

EXPLANATORY MEMORANDUM TO
THE REGISTRATION AND INSPECTION OF EDUCATION, CHILDREN'S
SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS)
(ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 315

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education (DfE) 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

- 2.1 This Instrument amends the Care Standards Act 2000 (Registration) (England) Regulations 2010 (S.I. 2010/2130) (“the Registration Regulations”) and 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 Fees and Frequency of Inspections Regulations”).
- 2.2 The Instrument increases certain fees payable to the Office for Standards in Education, Children’s Services and Skills (Ofsted) by up to 20% for children’s social care providers not paying the full cost of inspection and regulation. It also amends the inspection frequency for children’s homes not accommodating any children at the time of the first inspection, makes provision for the disclosure of certain details relating to secure children’s homes, makes changes to the information required to be provided by applicants to Ofsted when seeking registration, stipulates the fees payable by providers of supported accommodation and sets the frequency of inspection for supported accommodation undertakings.
- 2.3 This instrument also corrects minor errors in the Fees and Frequency of Inspections Regulations. The procedure for free issue will be applied to this instrument, which will be issued free of charge to all known recipients of those 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 20% 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 Fees and Frequency of Inspections Regulations to correct minor errors that have come to our attention.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Fees and Frequency of Inspections Regulations currently prescribe the fees payable to Ofsted 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;
- 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.

6.2 The Fees and Frequency of Inspections Regulations also prescribe the minimum frequency of inspections in relation to children's homes (including secure children's homes), residential family centres, holiday schemes for disabled children, fostering agencies, voluntary adoption agencies and adoption support agencies.

6.3 The Registration Regulations make provision in relation to the registration requirements for settings registerable under the Care Standards Act 2000 including children's homes, fostering agencies, voluntary adoption agencies, adoption support agencies, residential family centres and supported accommodation undertakings.

7. Policy background

Provider Fees

7.1 Children's social care providers¹ are required to pay fees to Ofsted, including when they first register and then annually. These fees only partially cover the cost of Ofsted regulating and inspecting this provision – the rest of the cost is covered by Ofsted's grant from HMT (i.e., the taxpayer). Fees are a very small part of most providers' overall cost - for example the largest children's homes with over 21 places pay £8,629 annually.

7.2 Since 2010, the government has usually increased provider fees annually in order to move towards full cost recovery. Given the large disparity between the level of fees and the full costs of inspection and regulation, the government has not sought to move providers there in one go. Instead, fees have increased each year for all providers not already paying full cost, and we have consulted annually on how much that increase should be. Fee increases of 10% have been applied every year since 2010 for providers not already paying the full cost rate (with the exception of 2020-21 and 2021-22 when fees were frozen due to the pandemic).

¹ Providers include adoption support agencies, boarding schools and residential further educational colleges, children's homes, holiday schemes for disabled children, independent fostering agencies, residential family centres, residential special schools, voluntary adoption agencies.

- 7.3 This year, we consulted on a 20% annual increase to the fees payable to Ofsted, on the basis that a 10% increase would not offset the rise in Ofsted's costs and would actually move us further away from full cost recovery. A 20% fee increase represents on average £538 extra per year for all private and voluntary providers. The fees paid by most providers do not cover the full costs of regulation and inspection. This means that Ofsted subsidises the remainder of these costs from its central funding (i.e. the taxpayer). We have been increasing the fees paid by most providers year on year to move them towards paying full costs. The decision was taken to increase the fees payable to Ofsted by 20% this year rather than the usual 10%, for those providers (apart from supported accommodation undertakings) not already at full cost recovery.
- 7.4 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.
- 7.5 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.

Inspecting children's homes: removal of requirement to undertake a second inspection when no judgement on the four-point scale can be made

- 7.6 The Fees and Frequency of Inspections Regulations set the minimum frequency of inspections in children's social care settings including children's homes. Subject to certain exceptions, children's homes are required to be inspected twice per year. If a home is judged to be "good" or "outstanding" at their first inspection, they are not required to be inspected a second time in that same inspection year. For homes judged to be "requires improvement" or "inadequate" at their first inspection, Ofsted is required to undertake a second inspection during the inspection year. The requirement for a second inspection also applied to homes where a judgement on the overall experiences and progress of children and young people living in a home could not be reached because there were no children living in the home at the time of the inspection.
- 7.7 It was not considered to be an efficient use of Ofsted's inspection resources to require it to carry out a second inspection of a children's home in the same inspection year where there were no children accommodated in the home at the time of the first inspection. This instrument therefore amends the Fees and Frequency of Inspection Regulations to provide that, where Ofsted inspects a children's home and prepares a report under section 32(5) of the Care Standards Act 2000 which does not record a judgment on the overall experiences and progress of children and young people living in a children's home because there are no children and young people living in the home at the time of the inspection, no further inspection will be required in that year unless the Chief Inspector determines that a further inspection is required. Ofsted will update the Social Care Common Inspection Framework (SCCIF) to set out the circumstances in which a second inspection will be required and the timescales that will apply.

