EXPLANATORY MEMORANDUM TO

THE EDUCATION (SCHOOL INSPECTION) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 908

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Minister McKinnell, Minister for School Standards at the Department of Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Lorna Howarth, Deputy Director for School Accountability, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Johanna Bevis (Johanna.Bevis@education.gov.uk) or Rachel Smith (Rachel.Smith@education.gov.uk) at the Department for Education can be contacted with any queries regarding this instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 On 2 September, the Secretary of State for Education announced that Ofsted[1] will no longer report a single headline grade (overall effectiveness judgement) following its 'section 5 graded inspections' of state-funded schools[2], with immediate effect.

4.2 The purpose of this instrument is to ensure that the intervals between Ofsted's school inspections are not detrimentally affected by the new inspection reporting arrangements. The provisions are necessary to allow 'section 8 ungraded inspections'[3], which some higher performing schools receive, to count as 'relevant' or 'initial'[4] inspections for the purpose of setting maximum inspection intervals, without reference to the single headline grade ('good or better'). In doing so the provisions avoid burdens on schools and on Ofsted that would arise through the need for additional, unnecessary section 5 inspections were the current regulations to remain in place.

Where does the legislation extend to, and apply?

4.3 The territorial extent of this instrument is England and Wales.

4.4 The territorial application of this instrument is England only.

[1] The Office for Standards in Education, Children's Services and Skills.
[2] Inspections carried out under section 5(1) of the Education Act 2005.
[3] A type of routine inspection carried out in some schools under section 8(2) of the Education Act 2005.
[4] 'Relevant' and 'initial' section 8 inspections are defined in regulation 3, 3A and 3B of S.I. 2005/2038.

5. Policy Context

What is being done and why? What was the previous policy, how is this different?

5.1 In its Manifesto 2024, the Labour Party committed to enhancing the inspection regime, including by replacing the single headline grade with a new report card system telling parents clearly how schools are performing.

5.2 The government is clear that accountability as vital, but also that it must be much more effective if it is to make a real contribution to breaking down barriers and helping to support improvement for the benefit of children, students and learners.

5.3 On 2 September 2024, the government took forward the first part of the manifesto commitment by announcing that single headline grades would no longer be used in inspections of state-funded schools with immediate effect. The government also announced that work would be undertaken to introduce a new reporting system, through a 'school report card' from September 2025.

5.4 The removal of the single headline grade from school inspections has been widely cited as a key area for urgent action. For example, the Education Select Committee, following its recent Inquiry Into Ofsted's Work with Schools[5], recommended that the Department and Ofsted should, as a priority, develop an alternative to the single-word judgements that better captures the complex nature of a school's performance.

5.5 The removal of the single headline grade also follows engagement with the sector and the family of headteacher Ruth Perry, after a coroner's inquest found the Ofsted inspection process had contributed to her death[6].

5.6 On 3 September, Ofsted published the outcome of its Big Listen consultation[7], the largest consultation in its history. Research commissioned by Ofsted reported that only 3 in 10 professionals (29%) and 4 in 10 parents (38%) support single-word judgements for a provider's overall effectiveness.

5.7 Ofsted's Big Listen response[8] commits the inspectorate to resetting its relationship with those it inspects and regulates, working collaboratively with them to put children and learners first; fostering a culture of integrity that always treats people with professionalism, courtesy, empathy and respect; and being a learning organisation that operates transparently, listens to challenge and takes action to change. Ofsted plans to consult later this academic year on revisions to its School Inspections Handbook and on changes to reporting with a view to new arrangements – a school report card - being in place from September 2025.

6. Legislative and Legal Context

How has the law changed?

6.1 The existing legal framework relating to inspections of the relevant schools is contained in the Education Act 2005 ('the Act') and the Education (School Inspection) (England) Regulations 2005 (No 2038) ('the 2005 Regulations') as

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[5] Ofsted's work with schools - Committees - UK Parliament – https://committees.parliament.uk/work/7761/ofsteds-work-with-schools/publications/

[6] 'Ruth Perry: Prevention of future deaths report', Courts and Tribunals Judiciary, December 2023 – https://www.judiciary.uk/prevention-of-future-death-reports/ruth-perry-prevention-of-future-deaths-report/

[7] Findings of Ofsted's Big Listen public consultation - GOV.UK (www.gov.uk) – https://www.gov.uk/government/publications/ofsted-big-listen-supporting-documents/findings-of-ofsteds-big-listen-public-consultation

amended by the Education (School Inspection) (England) (Amendment) Regulations 2015 (No 170), the Education (School Inspection) (England) (Amendment) (No. 2) Regulations 2015 (No 1639), the Education (Exemption from School and Further Education Institutions Inspections) (England) (Amendment) Regulations 2020 (No 1258) and the Education (School Inspection) (England) (Coronavirus) (Amendment) Regulations 2021 (No 845), among others that are not relevant. Key provisions are sections 5, 8 and 9 of the Act and regulations 3, 3Aand 3B of the 2005 Regulations.

