

EXPLANATORY MEMORANDUM TO
THE HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S
SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS)
(CHILDREN'S HOMES ETC.) REGULATIONS 2007

2007 No. 694

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.
 - 1.1 This memorandum may be read in conjunction with that accompanying the Commission for Social Care Inspection (Fees and Frequency of Inspections) Regulations 2007 laid on 2 March 2007. Those Regulations are closely connected to the Regulations covered by this memorandum, as explained in paragraphs 4.2 and 4.3 below.
2. **Description**
 - 2.1. The Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007 enable Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") to charge children's homes, voluntary adoption agencies, adoption support agencies, fostering agencies and residential family centres registration fees, and a fee upon variation of registration, and to charge annual fees in respect of regulation and inspection to be paid by the above establishments and agencies and by residential special schools, boarding schools and residential colleges, and by local authorities in respect of their adoption and fostering functions. The Regulations also set out (except for boarding schools, residential special schools and residential colleges) minimum inspection frequencies for those establishments, agencies and local authority premises.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Background**
 - 4.1. Registration fees and variation of registration fees are set by regulations made under sections 12(2) and 15(3) of the Care Standards Act 2000 ("the 2000 Act"). Voluntary adoption agencies, adoption support agencies, children's homes, residential family centres and fostering agencies are required to be registered and are therefore covered by these provisions. Annual fees are also required to be paid by the above establishments and agencies and by residential colleges and residential special schools. These fees are set by regulations under section 16(3) of the 2000 Act. Annual fees for boarding schools are set by regulations under

section 87D of the Children Act 1989 and for local authorities in respect of their adoption and fostering functions by regulations under section 155 of the Education and Inspections Act 2006 (“the 2006 Act”). Frequency of inspections is prescribed by regulations under section 31(7) of the 2000 Act in respect of all the above agencies and establishments, except in the case of local authorities’ adoption and fostering functions where regulations are made under section 147 of the 2006 Act.

- 4.2. For the financial year 2006-07 and in previous years, fees and frequency of inspections were prescribed by two sets of regulations. In the cases of voluntary adoption agencies, adoption support agencies and local authority adoption and fostering functions the National Care Standards Commission (Fees and Frequency of Inspections) (Adoption Agencies) Regulations 2003 (S.I. 2003/368) as amended applied. In all other cases the Commission for Social Care Inspection (Fees and Frequency of Inspections) Regulations 2004 (S.I. 2004/662) as amended applied. The registration and inspection was carried out by Commission for Social Care Inspection (“CSCI”) in all cases.
- 4.3. The 2006 Act, which received Royal Assent on 8 November 2006, provides for a single inspectorate in respect of children’s social care functions, intended to be in force on 1 April 2007. The 2006 Act (in Chapter 4 of Part 8) provides for the registration and inspection of children’s social care functions (previously exercised by CSCI) to be carried out by the Chief Inspector. CSCI retains the remainder of its functions. Consequently, the Commission for Social Care Inspection (Fees and Frequency of Inspections) Regulations 2007 make provision for fees and frequency of inspection in relation to CSCI’s functions and the Regulations to which this Memorandum relates provide for those matters in relation to the Chief Inspector. The Regulations referred to in paragraph 4.2 are revoked by these two sets of Regulations.

5. Extent

- 5.1. This instrument applies to England.

6. European Convention on Human Rights

- 6.1. As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required

7. Policy background

- 7.1 In 2001 the Department of Health (“DH”) consultation paper *Frequencies of Inspection and Regulatory Fees* proposed a fee structure for regulatory work undertaken under the Care Standards Act 2000 and a move towards full cost recovery within 5 years. DH Ministers later decided that the timetable for reaching full cost recovery should be slowed to allow more affordable increases. Fees have increased by 20% in 2003-04, 20% in 2004-05, 20% in 2005-06 and 15% in 2006-07. A DH consultation paper *Frequencies of Inspection and*

Regulatory Fees issued in July 2001 proposed a fee structure for regulatory work undertaken under the Care Standards Act 2000 and a gradual move towards the long term objective of improved regulatory effectiveness and efficiency through full cost recovery.

