

## EXPLANATORY MEMORANDUM TO

### THE CHILDCARE AND INSPECTION OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES) (AMENDMENTS) REGULATIONS 2023

2023 No. 276

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

##### *Children's social care registration, variation and annual fees and inspection framework for secure 16-19 academies*

- 2.1 This Instrument increases fees payable to the Office for Standards in Education, Children's Services and Skills (Ofsted) by up to 10% for children's social care providers not paying the full cost of inspection and regulation.
- 2.2 It will also require that the secure children's home element of all secure 16-19 academies is subject to a minimum of two Ofsted inspections a year.

##### *Transitional arrangements*

- 2.3 This Instrument also temporarily extends the transitional provision to allow childcare providers (other than childminders) who operate for less than 4 hours per day and who automatically transferred on 1 September 2008 from the previous childcare register onto the early years register to continue to pay the same annual fee rate until 31 August 2025.
- 2.4 This will help to reduce the financial burden on these providers whilst the Department develops new fee arrangements for all early years providers.

##### *15 hours free childcare*

- 2.5 This Instrument ensures that local authorities' ("LAs") duties to secure provision and make arrangements with childcare on domestic premises ("CODPs") registered with Childminder Agencies ("CMAs") for the provision of 15 hours free childcare are consistent with their duties relating to childminders ("CMs") registered with CMAs.

##### *30 hours free childcare*

- 2.6 This Instrument corrects minor technical errors to ensure eligible parents can continue to access 30 hours free childcare. It also ensures that LAs' duties to make arrangements with early years CODPs registered with early years CMAs for the provision of 30 hours free childcare are consistent with their duties relating to CMs registered with CMAs.
- 2.7 The procedure for free issue will also be applied to this Instrument, which will be issued free of charge to all known recipients of the Local Authority (Duty to Secure

Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) (“the 2014 Regulations”) and the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (“the 2022 Regulations”).

### **3. Matters of special interest to Parliament**

#### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 This instrument imposes an increase of up to 10% on certain registration, variation and annual fees payable to Ofsted by a number of schools, agencies and other children’s social care establishments. Further detail is provided in the policy background section.
- 3.2 The instrument amends the 2014 Regulations and the 2022 Regulations to correct errors that have come to our attention.

### **4. Extent and Territorial Application**

- 4.1 The extent of the Instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this Instrument (that is, where the instrument produces a practical effect) is England only.

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

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

### **6. Legislative Context**

#### *Children’s social care registration, variation and annual fees and inspection framework for secure 16-19 academies*

- 6.1 The 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 Ofsted in respect of:
  - registration fees, variation fees and annual fees for children’s homes, voluntary adoption agencies, adoption support agencies, fostering agencies and residential family centres and holiday schemes for disabled children under sections 12(2), 15(3) and 16(3) of the Care Standards Act 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 sections 155 (1) and (2) of the Education and Inspections Act 2006.
- 6.2 The 2015 Regulations also set out the minimum frequency of inspections for children’s homes (including secure children’s homes), residential family centres, voluntary adoption agencies, adoption support agencies, fostering agencies and holiday schemes for disabled children.
- 6.3 Further to the Police, Crime, Sentencing and Courts Act 2022 (“PCSC Act”), secure schools will be established as secure 16-19 academies under the Academies Act 2010 and secure children’s homes under the Children’s Homes (England) Regulations

2015. Secure 16-19 academies will be inspected by Ofsted with support from the Care Quality Commission.

- 6.4 Regulation 27(1) of the 2015 Regulations provides that, subject to certain exceptions, premises used for the purposes of a children's home must be inspected at least twice in every year. One such exception is set out in regulation 27(3A) and enables Ofsted to exercise its discretion in certain circumstances to carry out one rather than two inspections per year. Regulation 27(3B) currently provides that paragraph (3A) does not apply to accommodation in a children's home approved by the Secretary of State under regulation 3 of the Children (Secure Accommodation) Regulations 1991 ("the 1991 Regulations"). This means that secure children's homes must be inspected a minimum of twice per year.
- 6.5 Once secure 16-19 academies become operational, the intention is for the secure children's home element to be inspected at the same minimum frequency as other secure children's homes. The Instrument therefore aligns the minimum inspection frequency of secure 16-19 academies with other secure children's homes by:
- amending the definition of "secure children's home" in regulation 2 so that it includes a secure 16 – 19 academy approved under section 1B(4) of the Academies Act 2010; and
  - substituting a new regulation 27(3B) to the effect that regulation 27(3A) does not apply to a secure children's home.

