2018 ('the draft regulations'), with a view to revised regulations coming into force in April 2018.

This document sets out a number of proposed changes to the fees charged to those independent schools inspected by the Office for Standards in Education, Children's Services and Skills (Ofsted).

This consultation seeks views on:

- An increase in the current fees levied by Ofsted for standard inspections after the first such inspection
- The introduction of a fee for:
 - pre-registration inspections that are required under s.99 of the Education and Skills Act 2008 ('the 2008 Act');
 - first standard inspections directed to be made under s.109 of the 2008 Act;
 - third and any subsequent progress monitoring inspections directed to be made under s.109 of the 2008 Act.
- The draft regulations include new provisions relating to standard inspections:
 - a. to include two-year-olds when determining the number of pupils for the purposes of the calculation of fees;
 - b. to remove the provision for a "reduced tariff" which is currently provided for by regulation 3(3) in the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 ("the 2009 Regulations"); and
 - c. to amend the provisions relating to the periods for which fees are charged and when they can be charged.

¹ The term "independent school" is defined in s.463 of the Education Act 1996. The proposals in relation to inspection fees do not apply to academies, city technology college or a city college for the technology of the arts

- d. to remove the provision allowing fees to be charged at the 'old' rate for the remainder of a the three year period in which a standard inspection is held (current regulation 5 of the 2009 Regulations)

It is currently intended that the proposed changes within this consultation will come in force from April 2018.

The consultation also covers proposals to amend references in the current independent school standards to the National Minimum Standards for Boarding. These proposals are also currently intended to come into force from April 2018, and are explained in a separate section of this document.

The consultation will run for eight weeks.

Who this is for

- Head teachers and proprietors of independent schools.
- Office for Standards in Education, Children's Services and Skills (Ofsted)
- Independent school associations.
- Parents and carers.

Issue date

The consultation was issued on 12 October 2017.

Enquiries

If your enquiry is related to the policy content of the consultation you can contact the team by email on:

InspectionFees.Consultation@education.gov.uk

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

Additional copies

Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

The response

The results of the consultation and the Department's response will be [published on GOV.UK](#) in spring 2018.

Respond online

To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

Other ways to respond

If, for exceptional reasons, you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

By email:

InspectionFees.Consultation@education.gov.uk

By post

Independent Education and Boarding Team
Department for Education
Bishopsgate House
Feethams
Darlington
DL1 5QE

Deadline

The consultation closes on 6 December 2017.

Introduction

All independent educational institutions including independent schools in England are inspected at the direction of the Department for Education (DfE) on behalf of the Secretary of State, who is the registration authority for such schools. All independent schools must meet all the independent school standards, which are set out in The Education (Independent School Standards) Regulations 2014².

Of the 2,332 independent schools in England (October 2017), around 1,100 are currently inspected by Ofsted. The remaining schools are normally inspected by two other independent inspectorates, the Independent Schools Inspectorate (ISI) and the School Inspection Service (SIS) - although in appropriate circumstances Ofsted can be commissioned by DfE to inspect those schools also. The proposed changes to the arrangements for fees in respect of inspections within this consultation only apply to those independent schools (excluding state-funded Academies and Free Schools) inspected by Ofsted; they do not affect fees levied by ISI or SIS.

In line with central government policy that fees charged by government bodies for inspections should so far as possible recover the full cost of those inspections, the Spending Review 2015³ settlement for Ofsted included assumed savings by moving towards full cost recovery. However, there is currently a significant disparity between full cost recovery and existing fees charged. Although the cost of independent school inspection by Ofsted is around £4.5m per annum, only around £0.8m of this cost is recovered. This is largely owing to the fact that the great majority of schools inspected by Ofsted are relatively small, with between 5 - 74 pupils, and fees charged for inspections are currently based on a sliding scale according to the number of pupils on roll. At current fee levels, around 15% of costs are recovered for schools with 5 pupils, 37% for schools with 50 pupils and between 50 to 75% for schools with over 100 pupils (using 2016-17 costs).

The levels of fees currently charged to independent schools for inspections carried out by Ofsted are set in the Education (Independent Educational Provision in England) (Inspection Fees) Regulations 2009 and are made under s.111 of the Education and Skills Act 2008. These regulations came into force in September 2009 and subject to minor amendments in 2010, the level of fees or manner of arrangement of fees payable

² <http://www.legislation.gov.uk/ukxi/2014/3283/contents/made>

³ <https://www.gov.uk/government/publications/spending-review-and-autumn-statement-2015-documents>

have not been revised since 2009⁴, and consequently fee levels have remained unchanged since then.