- 7.2 The Government's policy is to continue to move towards full cost recovery. DfES is currently considering further options for progression towards full cost recovery and has decided not to make any increases to fees for 2007/08 to allow stability to the sector at a time of change to the regulatory framework, service providers and the inspectorate.
- 7.3 The current approach for inspection is based on universal coverage where all providers, regardless of their quality, are inspected routinely on the basis of set frequencies. To allow a better focus on the experience of users and to improve outcomes across all inspected settings and services there is a need to move away from this. Risk assessment is an effective means of identifying where intervention is needed by inspectorates and of focusing resources most effectively. Using a proportionate approach, informed by considerations of risk, will ensure that all services and settings are inspected regularly while allowing the inspectorate to target those performing poorly and to react when concerns are raised.
- 7.4 The Government proposes future amendment of the current regulations to ensure that the new Ofsted is able to focus its inspection activity on providers about which it has the greatest level of concern, rather than treating high quality and poor quality providers in the same way. However, all providers will be subject to regular risk assessments and visits so that all children using these services receive appropriate protections.

8. Impact

- 8.1. A Regulatory Impact Assessment (RIA) has been prepared for this instrument in relation to revising minimum inspection frequencies for children's social service establishments and agencies. This is attached to the memorandum.
- 8.2. The RIA does not apply to amendments to enable the Chief Inspector to charge children's social service establishments and agencies a fee in respect of inspection, as it has no impact on business, charities or voluntary bodies. The impact on the public sector is not considered to warrant a Regulatory Impact Assessment as costs for implementation are cost neutral and not expected to exceed £5 million.

9. Contact

- 9.1. Michelle Warne at the Department for Education and Skills Tel: 020 7273 5938 or e-mail: michelle.warne@dfes.gsi.gov.uk can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT FOR THE MODERNISATION OF REGULATORY FRAMEWORK FOR CHILDREN'S SOCIAL SERVICES

PURPOSE AND INTENDED EFFECT

Objective

1. A review of the National Minimum Standards (NMS) for children's social services will consider what changes are needed to allow the new Ofsted, when it comes into force on 1 April 2007, to act more responsively, and to target and improve its activity, so that it has maximum impact in protecting and safeguarding the children and young people using these services. In doing so, it can contribute to improved outcomes for them and reduce the burden of inspection on good quality providers and Ofsted.
2. The proposed changes are intended to:
 - allow the new Ofsted greater flexibility to focus its inspection activity on providers and services about which it has the greatest level of concern, by setting a minimum inspection frequency of three years for all children's social services except children's homes and residential special schools;
 - build providers' capacity to develop quality review processes based on evidence and with a focus on improvement; and,
 - help strengthen enforcement measures where regulations and/ or NMS are not being met, through the use of improvement plans.

Background

3. The Education and Inspections Act provides for the transfer of CSCI's children's functions to Ofsted in April 2007. Expanding Ofsted's remit to cover services for children will help improve service quality and standards for all children and young people and strengthen safeguards to protect our most vulnerable by reducing bureaucracy and the burden of inspection. Implementation of the proposals for revised inspection frequencies will fall to Ofsted.
4. Section 31(7) of the Care Standards Act 2000 enables the Secretary of State to prescribe the occasions or intervals at which providers may be inspected. CSCI is required to inspect providers of children's social services in line with statutory inspection frequencies set out in the Commission for Social Care Inspection (Fees and Frequencies of Inspection) Regulations 2004. The inspection frequencies are unchanged from those that were required of CSCI's predecessor, the National Care Standards Commission (NCSC).
5. When originally developed, the inspection frequencies were based on existing practice in the previous inspection regime (operated by local councils, health authorities and the Social Services Inspectorate), an assessment of perceived risk, and the desire for consistency between the sectors involved – private, voluntary and public. At present the regulations require CSCI to inspect:

- children's homes twice a year;
 - fostering services (local authority services and independent fostering agencies), residential special schools and residential family centres once a year; and,
 - voluntary adoption agencies, local authority adoption services and adoption support agencies once every three years.
6. There is no statutory minimum frequency for the inspection of boarding schools or further education colleges accommodating students under 18 years old, although at present they are inspected once every three years. CSCI have inspected local authority private fostering services.
 7. When the initial NMS were introduced in 2002, Ministers committed to carrying out a review after 3 years. In January 2005, Margaret Hodge referred to the review in a Parliamentary Question.

