

EXPLANATORY MEMORANDUM TO
THE COMMISSION FOR SOCIAL CARE INSPECTION (FEES AND
FREQUENCY OF INSPECTIONS) (AMENDMENT) REGULATIONS 2006

2006 No. 517

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1. The Commission for Social Care Inspection (Fees and Frequency of Inspections) (Amendment) Regulations 2006 set out revised fee levels for certain social care establishments and agencies that are regulated by the Commission (CSCI). They also amend the frequency of inspections for care homes, domiciliary care agencies, nurses agencies and adult placement schemes.

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

- 3.1. The level of increase applied to the fees is 15 per cent across the board, ie. above the rate of inflation. The policy rationale for this is explained in paragraphs 7.1 and 7.2 below.

4. **Legislative Background**

- 4.1. CSCI is required under the Health and Social Care (Community Health and Standards) Act 2003 to inspect social care establishments and agencies according to prescribed frequencies. Regulated establishments and agencies within the scope of the Care Standards Act 2000 are required, where appropriate, to pay fees for registration, variations of registration, and annual fees as prescribed by the Secretary of State for Health. These requirements are set out in regulations.

5. **Extent**

- 5.1. This instrument applies to England.

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

- 7.1 The policy objective of raising fee income from social care providers is twofold. Firstly, it helps the Commission to be properly funded and able to discharge its responsibilities and statutory obligations effectively. Secondly, the charging of fees is also intended to make the costs of regulation transparent, ensuring that these are borne by those who stand to benefit from the regulatory process.
- 7.2. The longer-term objective is for improved regulatory effectiveness and efficiency through full cost recovery. The Government's policy is to continue to move towards full cost recovery in stages. Because the amount recovered in fees was originally set at a low level, and is still well short of the full cost, these increases need to be above the rate of inflation. No decision has been taken on the time it should take to achieve full cost recovery, but further annual increases to move in that direction remain the Government's policy.
- 7.3. The policy intention underlying the changes to inspection frequencies is to enable the Commission to focus its inspection activity on providers about which it has the greatest level of concern, rather than treating both high quality and poorer quality providers in the same way. This helps to meet the Government's aim that regulation should be risk-based and proportionate. These changes relate only to registered adult social care services.

8. Impact

- 8.1. A Regulatory Impact Assessment has been prepared and is attached to this memorandum.

9. Contact

- 9.1. Tony Bennett at the Department of Health, Tel: 020 7972 4126 or e-mail: tony.bennett@dh.gsi.gov.uk can answer any queries regarding the instrument.



Full Regulatory Impact Assessment

Commission for Social Care Inspection

**Regulatory Fees
2006/07**

FULL REGULATORY IMPACT ASSESSMENT

Regulatory proposal: Commission for Social Care Inspection – Fees and Frequencies of Inspection 2006/07

Purpose and Intended Effect

Background

1. The Commission for Social Care Inspection (CSCI) is required to inspect social care establishments and agencies according to established annual frequencies. From April 2002 until April 2004 this function belonged to the National Care Standards Commission (NCSC). Establishments, agencies and boarding schools within the scope of the Care Standards Act 2000 have been required, where appropriate, to pay fees for registration, variations of registration, and annual fees as prescribed by the Secretary of State for Health. These requirements are set out in secondary legislation¹, which replicates the existing regulations brought into force when the NCSC was created in 2002.
2. The content of this RIA deals specifically and explicitly with the annual increase in regulatory fees for 2006/07. Frequencies of inspection are also subject to changes, but these are part of a package of changes designed to ensure greater proportionality in the process of regulating adult social care providers, and involve changes to other sets of regulations. They are therefore not dealt with in this RIA but feature in a separate RIA dealing with all the associated proportionality changes, which will be published shortly.
3. A full regulatory impact assessment for the frequencies of inspection and regulatory fees was published in December 2001. Subsequent RIAs have been published in respect of increases in the levels of regulatory fees which have taken place in April 2003, April 2004 and April 2005. These subsequent RIAs and this one effectively update the original RIA of December 2001.

