

Consultation

Launch Date 5 September 2012

Respond by 5 October 2012

Ref: Department for Education

Fees and Frequency Regulations 2013 - 2014

The aim of this consultation is to seek the views of key stakeholders on proposed changes to the Children's Homes Regulations 2001 and the Fees and Frequency of Inspections Regulations, with a view to amendment Regulations being laid in February 2013, and coming into force in April 2013. Both sets of regulatory changes have already been subject to discussion with stakeholders.



**Department
for Education**

Fees and Frequency Regulations 2013 - 2014

To Local authorities, providers/registered managers of children's homes, providers of holiday schemes for disabled children, voluntary organisations providing support and services for disabled young people and their families, parents, Ofsted, boarding schools and residential further educational colleges, residential special schools, residential family centres

Issued 5 September 2012

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the Department on 0370 000 2288 or email: Shelley.STEWART-MURRAY@education.gsi.gov.uk

Contact Details

If you have a query relating to the consultation process you can contact the Department by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

- 1 Foreword
 - 1.1 The aim of this consultation is to seek the views of key stakeholders on the proposed changes to the Children's Homes Regulations 2001 and Her Majesty's Chief Inspector of Education, Children's Services and Skills (Fees and Frequency of Inspections) (Children's Homes etc.) Regulations 2007.
 - 1.2 This consultation proposes a 10% increase in inspection and regulation fees in 2013, for those providers *not* already paying the full cost of conducting their inspection. This continues a policy, introduced in 2009, of moving to providers covering the full cost of conducting their inspection. As many providers still pay less than the full cost of their inspections, we propose to continue the 10% annual increase in Ofsted inspection fees in 2013 for those not currently covering the full cost of their inspection.
 - 1.3 The changes proposed have two other key aims: to enable the introduction of the new integrated inspection framework for local authority looked after children services and their fostering and adoption services; and to reduce unnecessary regulatory and financial burdens on providers of holiday schemes for disabled children. The integrated inspection framework will reduce the bureaucratic burden on local authorities, allowing more focus on supporting looked after young people. The proposed changes in relation to holiday schemes for disabled children would remove the current regulatory requirements that are inappropriate for these holiday schemes and reduce

the chargeable fees for inspection.

2 Background and Context

2.1 This consultation is concerned with 3 areas:

- consulting on a continuation for a further year of the Government's current policy of increasing fees for inspection, and where appropriate compliance, by 10% for those children's social care settings who are not currently paying the **full** costs for their inspection and regulation (those organisations that are paying full cost will not incur this increase);
- consulting on the regulatory changes required to enable the introduction in April 2013 of a new inspection framework for local authority looked after children services. This new framework will replace the current separate inspections of looked after children's services, local authority adoption agency services and local authority fostering services. Currently inspections are delivered on 3-year cycles, but Ofsted propose that the new Children Looked After inspection would be on a 4-yearly cycle from April 2013;
- reducing the financial and regulatory burden on holiday schemes for disabled children whilst ensuring that effective and proportionate safeguards are in place to protect the welfare of the children who take part in these schemes.

2.2 There are two main sections to this document. The first section is concerned with proposed amendments to the *Fees and Frequency of Inspections Regulations*. The second section is concerned with proposed changes to the regulatory framework in respect of *Holiday Schemes for Disabled Children* (Children's Homes Regulations 2001) to make these more proportionate and reduce the burden of inspection for such schemes.

3 Section 1 - Fees and Frequency for Inspections Regulations

3.1 The Department for Education is consulting on a proposed further increase of 10% for an additional year, in the fees charged for inspection and regulation for those social care providers who are still not at full cost recovery for the cost of inspection and regulation.

3.2 Fees are 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 as annual fees for regulation and inspection by these establishments and agencies and for inspection by residential special

schools, boarding schools, residential colleges, and by local authorities for inspection of their adoption and fostering functions.

