EXPLANATORY DOCUMENT

THE PUBLIC SERVICES REFORM (RECOVERY OF EXPENSES IN RESPECT OF INSPECTION OF INDEPENDENT FURTHER EDUCATION COLLEGES AND ENGLISH LANGUAGE SCHOOLS) (SCOTLAND) ORDER 2012

Introduction

1. This Explanatory Document has been prepared in respect of the draft Public Services Reform (Recovery of Expenses in respect of Inspection of Independent Further Education Colleges and English Language Schools) (Scotland) Order 2012 ("the draft Order"), which Scottish Ministers propose to make in exercise of powers conferred by section 17 of the Public Services Reform (Scotland) Act 2010 ("the 2010 Act") in accordance with section 26 (2) (a) (ii) of the 2010 Act.

2. This Explanatory Document is laid before the Scottish Parliament in accordance with section 25(2)(b) of the 2010 Act together with a copy of the draft Order. A consultation was carried out by Scottish Ministers in accordance with section 26(1) of the 2010 Act from 1 November 2011 to 16 January 2012 with a copy of the proposed draft Order and the proposed explanatory document laid before Parliament on 1 November 2011 in accordance with section 26(2)(a) of that Act. No representations were received by Scottish Ministers in response to the consultation; which Scottish Ministers interpreted as a consensus in favour of the proposed Order or at least no known objectors to it. Accordingly no change has been made to the draft Order.

3. The draft Order makes an amendment to section 72 of the Education (Scotland) Act 1980 ("the 1980 Act").

4. The amendment to section 72 of 1980 Act removes in respect of certain independent further education colleges and English language schools, the restriction in section 72 on Scottish Ministers being able to recover from these establishments the costs of carrying out inspections under section 66(1) of the 1980 Act of independent further education colleges and English language schools following a request from them.

5. Currently section 72 of the 1980 Act in effect precludes Scottish Ministers from charging for any inspections carried out under section 66(1) of the 1980 Act. In future, if the Order is approved, Scottish Ministers will be authorised to recover costs in respect of inspections under section 66(1) of the 1980 Act of certain independent further education colleges and English language schools, following a request from them.

6. Whether Education Scotland, an executive agency of the Scottish Government, (including the former Her Majesty's Inspectorate of Education) carry out the inspections of the relevant independent further education colleges and English language schools is wholly at the discretion of Scottish Ministers, with the independent further education colleges and English language schools having no entitlement to be inspected.

7. Although the relevant independent further education colleges and English language schools are willing to be inspected by Education Scotland for commercial

reasons and are prepared to pay for the costs of the service, the service is effectively not available to them because Education Scotland is not resourced to offer the service to them free of charge. This restriction on charging is an administrative inconvenience and an obstacle to efficiency, productivity and profitability for the purposes of section 17(2)(b) and (d) of the 2010 Act and hence a "burden" for the purposes of section 17 of that Act.

8. The removal of the burden will remove an administrative inconvenience and allow the economic activity of Education Scotland inspecting the independent further education colleges and English language schools to take place, which would not otherwise take place. For commercial reasons, Education Scotland is the provider of choice of the independent further education colleges and English language schools in respect of the inspection service and it is thought inspection by Education Scotland would generally be cheaper or better value than by any alternative provider.

9. Secondly, if Education Scotland were to carry out the service of inspections, the charges payable in respect of the inspections would be retained within the Scottish economy; which in the case of provision by an alternative non-Scottish provider would not be the case.

10. Thirdly, there is a real risk that if the independent further education colleges and English language schools were not be able to access their preferred route of inspection by Education Scotland, they could cut back on their business with resultant job losses for the specialist staff employed there, and a significant loss to the wider economy through removal of students' purchasing power. Alternatively they might cease operations in Scotland with the same results to the Scottish economy.

Background

11. Section 66(1) of the 1980 Act, as amended, gives Scottish Ministers the power to inspect schools and other educational establishments including independent further education colleges and English language schools. It reads:

> "(1) [The Scottish Ministers] shall have power to cause inspection to be made of every school at such intervals as appear to him to be appropriate, and to cause a special inspection of any school to be made whenever he considers such an inspection to be desirable, and he may from time to time cause inspection to be made of any other educational establishment (other than a designated institution within the meaning of Part II of the Further and Higher Education (Scotland) Act 1992), and such inspections shall be made by Her Majesty's Inspectors or any person appointed by the Scottish Ministers for the purposes of this section (or Her Majesty's Inspectors and any such person)."

