

## EXPLANATORY MEMORANDUM TO

### HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS) (CHILDREN'S HOMES etc.) (AMENDMENT) REGULATIONS 2013

2013 No. 523

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**
  - 2.1. Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc) (Amendment) Regulations 2013 ("the 2013 Regulations") make amendments to the annual fee levels prescribed in Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007 (SI 2007/694) ("the 2007 Regulations").
  - 2.2. The effect of the 2013 Regulations is to make changes to the level of annual fees payable by voluntary adoption agencies, adoption support agencies, children's homes, residential family centres, boarding schools, residential special schools, residential colleges, and by local authorities in respect of the inspection of their adoption and fostering functions.
  - 2.3. The 2013 Regulations also remove the requirement for Ofsted to inspect the premises used by local authorities in the performance of adoption and fostering functions at least once in every three year period. Finally, the Regulations also update the definition of "children's services" in the Children Act 2004 (Children's Services) Regulations 2005 ("the 2005 Regulations").
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1. None.
4. **Legislative Context**
  - 4.1. The 2007 Regulations prescribe the fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") in respect of:
    - registration fees, variation of registration fees and annual fees for children's homes, voluntary adoption agencies, adoption support agencies, fostering agencies and residential family centres, under sections 12(2), 15(3) and 16(3) of the Care Standards Act 2000 ("CSA 2000"),
    - annual fees for residential special schools, boarding schools and residential colleges under section 87D(2) of the Children Act 1989, and
    - annual fees payable by local authorities in respect of their adoption and fostering functions under section 155 (1) and (2) of the Education and Inspections Act 2006 ("the 2006 Act").
  - 4.2. The 2007 Regulations made provision for the fees payable under the CSA 2000, the 2006 Act and the Children Act 1989 and were amended in 2009, 2010, 2011 and 2012 by

respectively Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc.)(Amendment) Regulations 2009 ("the 2009 Regulations"), Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc.)(Amendment) Regulations 2010 ("the 2010 Regulations"), Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2011 ("the 2011 Regulations") and Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc.)(Amendment) Regulations 2012 ("the 2012 Regulations").

- 4.3. The 2007 Regulations also prescribe the frequency of inspections in relation to children's homes, residential family centres, voluntary adoption agencies, adoption support agencies fostering and local authorities in their performance of relevant functions, that is, their fostering and adoption functions.

## **5. Extent**

- 5.1. These Regulations apply in relation to England only.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### **Proposed changes to the 2007 Regulations in respect of fees for social care settings**

- 7.1. In 2001, the Department of Health (DH) (which then had policy responsibility for the regulation and inspection of children's homes etc) issued a consultation paper *Frequencies of Inspection and Regulatory Fees* that proposed a fee structure for regulatory work undertaken under the CSA 2000 and a move towards full cost recovery within 5 years. DH later decided that the timetable for reaching full cost recovery should be slowed to allow more affordable increases. Consequently these fees increased by 20% in 2003-04, 20% in 2004-05, 20% in 2005-06 and 15% in 2006-07.
- 7.2. The policy was to continue to move towards full cost recovery, but no changes were made to the fee levels in 2007-08 or 2008-09 as it was necessary following implementation of the 2006 Act to review the fee structure in the context of the transfer of the regulation and inspection functions from the Commission for Social Care Inspection to the Chief Inspector.
- 7.3. In 2007 Ofsted carried out an organisation-wide efficiency review which reduced the costs of inspection and resulted in the availability of accurately audited up to date figures for the costs of inspection and regulation for 2007-8 and 2008-9. This analysis of the costs identified a number of providers whose annual fee under the 2007 Regulations were more than the actual cost of inspection. As a result, the 2009 Regulations amended the 2007 Regulations to reduce the fees payable by this group of providers so as to reflect the average actual cost.
- 7.4. However, there still remained a large proportion of providers, largely providers of children's homes, who were paying significantly less than the actual cost of inspection. Following the 2009 Regulations, the then Government consulted in November 2009 on a proposal for a two-tiered model for annual fees to begin in 2010 ("the 2010 Model"). This

approach was subsequently adopted for three years from 2010 in order to get closer to full cost recovery over time. As a result, for those providers who were paying less than the average cost of inspection, the 2010, 2011 and 2012 Regulations increased the annual fee from 1 April 2010, 1 April 2011 and 1 April 2012 respectively by 10%. Providers whose fee level was already within 10% of full cost recovery had their increase limited so as not to exceed full cost recovery and any provider already at full cost recovery had no increase.

- 7.5. The Government's recent month long consultation on the 2013 Regulations was centred primarily on the issue of a further 10% increase in the fees for those providers not currently at full cost recovery. The consultation proposed that fees for those providers who had already reached the full cost of their inspection would not be increased.
- 7.6. The model used for setting fees for inspection had been modified by Ofsted in 2010-11 to meet Treasury guidelines in this area. This revised financial model underpinned the cost of fees set out in the consultation document for the 2013 Regulations but the Department did not explicitly consult on this. The consultation revealed that the revised model would result in a number of providers, particularly residential special schools and boarding schools, whose fees had previously been capped, being charged an additional 10% in their fees. The Department concluded that it would not be fair to introduce this rise for those providers who had reached full cost recovery under the previous model, and we have therefore retained the cap for this group of providers. The fees for all settings are set out in the table at Annex A.