#### ***Transitional Arrangements***

- 6.6 The Childcare (Fees) Regulations 2008 (S.I. 2008/1804) ("the 2008 Regulations") prescribe the fees payable by childcare providers to the Chief Inspector in respect of childcare providers registered under Part 3 of the 2006 Act. This amendment extends the transitional arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the Early Years Register ("EYR") (introduced by the Childcare Act 2006 ("the 2006 Act") and who provide childcare for less than 4 hours per day. This amendment allows the providers to pay the same annual fee rate for a further two years (to 31 August 2025).

#### ***15 hours free childcare***

- 6.7 The 2014 Regulations made under section 7 of the 2006 Act place a duty on LAs to secure early years provision free of charge. These regulations set out the type and amount of free provision and the description of children who are entitled to receive free early years provision.
- 6.8 The 2014 Regulations prescribe that LAs must secure and make arrangements (including any termination arrangements) with an early years provider for the provision of 15 hours of free early years provision per week over 38 weeks of the year. This is available for disadvantaged two-year-olds and all three-and-four-year-olds in their area in accordance with parental choice and subject to the provider willing to provide the provision in accordance with the LA's arrangements and meeting certain quality standards.

#### ***30 hours free childcare***

- 6.9 The 2022 Regulations consolidated and made minor technical changes to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257) ("the 2016 Regulations"), to improve the operational delivery

of 30 hours free childcare. The 2022 Regulations are made under sections 1 and 2 of the Childcare Act 2016, and they prescribe the conditions relating to the parents of the child and set out eligibility criteria for the 30 hours free childcare. In addition the 2022 Regulations confer functions upon His Majesty's Revenue and Customs and require LAs to secure the provision of 30 hours free childcare for qualifying children in their area.

## 7. Policy background

### *What is being done and why?*

#### *Children's social care registration, variation and annual fees*

- 7.1 Since 2010-11, the fees payable to Ofsted by children's social care providers have been set using a model for calculation developed by Ofsted in 2008-09 and updated on an annual basis. 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 have 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 on inspection and regulatory activity.
- 7.2 The majority of children's social care providers are not paying the full cost of the inspection and regulatory activity undertaken by Ofsted with around 70% still paying less than 50% of the full cost. This means that the government continues to subsidise the regulation of the majority of children's social care providers.
- 7.3 Since 2010, the government has usually increased registration, variation and annual fees by up to 10% on an annual basis in order to move the sector closer to full cost recovery.
- 7.4 As in previous years, the level of increase is designed to maintain stability in the market and avoid imposing unsustainable pressure on individual providers, while moving towards full cost recovery. By way of illustration, a typical children's home has 3-5 places, so the fee increase would represent an annual increase of £284-£340 or an extra £5-£7 per week. Evidence for 2020-21<sup>1</sup> found that local authority residential places cost on average £4,865 per child per week and places in independent settings cost on average £4,153 per child per week.
- 7.5 Fees for providers already at full cost recovery level will be capped at the full cost rate. The annual fees for residential holiday schemes for disabled children will also remain capped at a reduced rate as has been the case since 1 April 2017. This continues to represent a proportionate fee structure in relation to the operating model for this specific setting.
- 7.6 Certain providers are also charged fees on the basis of the number of approved places that they offer. In these circumstances there is a set lower fee for a minimum number of places and an additional fee for each place above that minimum – the per place fee. This does not apply when a provider is paying fees at full cost recovery.
- 7.7 For example, a children's home that is approved to accommodate 3 or less children will pay an annual fee of £3,120. For children's homes that are approved to

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<sup>1</sup> <https://www.pssru.ac.uk/project-pages/unit-costs/unit-costs-of-health-and-social-care-2021/>

accommodate between 4 and 20 children, they will pay the £3,120 fee and an additional £311 per each approved place from the 4th up to the 20th place. Children's homes that are approved to accommodate more than 20 children, will pay fees at the full cost recovery rate (£8,629) and no more.