12. Section 72(1) provides that the expenses incurred by Scottish Ministers in carrying out their functions under the 1980 Act must be met from public funds. It reads:

> "(1) expenses incurred by [the Scottish Ministers] in the exercise of [their] functions under this Act shall ….be defrayed out of money provided by Parliament."

Only Publicly Funded Colleges Inspected

13. Although section 66(1) of the 1980 Act gives Education Scotland a discretionary power to inspect educational establishments including further education colleges, it has

only ever inspected those further education colleges, which it is under a duty to fund in terms of section 4(1) of the Further and Higher Education(Scotland) Act 1985. That is those listed in Schedule 2 to the Further and Higher Education(Scotland) Act 1985 .

14. Education Scotland is funded by Scottish Funding Council (SFC) each year to the tune of £1.045m to support the external review only of Scotland's 41 publicly-funded further education colleges listed in Schedule 2 to the Further and Higher Education(Scotland) Act 1985 and carry out in respect of them other additional quality enhancement activities. As part of the £1.045m, Education Scotland also recruit, train and deploy Associate Assessors (AAs) in their various activities. AAs are high quality college practitioners who are trained up to take a role in review (inspection) teams and other enhancement activities in colleges, led by Education Scotland.

Independent Further Education Colleges and English language schools

15. There are over 20 non-funded independent further education colleges and English language schools operating in Scotland. The United Kingdom Border Agency ("UKBA"), an executive agency of the Home Office, is pressing these establishments to be inspected by Education Scotland in order to satisfy the UKBA requirements for educational oversight. A successful inspection by Education Scotland would be an important credential in their application to UKBA for "highly trusted status" which entitles them to sponsor and hence bring to Scotland to study non-EEA students who have been given Tier 4 status on the UKBA points based system for immigrants.

16. UKBA controls the number of licences allocated to any independent further education colleges and English language schools. The inspection report will only be one part of the requirements by UKBA. Whilst it may be difficult to say with confidence how many more non-EEA students could come to Scotland, it can be safely predicted that without inspections, and not being able to satisfy UKBA, organisations will not be able to sponsor students, and so there would be a fall in the number coming to Scotland.

17. Of these colleges and schools that are expected to apply to UKBA for highly trusted status, the biggest organisation sponsors approximately 700+ students, whilst others have relatively small numbers. Student fees on individual organisation websites vary but can be as high as £9,000 per year, similar to university fees.

18. It is open to other organisations not currently endeavouring to satisfy UKBA requirements to apply for educational oversight/inspection for other reasons.

Education Scotland Charging Regime if Order approved/Non-Profit Full Cost Recovery

19. If the Order is approved, the charging basis of Education Scotland would be non-profit full cost recovery.

20. Education Scotland plans to charge 1.2 days for the consideration of the application submissions that will be required from organisations i.e. £1,200. Currently Education Scotland are predicting that a typical inspection will be for 3 days, carried out by 2 Inspectors, this amounts to 6 inspector days, which will be charged at £1,000 per day. Not all applicants will progress to inspection. Some may not be sufficiently developed with their own internal quality arrangements and so even from a desk exercise

may have their application put on hold until certain things are put in place. Organisations will get 3 weeks' notice of the inspection. The report will be published on Education Scotland's website 6 weeks after the inspection.

21. Daily rate within Education Scotland to secure full-cost recovery has been set at £1,000 per day. This rate reflects recovery of both staff costs and overheads associated with the development of the methodology, training and subsequent operational programme. Further details are given in the Appendix. The proposed charging regime of Education Scotland means that charges are likely to be less than those made by comparable inspecting bodies in the UK.

Provision Against Charging in Section 72 of the Education (Scotland) Act 1980 - a Burden

22. The restriction in section 72 of the 1980 Act on charging is an administrative inconvenience and an obstacle to efficiency, productivity and profitability and hence a "burden" for the purposes of section 17(1) of the 2010 Act for the following reasons.

