EXPLANATORY MEMORANDUM TO
THE NATIONAL CARE STANDARDS COMMISSION (COMMISSION FOR SOCIAL CARE INSPECTION) (FEES) (ADOPTION AGENCIES, ADOPTION SUPPORT AGENCIES, AND LOCAL AUTHORITY FOSTERING FUNCTIONS) (AMENDMENT) REGULATIONS 2006

2006 No. 578

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

1.1 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1. The National Care Standards (Commission For Social Care Inspection) (Fees) (Adoption Agencies, Adoption Support Agencies and Local Authority Fostering Functions) (Amendment) Regulations 2006 will enable the Commission for Social Care Inspection (CSCI) to charge local authorities a fee in respect of the inspection of local authority adoption and fostering function and sets out revised fee levels for voluntary adoption agencies and adoption support agencies that are regulated by the CSCI.

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

3.1. The SI imposes an annual increase in regulatory fees and covers Voluntary Adoption Agencies (VAAs) and Adoption Support Agencies (ASAs) for 2006/07. In line with the Government's policy to move to a position where the recurrent costs of providing regulation are fully recovered from service providers, this increase has been set at 15%. No decision has been taken on the time it should take to achieve full cost recovery, but further annual increases to move in that direction remain the Government's intention.

4. Legislative Background

4.1. Section 51 of the Care Standards Act 2000 allows the Secretary of State to set the fee in relation to an inspection of a local authority's adoption and fostering services. Section 51 was amended by the Health and Social Care (Community Health and Standards) Act 2003, the amendment being brought into force on 11th March 2004 by S.I. 2004/759, but its repeal was brought into force on 1st April 2004 by the same instrument. This was an inadvertent repeal which only came to light during the amendment of the National Care Standards Commission (Fees and Frequency of Inspections) Regulations 2003. As a result of the repeal, there has been no legal authority for CSCI to charge local authorities such fees since 1st April 2004 and, accordingly, the amounts paid to CSCI by local authority

fostering services in respect of annual fees in 2004/05 were refunded. The relevant provision in the National Care Standards Commission (Fees and Frequency of Inspections) Regulations 2003 has been revoked.

4.2. Section 86 of the Health and Social Care (Community Health and Standards) Act 2003 was commenced on 30 October 2005 by SI2005/2925. This provides for CSCI to be able to determine and levy fees in relation to such of its functions under Sections 79, 80 and 82 as may be prescribed. This instrument is the first use of the powers.

4.3. CSCI is required under the Care Standards Act 2000 to register voluntary adoption agencies, adoption support agencies and other social care establishments and agencies provided they meet the regulatory requirements. Once the establishment or agency has been registered, CSCI is required to inspect them according to established frequencies. For voluntary adoption agencies and adoption support agencies this is once every three years. Regulated agencies are required to pay fees for registration, variations of registration, and annual fees as prescribed by the Secretary of State**.** These requirements are set out in regulations.

5. Extent

5.1. This instrument applies to England.

6. European Convention on Human Rights

6.1. As the instrument is subject to negative resolutions procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Department of Health (DH) sponsors CSCI and sets its budget. CSCI's expenditure is funded partly through fees paid by providers and partly by grant in aid paid by central Government. The policy objective of charging fee income from social care providers is twofold. Firstly, it helps the Commission to be properly funded and able to discharge its responsibilities and statutory obligations effectively. Secondly, the charging of fees is also intended to make the costs of regulation transparent, ensuring that these are borne by those who stand to benefit from the regulatory process.

7.2 A DH consultation paper *Frequencies of Inspection and Regulatory Fees* issued in July 2001 proposed a fee structure for regulatory work undertaken under the Care Standards Act 2000 and a gradual move towards the long term objective of improved regulatory effectiveness and efficiency through full cost recovery.

7.3 The Government's policy is to continue to move towards full cost recovery in stages. As the amount recovered in fees was originally set at a low level, and is still well short of the full cost, these increases need to be above the rate of inflation. No decision has been taken on the time it should take to achieve full cost recovery, but further annual increases to move in that direction remain the Government's policy.