- 7.8 As a result of per place fees increasing by 10%, the point at which providers paying on this basis reach full cost recovery, changes. Full cost recovery is therefore achieved on the basis of a lower number of places offered. The changes made by this Instrument to the per place fee threshold are necessary to avoid fees payable by some children's homes from exceeding the full cost rate.

*Inspection framework for secure 16-19 academies*

- 7.9 Secure 16-19 academies are a new type of custodial provision for children and young people remanded or sentenced to detention in relation to a criminal offence. They will be run by child-focused providers and create a therapeutic environment within a secure setting, in line with international evidence that this is the most successful approach in reducing reoffending. The first secure 16-19 academy is planned to open in 2024.
- 7.10 The 2015 Regulations provide that children's homes must be inspected a minimum of twice a year but also give discretion to Ofsted to reduce that to once a year if a children's home has been rated as 'good' or 'outstanding' in the inspection immediately before. Secure children's homes, currently defined as children's homes provided for the purpose of restricting liberty and approved for that purpose under the Children (Secure Accommodation) Regulations 1991, are removed from that discretion and must always be inspected a minimum of twice a year.
- 7.11 The PCSC Act created a new category of secure residential provision (namely "secure 16-19 academies") that does not fall within the definition of "secure children's home" in the 2015 Regulations. This means that the discretion to reduce the frequency of inspections currently applies to secure 16-19 academies.
- 7.12 Given the vulnerability of the children and young people who will be placed in secure 16-19 academies, we consider it is important to ensure that secure 16-19 academies are subject to the same minimum number of inspections as secure children's homes. As such, this Instrument will amend the 2015 Regulations to require that the secure children's home element for all secure 16-19 academies is subject to a minimum of two Ofsted inspections a year.
- 7.13 We are continuing to work through how Ofsted will inspect the academy element of secure 16-19 academies. The detail of how the academy element will be inspected, and to what frequency, is yet to be finalised. Ofsted are undertaking work on this and will be engaging with relevant stakeholders. The inspection framework applicable to secure 16-19 academies will be published prior to the first one opening in 2024.

*Transitional Arrangements*

- 7.14 The 2008 Regulations prescribe the application fees for registration as a childcare provider, and annual fees for those who are so registered. The application fees and annual fees for the EYR are based on three "bands":
- a) Band 1: Childminders and other childcare providers below the operating time thresholds of Band 3 providers - £35.

- b) Band 2: Certain sessional childcare providers (not childminders) who transferred from the previous register maintained under the Children Act 1989 to the EYR and provide childcare provision for less than 4 hours per day - £50.
  - c) Band 3: Other childcare providers (not childminders) which operate for at least 3 hours per day and at least 5 days per week and at least 45 weeks per year - £220.
- 7.15 The amendment made by this Instrument to the 2008 Regulations is to extend, from 1 September 2023 until 31 August 2025, the transitional provision for Band 2 providers, i.e. a particular group of around 3,670 sessional childcare providers who transferred from the previous register maintained under the Children Act 1989 to the EYR and who provide childcare provision for less than 4 hours per day.
- 7.16 The transitional arrangement was put in place in order to avoid this particular group of childcare providers having to pay a significantly increased annual fee. Under the previous system, the annual fee applicable to this group of providers was approximately £30. This was modestly increased to £50 in 2010, in recognition that these were mainly voluntary and not-for-profit providers of childcare. Without the transitional provision, they would be required to pay an annual fee of £220. The policy initially was to increase the Band 2 fee gradually. However, fees have not been increased since 2010 for any of the provider fee bands. In 2011, the Government considered whether to remove transitional arrangements for fees but decided to retain subsidised fees to reduce burdens on these providers and help promote affordability of childcare. Expiry of the transitional arrangement would result in a large fee increase for Band 2 providers.

