

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 2016

2016 No. 322

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education (DfE) 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.) Regulations 2015 (S.I. 2015/551) ("the 2015 Regulations") prescribe the fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") by a number of schools, agencies and other establishments. These Regulations increase the level of certain registration, variation and annual fees payable to the Chief Inspector by those schools, agencies and establishments imposed by the 2015 Regulations.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The 2015 Regulations prescribe the fees payable to 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, providers of social work services and holiday schemes for disabled children 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.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies to England only.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

- 7.1 The policy of moving towards full cost recovery for the office of the Chief Inspector's (Ofsted) inspection of children's social care settings was introduced to comply with HM Treasury guidance. Since 2009 inspection fees have been increased annually by 10% for those providers not at full cost recovery. The majority of providers are still a long way from paying the full cost of their inspections. This means that the Government continues to subsidise these inspections and, therefore, the market as a whole.
- 7.2 Given the wide gap between the cost of inspection and many providers' fees, the policy of an annual 10% increase in inspection fees represents a measured way of bringing fees closer to full cost recovery. The level of proposed annual increase has been designed to maintain stability in the markets and avoid over pressurising individual providers.
- 7.3 As in previous years, the inspection fees for settings that have already reached "full-cost recovery" level will be capped at the full-cost rate. Currently, this only applies to a small number of larger settings.
- 7.4 A less than 10% increase has been applied to the annual inspection fee for large children's homes for 2016/17 so as to bring it to the full cost recovery level. In addition, the registration fee and the annual fee for holiday schemes for disabled children have been held at the levels applied for financial year 2015/16.

Consolidation

- 7.5 Not applicable.

8. Consultation outcome

- 8.1 The DfE consulted publicly from 3 November 2015 to 15 December 2015 on the proposed future level of registration, variation and annual fees for settings and services caring for children to apply from April 2016, and whether these should set a 10% increase for those settings which are not currently meeting the full costs of inspections. 17 responses were received, largely opposing any increase in fees for inspections, given the number of other pressures providers faced.
- 8.2 The DfE's response to this consultation will be made available on the DfE's consultation website from 9 March 2016.

9. Guidance

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

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is an increase in fees for those providers whose fees are more than 10% below the full cost of inspection and

regulation, while ensuring that providers do not face increases which take them above the full cost.

- 10.2 The impact on the public sector is the same as in paragraph 10.1.
- 10.3 A final stage impact assessment has not been prepared because the legislation has a low cost impact on the business sector. A validation stage impact assessment has also not been prepared as the measure is out of scope of 'One In, Three Out'. This approach was confirmed by the Regulatory Policy Committee.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to limit fee increases to 10%.
- 11.3 The basis for the final decision on what action to take to assist small business is that the DfE considers a 10% increase to be affordable for providers. The policy of an annual 10% increase in fees represents a measured way of bringing fees closer to full cost recovery, and has been designed to maintain stability in the market and to avoid over-pressurising individual providers.

12. Monitoring & review

- 12.1 Ofsted will continue to monitor the cost of regulation and inspection. It is planned to review the fee levels and to undertake an extensive consultation exercise in 2016 on proposals for fee increases over a number of years. This should give providers greater certainty and an ability to make plans over a longer term.

13. Contact

- 13.1 Sultana Dilu at the Department for Education. Telephone: 0207 783 8053 or email: Dilu.Sultana@education.gsi.gov.uk can answer any queries regarding the instrument.