- 3.3 In April 2010, after consulting formally on the issue, a 10% increase in fees for inspection and compliance was introduced for those providers who were paying less than the cost of inspection and regulation until they had reached full cost recovery (or a less than 10% increase where providers are less than 10% from full cost recovery. Where settings are paying the full cost of inspection there will be no increase in fees). This also proposed changes to how fees are adjusted from year to year, so as to ensure transparency and fairness across all settings, with fees being set on a three yearly basis.
- 3.4 Whilst the policy of moving towards providers contributing towards the full cost of their inspection was introduced in 2010, the current fees still do not accurately reflect the costs of inspection. The majority of providers pay less than full cost of inspection, in some cases considerably less. The current situation effectively means Ofsted is subsidising these inspections and therefore the market as a whole. Both providers and users of services benefit from a transparent inspection regime. Providers benefit from the fact that the quality of the service they offer is recognised, which they can reflect in their fees. Purchasers of the services benefit as they can factor service quality into their decisions about which providers to use, helping them make optimal choices.
- 3.5 Although this policy has been in place for three years, it is clear that the majority of providers are still a long way from paying the full cost of their inspections. We are proposing that for next year we maintain the current measured approach towards full cost recovery of a 10% increase per year for those providers not already paying the full cost of their inspection.
- 3.6 We are not however currently reviewing this policy, nor are we reviewing the current financial model, which was developed in 2010-11 by which fees are set and which will be used to set the fees for 2013-14. We have attached the proposed annual fees that children's social organisations will be charged for 2013-14, at Annex A
- 3.7 We are also consulting on proposed changes to the fees and frequency of inspection regulations that would enable Ofsted to introduce their new Children Looked After framework in April 2013. We are consulting in particular on the changes to the frequency of inspection that this new framework will introduce. Under these proposals, local authority looked after children services and local authority fostering and adoption services will move from a three yearly to a four yearly inspection and be combined within a single inspection.
- 3.8 Ofsted are currently consulting on the new Children Looked After inspection framework, which would be introduced by Ofsted in April 2013. This consultation will end on 18 September 2012. This new framework was

developed in response to Ofsted's earlier consultation in 2011, where it proposed to move towards a sampling approach to inspecting local authority looked after children's services. These proposals received a negative response from stakeholders. In response Ofsted has developed a revised approach of a new single framework for the inspection of local authority's children looked after services which will replace the current separate inspections of; looked after children's services, local authority adoption agency services and local authority fostering services.

- 3.9 Ofsted propose that the new inspections would focus on: the effectiveness of local authorities as corporate parents; the provision of health services for children who are looked after; the quality of professional practice, including the protection of children who are looked after; the impact of the care on children and young people; and the effectiveness of shared professional responsibility for their outcomes.
- 3.10 Replacing these three previously separate inspection frameworks will enable Ofsted to deliver a universal inspection programme for looked after children, whilst also delivering some cost savings. Further benefits of this approach in terms of a more holistic inspection of the experiences of looked after children are outlined in the Ofsted consultation document.
- 3.11 There are no new costs associated with this new inspection framework, though the fee levied for the inspection of the local authority functions in respect of adoption and fostering will remain. As the inspection cycle will increase from three to four years, the fee will in effect reduce slightly as it will reflect the longer period between inspections that is being proposed.
- 3.12 We therefore propose to amend the Fees and Frequency of Inspections Regulations to enable Ofsted to introduce these changes from April 2013 onwards. The changes required to enable the new framework to be introduced are relatively minimal.

Consultation questions

1. Do you agree with the approach to increase fees by 10% from April 2013?

2. Do you agree with the proposal to change the frequency of the new integrated inspection cycle from the current 3 yearly interval for local authority looked after children's services, adoption and fostering services, to a four yearly interval?

3. Are you content with the proposed changes to the regulations, as set out in Annex B below? If no, please can you explain why?

4 Section 2 - Regulating Holiday Schemes for Disabled Children

- 4.1 The Department for Education is consulting on two policy options on arrangements for streamlining children's homes regulations for holiday schemes for disabled children. Currently, there are a small number of holiday schemes that are specifically set up to provide holidays for disabled children. Such schemes, which are largely provided by voluntary organisations and staffed by volunteers, operate for under 28 days each year for the sole purpose of providing a holiday break for this group of children, who otherwise may not have access to a holiday away from their families or carers. For example, one organisation is a provider of a holiday scheme for children with disabilities and has run a week long summer camp for over 50 years.
- 4.2 Although holiday schemes that provide accommodation to children for less than 28 days are exempt from being a children's home (regulation 3(1) of the Children's Homes Regulations 2001), this exemption does not apply to holiday schemes which provide accommodation wholly or mainly for children with disabilities (regulation 3(2) of the Children's Homes Regulations 2001). Accordingly, holiday schemes for disabled children which operate for under 28 days a year for the sole purpose of providing a holiday break for this group of children are required to register as children's homes. As a result they need to meet the requirements set out in the regulatory framework and National Minimum Standards (NMS) relating to children's homes. In addition, they are also required to pay an annual fee for the cost of inspection and regulation.
- 4.3 The decision to bring holiday schemes for disabled children within the remit of the Children's Homes Regulations was made in 2001. This was in recognition of the vulnerability of disabled children being cared for away from their parents. However, providers of holiday schemes for disabled children have found the requirements and costs of the current regulatory framework extremely burdensome. We are therefore aiming to revise the current requirements on these schemes so that they reflect much more clearly the differences between holiday schemes and mainstream children's homes.
- 4.4 **Policy options under consultation**

