

## 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 2017

2017 No. 245

#### 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. These Regulations also amend the frequency of inspections for those registered children's homes judged 'good' or 'outstanding' by the Chief Inspector, reducing such frequency from twice a year to once a year.

#### 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.

4.2 The 2015 Regulations also prescribe the frequency at which the Chief Inspector must inspect premises used for the purposes of a children’s home, residential family centre, voluntary adoption agency, adoption support agency, fostering agency, and holiday scheme for disabled children.

## **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 Since 2010-11, the fees which are payable by children’s social care providers to the Office of the Chief Inspector (“Ofsted”) are set using a model for calculation developed by Ofsted in 2008-09 and the model is updated each year. The cost of each inspection and regulatory activity is calculated based on a mix of direct and indirect costs, including the tariff for each inspection and/or visit and the wider costs of regulating the sector. Ofsted developed this model to give greater transparency to providers on how fees were set, providing a more accurate and readily understandable indication of the time and resource involved in each inspection or other regulatory activity.

7.2 The majority of providers are still a long way from paying the full costs associated with their regulation. This means that the government continues to subsidise the regulation of the majority of children’s social care settings.

7.3 Given that the majority of providers are a long way from paying the full costs of the regulatory activity undertaken by Ofsted, the policy of an annual 10% increase in 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 to avoid over pressurising individual providers.

7.4 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.

7.5 As an exception, the annual fee for residential holiday schemes for disabled children has been reduced and the provider and registration fees have been held at the levels applied for financial year 2016/17. This reflects a more appropriate and proportionate fee level for the scope of activity that these schemes undertake.

- 7.6 The size classification of children's homes has been amended to remedy an anomaly whereby potentially providers with 33 or 32 registered places would have paid a fee higher than that paid by providers with registered places of 34 and above.
- 7.7 The frequency of Ofsted inspections has been amended for those registered children's homes (excluding those children's homes approved as secure homes) which currently have an overall effectiveness judgement of 'good' or 'outstanding' so that they receive a minimum of one full inspection during the next inspection period and each subsequent year in which the good or outstanding judgment is retained.
- 7.8 The Secretary of State and the Chief Inspector believe that high quality providers can be trusted to use their professional judgements and experience to deliver high quality outcomes for those in their care, without having to be inspected twice per year.
- 7.9 No changes have been made to the frequency of inspection of homes judged to require improvement, or to be inadequate.

### *Consolidation*

- 7.10 Not applicable.

## **8. Consultation outcome**

- 8.1 The DfE consulted publicly from 13 December 2016 to 17 January 2017. The DfE consulted on the proposed future level of registration, variation and annual fees for settings and services caring for children to apply from April 2017. This included the proposed 10% increase in fees for Ofsted's regulatory activity for those settings that are not currently meeting the full costs of that activity (with the exception of residential holiday schemes for disabled children).
- 8.2 The DfE also consulted on reducing the frequency of inspections of children's homes which have an overall effectiveness rating of 'good' or 'outstanding' so that they receive a minimum of one full inspection during the next inspection period.
- 8.3 21 responses were received, largely opposing an increase in fees. The majority of respondents were in support of reducing the inspection frequency for good and outstanding children's homes from at least twice per year to at least once per year.
- 8.4 The DfE's response to this consultation is available at <https://www.gov.uk/government/consultations/childrens-social-care-providers-fees-and-inspection-frequency>.

## **9. Guidance**

- 9.1 No guidance is being produced by the DfE, but the providers affected will be notified by Ofsted of the level of fees payable by virtue of the increases made in this instrument. Ofsted will publish the Social Care Common Inspection Framework which sets out the structure for reduced inspection frequency.

## **10. Impact**

- 10.1 The impact on business, charities or voluntary bodies is an increase in fees of 10% for those providers who are not at full cost recovery.
- 10.2 The impact on the public sector is the same as in paragraph 10.1.

10.3 An impact assessment was not prepared as this legislation has a very low regulatory burden on the business sector.

## **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 the new inspection arrangements. It is planned to review the fee levels and to undertake a further consultation exercise in advance of any regulations made in 2018.

## **13. Contact**

13.1 Emily Roling at the Department for Education. Telephone: 0207 783 8324 or email: [Emily.Roling@education.gov.uk](mailto:Emily.Roling@education.gov.uk) can answer any queries regarding the instrument.