"...We are also reviewing the National Minimum Standards used by the Commission for Social Care Inspection to inspect and register services for children, including those for fostering and adoption agencies and for residential child care, to consider if they could be better focused around outcomes for children." – Margaret Hodge, Commons Written Answer, 17 January 2005.

Rationale for government intervention

8. CSCI is required to inspect social care establishments and agencies according to established frequencies set out in secondary legislation. These set frequencies do not reflect a risk-based and proportionate approach to inspection.
9. Existing quality review processes vary between providers, with some being more reflective, analytical and informative than others.
10. The Government is committed to ensuring that public service inspection has maximum impact on service improvement and outcomes while delivering real value for money. In 2003 the Government published *Inspecting for improvement* (OPSR, 2003) which set out 10 principles of inspection. The principles make clear inspections should focus on outcomes, and be delivered with a clear user perspective. They also require inspection to be proportionate to risk, with resources concentrated on areas of greatest risk and concern, an approach endorsed by the Better Regulation Task Force in their report *Better Regulation for Civil Society* (November 2005).
11. The strategy to implement the Government's policy on inspection is intended to refocus (on people and outcomes), rationalise (the landscape and the programmes), and reduce (the amount, based on risk-assessment). This is a measure, designed to promote a streamlined approach and improve efficiency.
12. There has been criticism that the current NMS and regulations do not adhere to the ten principles and therefore need to be revised. The Better Regulation Task Force has also

criticised the current 'one size fits all' approach where all providers, regardless of their quality, are inspected routinely on the basis of set frequencies. Furthermore, commissioners and providers of services and others using the NMS have identified a number of anomalies, duplications and issues that need to be addressed as well as the need for recent legislative changes and our improved understanding of good practice to be reflected in the NMS.

13. Some have suggested that the current structure of the NMS drives inspectors to take too much of a tick-box approach which leaves too little time to:

- talk to service-users and staff to get a real sense of the quality of service; and,
- follow up concerns, including using the regulations to enforce improvement.

14. CSCIs corporate plan (2004-07) acknowledged that the current framework for the registration and inspection of regulated social care services was insufficiently focused on what matters to service users, and "too inflexible to accommodate models of care which respond more effectively to their needs". CSCIs proposals for modernisation were set out in a consultation document *Inspecting for Better Lives* in 2005. They included the introduction of self-assessment for care providers as part of inspection activity and increasing the voice of users.

CONSULTATION

Within government

15. There has been extensive consultation with relevant officials within the Department for Education and Skills, Cabinet Office, Treasury, Department for Communities and Local Government and the Department of Health. The views of officials in all Departments have been carefully considered and reflected in these proposals.

Public Consultation

16. The Government has had initial discussions with key stakeholders representing some of the services and settings that will be affected by the proposed regulatory changes. Comments from the stakeholders have been largely positive, with the majority in support of proposals to reduce the minimum frequency to allow for a greater focus on unannounced visits that are proportionate to risk. Stakeholders also welcomed proposals for the introduction of self assessments and the implementation of provider improvement plans.

17. A full public consultation was carried out between 4 August and 10 November 2006. 71 people responded to the consultation from local authorities, national organisations, private and independent service providers, children's charities, schools and colleges, voluntary service providers, relevant inspectorates and children and young people.

18. Overall, the majority of respondents agreed with the proposals contained within the consultation document. Respondents agreed that Ofsted should be able to focus inspection activity on providers about which there was the greatest level of concern.