8. Impact

8.1. A Regulatory Impact Assessment (RIA) has been prepared for this instrument in relation to revising fee levels for voluntary adoption agencies and adoption support agencies. This is attached to this memorandum.

8.2. The RIA does not apply to amendments to enable CSCI to charge local authorities a fee in respect of the inspection of local authority adoption and fostering function, as it has no impact on business, charities or voluntary bodies. The impact on the public sector is not considered to warrant a Regulatory Impact Assessment as costs for implementation are not expected to exceed £5 million.

9. Contact

9.1. Michelle Warne at the Department for Education and Skills Tel: 020 7273 5938 or e-mail: michelle.warne@dfes.gsi.gov.uk can answer any queries regarding the instrument.

FULL REGULATORY IMPACT ASSESSMENT

COMMISSION FOR SOCIAL CARE INSPECTION – FEES FOR INSPECTION OF VOLUNTARY ADOPTION AGENCIES AND ADOPTION SUPPORT AGENCIES 2006/07

PURPOSE AND INTENDED EFFECT

Objective

1. The content of this Regulatory Impact Assessment (RIA) deals specifically with the annual increase in regulatory fees and covers Voluntary Adoption Agencies (VAA) and Adoption Support Agencies (ASA) for 2006/07. This has been carried out alongside a wider RIA produced by the Department of Health (DH) in relation to the annual increase in regulatory fees for other settings. DH has overall responsibility for the funding of the Commission for Social Care Inspection (CSCI).

2. The policy objective of raising fee income from VAAs and ASAs is twofold. Firstly, it helps the Commission to be properly funded and able to discharge its responsibilities and statutory obligations effectively. Secondly, the charging of fees is also intended to make the costs of regulation transparent, ensuring that these are borne by those who stand to benefit from the regulatory process.

3. The longer-term objective is for improved regulatory effectiveness and efficiency through full cost recovery – in effect making the Commission self funding through fee income, rather than via central Government subsidy. This proposal is both consistent with Treasury guidance on fees and charges[1] and generally accepted by care providers. These objectives were the subject of a wide-ranging public consultation in 2001[2] and remain in place.

Background

4. The CSCI is required to inspect VAAs and ASAs in addition to other social care establishments and agencies according to established frequencies. For VAAs and ASAs this is once every three years. VAAs and ASAs, like all establishments, agencies and boarding schools within the scope of the Care Standards Act 2000, have been required, where appropriate, to pay fees for registration, variations of registration, and annual fees as prescribed by the Secretary of State. These requirements are set out in secondary legislation[3]. The regulatory framework for VAAs and ASAs is underpinned by the Voluntary Adoption Agencies and the Adoption Agencies (Miscellaneous Amendments)

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[1] The Fees and Charges Guide – HM Treasury, 1992

[2] Frequencies of Inspection and Regulatory Fees – *a consultation paper*. DH, 2001

[3] The National Care Standards Commission (Fees and Frequency of Inspections) (Adoption Agencies) Regulations 2003 cover adoption agencies while the Commission for Social Care Inspection (Fees and Frequency of Inspection) Regulations 2004 cover other establishments and agencies.

Regulations 2003 SI 2003/367 and Adoption Support Agencies (England) and Adoption Agencies (Miscellaneous Amendments) Regulations 2005 SI 2005/2720 respectively.

5. The former system of registration and inspection differed between establishments and agencies. For VAAs, the system of approval and inspection was carried out centrally in England by the Social Services Inspectorate who advised the Secretary of State for Health on the suitability of a VAA to be approved to operate. VAAs were not subject to any charges and the costs of the Social Services Inspectorate were met centrally. VAAs, and the purchasers of their services (primarily local authorities) were not therefore bearing the true costs associated with the approval and inspection tasks. It should be noted that the regulation of ASAs only came into force from December 2005.

6. In the process of establishing the NCSC under the Care Standards Act 2000, the Frequencies of Inspection and Regulatory Fees were consulted on in 2001. The preferred option sought to raise standards throughout social care with a nationally applied system of registration and inspection, with standards in care establishments henceforward subject to independent scrutiny.