#### **Proposed changes to the 2007 Regulations in respect of the single programme of inspection of the arrangements for looked after children from April 2013.**

- 7.7. The Government has also consulted on Ofsted's proposals to introduce their new Children Looked After framework in April 2013. Ofsted has also already consulted extensively on proposals to introduce a new single programme of inspection of local authority looked after children services and local authority fostering and adoption services and to move the frequency of these newly integrated inspections from a three to a four yearly cycle. Ofsted will carry out these inspections jointly with the Care Quality Commission under section 20 of the Children Act 2004.
- 7.8. Ofsted propose that the new inspections would focus on: the effectiveness of local authorities as corporate parents; the provision of health services for children who are looked after; the quality of professional practice, including the protection of children who are looked after; the impact of the care on children and young people; and the effectiveness of shared professional responsibility for their outcomes. Replacing these three previously separate inspection frameworks will enable Ofsted to deliver a universal inspection programme for looked after children, whilst also delivering some cost savings.
- 7.9. These Regulations amend the 2007 Regulations in order to remove the requirement (under regulation 19 of the 2007 Regulations) for Ofsted to inspect local authorities' adoption and fostering functions once every three years. This amendment will give Ofsted increased flexibility in managing their inspection processes.
- 7.10. From 1 April 2013, Ofsted will carry out their new integrated inspections of looked after children jointly with the Care Quality Commission ("CQC") under section 20 of the Children Act 2004. This section grants Ofsted the power to review, jointly with CQC, any "children's services provided in the area of a particular local authority in England". "Children's services", for these purposes, are defined in the 2005 Regulations.
- 7.11. These Regulations also amend regulation 2(1)(v) of the 2005 Regulations, which currently define "children's services" by reference to section 148 of the Health and Social Care

(Community Health and Standards) Act 2003. Section 148 was amended by the 2006 Act. The purpose of the amendment made by these Regulations is to refer explicitly to the functions of local authorities listed in section 135 (d) and (e) of the 2006 Act. The amendment is necessary to update the definition of children's services for the purposes of section 20 of the Children act 2004.

## **8. Consultation**

- 8.1. The Department consulted publicly from 5 September 2012 to 5 October 2012 on the fees to apply from April 2013, and whether to set 10% increase for 2013 where providers have not reached full cost. The response to this consultation is available on the Department's consultation website<sup>1</sup>. As part of the consultation, respondents were asked their views on Ofsted's proposals to implement a revised integrated inspection framework for local authority Looked After Children services and their fostering and adoption functions from April 2013. We did not receive a significant number of responses on this issue but respondents who expressed a view were content with Ofsted's proposal in respect of the new single inspection framework.
- 8.2. The response to this consultation will be made available on the Department's consultation website from 28.02.2013.

## **9. Guidance**

- 9.1. No guidance is being produced but the providers affected will be notified by Ofsted of the level of fees payable by virtue of the increases made by the 2013 Regulations.

## **10. Impact**

- 10.1. The impact on businesses, charities or voluntary bodies is an increase in fees for those providers where the fees are more than 10% below the full cost of inspection and regulation, while ensuring that providers do not face increases that take them above the full cost.
- 10.2. The impact on the public sector is the same as in 10.1.
- 10.3. The policy was assessed using the fast-track system. The RPC agreed with the Department's assessment that the policy is out-of-scope of 'One In, Two Out' and that a Validation Impact Assessment is not required.

## **11. Regulating small business**

- 11.1. The legislation applies to small business.
- 11.2. To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to limit the increases to 10%.
- 11.3. The basis for the final decision on what action to take to assist small business, is that in light of the consultation, we expect the increases, limited to 10%, will be affordable.

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<sup>1</sup><http://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1573&external=no&menu=3>

## **12. Monitoring and review**

- 12.1. Ofsted will continue to monitor the cost of regulation and inspection. We plan to review the fee levels and undertake an extensive consultation exercise in Summer 2013 in respect of the fees that will apply for years 2014-2017.

## **13. Contact**

- 13.1. Contact Shelley Stewart-Murray at the Department for Education, Tel: 020 7783 8089 or e-mail: [shelley.stewart-murray@education.gsi.gov.uk](mailto:shelley.stewart-murray@education.gsi.gov.uk) with any queries regarding the instrument.

**Ofsted Annual Inspection Fees - 2013-14**Voluntary adoption agencies

**£952.54**; or **£505.11** in respect of each small branch.

Adoption support agencies

**£956.05**, or small adoption support agency **£505.11**.

Fostering agencies

**£1597.00**

Children's homes

- 3 or fewer approved places, **£1,455.32**;
- 4 - 37 approved places **£1455.32** plus **£144.95** for each approved place from the 4th to the 37th place inclusive;
- more than 38 approved places, **£6,399.31**.

Residential family centre

- 3 or fewer approved places, £969.23
- 4 approved places £1090.75
- more than 4 approved places, **£1138.00**

Boarding school

- 3 or fewer approved places, **£632.49**;
- 4 - 12 approved places **£632.49**, plus **£38.07** for each approved place from the 4th to the 12th place inclusive;
- 13 - 50 approved places, **£994.00**
- 51 - 500 approved places, **£1,391.00**
- 501 - 800 approved places, **£1,789.00**
- more than 800 approved places, **£2,186.00**

Residential college

- 3 or fewer approved places, **£632.49**;
- 4 – 11 approved places **£632.49**, plus **£38.07** for each approved place from the 4th to the 11th place inclusive;
- more than 11 approved places, **£969.00**

Residential special school

- 3 or fewer approved places, **£1,163.96**;
- 4 – 18 approved places **£1,163.96** plus **£115.66** for each approved place from the 4th to the 18th place inclusive;
- more than 18 approved places, £2,899.00

Local authority adoption and fostering functions

- relevant adoption functions £ £1,161.75
- relevant fostering functions £ £1,815.75