Objectives

4. The policy objective of raising fee income from social care providers is twofold. Firstly, it helps the Commission to be properly funded and able to discharge its responsibilities and statutory obligations effectively. Those responsibilities in turn are aimed at reducing the incidence of abuse and neglect of children and vulnerable adults in children's homes, care homes and in other regulated settings, and ensuring that the safety and welfare of service users is at all times protected.
5. Secondly, the charging of fees is also intended to make the costs of regulation transparent, ensuring that these are borne by those who stand to benefit from the regulatory process. It is stated Government policy to move towards full cost recovery – in effect making the Commission self-funding through fee income,

¹ The Commission for Social Care Inspection (Fees and Frequency of Inspection) Regulations 2004

rather than via central Government subsidy. The background to this is set out below in paras 8-9.

Rationale for Government Intervention

6. Earmarked resource budgets for the NCSC and CSCI have shown, over the four-year period 2003/04 to 2006/07, a steady reduction in the central Government grant, based on the policy of increasing regulatory fee income and moving towards full cost recovery. Fee income received by CSCI for 2005/06 is estimated to be about £55m.
7. In 2006/07, CSCI will need to raise about £65m in fee income in order to carry out its statutory regulatory functions effectively, taking into account the available central Government grant. The latter has not been finalised at the time of writing but is expected to be about £85m out of an operating budget of about £150m. Of that £150m the Commission's regulatory functions will account for about £120m, so £65m of fee income would represent about 54 per cent of the full cost of regulation, i.e. still well short of full cost recovery.
8. Moving towards full cost recovery is consistent with Treasury guidance on fees and charges² and was included in a wide-ranging public consultation in 2001³. Full cost recovery is based on the philosophy that it is right that those regulated should pay for their regulation. All providers, private or voluntary, benefit from regulation. Those who pay for the services that are regulated, whether local authorities commissioning services, private individuals funding their own care, or those making charitable donations to voluntary organisations, would expect the organisations concerned to be providing high quality services. Regulation is the way that quality is assured and abuse detected and avoided. So regulatory fees are regarded as a legitimate cost to any regulated organisation.
9. It is the Government's firm policy to move to a position where the recurrent costs of providing regulation are fully recovered from service providers. This was the stated policy when the fee structure was introduced in 2002. At the time, the Government stated that it intended to achieve full cost recovery within five years (i.e. by April 2007) but would review this policy after two years. In the light of this, the Government decided in 2004 that it should maintain the policy of moving in the direction of full cost recovery. A fee increase for 2006/07 is part of this process. However, the Government acknowledges that the original proposal to reach full cost recovery within five years is not achievable as it would require annual increases that would be generally regarded as too steep. No decision has been taken on the time it should take to achieve full cost recovery, but further annual increases to move in that direction remain the Government's policy.
10. In addition, CSCI's modernisation process, as set out in their consultation document "Inspecting for Better Lives", and the associated changes to the statutory regulatory regime being made by the Government, eg. reduction in inspection frequencies (subject of a separate regulatory impact assessment to be

² The Fees and Charges Guide – HM Treasury, 1992

³ Frequencies of Inspection and Regulatory Fees – *a consultation paper*. DH, 2001

published shortly) will contribute gradually to the reduced overall cost of CSCI. The savings have not been finalised but we can state that the overall operating cost of CSCI will be smaller by at least £18m in cash terms by 2008. CSCI will as a result be more efficient and effective, and the rate of fee increases is diminishing because the overall cost is reducing.

Consultation

11. The NCSC Fees and Frequencies of Inspection Regulations 2002 were consulted on during the summer of 2001. The document set out how the NCSC was to regulate health and social care, the cost of this, its funding and fees. The costs associated with registration and inspection activity and the policy of full cost recovery (and the consequences for later years) were fully set out, as was the need for yearly fee increases.
12. There was extensive consultation with focus groups for service users and carers, with providers, commissioners and regulators in order to seek views on the fee proposals. The general reaction to the consultation proposals was moderate and the number of responses (165) was modest. Most providers were more concerned about the impact of national minimum standards than fees. Some major organisations welcomed most of the proposals. This is the best the Government could have expected.
13. The new Regulations provide for the yearly increase in respect of the 2006/07 financial year. The Government considers that consultation on the new Regulations is unnecessary since the principles and financial model present within the 2001 consultation are still in place and have been carried forward. Reductions for small providers remain in place at the same proportions as before.

