STATUTORY INSTRUMENTS

2019 No. 995

EDUCATION, ENGLAND

The Independent Educational Provision in England (Inspection Fees and Savings Provisions) Regulations 2019

Made - - - -	*5th June 2019*
Laid before Parliament	*7th June 2019*
Coming into force - -	*1st July 2019*

The Secretary of State, in exercise of the powers conferred by sections 111(1), (2), (3)(a) and (c) and (4)(b), and 166(6) of the Education and Skills Act 2008(**a**), makes the following Regulations.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Independent Educational Provision in England (Inspection Fees and Savings Provisions) Regulations 2019 and come into force on 1st July 2019.

(2) In these Regulations—

"the 2008 Act" means the Education and Skills Act 2008;

"the independent school standards" means—

(a) standards prescribed by the Education (Independent School Standards) Regulations 2014(**b**); or

(b) in relation to early years provision for children who have attained the age of two, the Early Years Foundation Stage within the meaning of section 39 of the Childcare Act 2006(**c**);

"progress monitoring inspection" means an inspection of a relevant institution by the Chief Inspector(**d**) which is prompted by evidence from an earlier inspection that one or more of the independent school standards is or are not being met in relation to that institution;

"pupil" has the meaning given in section 3 of the Education Act 1996 (definition of pupil etc.)(**e**);

"relevant date" means 1st July 2019;

(**a**) 2008 c. 25 ("the 2008 Act"); section 111 was amended by section 23 of the Children, Schools and Families Act 2010 (c. 26). See section 168(1) for the definition of "prescribed" and "regulations".
(**b**) S.I. 2014/3283; amended by S.I 2018/205 and 2018/901.
(**c**) 2006 c. 21. See section 138 of the 2008 Act for the definition of "early years provision". For the purposes of section 39 of the Childcare Act 2006 learning and development requirements are specified in S.I. 2007/1772 (which was amended by S.I 2012/937, 2014/913 and 2017/361); welfare requirements are specified in S.I. 2012/938 (which was amended by S.I. 2014/912, 2015/1562 and 2017/361).
(**d**) See section 138 of the 2008 Act for the definition of "Chief Inspector".
(**e**) 1996 c. 56; section 3 was amended by paragraph 9(2) of Schedule 7 to the Education Act 1997 (c. 44) and paragraph 34(2) and (3) of Schedule 21 to the Education Act 2002 (c. 32).

"relevant institution" means an institution to which section 111 of the 2008 Act (fees for inspections by the Chief Inspector under Chapter 1 of Part 4)(**a**) applies.

Fees for inspections by the Chief Inspector

2.—(1) The proprietor(**b**) of a relevant institution must pay to the Chief Inspector the overall inspection fee in respect of an inspection to which paragraph (2) applies.

(2) This paragraph applies in respect of an inspection of a relevant institution under section 109 of the 2008 Act (duty to inspect registered institution on direction of Secretary of State) which is to take place on or after the relevant date which is not—

(a) an inspection prompted by a complaint or allegation about that relevant institution;

(b) an inspection prompted by a request by the Tribunal(**c**) in relation to an appeal to the Tribunal in relation to that relevant institution; or

(c) a progress monitoring inspection.

Composition of the overall inspection fee and time for payment

3.—(1) The overall inspection fee in respect of an inspection to which regulation 2 applies comprises three individual fees and is to be paid, in accordance with this regulation, within the three-year period beginning with the day on which the inspection is completed.

(2) The amount of each individual fee is determined according to the entry in column 2 of Table 1 which corresponds to the number of pupils attending the relevant institution specified in column 1 of that table.

(3) An individual fee—

(a) must be paid by the proprietor no later than 28 days after the Chief Inspector gives the proprietor a notice requesting payment of that fee; and

(b) may be required to be paid before the inspection to which it relates takes place.

(4) When determining the number of pupils attending a relevant institution, all pupils who are aged two or over on the date of the notice referred to in paragraph (3)(a) are to be taken into account.

Table 1

Column 1 (Number of pupils attending the relevant institution)	*Column 2 (Individual fee)*
Fewer than 100	£400 plus an additional £16 per pupil
100 or more but no more than 120	£2,200
121 or more but no more than 149	£2,200 plus, in respect of the 121st pupil and every pupil up to and including the 149th, an additional £10 per pupil
150 or more but no more than 399	£2,500
400 or more	£2,750

Fee not to be refunded if inspection does not take place

4.—(1) If an inspection in respect of which regulation 2 applies does not take place because the relevant institution is no longer registered(**d**), any fee paid in respect of that inspection in accordance with regulation 3 is not to be refunded.

(**a**) See section 111(6) of the 2008 Act for the application of that section. See section 92 for the definition of "an independent educational institution".
(**b**) See section 138(1) of the 2008 Act for the definition of "proprietor".
(**c**) See section 124(5) of the 2008 Act for the definition of "the Tribunal".
(**d**) See section 138 of the 2008 Act for the definitions of "registered" and "the register".

(2) If a notice under regulation 3(3)(a) has been given, the fee must be paid, regardless of whether the inspection takes place.