*15 hours free childcare*

- 7.17 Since September 2010, all three- and four-year-olds have been entitled to 15 hours a week free childcare over 38 weeks of the year. This is often referred to as the ‘universal’ funded early education entitlement. From September 2013, the entitlement to 15 hours free childcare was extended to two-year-olds from families in receipt of specified benefits and two-year-olds who were looked after by the local authority.
- 7.18 The entitlement for two-year-olds was further extended in September 2014 to children in low-income families, children with a statement of Special Educational Needs (SEN) or an Education, Health and Care Plan (EHCP), children in receipt of Disability Living Allowance and children who are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangements order which specifies with whom the child is to live. In April 2018, the eligibility criteria for two-year-olds to benefit from a funded early education place were changed to reflect the introduction of Universal Credit.
- 7.19 Under the 2014 Regulations, LAs must secure and make arrangements, (including any termination arrangements) with an early years provider for the provision of 15 hours of free early years provision per week, across 38 weeks of the year. This is available for disadvantaged two-year-olds and all three-and-four-year-olds in their area in accordance with parental choice and subject to the provider being willing to provide the provision in accordance with the LA’s arrangements and meeting certain quality standards. This duty applies to all childcare providers.
- 7.20 This amendment ensures that early years provision which would otherwise be excluded under section 96(5) of the Childcare Act 2006 (because the number of persons providing that provision exceeds three), is included within the definition of an “early years childminder” for the purpose of the 2014 Regulations. This would mean

that CODPs providers which are registered with either Ofsted or a childminder agency, are treated in the same way as childminders.

### ***30 hours free childcare***

#### **Background**

- 7.21 The Childcare Act 2016 places a duty on the Secretary of State for Education to ensure that 30 hours free childcare, over 38 weeks of the year, is available for three and four year old children of eligible working parents. The 2016 Regulations described the operation and delivery of the 30 hours free childcare entitlement.
- 7.22 The 2022 Regulations made small, technical changes to the 2016 Regulations to improve the operational delivery of 30 hours free childcare.
- 7.23 Whilst making these improvements, the opportunity was taken to consolidate the 2016 Regulations, which had been amended several times since they were first introduced.
- 7.24 We have identified several minor errors in the 2022 Regulations, which we are correcting in this Instrument. The corrections being made are summarised below.

#### **Eligibility for 30 hours free childcare with a partner in receipt of specified benefits**

- 7.25 To be eligible for 30 hours free childcare, both members of a two-parent family must be earning between the minimum and maximum income thresholds.<sup>2</sup> There is an exception within 30 hours free childcare policy where one parent is working (and meeting the income thresholds) and the other person receives certain specified benefits, which means that the couple can make an application without both of them meeting the income thresholds.<sup>3</sup>
- 7.26 The 2022 Regulations currently prevent a family from being eligible for 30 hours free childcare where one parent is in qualifying paid work, but their partner (who is not also a parent) receives certain qualifying benefits. The Instrument will correct this to allow conditions relating to a parent to also relate to any partner in a two-person family, regardless of whether they are not also a parent of the relevant child.

#### **Disregarding partners who are absent from the household for more than 6 months**

- 7.27 Both members of a two-parent family must meet the income criteria for 30 hours free childcare (unless one is receiving certain benefits, as described in paragraph 7.25 above). This does not apply where one parent is at home and the other is away for an extended period of time. Temporary absences such as holidays or business trips do not count towards this absence.
- 7.28 We are taking this opportunity to clarify the absence limit is for more than 6 months where the person is not in the same household as the parent making a 30 hours free childcare application, which was the position in the 2016 Regulations. We are reusing wording from the 2016 Regulations to avoid any ambiguity.