Disclosure of names and addresses; Secure 16-19 academies and secure children's homes (SCHs)

- 7.8 Secure 16-19 academies are Ministry of Justice (MoJ) funded establishments catering for sentenced 12–18-year-olds, with a focus on helping young offenders rehabilitate.

The first secure 16-19 academy, Oasis Restore, in Kent, is set to open in 2024. They will be dual registered as children's homes and as 16-19 academies and will be inspected by Ofsted with support from the Care Quality Commission.

- 7.9 Whilst the MoJ lead on secure 16-19 academies, there is a clear overlap with DfE's secure children's homes (SCHs) and academies policy portfolios. Secure 16-19 academies will be established using DfE's free schools' framework and process and, as children's homes, must comply with the Children's Homes (England) Regulations 2015 (S.I. 2015/541) and the relevant provisions of the Registration Regulations.
- 7.10 Regulation 7(1) of the Registration Regulations requires the Chief Inspector to keep a register of children's homes. Regulation 7(5) provides that the name, address and telephone details of children's homes as contained in the register and as contained in an inspection report, or any other identifying information in relation to the children's home in the inspection report, must not be made available to a person requesting to see or obtain a copy from the register (subject to certain exceptions for disclosure to people specified in regulation 7(6)).
- 7.11 Children's homes are ordinarily located within communities with their whereabouts not known to the public. These homes look after vulnerable children who may be placed at risk if their whereabouts were known. The prohibition on disclosure of name and address details is therefore to maintain privacy and protect vulnerable children from being identified and potentially contacted.
- 7.12 When Ofsted begins inspecting secure 16-19 academies in 2024, in keeping with inspections for 16-19 academies generally, they will publish the name and address in their reports. The restriction in the Registration Regulations in relation to the disclosure of the names and addresses of children's homes creates an inconsistency, given secure 16-19 academies are to be dually registered as children's homes and 16-19 academies.
- 7.13 Secure 16-19 academies (and SCHs) are however very different by their nature to regular children's homes. They are secure provision and therefore knowing their location is not analogous with the risks of the same in relation to other children's homes. The location of SCHs is publicly available – the sector has its own website with addresses published thereon, and the children that will reside in them are protected by the very nature of the setting.
- 7.14 Given the very different risks between non-secure children's homes and secure 16-19 academies, and to avoid confusion when Ofsted begin inspecting and publishing inspection reports in respect of secure 16-19 academies, this instrument amends the Registration Regulations in relation to the disclosure of names and addresses so that this information is available to the public. For consistency, this amendment will also apply to all SCHs. Non-secure children's homes will still however be subject to the prohibition on disclosure of their names and addresses and other relevant information under the Registration Regulations. This amendment will result in the names and addresses of secure 16-19 academies and other SCHs being included in inspection reports relating to these establishments which will be available on the Ofsted find a report website.

Minor amendments to the Registration Regulations - documents to be supplied by applicants

- 7.15 This instrument makes two further amendments to the Registration Regulations. These changes seek to simplify the requirements on those applying to be registered

managers of an establishment, agency, holiday scheme for disabled children or a supported accommodation undertaking, or applying to be registered for the purposes of carrying on an establishment, agency, holiday scheme for disabled children or supported accommodation undertaking. We think both changes will help to improve the registration process for children's social care providers.

- 7.16 Currently those who are applying to carry on an establishment, agency, holiday scheme for disabled children or supported accommodation undertaking, or an applicant for registration as the manager of one of these settings, are required to submit a medical report from a GP. Most GPs do not complete such forms as standard anymore, so either refuse or charge additional fees to do so. This is costly for providers and can cause delays to applications. This instrument therefore amends the Registration Regulations so that applicants must provide a self-certified health declaration instead of a GP report. Applicants must, however, provide a GP report if requested to do so by Ofsted.
- 7.17 This instrument also removes the requirement for a person seeking to be registered for the purposes of carrying on an establishment, agency, holiday scheme for disabled children or supported accommodation undertaking to provide a bank reference. Banks no longer provide references, so it is no longer possible for this information to be provided. Ofsted continues to have access to other financial information as part of the registration and inspection process including business plans, profit and loss accounts, and financial forecasts.

Detail the variation and annual fees for providers of supported accommodation

- 7.18 Providers of supported accommodation have been able to register with Ofsted since 28 April 2023 and the government set out the various registration fees for providers of supported accommodation in a consultation response published in March 2023. The fees for supported accommodation are set at a level much closer to full cost recovery than in other forms of children's social care provision, with the intention of achieving full cost recovery in 2025-26.