6.2 On 2 September 2024, the Secretary of State announced that, with immediate effect, Ofsted's inspections of state-funded schools should no longer include a single headline grade; and that by September 2025 there should be a new approach to reporting through a 'school report card'[9].

6.3 Ofsted carries out two different types of routine inspections: section 5 inspections, referred to as 'graded' inspections and section 8 inspections, referred to as 'ungraded' inspections. A little over a half of all routine inspections are the latter.

6.4 Section 5(5), (5A) and (5B) of the Act specify areas that Ofsted must cover in section 5 inspections. Ofsted's published School Inspection Handbook[10] provides guidance about this, and other details of the inspection. There is no statutory requirement for a single headline grade.

6.5 In a section 5 inspection, inspectors have, under the most recent arrangements, reported a single headline grade[11] and four main graded sub-judgements and in certain cases provision outcomes[12], using a four-point scale[13]. These arrangements are a matter of policy rather than legislation. From September 2024, Ofsted will not report a single headline grade as part of its graded inspections but will continue to report graded sub-judgements. The requirement on Ofsted to report where it finds a school is 'causing concern'[14] remains in place.

6.6 Under section 8 of the Act, Ofsted has the power to carry out inspections other than those required by section 5. 'Ungraded inspections', carried out under section 8, have been designed to be light touch visits to schools, and have to date been carried out in schools reported to be 'good' or 'outstanding' in the most recent section 5 inspection. The purpose of these inspections has been to ascertain whether the school would remain 'good or better' in terms of the quality of education it provides[15] if a section 5 inspection were to take place. In practice this has meant that inspectors have assessed whether the school has maintained its performance, has deteriorated or has improved, compared to its latest section 5 inspection.

6.7 Under section 9 of the Act, a section 8 inspection may be deemed to be a section 5 inspection. This power is used where inspectors assess that performance has dropped so significantly that immediate action is needed.

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[9] Single headline Ofsted grades scrapped in landmark school reform - GOV.UK (www.gov.uk) – https://www.gov.uk/government/news/single-headline-ofsted-grades-scrapped-in-landmark-school-reform

[10] School Inspection Handbook (as updated on 5 April 2024) www.Ofsted.gov.uk

[11] Colloquially known as a 'single word judgement'.

[12] The sub-judgements are: quality of education; behaviour and attitudes; personal development; and leadership and management. Where relevant a school will also receive a sub-judgement on its early years provision and / or its sixth form provision.

[13] Outstanding; good; requires improvement; or inadequate.

[14] Section 13 of the Education Act 2005.

[15] References to the 'quality of education' in the regulations are references to the matters as a whole on which Ofsted is required to report on under section 5(5) of the Education Act 2005. This is distinct from the graded sub-judgement of the same name (which specifically focuses on a school's curriculum).

6.8 Section 5 of the Act requires Ofsted to inspect at such intervals as may be prescribed. The maximum intervals for inspection are specified in the 2005 Regulations. The interval where a school receives a section 5 inspection, and no relevant section 8 inspection is subsequently carried out, is within 5 years of the end of the school year in which the section 5 inspection was carried out.

6.9 The 2005 Regulations do not specify when within the statutory window a school should receive a section 5 graded inspection. This is a matter of policy, and expected intervals are set out in Ofsted's published School Inspection Handbook. For example, as a matter of policy, a school previously judged as 'requires improvement' is likely to have its next section 5 within the next two and half years.

6.10 The 2005 Regulations have to date allowed for a 'relevant' section 8 inspection of a 'good or better' school to re-set the statutory window for the school's next inspection (for a maximum period of 5 school years). This is where certain conditions are met. In particular, the section 8 inspection must be carried out within the period of five years beginning with the end of the school year in which the school previous section 5 or relevant section 8 inspection was carried out; it must be carried out to assess whether the school would be likely to achieve a 'good or better' rating if a section 5 inspection were carried out; and following the assessment, the inspector must be satisfied that the evidence does not suggest that it would not.

