

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 2020

2020 No. 253

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. This Instrument amends the 2015 Regulations to increase the level of certain registration, variation and annual fees payable to the Chief Inspector by those schools, agencies and establishments.
- 2.2 This Instrument also amends the per place fee threshold for children's homes, residential special schools and residential further education colleges.
- 2.3 Some providers are charged fees on the basis of the number of approved places that they offer. In these circumstances there is a set lower fee for a minimum number of places and an additional fee for each place above that minimum – the per place fee. This does not apply when a provider is paying fees at full cost recovery.
- 2.4 As a result of per place fees increasing by 10% (in line with the rate of fee increase being introduced by this Instrument), the point at which providers paying on this basis reach full cost recovery, changes. As a result of the increases, full cost recovery is achieved on the basis of a lower number of places offered. The changes made by this Instrument to the per place fee threshold are necessary to avoid fees payable by some children's homes, residential special schools and residential further education colleges from exceeding full cost recovery.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This 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, where those fees are not yet at full cost recovery. 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.

- 3.2 Some of the increases made by this Instrument are by less than 10%. This is where a 10% increase would result in full cost recovery being exceeded and so a lesser increase is applied to bring those fees to full cost recovery.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.3 As the Instrument is subject to negative resolution procedure and is not likely to be scheduled for debate there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The extent of this Instrument is England and Wales.
- 4.2 The territorial application of this Instrument is England only.

5. European Convention on Human Rights

- 5.1 As the Instrument is subject to negative resolution procedure and does not amend primary legislation no statement is required.

6. Legislative Context

- 6.1 The Instrument amends the 2015 Regulations in order to increase fees payable to the Chief Inspector by 10% (or less where 10% would exceed full cost recovery) and to amend the per place fee threshold, for children's homes, residential special schools and residential further education colleges so that full cost recovery is not exceeded.
- 6.2 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 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.

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 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 This is also the rationale for lowering the threshold for the per place fee for children's homes, residential special schools and residential further education colleges. As a result of per place fees increasing by 10%, the point at which providers in these categories reach full cost recovery, on the basis of the number of places that they offer, has changed. Full cost recovery is now achieved on the basis of a lower number of places offered and this amendment to thresholds is being made in order to ensure that full cost recovery is not exceeded in those settings.
- 7.6 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.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 Not applicable.

10. Consultation outcome

- 10.1 The DfE consulted publicly from 14 January to 11 February 2020 on increasing the fees payable by children's social care providers to the Chief Inspector, 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). 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 2020. The consultation was promoted with the sector by DfE and by Ofsted.
- 10.2 Eight responses were received to the consultation. A low number of responses to the consultations on changes to the 2015 Regulations is typical. There were eight responses to the 2019 consultation, 16 responses to the 2018 consultation, and 21 responses to the 2017 consultation.

- 10.3 The majority of respondents (87.5%) opposed an increase in fees. One respondent agreed with the increases.
- 10.4 Respondents were concerned that an increase in fees would put pressure on providers' budgets and on service provision. While recognising respondents' views, it remains the case that the majority of providers are a long way from paying the full cost of the inspection and regulatory activity undertaken by Ofsted. Although previous fee increases have closed the gap, there is still further to go. The majority of providers - around 70% - are still paying less than 50% of the full cost. This means that the taxpayer continues to subsidise the regulation of the majority of children's social care providers.
- 10.5 The policy of an annual 10% increase in inspection fees represents a measured way of bringing fees closer to full cost recovery. The government wants to limit the financial burden placed on providers while moving towards the full cost recovery of fees. The level of proposed annual increase has been designed to maintain stability in the market and avoid imposing unsustainable pressure on individual providers.

11. Guidance

- 11.1 No guidance is being produced by the DfE regarding the increases to the fees payable by children's social care providers to the Chief Inspector. The providers affected will be notified by Ofsted of the level of fees payable by virtue of the increases made in this Instrument and the new fees will be published on gov.uk.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 Impact Assessment has not been prepared for this instrument because the regulations are concerned with increasing the level of certain registration, variation and annual fees payable to the Chief Inspector. There are no changes to the inspection regime itself.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 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%. This level of increase is not specific to small businesses, rather is applicable to all providers regardless of size, where full cost recovery has not yet been achieved. However, the policy intention of an annual 10% increase in fees is that it introduces a measured way of bringing fees closer to full cost recovery and has been designed to maintain stability in the market. Small businesses will benefit from this measured approach.
- 13.3 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. It avoids over-pressurising individual providers and therefore no mitigating action is proposed.
- 13.4 Small businesses were able to contribute their views on these fee increases via the consultation. .

14. Monitoring & review

- 14.1 This Instrument does not include a statutory review provision and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Minister of State for Children and Families, Vicky Ford, has made the following statement: “A review would be disproportionate when taking into account the economic impact of the regulatory provisions on the qualifying activity.”
- 14.2 The changes set out in this Instrument to increase the fees payable by children’s social care providers to the Chief Inspector aim to bring fees closer to full cost recovery. Ofsted will continue to monitor the cost of regulation and the new inspection arrangements and the Regulations may be amended accordingly. Ofsted also plan to undertake a review of the basis on which fees are set at all levels. Any proposed changes to the fee structure will be fully consulted upon before implementation and will not be implemented until April 2021, at the earliest.

15. Contact

- 15.1 Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (Fees and Frequency of Inspections) (Children’s Homes etc.) Regulations 2015: Andrew Senior at the Department for Education (telephone: 0114 2742624; email: andrew.senior@education.gov.uk) can answer any queries regarding the Instrument.
- 15.2 Christina Bankes, Deputy Director for Children in Care and Permanence, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister of State for Children and Families, Vicky Ford, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.