Options

14. Three options have been identified:

Option 1 - nil increase

15. Although providers have to some extent become used to annual increases in fees, a nil increase in fees for 2006/07 would obviously be popular with them. However, it is clear that there is insufficient money available for CSCI to undertake its functions if fees remain at their 2005/06 levels. Pressure upon DH budgets is severe and there is no scope to increase the central grant above its 2005/06 level, which would be necessary if fee levels remained unchanged.
16. A nil increase would therefore have major disadvantages. It would result in a gap of about £10m in the resource budget for 2006/07 that would have to be filled from elsewhere. If this did not happen there would be an increased risk that unacceptable and unsafe practice by regulated providers would be undetected – or that unsatisfactory providers would achieve registration - because the Commission would be obliged to scale down the time spent by its inspectors on regulatory activity. There has always been a clearly stated intention to gradually increase fees until full cost recovery is achieved, and the Government maintains that this is

its objective. Option 1 would therefore jeopardise Government budgeting for 2006/07 and would seriously undermine the Commission's ability to carry out its work effectively. This option is therefore not being pursued.

Option 2 – 15 per cent across the board increase

17. It is clear that a further significant rise in fee income is required for 2006/07 if the Department is to remain on course to reduce the level of central revenue funding to CSCI. A 15 per cent increase would raise about £10m of additional revenue. This would taking CSCI's fee income up to some £65m, or about 54 per cent of the cost of CSCI's regulatory activity. The amounts of annual fees (and registration fees for new providers) under this option, with current levels for comparison, are set out in Annex A.
18. The increase would be lower than the previous three, but would still represent helpful progress towards properly reflecting the true cost of regulating care services. It represents the option with the best balance between funding CSCI appropriately on the one hand, and minimising financial impact on providers, and is therefore the preferred option.

Option 3 – immediate move to full cost recovery

19. To achieve full cost recovery an increase in fees over 2005/06 levels amounting to some £65m (or 118 per cent) taking fee income up to £120m, would be needed.
20. Such an increase would release £65m of funds to be deployed on other DH or Government priorities. The percentage size of the increase, more than doubling what providers now pay, would to some extent distract attention from the fact that fees would still represent only about 1 per cent of total provider costs. Many regulated providers, especially smaller ones, would find an increase of this size unpalatable and unmanageable in one stage. It is also not necessary given that available funds are in place to continue to provide a significant Government grant to CSCI in 2006/07.

Costs and Benefits

Sectors and groups affected

21. The regulations affect various markets in the social care sector, of which the largest by far is the care home market. There are over 20,000 care homes, of which the majority are in the private sector, with a substantial number also provided by voluntary organisations. Among other regulated services, domiciliary care agencies are the biggest group with over 3,000, mostly private or voluntary sector. The proposals involve no race equality issues.

Benefits

22. The main beneficiaries of the regulatory system are service users and carers. Providers also benefit from the regulatory system, and unsuitable providers are excluded from the sector, thus maintaining confidence in and enthusiasm for the care sector. It is therefore to the advantage of service users and providers if CSCI is appropriately funded to undertake its regulatory functions effectively.
23. Bearing the above in mind, therefore, option 1 has no identifiable benefits for service users because it would undermine CSCI's effectiveness. Its benefits accrue to providers, to some extent, by not adding to the regulatory fees that they pay, although providers are also known to want CSCI to be efficient and that would be at risk if funding was inadequate.
24. Options 2 and 3 would maintain the current benefits of the regulatory system for service users and for Government, by enabling CSCI to undertake its functions effectively, without creating demands for central funding that would create financial pressures elsewhere in Government. Option 2 also benefits providers by allowing CSCI to carry out its functions in an effective (properly funded) manner. Under option 3 similar benefits for providers would be offset by the sharp fee increase placed on them (see below under costs).