19. Most respondents were of the opinion that three years should be the longest time between inspections for any provider of children's social services. One of the main reasons given for this was that there was a high turnover of staff within the industry. Following on from this, most respondents considered that the risk factors for children's homes and residential special schools meant that the longest time between inspections for providers of these services should be once a year. Furthermore respondents favoured the inclusion of a stipulation in the regulations that providers assessed by Ofsted as providing an adequate service will receive a minimum of two inspections a year and those assessed as providing a poor service will receive a minimum of three inspections a year. A number of respondents stressed that they were in support of having a variety of inspection methods, e.g. spot checks, stating that they gave a more accurate representation of the working practices of a provider.

20. Roger Morgan, the Children's Rights Director consulted a selection of children and young people on the proposed changes to inspection frequencies. The following responses were received:

- Children were in favour of additional inspections for failing services, but they were opposed to any reduced inspection activity where there are fewer concerns, and were specifically opposed to any reductions from existing inspection frequencies
- Children opposed reduced inspection of successful services on the grounds that in their experience establishments and services change significantly over time as staff and the child group change, that inspectors' initial assessments of a service's success might be wrong, and that it might be regular inspection that maintains the success of some services at present.

21. The majority of respondents considered it appropriate to give statutory force, via regulations, to requirements on providers to produce annual quality assurance assessments. However, a number of respondents were concerned with how much bureaucracy would be generated. It was also suggested that it would be helpful to have some form of best practice documents in place.

22. There was a mixed reaction to the suggestion of the introduction of penalties, although most stated they were in support of them. A number of respondents did state that they would require more details. These included what the penalties were, how they would be actioned and whether there would be an appeals process.

OPTIONS

23. Three options have been identified.

Option 1: No change to the regulatory framework

Option 2: Reduce the statutory minimum inspection frequencies while intensifying other new Ofsted activity, such as risk based assessments to make inspection more proportionate to risk

Option 3: Removal of regulations on specified frequencies

BENEFITS AND COSTS

Sectors and groups affected

24. The following would be affected by these proposals:

- local authorities (children's homes, adoption services and fostering services, private fostering services, commissioners of children's social care, social workers responsible for placing children in regulated settings;
- boarding schools;
- residential special schools;
- independent children's homes (private and voluntary sector);
- independent fostering agencies (private and voluntary sector);
- residential family centres;
- further education colleges providing accommodation for young people under 18;
- residential family centres;
- voluntary adoption agencies;
- children and young people using services covered by the NMS for children's social services;
- parents and carers;
- those working in the services and settings regulated by new Ofsted; and,
- new Ofsted.

Benefits

Option 1: No change to the regulatory framework

25. The new Ofsted would carry out inspections in accordance with the existing regulations, an approach providers will be familiar with. The frequency and intensity of inspections would not necessarily be proportional to the safeguarding risks to young people in those settings. As a result, Ofsted would not be able to target their resources for maximum impact based on the risk presented by providers.
26. The new Ofsted would still be able to request any information it requires from providers to carry out its function, but it would not have the flexibility to divert resources to the new annual risk assessment process to make the best use of the information provided in the annual self assessment. In addition, there would be advantages in having a clear statutory requirement to produce a self assessment, and of providers knowing what is required of them.

Option 2: Reduce the statutory minimum inspection frequencies while intensifying other new Ofsted activity, such as risk based assessment, to make inspection more proportionate to risk

27. The longest time between inspections for any provider of children's social services would be three years. This is the **minimum** inspection frequency which will apply to those assessed as being the best performers in an annual risk assessment process. It does not equate to all services being visited just once every three years.
28. Additional inspections will be targeted on those not meeting the NMS and when triggered by newly identified risks (for example when complaints are made, if concerns are raised by social workers or members of the workforce, or when new managers are appointed). The new Ofsted also intends to carry out 'random' inspections, on a sample basis, which could take place at any time, without notice, to ensure that any provider, however good their service is deemed to be, does not become complacent. This will provide assurance to people who use services that when a service is judged to be of good quality, greater inspection intervals do not equate to an inspection 'holiday' during which standards would be allowed to slip.
29. For local authority adoption services, voluntary adoption agencies and adoption support agencies this would mean that the statutory three yearly minimum inspection frequency would not change. Boarding schools, and further education colleges providing accommodation to students aged under 18 would be expected to continue to receive three yearly inspections, but the Government does not propose, at this time, making this a statutory requirement.
30. The requirements for the inspection of all local authority private fostering services by 2008 will remain and a review of whether any further arrangements are necessary will be carried out once that work has been completed.
31. Fostering services and residential family centres would move from an annual inspection to a three yearly minimum inspection frequency.
32. The Government considers that the level of risk in children's homes and residential special schools and the vulnerability of the children and young people living there is such that a three yearly minimum inspection frequency would not be appropriate. The