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<sup>2</sup> The income thresholds are outlined in legislation and mean a parent must earn at least the equivalent of 16 hours per week at national minimum/living wage (Regulation 18; SI 2022/1134), and under £100,000 adjusted net income per year to be eligible for 30 hours free childcare (Regulation 14 and 15; SI 2022/1134).

<sup>3</sup> Regulation 14; SI 2022/1134

Foster parents: requirement to meet the 30 hours free childcare income tests

- 7.29 Foster parents can make a 30 hours free childcare application if it is consistent with the child’s care plan, provided they are also in paid work outside of their role as a foster parent.<sup>4</sup> The income thresholds do not apply to foster carers, therefore they do not need to prove they earn at least the equivalent of 16 hours a week at national minimum wage to qualify for 30 hours free childcare.
- 7.30 We have corrected the 2022 Regulations, to confirm foster parents do not need to meet the minimum income threshold. However, the local authority must still be satisfied the foster parent is in paid work outside their role as a foster parent.

Paternity leave as a qualifying period of leave for 30 hours free childcare

- 7.31 There are specified types of leave within the 2022 Regulations.<sup>5</sup> These allow a parent who is on certain types of parental leave (such as maternity leave or shared parental leave) to be temporarily exempt from being required to demonstrate they meet the income thresholds. This means they retain their eligibility whilst being temporarily absent from work.
- 7.32 “Paternity leave” was incorrectly excluded from this list of qualifying periods of leave whilst consolidating the 2016 Regulations. This Instrument will therefore include paternity leave as a qualifying type of leave.

Meeting the minimum income test following a declaration of eligibility

- 7.33 Parents can apply for 30 hours free childcare up to 31 days before they are due to return to work following a period of parental or adoption leave. By applying, a parent confirms they expect to meet the minimum threshold for the next three months.
- 7.34 These Regulations will correct an error made during the consolidation of the 2016 Regulations so that the minimum income test will apply for the three months following a declaration, rather than the three months following the return to work date.

Amending the definition of a “childminder”

- 7.35 This amendment ensures that early years provision which would otherwise be excluded under section 96(5) of the Childcare Act 2006 (because the number of persons providing that provision exceeds three), is included within the definition of a “childminder” for the purpose of the 2022 Regulations. This would mean that CODPs providers which are registered with either Ofsted or a childminder agency, are treated in the same way as childminders.

## **8. European Union Withdrawal and Future Relationship**

- 8.1 None of the measures within this instrument relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 There are no plans to consolidate the 2008 Regulations, 2014 Regulations, 2015 Regulations or the 2022 Regulations.

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<sup>4</sup> Whether or not a foster parent is in paid work outside of their role as a foster parent is determined by the local authority.

<sup>5</sup> Regulation 16; SI 2022/1134



## 10. Consultation outcome

### *Children's social care registration, variation and annual fees and inspection framework for secure 16-19 academies*

- 10.1 The Department consulted publicly from 30 November 2022 to 18 January 2023. The consultation covered a proposed 10% increase to fees for children's social care and a minimum inspection frequency for secure 16-19 academies.
- 10.2 There were 57 responses to the consultation. Responses were received from children's homes providers, fostering agencies, local authorities and adoption agencies. The consultation was run online through the gov.uk website.
- 10.3 Close to half of respondents (44%) told us that the proposed fee increase would have no or a minor impact. Whereas 39% told us that it would have a moderate impact and 18% told us it would have a major impact.
- 10.4 The most common issue raised by respondents (17 out of 57) was the additional financial burden the fee increase would place on the sector given the rising cost of living. Additional comments were that it could impact unfairly on smaller providers and add to increasing costs, leading to less money being reinvested in the service.
- 10.5 For those who told us that the proposed increase would have no, or a minor impact, they said it was small and would have a minimal impact on budgets.
- 10.6 The majority of respondents (63%) agreed with our proposal that secure 16-19 academies should be subject to the same number of minimum inspections as secure children's homes. They thought that this number of inspections was appropriate and would help to maintain standards.
- 10.7 The remaining 15 respondents raised a wide range of issues, most providing more general comments on the secure 16-19 academy model.
- 10.8 The government's response to the public consultation is published here: <https://www.gov.uk/government/consultations/childrens-social-care-providers-fees-and-inspections-2023>. The response acknowledged the concerns raised about increasing financial burdens, but has highlighted that in practice, the majority of providers will only see a small increase to their weekly costs (as noted in paragraph 7.4).