We are proposing to increase fees for standard inspections, and introduce charges for other categories of inspection to enable Ofsted to move closer to full cost recovery and make the necessary savings set out in the 2015 Spending Review. It is likely that further increases will follow in order to move further towards full cost recovery; this will be a matter for review from 2018-2019 onwards.

The draft regulations are being published alongside this consultation document.

⁴ The current substantive regulations can be found at <http://www.legislation.gov.uk/uksi/2009/1607/contents/made>

A defect in them was corrected by the 2010 regulations, which can be found at <http://www.legislation.gov.uk/uksi/2010/1002/contents/made>

Standard Inspections

Standard inspections are carried out under the Ofsted Framework against the complete set of independent school standards. All non-association independent schools will have had a 'standard inspection' within the period of three academic years starting from September 2015.

The standard inspection lasts no more than three days during which time inspectors gather evidence, talk to pupils about their school work, observe teaching in lessons and scrutinise school records and documentation. This evidence is used to inform judgements and to check the school's compliance with the independent school standards.

The existing 2009 regulations are based on a three year interval; schools pay annual instalments of one third of the total inspection fee, to even out the cost impact on the school.

Proposed changes to standard inspections

There are a number of changes proposed which will affect the fees that are currently charged for standard inspections.

It is our intention to increase the overall level of fees charged by Ofsted. As the cost of standard inspections varies depending on the size of the school the new costs have been devised using data on independent schools, pupil numbers and age to arrive at a structure which is still proportionate to school size but is moving towards better cost

recovery - particularly for small schools. Table 1 below illustrates fees currently charged and the new proposed annual fees:

Table 1

*NOR of Schools	Current annual fees		Proposed annual fee instalment	
	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	£200	£9	£300	£12
100 to 150	£200	£9	£1,475	£12(a)
151 to 399	£1,666		£1,999	
400 plus	£1,666		£2,232	

*Number of pupils on roll

(a) Only charged for pupils on roll above 120 in number. Without this, schools at the highest end of this band would pay less than at present.

The effect of the proposed increase is that a school with 50 pupils would pay three instalments of £900 rather than £650, a school with 150 pupils would pay £1,835 rather than £1,550, and a school with 400 pupils £2,232 rather than £1,666. In comparing these levels, it should be noted that inspection costs do not rise in linear proportion to school size; under the new fee levels the smaller schools would continue to pay a smaller proportion of actual costs than the larger schools.

Question 4 (on on-line response form): Do you agree that the proposed increase in fees chargeable by Ofsted for standard inspections is reasonable, in the circumstances outlined in the consultation document?

Question 5: Do you have any comments on the proposed level of increase in fees for standard inspections?

Transitional arrangements

The current regulations contain a provision which means that when an inspection has already taken place, the fees payable for the remaining inspections in the three year period are charged at the 'old' rate. The new regulations contain no such provision and

the higher charge would be payable in respect of all invoiced inspections from the date the new regulations come into force.

Question 6: Should fees at the new level be chargeable in respect of all inspections that are invoiced after the regulations come into force, notwithstanding where in the 3 year inspection cycle period an inspection falls?

Other changes to fee calculation for standard inspections

In addition to an increase in fees, we are proposing to make certain other changes to the current arrangements to fees payable for standard inspections. These are:

- a) *to include two year olds pupils registered at a school in the determination of calculation of fees due in assessing school size.*

At present pupils aged two are not included in the determination of the number of pupils in respect of the calculation. This reflects the fact that provision available for two-year-olds was previously required to be registered separately with Ofsted. As this is no longer the case following the coming into force of provisions in the Schedule 2 to the Small Business, Enterprise and Employment Act 2015, it is now appropriate to include them when calculating inspection fees. Pupils aged under two would still be excluded from the determination of pupil numbers for the purposes of the calculation for the fee;

- b) *to remove provision for a 'reduced tariff'.*

This provision in the current 2009 Regulations applied to the 'light touch' inspections formerly carried out by Ofsted. There is currently a discretion to apply a reduced tariff in cases where an inspection has not taken place at the time when the determination of the amount of fee is made. As these types of inspection are no longer carried out because it is government policy that full inspections of independent schools should take place every three years, it is not proposed to carry over this provision in the draft regulations;