Government therefore proposes a minimum of one inspection a year for all providers. This is a reduction from twice a year for children's homes but maintains the current position for residential special schools.

33. For most services, the new Ofsted will have the discretion to determine what additional inspections are required for individual providers and the form that these should take. However, for children's homes, where safeguarding issues have been of the greatest concern, to ensure that those not meeting the NMS will genuinely receive greater scrutiny, the Government proposed stipulating in the regulations differing requirements dependent upon assessed performance.
34. Following discussion with Ofsted the Government has determined that more data is required to inform proposals for changes to the existing inspection frequency for children's homes. The new Ofsted will continue to inspect children's homes to the existing regulatory requirements of twice a year from 1 April 2007 – 31 March 2008. During this time the new Ofsted will validate existing data on the performance of children's homes against the NMS and develop a framework for future inspection. The inspection frequencies for children's homes will be reviewed by the Government in light of the information gathered by the new Ofsted's validation exercise.
35. The new Ofsted will require all providers to produce an evidence based self assessment with a focus on improvement. This would provide the new Ofsted with the information it needs to carry out a robust annual risk assessment which would be necessary to safeguard the children and young people using children's social care and effectively target inspections and enable providers to build capacity to develop quality review processes.
36. This would also replace the pre-inspection questionnaire that providers are required to complete.
37. The introduction of an improvement plan would help strengthen enforcement measures where regulations and/ or NMS are not being met and raise the standard of the service provided. The new Ofsted would use existing powers to take enforcement action on a provider who failed to produce and implement an improvement plan when requested do so by new Ofsted on the grounds that the provider was failing to provide a good (or better) service.
38. Taken together, these measures will improve the proportionality of the current system. Good providers who deliver quality outcomes to people who use their services will have the burden of regulation and inspection minimised. Consistently good providers who know how to evaluate their services and deliver ongoing improvement will have significantly less routine inspection. Where services need substantial improvement there will be an onus on the provider to take greater responsibility to prove to the new Ofsted that they are able to manage their service. Such providers will be required to produce evidence of how improvement will be achieved.
39. The proposed inclusion of annual quality assurance assessments and improvement plans also reflect an important step forward, in that they reflect the proposition that the quality of a social care service is the responsibility of its provider, not its regulator. This is essential in a proportionate regime. It is new Ofsted's responsibility to sample, test and

validate the provider's performance and quality of delivery through their knowledge of a service, their understanding of the experience of those who use it, and proportionate on-site inspection. It will also be able to take action where quality does not reach the required standards.

40. Reducing statutory minimum inspection frequencies for all providers combined with the information gathered through the new annual quality assurance assessment will ensure the new Ofsted continue to regularly visit and assess all services providers while freeing them up to focus additional efforts and inspections on the poorest performers.

Option 3: Removal of regulations on specified frequencies

41. This would give the new Ofsted maximum flexibility to target its inspections purely in line with the annual risk assessment. However, written evidence that is not backed up by information gathered from regular visits that involve discussions with those providing and those receiving the services may not provide a full enough picture of the position on the ground. Without the guarantee of regular visits it would be difficult to reassure users, their relatives, commissioners of services, and others with an interest that the children and young people in the settings being regulated are being appropriately safeguarded.

Costs

42. Ofsted, like other public service inspectorates, is committed to reducing the cost of inspection by about a third in the medium term as a means of reducing the burden of inspection on providers of services. Ofsted estimate the changes to frequency of inspection to result in a net reduction in the annual volume of actual inspection visits, estimated at 20%, and contributing therefore to their cost reduction target.

