MEMORANDUM SUBMITTED BY DEPARTMENT FOR EDUCATION ON DRAFT REGULATIONS ON CLAUSE 39 (E 91)

Reference: EBCC/2011/Note 9

To aid the Committee’s consideration of the Education Bill, this note provides a draft of regulations intended to be made under the delegated power in clause 39.

STATUTORY INSTRUMENTS

[2011] No. [ ]

EDUCATION, ENGLAND

Education (Exemption from School Inspection) (England) Regulations [2011]

Made - - - - [ ] 2011
Laid before Parliament [ ] 2011
Coming into force - - [ ] 2011

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections [5(4A) and 120(1) and (2)(a)] of the Education Act 2005(a).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Education (Exemption from School Inspections) (England) Regulations and come into force on [ ] 2011.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the 2005 Act” means the Education Act 2005; and

“predecessor school” means a school that was converted into an Academy further to an Academy order made under section 4 of the Academies Act 2010(b).

Categories of school prescribed for the purposes of section 5(4A) of the 2005 Act

3.—(1) Subject to paragraph (2), the categories of school that are prescribed for the purposes of section 5(4A) of the 2005 Act(c) are those falling within subsections (a), (d), (e) and (f) of section 5(2) of the 2005 Act.

(a) c.18.
(b) c.32.
(c) Section 5(4A) was inserted into the 2005 Act by [section [ ]] of the Education Act [2011].
(2) A school falling within subsection (d) is not a prescribed category if its predecessor school was not a school falling within one of the other prescribed categories.

Circumstances prescribed for the purposes of section 5(4A) of the 2005 Act

4.—(1) The circumstances prescribed for the purposes of section 5(4A) of the 2005 Act are that—

(a) the school’s overall effectiveness was judged to be in the highest category in its most recent inspection under section 5 of the 2005 Act, or

(b) the school is an Academy that has never been inspected under section 5 of the 2005 Act and the effectiveness of its predecessor school was judged to be in the highest category in its last inspection under section 5.

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations are made under [section 5(4A)] of the Education Act 2005 (“the 2005 Act”) (inserted by section [39] of the Education Act 2011) which provides for the Chief Inspector’s duty under section 5 of the 2005 Act to inspect schools at certain intervals not to apply to certain categories of school in certain circumstances. Section 5(4B) of the 2005 Act provides that schools which are not subject to such routine inspection are known as “exempt schools”.

Regulation 3 provides that the categories of school that may be exempt from routine inspection are those falling within subsections (a), (d), (e) and (f) of section 5(2) of the 2005 Act i.e. community, foundation and voluntary schools; Academies; city technology colleges; and city colleges for the technology of the arts. However where the school is an Academy, paragraph (2) provides that it will only be capable of being an exempt school if the school it was converted from fell within any of the other exempt categories.

[Note: Regulation 3 does not currently exempt maintained nursery schools (subsection (c) of section 5(2)), special schools falling within subsections (b) and (g), or pupil referral units. A decision on future inspection arrangements for maintained nursery schools will be informed by the outcome of the independent review of the early years foundation stage led by Dame Clare Tickell and wider considerations on the inspection of the early years and childcare sector. The Schools White Paper, The Importance of Teaching, proposes that the principle of exempting outstanding schools should be extended to special schools and pupil referral units. In view of the more complex risk assessment requirements that will be needed for these schools, the White Paper states that further work will be undertaken with Ofsted to identify risk factors which might indicate a need for re-inspection. This work is ongoing. In the case of the special schools, the recently-published Green Paper, Support and aspiration: A new approach to special educational needs and disabilities, sets out a range of proposals for improving the accountability of schools for the progress and achievement of pupils, including those with SEN or who are disabled. The Green Paper marks the start of a four-month consultation, and responses to the proposals and questions it poses will inform the ongoing work on developing a risk assessment framework for outstanding special schools.]

Under regulation 4, the circumstances in which a school falling within the categories set out in regulation 3 will be exempt are that the school’s overall effectiveness was judged to be in the
highest category (currently the “outstanding” category) in its most recent inspection under section 5 of the 2005 Act or, where the school is an Academy that has never been inspected under section 5, the overall effectiveness of its predecessor school was judged to be in the highest category. “Predecessor school” means the school that was converted into an Academy by virtue of an Academy order made under the Academies Act 2010 (regulation 2).

March 2011