- c) *to amend the provision in the current regulations which limits Ofsted to one chargeable fee per calendar year so that instead only one standard inspection fee instalment can be charged invoiced in any twelve month period. Fees for other types of inspection (see below) might also be payable in such a period, however.*

Fees are currently charged on an annual cycle in calendar years. Occasionally a mis-match occurs between the inspection cycle and calendar year and Ofsted is

unable to recover the correct number of instalments. The draft regulations seek to clarify the position regarding the period for which fees are charged by referring to a relevant period of three years, which would start on the date on which the draft regulations come into force, and an annual fee instalment would be payable from the start of the relevant period.

Question 7: Do you agree with the inclusion of two-year-olds in the determination of the number of pupils for the purposes of calculation of inspection fees to be charged by Ofsted?

Question 8: Do you agree with the abolition of the 'reduced tariff'?

Question 9: Do you agree with proposed changes in the regulations designed to make clearer the times at which fees may be charged?

Question 10: Do you have any comments on the changes made in relation to time periods for fees?

Proposed introduction of new categories of fees

There are a number of inspections carried out under the current regulations for which no fees are currently charged. These are:

- Pre-registration inspections;
- First standard inspections;
- Third progress monitoring inspections;
- 'Material change' inspections and
- Emergency inspections.

To further support the full cost recovery policy we are intending to introduce charges for some further categories of inspection. For others, there will continue to be no charge.

Pre-registration inspections

Proprietors wishing to open a new independent school must apply to the DfE for registration of the school under s.98 of the 2008 Act. When the DfE has received a complete application from a proposed new school to enter on the register, Ofsted must conduct a pre-registration inspection of the proposed school in accordance with s.99 of the 2008 Act. The purpose of the inspection is for Ofsted to report to the DfE whether the school is likely to meet all of the independent school standards once it becomes a registered independent educational institution.

We are intending to introduce a fixed charge of £1,792 for each proposed new school (see draft regulation 5). These charges would apply to the pre-registration inspection of independent schools as well as those existing independent schools wishing to convert to free school status. This fee will cover approximately 65% of the actual cost. If a second pre-registration inspection is necessary for the same registration application then the fee would need to be paid again. Schools would have the option of withdrawing their application before the second inspection in such circumstances; but if the registration application was then re-submitted, there would need to be another pre-registration inspection in due course. This means that schools would need to ensure that they are ready for a pre-registration inspection soon after they make application for registration, to avoid multiple inspections.

Question 11: Do you agree with the introduction of a fee for pre-registration inspections?

First standard inspections

Within the first academic year after a new school is registered, a first standard inspection is normally required under s.109 of the 2008 Act to be conducted by Ofsted to report on performance against the independent school standards. This applies to all newly registered independent schools - even those which belong to an association and will go on to be inspected subsequently by ISI or SIS. Although this is a standard inspection carried out on the same basis as those carried out in later years, no charge is currently made. As part of the move towards full-cost recovery, we propose that this be changed so that there is a fee for the first standard inspection. Those establishing new independent schools will need to take account of this cost as part of their business model since inspection fees will be payable from the first year, in annual instalments.

We are proposing that this category of inspection would be charged at the same level as for other standard inspections as set out in Table 1 above.

Question 12: Do you agree with the introduction of a fee for first year standard inspections?

Third and subsequent progress monitoring inspections

If an inspection shows that there are unmet independent school standards, DfE will normally direct Ofsted to carry out a further inspection known as a progress monitoring inspection (PMI). The PMI is conducted by Ofsted to assess the progress a school has made towards meeting the standards. At present, only first and second PMIs which take place are chargeable, the second at a higher rate than the first.

It is our intention to introduce a fee for third and any subsequent PMIs, which will be chargeable at the rates noted below in Table 2. Very few of these take place each year.

Table 2

*Numbers on roll at school	Proposed Fee
Schools with 150 or fewer pupils	£300 plus £13.50 per pupil
Schools with 151 pupils or more	£2,499

*Number of pupils on roll aged 2 and upwards at date of inspection

These fees are the same as those currently chargeable for second PMIs. There will be no change to the existing level of fee for first or second progress monitoring inspections.

Question 13: Do you agree with the introduction of a fee for a third and any subsequent progress monitoring inspections?