Costs

25. Under option 1 there would be increased risk to service users if, as a result of being funded inadequately, CSCI were unable to discharge their duties effectively. These are not quantifiable in cost terms.
26. Under option 2, to indicate the cost imposed by the fee increases, care homes may be used for illustration. Care homes pay more in annual fees the more beds they have, up to a maximum of 29 beds. The impact is roughly as follows, with rounded numbers:
- number of registered homes 19,000
 - average annual fee for all homes, whatever size £1500 pa
 - average annual increase for all homes, whatever size £250pa
27. 17,000 homes (89 per cent of the total) pay fees up to £4000 pa – increases would range from about £40 to £600; 6,700 homes (35 per cent of the total) pay fees up to £1000 pa – increases would range from about £40 to £150.
28. It is acknowledged that in percentage terms the increase in fees under the preferred option is higher than the rate of inflation. However, the original fees were set at a very low level in order to help care establishments adjust to the new regulatory regime. The proposed new fee levels remain minor in proportion to the budgets of regulated providers. Taking care homes as an example, regulatory fees in 2006-07 will represent less than 0.5% of care home total costs. Full cost recovery would represent about 1% of total care home costs. And for an average-sized care home of 20 beds, the extra paid in annual fees will be £259 per annum, i.e. less than the cost of one week's stay in a care home. So in cash terms the increase is minimal.

29. In options 2 and 3 there would be no administrative costs involved, only additional costs in terms of the actual fees paid.

Small Firms Impact Test

30. Fee levels are important to agencies and this will be true of small businesses with lower profit margins than the larger organisations. However, they will be equally able to pass on these higher costs to clients. The registration of individual agency branches ensures that a disproportionate burden does not fall upon small agency businesses, since a large organisation with many branches pays more in fees than one with only one or two.
31. The impact on small businesses is not expected to be different from that on other providers. Providers will be able to pass on the increased regulatory costs to commissioners of services and small providers will, in addition, continue to enjoy a significant reduction in the “flat rate” or annual fee as well as substantially reduced registration fees in comparison with larger providers.
32. The Small Business Service (SBS) was consulted on the Fees and Frequencies of Inspection Regulations in 2001. It was satisfied that the Department of Health had sought to take on board the views of small businesses in line with the principles of “think small first”.

Competition Assessment

33. The proposed fees are relatively low in comparison to other set up costs. The Government’s priority is to ensure that users of new services are suitably protected. Nevertheless the fee reductions for “small” providers remain in place, and these mitigate the potentially disproportionate effects of the cost increases on smaller participants in the market. These fee concessions were introduced following the consultation on the original fee structure in 2001 to take account of the concerns of small providers and to give special protection to small care homes, domiciliary care or nurses agencies, and adult placement carers. In addition care homes and children’s homes, residential special schools and residential family centres all have annual fees based on greater levels for additional bed numbers, therefore mitigating any disproportionate impact of fee increases.
34. It is also the case that providers can take the increases into account in negotiating fees with those who commission their services. In view of the above factors the Government considers that the proposals will not affect the current nature of competition within the affected markets. The Government has not identified any specific distinctions in effect across the various markets affected.
35. This regulatory impact assessment has been considered during its preparation by the Regulatory Review Team at the Office of Fair Trading, who support the Department’s assessment.

Enforcement, Sanctions, and Monitoring

36. The new fee levels will be enforced by CSCI. Unpaid fees may be recovered as civil debts. CSCI would not process applications for registration without payment of the registration fee.

Implementation and delivery plan

37. The new fees will come into effect on 1 April 2006. The new fees will be advertised by CSCI writing to all registered providers.

Post-implementation review

38. The success of the regulations in generating appropriate fee income for CSCI will be apparent through in-year monitoring of income. In addition the Government will keep the policy of moving in the direction of full cost recovery under review.

Summary and Recommendation

39. The recommended option is option 2, an increase in fees of 15 per cent across the board. This is best in terms of achieving the Government's stated aims of progressing in the direction of full cost recovery, without the need for a fee increase that would be widely regarded as excessive. Whilst providers pay more for regulation, CSCI is enabled to continue to function effectively.
40. The Government's policy is a robust system of regulation and inspection aimed at ensuring high standards of care and the protection of vulnerable service users. It is important that the cost of this regulatory system should be transparent and borne jointly by the providers of services and those paying for them. The Government's firm intention remains to move in that direction in stages, whilst ensuring that the overall costs of regulation are gradually reduced.