7. The consultation proposed a five-year period to achieve full cost recovery, with a review of this policy after two years. In this way, the regulatory running costs of the NCSC (and its successor organisation, CSCI) were intended to be borne on an incremental basis by the providers and purchasers of care.

8. CSCI is currently funded (in 2005/06) via approximately £91m grant-in-aid and an expected £55m in regulatory fee income. The grant-in-aid covers both the regulatory and non-regulatory activity. Income from regulatory fees represents about 35% of the Commission's total (resource) costs and 40% of the cost of its regulatory services. However, the proportion of cost recovered varies between types of provider.

9. In line with work with other inspectorates, the overall cost of CSCIs regulatory activity will reduce as new risk proportionate inspection arrangements are put in place. This, combined with increases in fees will ensure that the proportion of full cost recovery will increase. DH has set a 15% overall fee increase for 2006/07. This allows a significant reduction in central Government's grant-in-aid over this period.

10. A full RIA for the frequencies of inspection and regulatory fees was published in December 2001. Subsequent RIAs have been published in respect of increases in the levels of regulatory fees which have taken place in April 2003, 2004 and 2005. The subsequent RIAs together with this one effectively update the original RIA of December 2001.

11. The expectation was (and continues to be) that providers will pass a large part of any increase on to those paying for the services. This would mean, for example, that local authorities would pay higher amounts and their financial settlements from central government reflect this. Local Authority funding therefore allows for this expected increase in their costs.

Rationale for government intervention

12. The policy of full cost recovery is a general Government policy and is consistent with Treasury guidance. It is based on the philosophy that it is right that those regulated should pay for their regulation. All providers, private or voluntary, benefit from regulation. Those who pay for the services that are regulated, whether local authorities commissioning services, private individuals funding their own care, or those making charitable donations to voluntary organisations, would expect the organisations concerned to be providing high quality services. Regulation is the way that quality is assured and abuse detected and avoided. So regulatory fees are regarded as a legitimate cost to any regulated organisation.

13. It is the Government's policy to move to a position where the recurrent costs of providing regulation are fully recovered from service providers. This was the stated policy at the time the fee structure was introduced in 2002. At the time, the Government stated that it intended to achieve full cost recovery within five years (i.e. by April 2007) but would review this policy after two years.

14. The Government has previously confirmed that it should maintain the policy of moving in the direction of full cost recovery. A fee increase for 2006/07 is part of this process. However, the Government acknowledges that the original proposal to reach full cost recovery within five years is not achievable as it would require annual increases that would be generally regarded as too steep. No decision has been taken on the time it should take to achieve full cost recovery, but further annual increases to move in that direction remain the Government's policy.

15. The regulatory system will be changing, in order to meet the Government's objectives of more proportionate, risk-based, user-focused inspection. As a result of this, and through the modernisation of CSCI's procedures and a Government-led review of the national minimum standards and associated regulations, the process of regulation will become more efficient and its costs reduce.

16. The structure of regulatory fees is broadly – but by no means precisely – related to the workload involved in registration and inspection. The relationship between fees and workload was calculated in the run-up to the creation of the NCSC, but as time passes the link between fee levels and workload becomes more blurred and this blurring can be expected to continue more quickly as CSCI's methodologies evolve in the move towards a more modern and proportionate inspectorate. In the longer term, therefore, the basis for the fee structure will need to be updated. The Government believes that it will be an appropriate time to reconsider the fee structure when this can be linked to the new modernised inspection arrangements being in place.

CONSULTATION

17. The NCSC Fees and Frequencies of Inspection Regulations 2002 were consulted on during the summer of 2001. The document set out how the NCSC was to regulate health and social care, the cost of this, its funding and fees. The costs associated with registration and inspection activity and the policy of full cost recovery (and the consequences for later years) were fully set out, as was the need for yearly fee increases.

18. There was extensive consultation with focus groups for service users and carers, with providers, commissioners and regulators in order to seek views on the fee proposals. The general reaction to the consultation proposals was moderate and the number of responses (165) was modest. Most providers were more concerned about the impact of national minimum standards than fees. Some major organisations welcomed most of the proposals.