Emergency inspections

Emergency inspections may be carried out by Ofsted when directed to do so by DfE under section 109 of the 2008 Act, usually as a result of a complaint or allegation received or such complaints or allegations are brought to the attention of DfE. No fee is currently charged for these, and that will continue to be the case under the proposed new regulations.

Question 14: Do you agree that there should continue to be no fee payable for emergency inspections?

Material change inspections

These inspections are used to assess whether a school is likely to continue to meet the independent school standards if it makes a proposed 'material change' such as an extended age range. These inspections are commissioned by DfE under the relevant provisions in the Education Act 2002 and there is no power to charge for such inspections. No changes are being made and such inspections will continue to be free of charge for the time being, even though the necessity for them normally arises from a school's own actions.

Question 15: Do you believe that a charge should be made for material change inspections if a legal power to do so were to be created?

Ofsted evaluation of schools' action plans

If a school fails to meet all the independent school standards, it is likely to be required to produce an action plan showing what steps it will take to meet them all as soon as possible. The action plan, prior to approval or rejection, is evaluated by the inspectorate which carried out the inspection which found unmet standards. Although not an 'inspection' in terms of s.109 of the 2008 Act these evaluations are regarded by Ofsted as an 'inspection event' as they must be scheduled, and they consume inspector time. However, there is currently no basis on which to charge for 'inspections' for the purposes of evaluating an action plan and therefore these will also continue to be free of charge for the time being.

Question 16: Do you believe that a charge should be made for evaluation of schools' action plans if a legal power to do so were to be created?

Other matters

Question 17: Do you believe that the proposals would have a particular impact on certain types of school, and do you wish to comment on that?

Question 18: Do you have any further comment on the proposed changes to fee levels or categories, particularly in relation to the likely financial impact on schools?

Regulatory clearance

Proposed changes to regulations are subject to clearance from the Regulatory Policy Committee (RPC), Home Affairs Committee (HA) and the Reducing Regulation Committee (RRC).

We are undertaking a Regulatory Impact Assessment (RIA) which summarises the rationale for Government intervention, the options considered and the expected costs and benefits. The result of the initial RIA was that the overall cost to schools meant that the measure qualified for low cost 'fast track' clearance. This is because proposed changes are unlikely to place significant burdens on independent schools, with the estimated impact falling below £1m in the most expensive year. As a result, clearance from the RPC is not required for this consultation. A validation impact assessment will be undertaken at the conclusion of the consultation exercise.

Consultation has been approved by the HA and RRC Cabinet committees.

An equality impact log is being published for these proposals as part of the consultation process.

Changes to the independent school standards regulations: National Minimum Standards for Boarding

At the same time as this consultation on revised regulations relating to Ofsted inspection fees, we are taking the opportunity to consult on a proposed change to the independent school standards, contained in the The Education (Independent School Standards) Regulations 2014⁵ ('the 2014 regulations'). Paragraph 8 of the Schedule to these regulations requires that proprietors ensure that arrangements for the safeguarding and welfare of boarding pupils have regard to the relevant National Minimum Standards for Boarding (NMS) made under the Children Act 1989. The NMS are defined in Regulation 2 as being the NMS for Boarding Schools and the NMS for Residential Special Schools published in 2012.

However, the current NMS for both categories are those revised and amended NMS published in 2015. To ensure that regulatory action based on the 2015 NMS can be properly taken, the 2014 regulations are being amended to refer to the 2015 NMS. At the same time, reference to the NMS for accommodation of students under eighteen is being removed from the 2014 regulations (regulation 2 and paragraph 8(b) of Part 3 of the Schedule). This is because the NMS Standards for Boarding now cover pupils aged up to 18 even if the school has no boarding pupils below 16. Previously, when an independent boarding school had boarding pupils aged only 16 and above, the applicable NMS were those for the accommodation of students under 18 (designed mainly for FE colleges) but this reference is now otiose.

Question 19: Do you agree that the proposed technical amendments to the independent school standards regulations relating to the various sets of National Minimum Standards should be made?

⁵ <http://www.legislation.gov.uk/uksi/2014/3283/contents/made>

Next steps

Following the consultation period, responses will be considered and a full government response will be published setting out final decisions on the new regulations for inspection fees, and the amended regulations containing the independent school standards, which will be laid before Parliament for approval.



Department
for Education

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