Option 1: No change to the regulatory framework

43. Although providers have to some extent become used to the existing framework and are unlikely to object to this option it carries some major disadvantages.
44. This option would not allow for a risk based approach to be adopted in line with the Government's principles on inspection or put in place clear statutory requirements for the production of a self assessment or improvement plan by providers when requested to do so.
45. In order to reduce the burden of inspection on providers and enable Ofsted to target their resources for maximum impact, inspections must focus on those providers presenting greatest risk. Not changing the regulations would mean Ofsted is unable to do this. It would also reduce Ofsted's ability to focus on the new risk assessment process and to target additional inspections as the result of triggers identified as part of this.

Option 2: Reduce the statutory minimum inspection frequencies while intensifying other CSCI activity, such as risk based assessments to make inspection more proportionate to risk

46. This option would contribute to the Government's wider work aimed at modernising the inspectorates and allow the new Ofsted to reduce the burden of inspection without

reducing safeguards.

47. The removal of the pre-inspection questionnaire should mean that the introduction of an annual self assessment will be cost neutral or equal a reduced costs to all providers currently subject to inspections more than once every three years. However, those providers that are already inspected once every three years will be required to fill in an annual assessment as opposed to a three yearly pre-inspection questionnaire. This should be something that they already do for their own quality assurance procedures but may be seen by some as an additional burden.

Option 3: Removal of regulations

48. Removing all minimum inspection frequencies would give the new Ofsted maximum flexibility and allow them to keep the costs and burdens of regulation to a minimum. However, it would not provide reassurances that a visit will be carried out on a regular basis and, given the vulnerability of the children and young people using the regulated services, such an approach would not offer the required levels of safeguards and could not, therefore, be recommended.
49. There would be no obvious costs to the provider associated with this option and the new Ofsted could reduce the overall burden of inspection on providers. However, the Government would expect the new Ofsted to still target its efforts on providers causing greatest risk so they would be subject to some additional regulatory burden.

SMALL FIRMS IMPACT TEST

50. Early in 2005, CSCI set out its proposals, including inspection frequencies proportionate to risk, the introduction of self-assessment for care providers and improvement plans, in a consultation document *Inspecting for Better Lives*. Feedback from this was published in July 2005 in *Inspecting for Better Lives – Delivering Change*. Respondents favoured an approach where there was greater focus on problem areas, an increase in the number of unannounced inspections and increased focus on the experiences and feedback from people who use the service. Self-assessment was welcomed as a way of reducing the burden of inspections but raised some concerns about the increase in paper work for small care providers and its susceptibility to abuse.
51. Initial discussions with the Looked After Children Stakeholder Group has suggested that there is support from them for the proposals outlined above because they should reduce the burdens on good providers of children's social care while retaining the focus on the poorest providers, and thus retain safeguards for the children and young people receiving the services.
52. The changes will keep to a minimum the number of forms to be completed and the numbers of inspections to be carried out. It will result in a significant reduction in the numbers of inspections and pre-inspection questionnaires that are required of children's homes, fostering services and residential family centres.
53. Those providers currently receiving three yearly inspections (e.g. boarding schools, further education colleges, and voluntary adoption agencies) may consider the

requirement to produce an annual self assessment to be an additional burden as they currently only complete a pre-inspection questionnaire once every three years. However, most good performers will already be carrying out their own in-house assessments and it would be hoped that this could feed into the information required by the new Ofsted to keep the burden to the minimum.

COMPETITION ASSESSMENT

54. Initial analysis of the market suggests that this proposal will have little or no effect on competition. Reducing the overall burden of inspection and regulation will reduce the costs to most providers. The biggest impact will be on the poorest providers as they will be required to improve standards to the minimum levels already set for all.