6.11 If inspectors are not so satisfied, the inspection is not counted as a relevant section 8; the statutory window is not re-set; and the school will require a section 5 inspection within five years of the section 5 rather than the section 8 inspection. For example, if a school previously judged 'good' has a section 8 after four years, and inspectors assess that the school may have deteriorated, then the inspection is not a relevant section 8 inspection and a section 5 inspection must, in line with the 2005 Regulations, take place within the next year or so.

6.12 If inspectors visit a school previously judged 'outstanding' and assess that the school has declined but may remain 'good', then the test for the inspection counting as a relevant section 8 inspection has been met and the school does not require an inspection for five years. However, as a matter of policy, Ofsted will revisit the school after a year or two to conduct a section 5 inspection.

6.13 The 2005 Regulations also allow for relevant section 8 inspections of certain schools with one or more predecessor schools. For example, it covers the situation where a local authority school converts to become an academy school.

6.14 Finally, the 2005 Regulations make provision for a set of outstanding schools that were previously exempt from routine inspection to have a section 5 or initial section 8 inspection following the lifting of the exemption.

Why was this approach taken to change the law?

6.15 With the concept of the single headline grade no longer being in place from September 2024, inspectors conducting a section 8, ungraded inspection, will no longer assess whether a school remains 'good or better' for the quality of education provided. Without amendment to the 2005 Regulations, no section 8 inspection would therefore count as a relevant or initial inspection for the purpose of the re-setting of the statutory window for the school's next inspection. This would place unacceptable burdens on both Ofsted and schools, as it would require additional and unnecessary section 5 inspections to take place for schools in a short period of time.

6.16 This instrument addresses this by amending the 2005 Regulations so that the inspection interval is no longer reliant on the single headline grade assessment. The instrument re-defines a relevant section 8 inspection as one carried out for the purpose of determining whether the school's performance is being maintained, is improving[16], or is deteriorating with reference to the school's last section 5 inspection.

6.17 In doing so, the instrument removes any condition attached to the outcome of the section 8 inspection. In line with the principle that already applies to section 5 inspections and that have to date applied where an outstanding school appears to have declined to good following a relevant section 8 inspection (see paragraph 6 .6 above), the timing and nature of the school's next inspection within the statutory window will be determined as a matter of policy.

6.18 Ofsted's School Inspection Handbook, which will underpin inspections from September 2024[17], will set out the response to the various inspection outcomes. In practice, this will maintain a similar approach to inspection intervals as applied under the previous arrangements. Following a section 8 inspection:

6.19 Where inspectors assess that the school has taken effective action to maintain the standards identified at the previous section 5 inspection, the school will normally have a further section 8 inspection around four years later.

6.20 Where the evidence suggests the school has significantly improved since its last section 5 inspection, the school will have a follow-up section 5 inspection within one to two years, to give the school time for the marked improvements to be consolidated, and then to recognise the improvement in a published section 5 report.

6.21 If evidence gathered suggests that aspects of the school's work may not be as strong as at the time of the previous section 5 inspection, the school will be informed about areas that need improvement, and a follow-up section 5 inspection is likely to take place in the next one to two years.

6.22 Finally, if inspectors assess that there has been a very significant deterioration, they may decide to convert the section 8 inspection to a section 5 inspection within a period of 48 hours.

6.23 For 2024/25, Ofsted is not intending to set out details of the timing of the school's next inspection following a section 5 graded inspection. This is because 2024/25 is effectively an interim year in which Ofsted will consult on new inspection and reporting arrangements. Ofsted intends to set out further details about the timing of subsequent section 5 graded inspections in due course.

7. Consultation

Summary of consultation outcome and methodology

7.1 The instrument makes urgent changes as a consequence of the announcement by the Secretary of State for Education, on 2 September 2024, of the removal of single headline grades from state-funded school inspections with immediate effect. In this context it has not been possible to consult on the specific measures contained in this instrument.

[16] Except in the case of former exempt outstanding schools.
[17] www.ofsted.gov.uk

8. Applicable Guidance

8.1 Ofsted policy for the inspection of schools is set out in its Schools Inspection Handbook. This, and any other relevant documents, will be updated as appropriate before the new arrangements are implemented[18].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because of the minimal impact the instrument will have on the public sector, businesses, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies.

9.3 There is no impact on small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The government will keep under review the operation of this legislation, including through regulation engagement with Ofsted and with relevant stakeholders.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).

[18] The updated School Inspection Handbook will be published on Ofsted’s website: www.ofsted.gov.uk