

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) REGULATIONS 2015

2015 No. 551

- 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 These Regulations change the registration, variation and annual fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") by schools, agencies and establishments.
 - 2.2 In addition, the Regulations revoke and replace 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") in order to consolidate amendments made to those Regulations.
- 3. Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
- 4. Legislative Context**
 - 4.1 The 2007 Regulations currently prescribe the fees payable to the Chief Inspector in respect of:
 - registration fees, variation of registration fees and annual fees for children's homes, voluntary adoption agencies, adoption support agencies, fostering agencies and residential family centres, providers of social work services and holiday schemes for disabled children under sections 12(2), 15(3) and 16(3) of the Care Standards Act 2000;
 - annual fees for residential special schools, boarding schools and residential colleges under section 87D(2) of the Children Act 1989; and
 - annual fees payable by local authorities in respect of their adoption and fostering functions under section 155 (1) and (2) of the Education and Inspections Act 2006.

- 4.2 The 2007 Regulations also prescribe the frequency of inspections in relation to children's homes, residential family centres, holiday schemes for disabled children, voluntary adoption agencies and adoption support agencies.
- 4.3 The 2007 Regulations have been amended eight times since they were made. In the 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 (S.I. 2014/670), the Department expressed its intention to consolidate the 2007 Regulations, when the next fee increases were prescribed in 2015. Accordingly, these Regulations revoke and replace the 2007 Regulations, to consolidate amendments made since 2007 and to update legislative references in those Regulations.
- 4.4 The Regulations also make amendments to the fees payable to the Chief Inspector. The reasons for those amendments to the fees are described in detail below.

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

- 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 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.
- 7.7 In November 2014, given that many providers still pay significantly less than the cost of conducting their inspections, Government consulted on quickening the pace towards full-cost recovery and proposed a 20% increase in annual fees in April 2015 for those providers who had not reached full cost recovery. In addition we consulted on increasing registration/variation fees for children's social care and residential education providers by 10%.

8. Consultation outcome

- 8.1 The Department consulted publicly from 27 November 2014 to 24 December 2014 on the proposed future level of fees for inspecting settings and services

caring for children to apply from April 2015, and whether these should set a 20% increase for those settings and services that are not currently meeting the full costs of inspections. We received 17 responses, largely opposed to there being any increase in fees for inspecting, given the number of other pressures they faced.

8.2 The response to this consultation is available on the Department's consultation website at <https://www.gov.uk/government/consultations/fees-and-frequency-of-inspections-regulations-proposed-revisions>.

8.3 As a result of the consultation, and taking into account that providers will be implementing the new Quality Standards in the coming year, Government decided not to press ahead with a 20% increase, but to increase inspection fees by 10% - a continuation of the current policy for setting an annual 10% increase in fees for those providers not at full cost recovery. We will go ahead with increasing registration/variation fees by 10%.

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 2015 in respect of the fees that will apply for years 2016-2018.

13. Contact

13.1 Contact Ian Payne at the Department for Education (tel: 0207 783 8082 or email: ian.payne@education.gsi.gov.uk) with any queries regarding the instrument.