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 2012

2012 No. 511

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. Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc) (Amendment) Regulations 2012 ("the 2012 Regulations") make amendments to the annual fee levels prescribed in Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007 (SI 2007/694) ("the 2007 Regulations").

2.2. The effect of the 2012 Regulations is to make changes to the level of annual fees payable by voluntary adoption agencies, adoption support agencies, children's homes, residential family centres, boarding schools, residential special schools, residential colleges, and by local authorities in respect of the inspection of their adoption and fostering functions.

2.3. For some categories of providers, for example children's homes, the level of fees payable is dependent on the number of places provided. These fees are capped at a maximum figure so as not to exceed the costs of inspection.

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

3.1. None.

4. Legislative Context

4.1. The 2007 Regulations prescribe the fees payable to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("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, 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 ("the 2006 Act").

4.2. The 2007 Regulations made provision for the fees payable under the CSA 2000, the 2006 Act and the Children Act 1989 and were amended in 2009, 2010 and 2011 by respectively 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), Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections)(Children's Homes etc.)(Amendment) Regulations 2010 ("the 2010 Regulations) and the Her Majesty's Chief Inspector of

Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) (Amendment) Regulations 2011 ("the 2011 Regulations").

5. Territorial Extent and Application

5.1. This instrument applies in relation 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, but 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.

7.4. This analysis of the costs identified a number of providers whose annual fee under the 2007 Regulations were more than the actual cost of inspection. As a result, the 2009 Regulations amended the 2007 Regulations to reduce the fees payable to this group of providers so as to reflect the average actual cost.

7.5. However, there still remained a large proportion of providers, largely providers of children's homes, who were paying significantly less than the actual cost of inspection. Following the 2009 Regulations the then Government consulted in November 2009 on a proposal for a two tiered model for annual fees to begin in 2010. This approach was subsequently adopted for three years from 2010 in order to get closer to full cost recovery over time. As a result for those providers who were paying less than the average cost of inspection, the 2010 and 2011 Regulations increased the annual fee from 1 April 2010 and 1 April 2011 respectively by 10%. 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.

7.7. Ofsted's cost data also forms the basis for setting the annual fees for inspection for providers from April 2012. The 2012 Regulations provide for 10% increases for those providers whose fees are more than 10% below full cost recovery. Those providers whose fee level is already within 10% of full cost recovery have their fee increase limited so as not to exceed full cost recovery. Those already at full cost recovery have no increase.

7.8. The fees that will apply from April 2012 are set out in the table at Annex A.

8. Consultation outcome

8.1. The (then) Department of Children, Schools and Families consulted publicly from 18

November 2009 to 11 February 2010 on the fees to apply from April 2010, and whether to set 10% increases for 2010 only or for each of the three years from 2010. The response to this consultation is available on the Department's consultation website[1].

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 the 2012 Regulations.

10. Impact

10.1. The impact on business, 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 the same as in 10.1.

10.3. An Impact Assessment is attached to this Memorandum.

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 in light of the consultation, we expect the increases, limited to 10%, will be affordable.

12. Monitoring and review

12.1. Ofsted will continue to monitor the cost of regulation and inspection. We plan to review the fee levels and undertake a consultation exercise in Autumn 2012 in respect of the fees that will apply from 2013.

13. Contact

13.1. Contact Shelley Stewart-Murray at the Department for Education, Tel: 020 7783 8089 or e-mail: shelley.stewart-murray@education.gsi.gov.uk with any queries regarding the instrument.

[1] http://www.education.gov.uk/consultations/index.cfm?action=conResults&consultationId=1573&external=no&menu=3

Annual Fees 2012-13

Voluntary adoption agencies
£918.39; or £459.20 in respect of each small branch.

Adoption support agencies
£918.39, or small adoption support agency £459.20.

Fostering agencies
£1597.

Children's homes
- 3 or fewer approved places, £1323.01;
- 4 - 62 approved places £1323.01 plus £131.77 for each approved place from the 4th to the 62nd place inclusive;
- more than 62 approved places, £9120.

