

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 2009

2009 No. 2724

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families 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 2009 ("the 2009 Regulations") make amendments to the fee levels prescribed in the Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007 No.694 ("the 2007 Regulations").
- 2.2. The 2007 Regulations prescribe the fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") for applications for registration, or variation of registration, in respect of children's homes, voluntary adoption agencies, adoption support agencies, fostering agencies and residential family centres, and the annual fees for regulation and inspection to be paid by these establishments and agencies and for inspection by residential special schools, boarding schools and residential colleges, and by local authorities for inspection of their adoption and fostering functions.
- 2.3. The effect of the 2009 Regulations is to makes changes to the level of annual fees payable by some of the providers covered by the 2007 Regulations.

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

- 3.1. None.

4. Legislative Context

- 4.1. Registration fees, variation of registration fees and annual fees for voluntary adoption agencies, adoption support agencies, children's homes, residential family centres and fostering agencies are set by regulations made under sections 12(2), 15(3) and 16(3) of the Care Standards Act 2000 ("CSA 2000"). The power to set annual fees for boarding schools, residential colleges and residential special schools is contained in section 87D(2) of the Children Act 1989. The powers to set annual fees for local authorities in respect of their adoption and fostering functions are contained in section 155 (1) and (2) of the Education and Inspections Act 2006 ("the 2006 Act").

- 4.2 The 2006 Act, which received Royal Assent on 8 November 2006, provides for the inspection of local authority adoption and fostering functions, regulation and inspection of establishments and agencies under the CSA 2000 and inspection of boarding schools etc to be transferred from the Commission for Social Care Inspection (“CSCI”) to the Chief Inspector. The 2007 Regulations made provision for fees payable under the CSA 2000, the 2006 Act and the Children Act 1989. An explanatory memorandum in respect of the 2007 Regulations was prepared by the Department for Education and Skills and may be read in conjunction with this memorandum.

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 In 2001, the Department of Health (DH) consultation paper *Frequencies of Inspection and Regulatory Fees* proposed a fee structure for regulatory work undertaken under the CSA 2000 and a move towards full cost recovery within 5 years. DH Ministers later decided that the timetable for reaching full cost recovery should be slowed to allow more affordable increases. Fees increased by 20% in 2003-04, 20% in 2004-05, 20% in 2005-06 and 15% in 2006-07.
- 7.2 The Government’s policy is to continue to move towards full cost recovery, but no changes to the fee levels were made in 2007/08 or 2008/09, mainly because it has been necessary to review the fee structure in the context of the transfer of the regulation and inspection functions referred to above from CSCI to the Chief Inspector.
- 7.3 Ofsted has carried out an organisation-wide efficiency review, including a review of its modelling of compliance and inspection costs. As a result, data is now available for the costs of inspection and regulation for 2007-8 and 2008-9, which is based on a clear model of the actual cost of inspection and other regulatory functions and which has been thoroughly reviewed and audited. For establishments and agencies regulated under the CSA 2000 – in the 2009 Regulations fostering agencies and residential family centres – the cost model includes an element in respect of compliance costs. For residential special schools, residential colleges, boarding schools and local authority adoption functions, the cost model reflects the cost of inspection only.
- 7.4 This detailed analysis of the costs of inspection etc provides a much more precise analysis of the actual costs of inspection than has previously been available. It has also shown that the actual costs of inspection are less than previous modelling suggested. In addition to

this, Ofsted's recent efficiency savings have reduced the costs of inspection across all sectors.

