EXPLANATORY MEMORANDUM TO

THE REGISTRATION AND INSPECTION OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2025

2025 No. 266

1. Introduction

1.1. This explanatory memorandum has been prepared by the Department for Education (DfE) and is laid before Parliament by Command of His Majesty.

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

2. Declaration

2.1. Minister Daby, Parliamentary Under-Secretary of State (Minister for Children and Families) at DfE confirms that this Explanatory Memorandum meets the required standard.

2.2. Sarah Jennings, Deputy Director for Looked After Children Placements, at DfE confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1. Caroline Firth at DfE (caroline.firth@education.gov.uk) can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1. The Instrument increases certain fees payable to the Office for Standards in Education, Children's Services and Skills (Ofsted) by up to 20% for children's social care providers not paying the full cost of inspection and regulation.

Where does the legislation extend to, and apply?

4.2. The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3. The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1. Children's social care providers are required to pay fees to Ofsted, including when they first register and then annually. These fees only partially cover the cost of Ofsted regulating and inspecting this provision – the rest of the cost is covered by Ofsted's grant from HMT (i.e., the taxpayer). Fees are a very small part of most providers'

overall costs - for example the largest children's homes with over 17 places pay £8,629 annually.

5.2. Since 2010, the government has usually increased provider fees annually in order to move towards full cost recovery. Given the large disparity between the level of fees and the full costs of inspection and regulation, the government has not sought to move providers there in one go. Instead, fees have increased each year for all providers not already paying full cost, and we have consulted annually on how much that increase should be. Fee increases of 10% have been applied every year since 2010 for providers not already paying the full cost rate (with the exception of 2020-21 and 2021-22 when fees were frozen due to the pandemic).

5.3. Following consultation last year, the decision was taken to increase the fees payable to Ofsted by 20% rather than the usual 10% for those providers (apart from supported accommodation undertakings, as fees were set for the first time) not already at full cost recovery on the basis that a 10% increase would not offset the rise in Ofsted's costs and would move further away from full cost recovery. It was also concluded that future consultations (with the exception of supported accommodation, which was excluded from this consultation) would not be necessary for increases of 20% or less.

5.4. Providers of supported accommodation have been able to register with Ofsted since 28 April 2023 and the government set out the various registration fees for providers of supported accommodation in a consultation response published in March 2023. The fees for supported accommodation are set at a level much closer to full cost recovery than in other forms of children's social care provision, with the intention of achieving full cost recovery at pace. The decision to increase supported accommodation undertakings fees by up to 20% this year is consistent with our intention to move these providers to full cost recovery quickly but reflects the need to balance the stabilisation of a growing and nascent market.

5.5. This year we have taken the decision to increase some fees by up to 20%, including for supported accommodation undertakings, to ensure most providers are paying or working towards paying the full cost of the inspection and regulatory activity undertaken by Ofsted. Currently approximately 58% are paying less than 50% of the full cost. Where we are able to meet full cost recovery by a smaller increase we have done so. We have also reduced fees for children's homes accommodating 16 or more children and local authority fostering functions because the proposed 2025-26 fee is capped at full cost or the fee is capped at full cost from previous years.

6. Legislative and Legal Context

How has the law changed?

6.1. The 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 Fees and Frequency of Inspections Regulations") currently prescribe the fees payable to Ofsted in respect of:

- registration fees, variation of registration fees and annual fees for children's homes, voluntary adoption agencies, adoption support agencies, fostering agencies, supported accommodation 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;
- 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.

6.2. This Instrument amends the Fees and Frequency of Inspections Regulations by increasing the current fees payable by children's social care providers by 20% or less for those providers which are not already at full cost recovery.

7. Consultation

Summary of consultation outcome and methodology

7.1. It was concluded from last year's consultation that future consultations would not be necessary for increases of 20% or less. Supported Accommodation was not part of the 2023-24 consultation as these fees were consulted on separately and it was decided fees for this new sector would continue to be assessed independently in order to progress to full cost recovery at pace.

7.2. There has been no consultation this year (for all settings, including supported accommodation). It was decided consultation for supported accommodation was not necessary to be consistent with the decision to not consult on 20% or less for other settings.

8. Applicable Guidance

8.1. 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 this instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1. An Impact Assessment has not been prepared for this instrument because the changes only regulate the public sector or a public service. That is, they are made regarding: the registration, variation and annual fees charged by Ofsted for the regulation of children's social care and certain education settings.

Impact on businesses, charities and voluntary bodies

9.2. There is no, or no significant, impact on business, charities or voluntary bodies.

9.3. The legislation applies to activities undertaken by small businesses. To minimise the impact of the requirements on small businesses the approach taken is to limit the fee increase to 20%. This fee increase does not apply specifically to small businesses, but to all children's social care and education providers within the scope of the Fees and Frequency of Inspections Regulations, regardless of size, where full cost recovery has not yet been achieved. However, the policy intention is to introduce a fee increase in a measured way by bringing fees closer towards full cost recovery and has been designed to maintain stability in the market and to avoid over pressurising individual providers. Overall, there is no specific action proposed to minimise the regulatory burdens on small businesses of these changes.

9.4. There is no, or no significant, impact on the public sector. The impact on the public sector is likely to come through increased financial burdens on local authorities, as it is likely there will be an increase in the fees charged by providers to local authorities for accommodating children.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1. The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Daby 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."

10.2. The Department will continue to monitor and review the Fees and Frequency of Inspections Regulations and the amendments set out in this instrument.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1. This instrument imposes an increase of up to 20% on certain registration, variation and annual fees payable to Ofsted by a number of schools, agencies and other children's social care establishments. Further detail is provided in the policy background section. We will review again in one year's time to determine the fees for 2026-27.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1. This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").