EXPLANATORY MEMORANDUM TO

THE INDEPENDENT INSPECTORATES (EDUCATION AND BOARDING ACCOMMODATION) REGULATIONS 2014

2014 No. 2158

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

2. Purpose of the instrument

The instrument sets out the matters that must be taken into account by the Secretary of State in deciding whether to approve an independent body to carry out inspections of independent schools and/or their boarding accommodation, or whether to withdraw any approval previously given.

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

None

4. Legislative Context

4.1 Part 4 of the Education and Skills Act 2008 sets out a new framework for the regulation and inspection of independent schools in England. It replaces the existing framework provided for by the Education Act 2002. The Department for Education is implementing most of this new framework.

4.2 Section 106 of the Education and Skills Act 2008 (the 2008 Act) gives the Secretary of State the power to approve a body to carry out inspections of independent schools in England (or to withdraw such approvals). Section 87A of the Children Act 1989 enables the Secretary of State to appoint, or terminate the appointment of, a person (including a person approved under section 106 of the 2008 Act) to inspect whether the welfare of children provided with boarding accommodation by schools is adequately safeguarded and promoted.

4.3 Sections 106(4) of the 2008 Act and 87A(4A) of the Children Act 1989 give the Secretary of State power to specify in regulations the matters that must be taken into account in deciding to approve or withdraw approval from a body.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Lord Nash has made the following statement regarding Human Rights:

In my view the provisions of the Independent Inspectorates (Education and Boarding Accommodation) Regulations 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 There are three independent inspectorates of independent schools in England, currently approved under the Education Act 2002. These inspectorates inspect around half of the independent schools in England and their work is quality assured by Ofsted. We are commencing the 2008 Act powers and making these regulations to provide more transparency in the approval of independent inspectorates. This is part of a wider reform package designed to increase the robustness of inspection of independent schools in England. These wider reforms include putting the performance monitoring of the independent inspectorates by Ofsted on a statutory footing.

8. Consultation outcome

8.1 These provisions were subject to a seven-week consultation commencing on 28 March 2014. The consultation was available on the DfE and GOV.UK websites and attracted 22 responses, mostly from key organisations, including the independent inspectorates and school membership organisations. Respondents were broadly supportive of the proposals and agreed with most of the detail in departmental advice. However concerns were raised with some areas of the Department's advice document (see below), in particular in relation to the number and range of schools which an inspectorate inspects, specific qualification requirements for inspectors, reference to Ofsted's inspection framework and complaints procedure, and arrangements for Ofsted monitoring. Revised departmental advice and the results of the consultation have been published on www.gov.uk.

9. Guidance

9.1 Departmental advice on the approval of independent inspectorates is being published alongside these regulations. The advice sets out the Secretary of State's general policy and expectations in relation to each of the matters specified in the regulations. However, the Secretary of State will take into account all of the relevant facts and circumstances in assessing any particular body in deciding whether or not to approve or withdraw approval.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The advice will be reviewed by September 2015. The regulations will be reviewed as and when necessary taking into account the approved inspectorates and government policy.

13. Contact

Joanne Harker at the Department for Education Tel: 01325 735310 or email: joanne.harker@education.gsi.gov.uk can answer any queries regarding the instrument.