- 7.5 The impact of these changes has been that a number of social care providers and residential special schools, residential colleges and boarding schools have been identified as paying more than the actual costs.
- 7.6 We are therefore amending the fees as set out in the 2007 Regulations from 2 November 2009 to reduce the fees payable by those providers who have been identified as paying more than the full cost of inspection and regulation, so as to reflect the average actual cost.
- 7.7 In addition, for those providers whose liability to pay an annual fee arose before the 2 November 2009 and who have not yet paid, we have made provision for the date on which the annual fees are to be paid to be 2 November 2009, so that providers are invoiced for these new (lower) amounts.
- 7.8 For those providers who have already paid the annual fee set under the 2007 Regulations for this financial year which is greater than the fee set out in the 2009 Regulations, we will be consulting on a proposal to refund this amount by a corresponding reduction in their fees in 2010-11.
- 7.9 However, there still remains a large proportion of providers, largely of children's homes, who currently pay significantly less than the actual cost of inspection and, where appropriate, compliance. We will be consulting shortly on how to move to a more robust and transparent approach to setting annual fees, which will aim to achieve full cost recovery over time. This consultation will propose a two tiered model to changes in annual fees for children's social care settings and residential special schools, residential colleges and boarding schools as follows:
 - **Phase One:** For those providers currently paying more than the average cost of inspection and where appropriate compliance, we are reducing the annual fees within these 2009 Regulations to reflect the actual cost. These annual fees are based upon Ofsted's cost data from the financial year 2008-2009. The cost data from 2008-9 will also form the basis for setting the annual fees for inspection and compliance for these providers from April 2010.
 - **Phase Two:** For those providers who are currently paying less than the average cost of inspection and, where appropriate, compliance, we are proposing subject to consultation to introduce an annual 10% increase to their annual fee from 1 April 2010 until they have reached full

cost recovery (or less than a 10% increase where providers are less than 10% from full cost recovery).

We will be consulting on whether to set in place a three yearly cycle for the setting of fees for those providers at full cost recovery, with an annual increase for inflation if appropriate, or whether to set the fees on an annual basis each April to reflect finalised cost data from the financial year finishing 12 months earlier.

- 7.10 The fees changes that apply from 2 November 2009 are set out in the table at Annex A.

8. Consultation

- 8.1. The Department has worked with Ofsted to analyse how their cost data compares to the fees set under the 2007 Regulations, and establish where the fees should be amended to reduce those which were set higher than Ofsted's costs. The changes to the level of fees in the 2009 Regulations are reductions and on that basis no consultation with providers has been carried out.

9. Guidance

- 9.1. No guidance as such is being produced but the providers affected will be notified by Ofsted of changes to the level of fees made by the 2009 Regulations. Where those providers have not yet paid the fees due for the period from the 1 April 2009 to the 1 November 2009 they will be invoiced by Ofsted at the new rates set out in the 2009 Regulations. Where providers have already paid the fees due in that period, we are proposing subject to consultation to reduce the fees payable in the next financial year.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is to reduce fees for those providers where the fees as set out in the 2007 Regulations were more than the full cost of inspection and regulation.
- 10.2 The impact on the public sector is to reduce fees for those providers where the fees as set out in the 2007 Regulations were more than the full cost of inspection and regulation.
- 10.3 An Impact Assessment has not been prepared for this instrument.

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 ensure that all the amendments made to fees are reductions, for those providers where the fees payable would otherwise be greater than the full cost of inspection and regulation.
- 11.3 The basis for the final decision on what action to take to assist small business, is that no assistance is required in respect of reductions made to fees.

12. Monitoring and review

- 12.1 We will be consulting on the fee levels to apply from 2010, as outlined in section 7.

13. Contact

- 13.1 Contact Andrew Dalton at the Department for Children, Schools and Families, Tel: 020 7340 7352 or e-mail: Andrew.Dalton@DCSF.gsi.gov.uk with any queries regarding the instrument.

Annex A

Provider	Size	Fees under 2007 Regulations (average)	Adjusted 2009-2010 Fees
Local Authority Adoption functions	All	£1,987	£1,549
Boarding School	25-50	£1,211	£994
Boarding School	51-500	£2,772	£1,391
Boarding School	501-800	£8,779	£1,789
Boarding School	801+	£13,123	£2,186
Independent Fostering Agency	All	£1,987	£1,597
Residential College	>23	£1,954	£969
Residential Family Centre	>8	£1,285	£1,138
Residential Special School	>30	£3,838	£2,899