Inspection for supported accommodation undertakings

- 7.19 This instrument also sets the minimum inspection frequency for supported accommodation undertakings. Regulations 16(4) to (6), which make provision for the inspection of supported accommodation undertakings, come into force on 1st September 2024.
- 7.20 Ofsted will be required to inspect providers of supported accommodation at least once in the first inspection cycle and thereafter at least once in each subsequent inspection cycle. The dates of the first inspection cycle will vary depending on when the supported accommodation undertaking was registered. For supported accommodation undertakings registered before 1st April 2024, the first inspection cycle starts on 1st September 2024 and ends on 31st March 2027. For supported accommodation undertakings registered on or after 1st April 2024, the first inspection cycle starts on 1st April following the date on which the supported accommodation undertaking is registered and ends 36 months later. The subsequent inspection cycle starts on 1st April following the date on which the supported accommodation undertaking was last inspected and ends 36 months later.
- 7.21 Ofsted will be required to inspect supported accommodation undertakings at a provider level and must visit a range of premises where children are accommodated as

part of their inspection of the provider. There is no requirement that Ofsted visit all premises used by a supported accommodation undertaking during any given inspection.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate the Fees and Frequency of Inspections Regulations or the Registration Regulations.

10. Consultation outcome

10.1 A public consultation covering some of the measures implemented by this instrument ran from 21 December 2023 to 25 January 2024. The consultation covered:

- A 20% increase in current fees payable by children's social care providers (apart from supported accommodation), for those providers which are not already at full cost recovery.
- Consultation on future fee increases of 20% or less.
- Removal of the requirement for Ofsted to undertake a second inspection on a children's home when there are no children accommodated in the home at the time of the first inspection.
- Disclosure of names and addresses in inspection reports relating to secure 16-19 academies and secure children's homes.

10.2 There were 16 responses to the consultation. Responses were received from different stakeholders from across the children's social care sector including local authorities, children's homes, adoption agencies and fostering agencies. The consultation was run online through the gov.uk website.

10.3 In relation to the proposal to increase current fees payable by children's social care providers (for those providers which are not already at full cost recovery) by 20%, the majority of respondents (approx. 68%) indicated that the proposed increase would have no, minor or moderate impact. In light of this, and having regard to the objective of moving providers of children's social care closer to full cost recovery, this instrument amends the Fees and Frequency of Inspections Regulations to implement the 20% increase to Ofsted annual, registration and variation fees from 1 April 2024 for children's social care providers not already at full cost recovery.

10.4 Remove the requirement for Ofsted to undertake a second inspection on a children's home when there are no children accommodated in the home at the time of the first inspection: Most respondents (69%) agreed with our proposal to remove the requirement for Ofsted to undertake a second inspection on a children's home when there are no children accommodated in the home at the time of the first inspection. This instrument therefore amends the Fees and Frequency of Inspections Regulations so that, where Ofsted inspects a children's home and prepares a report under section 32(5) of the Care Standards Act 2000 which does not record a judgment on the overall experiences and progress of children and young people living in a children's home because there are no children and young people living in the home at the time of the inspection, no further inspection will be required in that year unless the Chief Inspector determines that a further inspection is required. This change will mean

Ofsted will not be required to undertake a second inspection in any given inspection year if they are aware that there are still no children living in the home.

- 10.5 Disclosure of names and addresses in the inspection reports for secure 16-19 academies and secure children's homes: The majority of respondents (75%) did not foresee any potential issues with the proposal. This instrument therefore amends the Registration Regulations so that name and address information relating to secure children's homes is available to the public. Restrictions in the Registration Regulations on disclosure of name and address details relating to non-secure children's homes remain.
- 10.6 The government published its response to the public consultation.²

11. Guidance

- 11.1 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 this instrument.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies. The department recognises that the changes may represent a challenge to some providers.
- 12.2 There is no, or no significant, impact on the public sector. The impact on the public sector is likely to come through increased financial burdens on local authorities as it is likely there will be an increase in the fees charged by providers to local authorities for accommodating children.
- 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: the registration, variation and annual fees charged by Ofsted for the regulation of children's social care and certain education settings; the minimum inspection frequency of children's homes and supported accommodation settings; the information that is publicly available in relation to secure children's homes; and the information that must be provided to Ofsted by applicants seeking registration as a person who carries on or is the registered manager of children's social care settings.

13. Regulating small business

- 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 20%. 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 Fees and Frequency of Inspections 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 by 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 Overall, there is no specific action proposed to minimise the regulatory burdens on small businesses of these changes.

² Government's response to the public consultation: <https://www.gov.uk/government/consultations/childrens-social-care-providers-fees-and-inspections-2024>

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, the Parliamentary Under Secretary of State (Minister for Children, Families and Wellbeing), David Johnston, 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.”
- 14.2 The Department will continue to monitor and review the Fees and Frequency of Inspections Regulations and the Registration Regulations and the amendments set out in this instrument.

15. Contact

- 15.1 Caroline Firth at the Department for Education (caroline.firth@education.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 Sarah Jennings, Deputy Director, Looked After Children Placements can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister David Johnston, Parliamentary Under Secretary of State (Minister for Children, Families and Wellbeing) can confirm that this Explanatory Memorandum meets the required standard.