

EXPLANATORY MEMORANDUM TO

HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS) (CHILDREN'S HOMES ETC.) (AMENDMENT) REGULATIONS 2018

2018 No. 246

1. Introduction

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

2. Purpose of the instrument

- 2.1 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 Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") by a number of schools, agencies and other establishments. The 2015 Regulations also set out the minimum frequency of inspections in relation to children's homes. These Regulations increase the level of certain registration, variation and annual fees payable to the Chief Inspector by those schools, agencies and establishments. These Regulations also cease the annual inspection of closed children's homes and change the minimum frequency of inspection for reopening closed homes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 The instrument imposes an increase of 10% on certain registration, variation and annual fees payable to the Chief Inspector by a number of schools, agencies and other establishments. The reason for this increase is that the majority of fees payable to the Chief Inspector do not cover the full cost of the associated regulatory activity. An increase of 10% on fees payable to the Chief Inspector represents a proportionate way of bringing fees closer to full cost recovery. The intention is to increase these fees each year by 10% until the fees cover the full cost of the associated regulatory activity.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to the negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The purpose of the current instrument is to amend the 2015 Regulations in order to increase the fees payable to the Chief Inspector by 10% and to cease the inspection of closed children's homes and change the minimum frequency of inspection for reopening closed children's homes.

- 4.2 The 2015 Regulations 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 (“CSA 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.
- 4.3 The 2015 Regulations also prescribe the frequency at which the Chief Inspector must inspect premises used for the purposes of a children’s home, residential family centre, voluntary adoption agency, adoption support agency, fostering agency, and holiday scheme for disabled children.

5. Extent and Territorial Application

- 5.1 This instrument extends to England and Wales.
- 5.2 The territorial application of this instrument is 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

What is being done and why

- 7.1 Since 2010-11, the fees which are payable by children’s social care providers to the Chief Inspector, the head of the Office for Standards in Education, Children’s Services and Skills (“Ofsted”), are 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 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 in each inspection or other regulatory activity.
- 7.2 The majority of providers are a long way from paying the full cost of the inspection and regulatory activity undertaken by Ofsted. This means that the government continues to subsidise the cost of the inspection or other regulatory activity, which it pays Ofsted to carry out, for the majority of children’s social care settings.
- 7.3 Given that the majority of providers are a long way from paying the full costs of the regulatory activity undertaken by Ofsted, the policy of an annual 10% increase in fees represents a measured way of bringing fees closer to full cost recovery. The level of proposed annual increase has been designed to maintain stability in the markets and to avoid over pressurising individual providers.

- 7.4 As in previous years, the inspection fees for settings that have already reached “full-cost recovery” level are capped at the full-cost rate. Currently, this only applies to a small number of larger settings.
- 7.5 As an exception, the annual fee and provider and registration fees for residential holiday schemes for disabled children have been held at the levels applied for financial year 2017/18. This reflects a more appropriate and proportionate fee level for the scope of activity that these schemes undertake.
- 7.6 The annual inspection of closed children’s homes that are subject to a condition of registration imposed by the Chief Inspector under section 13(5) of the Care Standards Act 2000 will be ceased whilst the condition remains in force. The condition is that they must inform Ofsted three months before starting to accommodate children again. Before the home is reopened, it is Ofsted’s practice to inspect the home.
- 7.7 The purpose of this change is that Ofsted’s resources will no longer be used to inspect children’s homes that are closed. The number of closed children’s homes is small, there were 21 closed homes as of February 2018. Prior to this change, Ofsted were required to continue to carry out inspections of closed children’s homes, some of which remain closed for years.
- 7.8 The Regulations also change the minimum frequency of inspection of reopening closed children’s homes, in the year that they reopen.
- 7.9 When a closed home reopens it will be inspected in the following way:
- Where a closed children’s home reopens before 1st October in any year, the home will be inspected before the 31st March in that year.
 - Where a closed children’s home reopens on or after 1st October in any year, no inspection of that home is to be carried out, until the following inspection year.
- 7.10 The purpose of this change is that reopening children’s homes are not inspected multiple times over a short period.
- 7.11 The change also aligns the inspection frequency of reopening closed children’s homes with the inspection frequency of newly registered children’s homes which is a more practical inspection frequency.
- 7.12 Since the CSA 2000, newly registered children’s homes that register before the 1st October receive at least one inspection in the inspection year and those that register on or after the 1st October receive their first inspection in the following inspection year.
- 7.14 It remains the case that additional inspections may be carried out at any time under section 31 of the CSA 2000, this applies to all children’s homes including closed homes and reopening closed homes.

8. Consultation outcome

- 8.1 The DfE consulted publicly from 12 October 2017 to 7 December 2017. The DfE consulted on the proposed future level of registration, variation and annual fees for settings and services caring for children to apply from April 2018. This included the proposed 10% increase in fees for Ofsted’s regulatory activity for those settings that are not currently meeting the full costs of that activity (with the exception of residential holiday schemes for disabled children).

- 8.2 The DfE also consulted on ceasing the inspection of closed children's homes.
- 8.3 16 responses were received to the consultation. A low number of responses to the consultations on changes to the 2015 Regulations is typical. The consultation on the 2017 amendment to the Regulations received 21 responses and the consultation on the 2016 amendment to the Regulations received 17 responses.
- 8.4 The majority of respondents (62.5%) opposed an increase in fees. The majority of respondents (62.5%) were in support of ceasing the inspection of closed children's homes and the remaining respondents were indifferent.
- 8.5 Respondents were concerned that an increase in fees would put pressure on providers' budgets. While recognising respondents' views, given the wide gap between the cost of inspection and many providers' fees, the increase of 10% in registration, variation and annual fees represents a measured way of bringing fees closer to full cost recovery.
- 8.6 Respondents also sought clarification about the definition of a closed children's home and the process for reopening a closed home. The government response clarifies that closed children's homes are subject to a condition of registration imposed by the Chief Inspector under section 13(5) of the Care Standards Act 2000. The condition is that they must inform Ofsted three months before starting to accommodate children again. The government response also explains that prior to reopening it is Ofsted's practice to inspect the children's home.

Consolidation

- 8.7 Not applicable.

9. Guidance

- 9.1 No guidance is being produced by the DfE, but the providers affected will be notified by Ofsted of the level of fees payable by virtue of the increases made in this instrument.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is minimal.
- 10.2 The impact on the public sector is the same as in paragraph 10.1.
- 10.3 An Impact Assessment has not been prepared for this instrument because the amounts involved fall below the threshold for producing one.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to limit fee increases to 10%.
- 11.3 The basis for the final decision on what action to take to assist small business is that the DfE considers a 10% increase to be affordable for providers. The policy of an annual 10% increase in fees represents a measured way of bringing fees closer to full cost recovery, and has been designed to maintain stability in the market and to avoid over-pressurising individual providers therefore no mitigating action is proposed.

Small businesses were able to contribute their views to the consultation on the amendment to the Regulations.

12. Monitoring & review

- 12.1 The changes set out in this instrument aim to bring fees closer to full cost recovery, to cease the inspection of closed homes and to change the frequency of inspection of reopening closed homes. Ofsted will continue to monitor the cost of regulation and the new inspection arrangements and the Regulations may be amended accordingly. It is also planned to review the fee levels and to undertake a further consultation exercise in advance of any regulations made in 2019.

13. Contact

- 13.1 Atalanta Fitzgerald at the Department for Education (telephone: 02072275336; email: atalanta.fitzgerald@education.gov.uk) can answer any queries regarding the instrument.