19. The new Regulations provide for the yearly increase in respect of the 2006/07 financial year. The Government considers that consultation on the new Regulations is unnecessary since the principles and financial model present within the 2001 consultation are still in place and have been carried forward. Frequencies of inspection also remain unchanged, as do the reductions for small providers.

OPTIONS

20. Three options have been identified.

    Option 1: Nil increase

    Option 2: 15 per cent increase in fee levels

    Option 3: Immediate move to full cost recovery

BENEFITS AND COSTS

Sectors and groups affected

21. The following would be affected by these proposals:

- voluntary adoption agencies (30 agencies)
- Adoption Support Agencies (approximately 40 initially, increasing to between 60-100)

BENEFITS

Option 1: Nil increase

22. Although providers have to some extent become used to annual increases in fees, a nil increase in fees for 2006/07 would obviously be popular. However, it is clear that there is insufficient money available for CSCI to undertake its functions effectively if fees remain at their 2005/06 levels.

Option 2: 15 per cent increase in fee levels

23. A further rise in fee income is required for 2006/07 if the government is to remain on course to reduce the level of central revenue funding to CSCI. An increase of 15% would be less than previous increases (of 20%) and may therefore be welcomed by providers. It would represent helpful progress towards properly reflecting the true cost of regulating care services. It represents the option with the best balance between funding CSCI appropriately on the one hand, and minimising financial impact on providers, and is therefore the preferred option.

Option 3: Immediate move to full cost recovery

24. Ministers have referred to full cost recovery as an objective. Full cost recovery itself does not reduce the cost of the organisation, and merely reduces the amount that is needed from Government, but it has other advantages. It has an underlying logic, i.e. regulatory costs fall where they should, on those who are regulated. Regulation can also be viewed as being of benefit to service care providers, and the operation of CSCI as the regulator can be seen as helping to maintain confidence in the care sector. So logically providers should pay to be regulated, and, of course, at the moment they are still paying far below the cost of regulation. There are also arguments that full cost recovery enhances the independence of the regulator from Government, because this substantially reduces its reliance on grant-in-aid funding.

25. However, an increase of this magnitude in one stage would place an unmanageable and unpalatable burden on VAAs and ASAs.

COSTS

Option 1: Nil increase

26. A nil increase to the annual fees of VAAs and ASAs would place severe pressure upon the CSCI budget with no scope to increase the central grant above its 2005/06 level, which would be necessary if fee levels and its statutory responsibilities remained unchanged.

27. A nil increase would therefore have major disadvantages. It would result in a shortfall in the resource budget for 2006/07 that would have to be filled from elsewhere. There has always been a clearly stated intention to gradually increase fees until full cost recovery is

achieved, and the Government maintains that this is its objective. This option is therefore not being pursued.

Option 2: 15 per cent increase in fee levels

28. A 15 per cent increase in annual fees for VAAs would represent an increase from the 2005/06 fee of £600 to £690 for its principle office and for each of its branches. There is a concession for small principle offices and small branches (currently about half pay this). Similarly, a 15 per cent increase in registration fees would also be expected. Such an increase would mean moving from approximately 14% of full cost recovery to approximately 16%.

29. For ASAs a 15 per cent increase in annual fees would represents an increase from £600 to £690. Again, there is a concession for small adoption support agencies. Similarly, a 15 per cent increase in registration fees would also be expected. As these providers have only been regulated since December 2005 the present level of full cost recovery is unknown but is likely to be at a similar level to that for VAAs.

30. The amounts of annual fees (and registration fees for new providers) under this option, with current levels for comparison, are set out in Annex A.

Option 3: Immediate move to full cost recovery

31. An immediate move to full cost recovery would require a very significant increase in the fees charged by CSCI. In 2005/06 fees equated to less than one-sixth of the costs involved in regulating VAAs. To move to full cost recovery immediately would therefore involve a six fold increase to the fees. Such a move would be unpalatable and may destabilise the market.

32. As ASAs have only been regulated since December 2005 the present level of full cost recovery is unknown but is likely to be at a similar level to that for VAAs. The impact of a six fold increase on an area being newly regulated would be likely to be even more extreme than that on VAAs.