Residential family centre
- 3 or fewer approved places, £881.12;
- 4 - 5 approved places £881.12, plus £110.47 for each approved place from the 4th to the 5th place inclusive;
- more than 5 approved places, £1138.

Boarding school
- 3 or fewer approved places, £574.99;
- 4 - 15 approved places £574.99, plus £34.61 for each approved place from the 4th to the 15th place inclusive;
- 16 - 50 approved places, £994;
- 51 - 500 approved places, £1391;
- 501 - 800 approved places, £1789;
- more than 800 approved places, £2186.

Residential college
- 3 or fewer approved places, £574.99;
- 4 - 14 approved places £574.99, plus £34.61 for each approved place from the 4th to the 14th place inclusive;
- more than 14 approved places, £969.

Residential special school
- 3 or fewer approved places, £1058.15;
- 4 - 20 approved places £1058.15, plus £105.15 for each approved place from the 4th to the 20th place inclusive;
- more than 20 approved places, £2899.

Local authority adoption and fostering functions
- relevant adoption functions £1549
- relevant fostering functions £2421. [Note: this represents full cost (figures from 2008/09) thus does not have 10% increase in this year.]

DfE Chief Economist's Assessment of the Impact Assessment on Fees for inspection of children's social care settings, residential special schools, boarding schools and residential further education colleges etc.

13th January 2012

Predicted RPC rating	Amber	**Regulatory status**	N/A

Role of Chief Economist's Assessments

Impact Assessments (IAs) are published documents that provide estimates of the likely economic impact of policy changes. Chief Economist's Assessments provide (unpublished) advice to Ministers regarding the soundness of the economic case presented in the IA. They also provide a judgement on the likely opinion of the Regulatory Policy Committee (RPC), which give Red, Amber or Green ratings to IAs. A Red rating is deemed 'not fit for purpose' and requires the IA to be resubmitted before it is further progressed.

The regulatory status refers to the One-In-One-Out process, which aims to bear down on the cost and volume of regulation in the economy. Where new regulations are introduced that affect the private sector, bringing in new regulations (INs) must be balanced by removing existing regulations (OUTs).

Overall strength of the economic case

A consultation was undertaken in 2009/10, with providers, supporting the preferred option to raise fees by 10% for three years. This IA covers the third of these fee rises.

The rationale for the amendments presented in the IA is based on the equity argument that the current level of subsidy for the childcare registration system is unjustified. Private benefits accrue to childcare providers from the existence of the register in terms of decreased costs associated with signalling their quality to customers.

The suggested changes represent a further step in the move away from a heavily subsidised system to an unsubsidised system. There is a reasonable case for the suggested changes based on the argument that the current level of subsidy for childcare registration is unjustified – although as it effectively represents a transfer from one part of the public sector another (as the IA argues that increase in costs (from the fees) will be passed fully onto Local Authorities) the overall economic impact is likely to be zero.

Suggested RPC opinion

I expect this IA to receive an Amber rating from the RPC. This is explained below:

Options and counterfactual

The counterfactual (the 'do nothing' option) is that the Fees remain unchanged. Other than the 'do nothing' option, the options presented were a) raise fees by 10%; or b) raise fees by a greater amount to reach cost recovery faster. The option to raise fees by a greater amount is consistent with previous years' Impact Assessments.

Costs and benefits

Costs and benefits have been appropriately identified and monetised. The assessment argues that the cost of the increase in fees for providers is offset by an equivalent increase in fee income for Ofsted. This argument is underpinned by the argument that an increase in costs

(from the fees) will be passed fully onto Local Authorities and so there is no reduction in the quantity or quality of childcare.

This position is supported by the evidence from the consultation. However there is a risk that the RPC may argue that it should be possible to obtain evidence from previous rises to verify the behavioural response of providers and Local Authorities. However, this risk is small as I think that the small scale of impacts considered in this IA does not warrant this level of detailed analysis.

Regulatory status
Fees and charges (except where they result from an expansion or reduction in the level of regulatory activity) are out of scope of One-In-One-Out.

Karen Hancock
Chief Economist
29 February 2012