

**EXPLANATORY MEMORANDUM TO**  
**THE HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S**  
**SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS)**  
**(CHILDREN'S HOMES ETC) (AMENDMENT) REGULATIONS 2014**

**2014 No. 670**

- 1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
  
- 2. Purpose of the instrument**
  - 2.1 The Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc) (Amendment) Regulations 2014 make amendments to the annual fee levels prescribed by the Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007 (S.I. 2007/694) ("the 2007 Regulations").
  
  - 2.2. This instrument changes the level of annual fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") by voluntary adoption agencies, adoption support agencies, fostering agencies, children's homes, residential family centres, boarding schools, residential colleges, residential special schools and by local authorities in respect of their adoption and fostering functions.
  
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 The instrument, which is to come into force on 1 April 2014, was signed by the Minister on 25 February 2014. However, due to an administrative error, an earlier, unsigned version of the instrument was registered and then laid on 4 March 2014 instead of the correct, signed version. The only difference is that in the correct version of the instrument the revised annual fees are rounded up or down to the nearest pound. This error was discovered on 13 March 2014.
  
  - 3.2 On 17 March 2014 the incorrectly laid version of the instrument was withdrawn and the correct, signed version was laid. Accordingly, the instrument will now come into force less than 21 days after being laid.
  
  - 3.3 The instrument must come into force on 1 April 2014 in order that the revised fees it provides for will come into force at the start of the Chief Inspector's / Ofsted's financial year (which commences on 1 April).

#### **4. Legislative Context**

- 4.1 The 2007 Regulations prescribe, among other matters, the annual fees that are payable to the Chief Inspector by:
- a. boarding schools, residential colleges and residential special schools under section 87D(2) of the Children Act 1989;
  - b. voluntary adoption agencies, adoption support agencies, fostering agencies children's homes and residential family centres under section 16(3) of the Care Standards Act 2000 ("CSA 2000"); and
  - c. local authorities in respect of their adoption and fostering functions under section 155 (1) and (2) of the Education and Inspections Act 2006 ("the 2006 Act").
- 4.2. The 2007 Regulations have been amended seven times since 2009. Subject to paragraph 12.1 below, the Department intends to consolidate these amendments and revoke and replace the 2007 Regulations for April 2015, when the next annual fee increases are expected.

#### **5. Territorial Extent and Application**

- 5.1 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**

##### **Proposed changes to the 2007 Regulations in respect of fees for social care settings**

- 7.1 In 2001, the Department of Health (DH) (which then had policy responsibility for the regulation and inspection of children's homes etc) issued a consultation paper *Frequencies of Inspection and Regulatory Fees* that proposed a fee structure for regulatory work undertaken under the CSA 2000 and a move towards full cost recovery within 5 years. DH later decided that the timetable for reaching full cost recovery should be slowed to allow more affordable increases. Consequently these fees increased by 20% in 2003-04, 20% in 2004-05, 20% in 2005-06 and 15% in 2006-07.
- 7.2 The policy was to continue to move towards full cost recovery. However, no changes were made to the fee levels in 2007-08 or 2008-09 as it was necessary following implementation of the 2006 Act to review the fee structure in the context of the transfer of the regulation and inspection functions from the Commission for Social Care Inspection to the Chief Inspector.

- 7.3 In 2007 Ofsted carried out an organisation-wide efficiency review which reduced the costs of inspection and resulted in the availability of accurately audited, up to date figures for the costs of inspection and regulation for 2007-8 and 2008-9. This analysis of the costs identified a number of providers whose annual fees under the 2007 Regulations were more than the actual cost of inspection. As a result, the 2007 Regulations were amended in 2009 to reduce the fees payable by these providers so as to reflect the average actual cost.
- 7.4 However, there still remained a large proportion of providers, in the main providers of children's homes, that paid significantly less than the actual cost of inspection. Following the amendments to the 2007 Regulations in 2009, the then Government consulted in November 2009 on a proposal for a two-tiered model for annual fees to begin in 2010 ("the 2010 Model"). This approach was subsequently adopted between 2010 and 2012 with the aim of getting closer to full cost recovery over time. This resulted in fees increasing by 10% annually for those providers not at full cost recovery in April 2010, 2011 and 2012. Providers whose fee level was already within 10% of full cost recovery had their increase limited so as not to exceed full cost recovery and any provider already at full cost recovery had no increase.
- 7.5 In 2010-11, Ofsted modified its model for setting fees for inspection to meet Treasury guidelines. The revised cost model showed an increase in the cost of inspection for almost all settings, some of which had previously been at full cost recovery. However as the revised cost model had not been made explicit the Department concluded that it would not be fair when setting fees for 2013 to introduce this rise for those providers who had reached full cost recovery under the previous model. Therefore, the the cap for this group of providers was retained for the financial year 2013-14.
- 7.6 In November 2013, Government consulted on a further 10% increase in annual fees in April 2014. This consultation made it explicit that proposed fee increases for 2014-2015 were based on the revised Ofsted cost model. This consultation proposed a continuation of the policy for setting an annual 10% increase in fees for those providers not at full cost recovery. This policy has been maintained as there are still a significant number of providers who are not meeting the full costs of inspection, meaning that a wide gap remains between fees and the costs of inspection incurred by Ofsted.

## **8. Consultation outcome**

- 8.1 The Department consulted publicly from 13 November 2013 to 10 December 2013 on the proposed future level of fees for inspecting settings and services caring for children to apply from April 2014, and whether these should set a 10% increase for those settings and services that are not currently meeting the full costs of inspections. We received 19 responses, largely opposed to there being any increase in fees for inspecting, given a number of other pressures they faced.

8.2 The response to this consultation will be made available on the Department's consultation website from 25.2.2014.

## **9. Guidance**

9.1 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.

## **10. Impact**

10.1 The impact on businesses, charities or voluntary bodies is an increase in fees for those providers where the fees are more than 10% below the full cost of inspection and regulation, while ensuring that providers do not face increases that take them above the full cost.

10.2 The impact on the public sector is same as in paragraph 10.1.

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

## **11. Regulating small business**

11.1 The legislation applies to small business.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to limit the increases to 10%.

11.3 The basis for the final decision on what action to take to assist small business, is that we expect the increase, limited to 10%, will be affordable. The policy of an annual 10% increase in inspection fees represents a measured way of bringing fees closer to full cost recovery and has been designed to maintain stability in the market and avoid over pressurising individual providers.

## **12. Monitoring & review**

12.1 Ofsted will continue to monitor the cost of regulation and inspection. We plan to review the fee levels and undertake an extensive consultation exercise in autumn 2014 in respect of the fees that will apply for years 2015-2018.

## **13. Contact**

- 13.1 Contact Lydia Affie at the Department for Education (tel: 0207 783 8777 or email: [lydia.affie@education.gsi.gov.uk](mailto:lydia.affie@education.gsi.gov.uk)) with any queries regarding the instrument.