SMALL FIRMS IMPACT TEST

33. Fee levels are important to agencies and this will be true of small VAAs and ASAs with lower profit margins than the larger organisations. However, they will be equally able to pass on these higher costs to clients. The registration of individual agency branches ensures that a disproportionate burden does not fall upon small agency businesses, since a large organisation with many branches pays more in fees than one with only one or two.

34. The impact on small VAAs and ASAs is not expected to be different from that on other providers. VAAs and ASAs will be able to pass on the increased regulatory costs to commissioners of services and small providers will, in addition, continue to enjoy a significant reduction in the “flat rate” or annual fee as well as substantially reduced registration fees in comparison with larger VAAs and ASAs.

35. The Small Business Service (SBS) was consulted on the Fees and Frequencies of Inspection Regulations in 2001. It was satisfied that the Department of Health had sought to take on board the views of small businesses in line with the principles of "think small first".

COMPETITION ASSESSMENT

36. The proposed fee increase is lower that it has been in previous years and relatively low in comparison to other set up costs. The Government's priority is to ensure that users of new services are suitably protected. Nevertheless the fee reductions for "small" providers remain in place, and these mitigate the potentially disproportionate effects of the cost increases on smaller participants in the market. It is also the case that providers can take the increases into account in negotiating fees with those who commission their services. In view of the above factors the Government considers that the proposals will not affect the current nature of competition within the affected markets.

37. The market consists of:

- Voluntary Adoption Agencies (30 agencies)
- Adoption Support Agencies (approximately 40 initially, possibly rising to between 60 and 100)

ENFORCEMENT, SANCTIONS AND MONITORING

38. Implementation of the regulations will be carried out by CSCI. Failing to comply with the Regulations is an offence and may result in the provider being deregistered.

IMPLEMENTATION AND DELIVERY PLAN

39. Revised fee levels should be implemented with effect from 1 April 2006 if they are to have effect for the 2006/07 year. Regulated providers have been given notice of the new fee levels.

POST-IMPLEMENTATION REVIEW

40. The Government will keep the policy of moving in the direction of full cost recovery under review. Any changes to the underlying fee structure will be the subject of public consultation.

SUMMARY AND RECOMMENDATIONS

41. The recommended option is option 2, an increase in fees of 15 per cent for VAAs and ASAs as well as other establishments and agencies. This is best in terms of achieving the Government's stated aims of progressing in the direction of full cost recovery, without

the need for a fee increase that would be widely regarded as excessive and may result in destabilising the market. Whilst providers pay more for regulations, CSCI is enabled to function effectively but more efficiently.

42. The Government's policy is a robust system of regulation and inspection aimed at ensuring high standards of care and the protection of vulnerable service users. It is important that the cost of this regulatory system should be transparent and borne jointly by the providers of services and those paying for them. The Government's intention remains to move in that direction in stages, whilst ensuring that the overall costs of regulation are gradually reduced.

ANNEX A

Fees for registration and inspection 2006/7 (2005/6 in brackets) - Commission for Social Care Inspection

REGISTRATION AND VARIATION FEES

Service	**Provider Registration**	**Manager Registration**	**Minor Variation**	**Variation requiring visit**
Voluntary adoption agencies principal office and branches	£1,518 (£1,320)	N/A	£69 (£60)	£759 (£660)
VAA with small principal office or small branch	£414 (£360)	N/A	£69 (£60)	£414 (£360)
Adoption support agencies & branches	£1,518 (£1,320)	£414 (£360)	£69 (£60)	£759 (£660)
Small Adoption Support Agencies & branches	£414 (£360)	N/A	£69 (£60)	£414 (£360)

N/A – Not applicable

ANNUAL FEE

Service	**Flat rate**
Voluntary adoption agencies & branches	£690 (£600)
Small VAA & small branches	£345 (£300)
Adoption Support Agencies & Branches	£690 (£600)
Small Adoption Support Agencies & Small Branches	£345 (£300)

Declaration

I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs

Signed by the responsible Minister

.*Maria Eagle*.....

Date.....*6th March 2006*.....

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