ANNEX A

REGISTRATION FEES 2006-07 (2005-06 in brackets)

Service	Provider Registration	Manager Registration	Minor Variation	Variation requiring visit
Care homes	£ 2186 (£ 1901)	£ 596 (£ 518)	£ 99 (£ 86)	£ 1093 (£ 950)
Small care homes	£ 596 (£ 518)	N/a	£ 99 (£ 86)	£ 596 (£ 518)
Children's homes	£ 2186 (£ 1901)	£ 596 (£ 518)	£ 99 (£ 86)	£ 1093 (£ 950)
Small children's homes	£ 596 (£ 518)	N/a	£ 99 (£ 86)	£ 596 (£ 518)
Residential family centres	£ 1822 (£ 1584)	£ 497 (£ 432)	£ 83 (£ 72)	£ 911 (£ 792)
Small residential family centres	£ 497 (£ 432)	N/a	£ 83 (£ 72)	£ 497 (£ 432)
Domiciliary care agencies	£ 1822 (£ 1584)	£ 497 (£ 432)	£ 83 (£ 72)	£ 911 (£ 792)
Small domiciliary care agencies	£ 497 (£432)	N/a	£ 83 (£ 72)	£ 497 (£ 432)
Nurses agencies	£ 1822 (£ 1584)	£ 497 (£ 432)	£ 83 (£ 72)	£ 911 (£ 792)
Small nurses agencies	£ 497 (£ 432)	N/a	£ 83 (£ 72)	£ 497 (£ 432)
Voluntary adoption agencies principal office and branches	£ 1518 (£ 1320)	N/a	£ 69 (£ 60)	£ 759 (£ 660)
VAA's with small principal office or branch	£ 414 (£ 360)	N/a	£ 69 (£ 60)	£ 414 (£ 360)
Independent Fostering Agencies	£ 2186 (£ 1901)	£596 (£ 518)	£ 99 (£ 86)	£ 1093 (£ 950)
Adoption Support Agencies & Branches	£ 1518 (£ 1320)	£414 (£360)	£ 69 (£ 60)	£759 (£660)
Small Adoption Support Agencies & small Branches	£ 414 (£ 360)	N/a	£ 69 (£ 60)	£414 (£360)
Adult Placement Schemes	£ 2186 (£ 1901)	£ 596 (£ 518)	£ 99 (£ 86)	£ 1093 (£ 950)
Small Adult Placement Schemes	£ 596 (£ 518)	N/a	£ 99 (£ 86)	£ 596 (£ 518)

ANNUAL FEES 2006-07 (2005-06 in brackets)

Service	Flat rate	Approved Place from 4th – 29th	Approved place over 30th
Care homes	£ 297 (£ 259)	£ 99 (£86)	£ 99 (£86)
Small care homes and Adult Placements Carers	£ 199 (£ 173)	N/a	N/a
Children's homes	£ 994 (£ 864)	£ 99 (£86)	£ 99 (£86)
Small children's homes	£ 994 (£ 864)	N/a	N/a
Boarding schools & FE	£ 432 (£ 432)	£ 26 (£26)	£ 13 (£13)
Residential special schools	£ 795 (£ 691)	£ 79 (£69)	£ 40 (£35)
Residential family centres	£ 662 (£ 576)	£ 83 (£72)	£ 83 (£72)
Domiciliary care agencies	£ 1242 (£ 1080)	N/a	N/a
Small domiciliary care agencies	£ 621 (£ 540)	N/a	N/a
Nurses agencies	£ 828 (£ 720)	N/a	N/a
Small nurses agencies	£ 414 (£ 360)	N/a	N/a
Voluntary adoption agencies & Branches	£ 690 (£ 600)	N/a	N/a
Small voluntary adoption agencies & small branches	£ 345 (£ 300)	N/a	N/a
Independent Fostering Agencies	£ 1987 (£ 1728)	N/a	N/a
Adoption Support Agencies & Branches	£ 690 (£ 600)	N/a	N/a
Small Adoption Support Agencies & small Branches	£ 345 (£ 300)	N/a	N/a
Adult Placement Schemes	£ 1987 (£ 1728)	N/a	N/a
Small Adult Placement Schemes	£ 994 (£864)	N/a	N/a

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed: Liam Byrne

Date: 28th February 2006

Parliamentary Under Secretary of State, Department of Health.

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