### *Transitional Arrangements*

- 10.9 In July 2019, the Department for Education launched a public consultation about increasing the Early Years Register fees from 1 April 2020, and the principles that should underpin a revised Early Years Register fee model from April 2021. This was expected to be followed by a further consultation that would have included proposals for sessional providers who are subject to the transitional arrangements. However, the Department decided not to implement any fee increase from April 2020 and the Government response ([https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/872851/Ofsted\\_Fees\\_Review\\_Government\\_Response\\_March\\_2020.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872851/Ofsted_Fees_Review_Government_Response_March_2020.pdf)) provided assurances to the sector that any future fee proposals would be subject to a further public consultation.
- 10.10 On 17 March 2020, following the outbreak of the COVID-19 pandemic, the Department announced there would no rise in the fees following the 2019 consultation. Instead, Ministers decided to retain the transitional fees arrangement

until 31 August 2023. Due to current cost of living pressures, Ministers have decided to extend the transitional arrangements again so this group of providers can continue to pay a lower fee (of £50 instead of £220 per year) to reduce their financial burden whilst the Department develops a new fee arrangement.

*15 hours and 30 hours free childcare*

- 10.11 As this Instrument makes minor corrections to the 2014 and 2022 Regulations, there has been no consultation for these amendments.

## **11. Guidance**

*Children’s social care registration, variation and annual fees and inspection framework for secure 16-19 academies*

- 11.1 No guidance will be introduced by the Department, but providers will be advised by Ofsted of the changes to fees payable and the minimum inspection requirement for the secure children’s home element of secure 16-19 academies.

*Transitional Arrangements*

- 11.2 The Department will ensure that Ofsted is clear about the fee levels from September 2023. There is no need for new guidance to providers who are already paying fees at this level.

*15 hours and 30 hours free childcare*

- 11.3 The amendments made by this Instrument will not require new guidance, as they are correcting the 2014 and 2022 Regulations following the latter’s consolidation of the 2016 Regulations.

## **12. Impact**

*Children’s social care registration, variation and annual fees and inspection framework for secure 16-19 academies*

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this Instrument because the changes only regulate the public sector or a public service. That is, they are made regarding registration, variation, and annual fees charged by Ofsted for the regulation of children’s social care and certain education settings and ensuring that secure 16-19 academies are inspected by Ofsted a minimum of twice per year.

*Transitional Arrangements*

- 12.4 The impact on business, charities or voluntary bodies with regards to transitional arrangements is that the group of providers will continue to pay the same fee as they pay now (£50) rather than a significantly increased fee (£220).
- 12.5 An Impact Assessment has not been prepared in relation to the EYFS reforms because the impact of this change is deemed to be low and reduces burdens on businesses, the public sector and local authorities. An Impact Assessment has not been prepared in relation to the transitional arrangements as fees and charges are subject to a statutory exclusion (set out in section 22(4)(a)(i) of the SBEE Act 2015).

### *15 hours and 30 hours free childcare*

- 12.6 The impact on business, charities or voluntary bodies regarding the amendments to 15 and 30 hours free childcare will be small, as the Instrument will be correcting minor errors in legislation.