Fee for a pre-registration inspection

5.—(1) The proprietor of a relevant institution who applies, under section 98(1) of the 2008 Act (applications for registration), to the Secretary of State for the institution to be entered on the register must pay to the Chief Inspector a fee of £2,500 for each inspection undertaken under section 99(1) of the 2008 Act (determination of applications for registration).

(2) A fee in respect of an inspection to which paragraph (1) applies must be paid no later than 28 days after the Chief Inspector gives the proprietor a notice requesting payment of the fee.

Fees for progress monitoring inspections and time at which they must be paid

6.—(1) The proprietor of a relevant institution must pay to the Chief Inspector a fee in respect of an inspection to which paragraph (2) or (3) applies.

(2) This paragraph applies to a progress monitoring inspection which takes place on or after the relevant date which is prompted by evidence from an inspection other than a previous progress monitoring inspection that one or more of the independent school standards is or are not being met in relation to that institution.

(3) This paragraph applies to any progress monitoring inspection which takes place after a progress monitoring inspection under paragraph (2).

(4) A fee in respect of an inspection to which paragraph (2) or (3) applies must be paid by the proprietor no later than 28 days after the Chief Inspector gives the proprietor a notice requesting payment of the fee.

Amount of fees in respect of an inspection under regulation 6

7.—(1) The fee payable in respect of an inspection under regulation 6 is determined in accordance with Table 2.

(2) When determining the number of pupils attending a relevant institution, all pupils who are aged two or over on the date of the notice referred to in regulation 6(4) are to be taken into account.

Table 2

Number of pupils attending the relevant institution	*Fee payable in respect of an inspection to which regulation 6(2) applies*	*Fee payable in respect of an inspection to which regulation 6(3) applies*
150 or fewer	£300 plus an additional £9 per pupil	£400 plus an additional £15 per pupil
151 or more	£2,000	£3,000

Notifications

8.—(1) A notice given under regulation 3(3)(a), regulation 5(2) or regulation 6(4) must be sent to the proprietor either—

(a) by post; or

(b) electronically.

(2) If the notification is sent to the proprietor electronically it is to be treated as given only if—

(a) the proprietor had indicated to the Chief Inspector willingness to receive notification by electronic means and provided an address suitable for that purpose; and

(b) the notification was sent to that address.

Revocation and savings

9.—(1) Subject to paragraphs (2) and (3), the Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018(**a**) ("the 2018 Regulations") are revoked, except for regulation 9 of those Regulations (amendment of the Education (Independent School Standards) Regulations 2014).

(2) The revocation made by paragraph (1) does not affect any saving in regulation 10(3) of the 2018 Regulations which is capable of having continuing effect.

(3) Where—

(a) a relevant institution was inspected on or after 1st April 2018 but before the relevant date; and

(b) the proprietor was required to pay a fee in relation to that inspection,

the 2018 Regulations continue to have effect in relation to the requirement to pay that fee.

Agnew
Parliamentary Under Secretary of State
Department for Education

5th June 2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under powers in the Education and Skills Act 2008. Their purpose is to revoke and replace the Independent Educational Provision in England (Inspection Fees) and Independent School Standards (Amendment) Regulations 2018 (S.I. 2018/205) ("the 2018 Regulations").

Regulation 2 makes provision for the requirement to pay fees to Her Majesty's Chief Inspector of Education, Children and Skills ("the Chief Inspector") in respect of standard Ofsted inspections under section 109 of the Education and Skills Act 2008. Fees are not required to be paid under regulation 2 for certain types of inspections.

Regulation 3 and Table 1 set out the way that the fees are determined. The fees for the inspections referred to in regulation 2 are being increased above the rate of inflation. The fee is payable in instalments known as individual fees, which are all to be paid no later than three years after the inspection to which they relate. The effect of the regulation is that payment may be due under these Regulations before an inspection has happened. Regulation 4 provides for certain circumstances in which a fee payable under regulation 3 will not be refunded, even if the inspection does not take place at all (for example, in circumstances where the fee has been paid, but the school ceases to be registered).

Regulation 5 requires a fee to be payable in respect of inspections of schools that have applied to the Secretary of State to be registered. This fee is being increased above the rate of inflation.

Regulation 6 requires fees to be payable in respect of inspections of schools which appear not to be meeting the required standards ("progress monitoring inspections"). These fees are being increased above the rate of inflation.

Regulation 9 makes revocation and saving provisions. Regulation 9(1) revokes the 2018 Regulations, with two exceptions. The first exception is in respect of regulation 9 of the 2018 Regulations, which amended the Education (Independent School Standards) Regulations 2014. The second exception is regulation 10(3) of the 2018 Regulations, which made saving provisions in respect of the Education (Independent Educational Provision in England) (Inspection Fees)

(**a**) S.I. 2018/205.

Regulations 2009 which are still needed. Savings are made in respect of an inspection which took place under the 2018 Regulations before these Regulations come into force. The effect of regulation 9(3) is to preserve the obligation to make the payment for that inspection under the 2018 Regulations, notwithstanding their revocation.

An impact assessment of the effect that this instrument will have on the costs of business and the public and voluntary sector is available from the Independent Education and Boarding Team, Department for Education, Bishopsgate House, Feethams, Darlington, DL1 5QE and accessible on the Department's internet website at http://www.education.gov.uk. Copies have also been placed in the Library of each House of Parliament.

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