Private further education colleges and English language schools are beneficial to Scottish Economy/restriction on charging in section 72 of the 1980 Act jeopardises their success

23. The service that independent further education colleges and English language schools provide is valuable to the Scottish economy. It allows Scottish education to be promoted by the privately as well as the publicly-funded colleges to students from non-EEA countries, increasing the choice for them and also increasing the number of international learners who may be consumers in the economy at any point in time. Without educational oversight (inspection), however, international students do not have the requisite "kitemark" to refer to when considering the quality of the student experience in private colleges and guarantee that they are properly regulated; Publicly-funded colleges have the "kitemark" of an external review once every 4 years carried out by HM Inspectors within Education Scotland.

24. Unless the restriction on charging in section 72 is removed, Education Scotland will not be able to offer an inspection service to the independent further education colleges and English language schools. This is an administrative inconvenience. These organisations will not be able to satisfy, through their preferred route of inspection by Education Scotland, a key requirement from UKBA for gaining highly trusted status. The independent further education colleges and English language schools could go out of business with resultant job losses for the specialist staff employed there and loss to the wider economy through removal of students' purchasing power. Alternatively they might cease operations in Scotland with the same results to the Scottish economy.

Restriction in section 72 of the 1980 Act - an obstacle to efficiency at independent further education colleges and English language schools.

25. The restriction in section 72 of the 1980 Act is an obstacle to efficiency at independent further education colleges and English language schools. Generally, independent further education colleges and English language schools are willing to have the quality of the learning and teaching they provide recognised and are keen to satisfy

the requirements of UKBA through inspection by Education Scotland. Overall, this inspection programme will provide parity between independent further education colleges and English language schools and publicly-funded colleges. The independent further education colleges and English language schools concerned will be subject to the same measures of quality as publicly funded colleges for the first time and by their most appropriate inspectorate, namely Education Scotland.

26. The inspection process, the resultant published inspection report and any further support activity carried out by Education Scotland in terms of ongoing support and development, particularly in relation to self-evaluation, will drive up the quality of the learning and teaching within independent further education colleges and English language schools, and will assist those who are currently high quality providers to be fully recognised. Whilst the outcome of inspections will be required by UKBA to satisfy the requirement for educational oversight, the organisations involved may develop further benefits from the process through the marketing potential and PR of positive outcomes, and greater competitiveness. These benefits will not be delivered without the restriction in section 72 being removed.

Relevant Preconditions in section 18 of the 2010 Act

27. Scottish Ministers consider that the relevant conditions in section 18(2) of the Act 2010 are satisfied. The policy objective could not be achieved satisfactorily by non-legislative means. The only way this could be done would be by Education Scotland being funded to provide the inspection services free.

28. The removal of the restriction in section 72 is proportionate being narrowly targeted and meets the needs of those affected by any change.

29. No private interests are affected because whether to inspect independent further education colleges including English language schools was always at the discretion of Scottish Ministers and in practice was never done. Similarly no right is removed or affected and no protection is removed.
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Appendix

Proposed fees for educational oversight by Education Scotland

Fees for educational oversight by **Education Scotland** will be **non-refundable**.

Please note that this activity is exempt from VAT and therefore no VAT is chargeable.

Inspections will normally be for **three days** and will have a **minimum of two inspectors** visiting the college or school. The size of the team will be determined by the student numbers (headcount) enrolled at the private college or English language school and taking account of the complexity of the organisation.

Stage 1	Application fee – standard Non-refundable	£1,200	Payable on application by BACS or cheque
Stage 2	Inspection – 6 inspector days (minimum) Non-refundable	£6,000	Payable by BACS within 14 days of confirmation of acceptance and scheduling
	Inspection – 9 inspector days Non-refundable	£9,000	Payable by BACS within 14 days of confirmation of acceptance and scheduling
	Inspection – 12 inspector days Non-refundable	£12,000	Payable by BACS within 14 days of confirmation of acceptance and scheduling
Stage 3	Will vary according to the level of ongoing oversight		

Additional fees will be payable, and inspections may be cancelled, if an organisation is found to have provided inaccurate information on application.

Should a second visit or a re-inspection be required there will be an additional fee.