## **13. Regulating small business**

### *Children’s social care registration, variation and annual fees and minimum inspection requirement for secure 16-19 academies*

- 13.1 The legislation applies to activities undertaken by small businesses and they were able to contribute their views as part of the consultation.
- 13.2 To minimise the impact of the requirements on small businesses the approach taken is to limit the fee increase to 10%. This fee increase does not apply specifically to small businesses, but to all children’s social care and education providers within the scope of the 2015 Regulations, regardless of size, where full cost recovery has not yet been achieved. However, the policy intention is to introduce a fee increase in a measured way of bringing fees closer towards full cost recovery and has been designed to maintain stability in the market and to avoid over-pressurising individual providers.
- 13.3 The first secure 16-19 academy is due to open in 2024. Setting the minimum inspection frequency for this type of setting early, provides clarity to the provider of the first secure school, and future potential providers, of how many inspections they can expect to receive per year.
- 13.4 Overall, there is no specific action proposed to minimise the regulatory burdens on small businesses of these changes.

### *Transitional arrangements*

- 13.5 In terms of the 2008 Regulations, the legislation applies to activities that are undertaken by small businesses. The amendment will not impose new requirements on firms employing up to 50 people. Instead, it will have a beneficial effect on those affected by the transitional arrangements as they will not have to pay higher fees from September 2023. As the change avoids cost for small businesses, no action is necessary to assist them.

### *15 and 30 hours free childcare*

- 13.6 The 15 and 30 hours free childcare legislation applies to activities that are undertaken by small businesses. However, as it is making smalls corrections to LAs’ duties in the 2014 Regulations and retain eligibility for parents which were included in the 2016 Childcare Regulations, none of these changes will affect childcare providers.

## **14. Monitoring & review**

- 14.1 This Instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under Secretary of State (Minister for Children, Families and Wellbeing), Claire Coutinho, has made the following statement: “A review would be disproportionate when taking into account the economic impact of the regulatory provisions on the qualifying activity.”

***Children’s social care registration, variation and annual fees and minimum inspection requirement for secure 16-19 academies***

- 14.2 The Department will keep the operation of this Instrument under review via its regular meetings with Ofsted and children’s social care providers. The changes set out in this Instrument to increase the fees payable by children’s social care and education providers to Ofsted aim to bring fees closer to full cost recovery. Ofsted will continue to monitor the cost of regulation.
- 14.3 The Department, Ministry of Justice and Ofsted will continue to work together to ensure that the minimum inspection frequency for both the secure children’s home and academy elements of secure 16-19 academies are appropriate and proportionate.

***Transitional Arrangements***

- 14.4 The approach to monitoring of this legislation is the operation of this Instrument will be kept under review on a periodic basis.

***15 and 30 hours free childcare***

- 14.5 The 2014 and 2022 Childcare Regulations will be reviewed if further changes are needed.

**15. Contact**

- 15.1 Paul Stern at the Department for Education, email: [paul.stern@education.gov.uk](mailto:paul.stern@education.gov.uk) can be contacted with any queries regarding the amendments to the 2015 regulations in this Instrument.
- 15.2 Alex Hewitt at the Ministry of Justice, email: [alex.hewitt@justice.gov.uk](mailto:alex.hewitt@justice.gov.uk) can be contacted with any queries regarding the frequency of inspections for secure 16-19 academies.
- 15.3 Emily Bigham and Rachel Race, A/g Deputy Directors for Looked After Children Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.4 Helen McStravick at the Department for Education, email: [Helen.McStravick@education.gov.uk](mailto:Helen.McStravick@education.gov.uk) can be contacted with any queries regarding the transitional arrangements.
- 15.5 Hannah Streatfeild, Deputy Director for Responsive Childcare and Corporate Strategy at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.6 Rachael Gregory at the Department for Education, email: [Rachael.gregory@education.gov.uk](mailto:Rachael.gregory@education.gov.uk) can be contacted with any queries regarding the 15 and 30 hours free childcare amendments.
- 15.7 Joanna Mackie, Deputy Director for Early Years Sufficiency and Entitlements, at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.
- 15.8 Parliamentary Under Secretary of State for Children and Families, Claire Coutinho, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.