55. The market consists of:

- adoption services (approx. 150 local authority and 35 voluntary adoption agencies – currently inspected once every three years);
- fostering services (approx. 150 local authority and 150 independent fostering agencies – currently inspected once a year);
- private fostering (150 local authorities – to be inspected once between 2005 and 2008);
- children’s homes (approx. 2,050 children’s homes ((local authority, private and voluntary)) plus 24 secure children’s homes¹ – currently inspected twice a year);
- accommodation of under 18 year olds by further education colleges (approx. 55 – currently inspected once every three years);
- boarding schools (approx. 550 – inspected once every three years);
- residential special schools (approx. 240 – inspected once a year);
- residential family centres (approx. 40 – inspected once a year); and,
- adoption support agencies (approx. 40 initially, possibly rising to between 60 and 100 – inspected once every three years).

56. Services are generally commissioned by local authorities although parents and carers themselves often select and purchase services in the case of boarding schools and further education colleges.

57. In recent years the focus has been on ensuring that there is sufficient placement choice for children and young people in need of children’s social care. Much work has been done to

¹ Secure children’s homes are subject to additional checks. The Secretary of State must approve the use of a children’s home as secure accommodation. To inform his decision a CSCI specialist inspector visits a children’s home when the provider applies for such approval and each time approval is due for renewal (usually every 3 years).

support local authority commissioning capacity through the Choice Protects Programme. Most regions now have local authority commissioning consortia for children's services.

58. The proposed changes would not increase the regulation to those involved in providing services and settings. As a result, it is unlikely to impact significantly upon the costs of providers or affect the market structure.

ENFORCEMENT, SANCTIONS AND MONITORING

59. Implementation of the regulations and NMS will be carried out by the new Ofsted. The new Ofsted will give notice of what a provider must do to remedy any failing or contravention of the Regulations with a period, not exceeding three months, within which it must be done. Providers that failed to address the situation would have de-registration proceeding brought against them.
60. Local authorities in England that fail to meet the NMS and regulations will be reported to the Secretary of State who has a range of powers for taking remedial action available, depending upon the severity of the failing.

IMPLEMENTATION AND DELIVERY PLAN

61. Regulations to make three years the longest time between inspections for all children's social care settings, except children's homes and residential special schools, will come into force on 1 April 2007.
62. In consultation with Ofsted the Government has decided to delay any changes to the inspection frequency of children's homes to allow the new Ofsted to validate existing data on the performance of children's homes against the NMS and develop a framework for future inspection. Whilst developing their framework, the new Ofsted will continue to inspect all children's homes to the existing regulatory requirements; two inspections a year. The inspection frequencies for children's homes will be reviewed by the Government in light of the information gathered by new Ofsted.
63. There will be no change to the existing inspection frequency of residential special schools, currently one inspection in a 12 month period.
64. The new Ofsted will introduce a requirement that services and providers produce a self assessment (AQAA) from 1 April 2007.
65. The new Ofsted will introduce a requirement for providers to produce an improvement plan if requested to do so. This would not apply to providers assessed by the new Ofsted as providing a good quality (or better) service. The improvement plan would be in a form specified by the new Ofsted and would be monitored by the Inspectorate, thereby helping to underpin the improvement of services.

POST-IMPLEMENTATION REVIEW

66. The new Ofsted will closely monitor these measures including the effectiveness of the new and existing regulations. Where non compliance is reported, the Government will

consider what additional steps are needed to ensure that the regulations and NMS are met.

SUMMARY AND RECOMMENDATIONS

67. The Government is committed to ensuring that public service inspection has maximum impact in protecting and safeguarding the children and young people using children's social services and improving outcomes for them. To this end the Government is in the process of changing regulations to help the new Ofsted act more responsively and with greater flexibility, to target and improve the standard of service provision whilst reducing the burden of inspection on good quality providers and the Inspectorate.
68. Option two best meets ministerial policy commitments to ensuring the protection and safeguarding of children and young people in social care services and improving outcomes for them. This is the recommended option.

DECLARATION AND PUBLICATION

69. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed ...*Parmjit Dhanda*.....

Date.....5th March 2007.....

Parmjit Dhanda
Parliamentary Under secretary of State for Children and Families
Department for Education and Skills

CONTACT POINT

Michelle Warne
Children in Care division
Department for Education and Skills
Caxton House
London SW1H 9NA

Telephone: 0207 273 5938

Email: Michelle.Warne@dfes.gsi.gov.uk