We are proposing to significantly reduce the regulatory burden on these holiday schemes, so that regulations are more proportionate and reflect the real practice of these schemes whilst ensuring that disabled children who rely on these schemes for a holiday remain effectively safeguarded and protected. Therefore, we are consulting on changes to remove current regulatory requirements that are inappropriate for these holiday schemes and reduce the chargeable fees for inspection. We have considered two possible approaches to this:

- **Proposal One:** Removing the requirement on holiday schemes for disabled children to register as children's homes altogether.
- **Proposal Two:** Retaining the requirement on holiday schemes for

disabled children to register as children's homes, but to scale these requirements back, reducing the number of inspections and charging a more proportionate fee. This is the currently favoured option.

4.5 Disabled children are a particularly vulnerable group for whom it is important to maintain regular checks on the quality of provision in order to safeguard their welfare. There is therefore a very strong case for ensuring mandatory inspections of these schemes are undertaken and that Ofsted continues to ensure regulations are being adhered to. Removing holiday schemes for disabled children from any regulatory framework would in our view remove significant protection for vulnerable children taking part in schemes with the potential that individual children would be put at risk. We have explored other possible regulatory options for these holiday schemes but have concluded that none of these would provide the necessary safeguards for the children using schemes. Therefore, in our view, it would be inappropriate to remove the requirement on holiday schemes to register as children's homes as this would take the schemes outside of any regulatory framework, which would not be in these children's best interest.

4.6 For this reason Proposal 2 is our preferred approach. It is our view that retaining the requirement on these holiday schemes to register as children's homes but scaling these requirements back, reducing the number of inspections and enabling Ofsted to charge a more proportionate fee is the better approach

4.7 **Detailed discussion**

As set out above, we would aim significantly to reduce the current regulatory burden on holiday schemes for disabled children that operate for less than 28 days in any year, so that they are more proportionate and reflect the reality of these schemes. These schemes, which are largely run and staffed by volunteers, operate for the sole purpose of providing a holiday break for disabled children, who may not otherwise have access to a holiday away from their families or carers. We need to strike a balance between ensuring that these vulnerable children are effectively safeguarded and ensuring that the regulatory framework under which the schemes operate is proportionate and non-bureaucratic.

4.8 Our aim is to achieve that balance through the detailed proposals that we have set out below to reduce and revise requirements within the Children's Homes Regulations 2001 and to reduce the fees for inspection for these schemes.

4.9 **Proposals - Disapplication or reduction of regulations**

The majority of the proposed changes to the Children's Homes Regulations 2001 in respect of disabled children's holiday schemes are to remove or disapply specific regulations. We have set out the proposed changes in more detail below. These include:

- **Regulation 31** - Currently regulation 31 of the Children's Homes Regulations prohibits an adult staying overnight in a child's room. Many of the children staying in these holiday schemes have high levels of need. This means that currently a supervising adult often shares a child's room throughout the night.

We are currently considering whether regulation 31 might be dis-applied, subject to:

- a) the child's parents having confirmed their agreement;
 - b) the registered provider being satisfied that the child's needs require the presence or supervision of an adult in the child's bedroom;
 - c) a risk assessment having been carried out by the registered person of the risk of harm to that child without the presence or supervision of an adult at those specified times;
 - d) that the assessment has been signed by the registered provider; and
 - e) that this risk assessment must be made available to Ofsted on request. Ofsted have suggested that in their view this will be 28 days prior to the schemes opening.
- There may be occasions when it becomes necessary for an adult to share the same room as a child, but a risk assessment has not been carried out prior to the holiday starting. We are interested in your views as to whether, in these circumstances, it would be sufficient that a risk assessment be undertaken as soon as possible by the appropriate manager and made available to Ofsted on request.
 - **Regulation 12** - Placement planning. Removing the requirement to prepare a "placement plan" as this is inappropriate for this group of children.
 - **Regulation 15** - Removing the requirement on the holiday schemes to promote contact between the child and their parents, relatives and friends. In our view, the nature and length of children's stay within the schemes does not require there to be planned contact between the child and their parents or carers, so we are consulting on removing this part of the regulation.
 - **Regulation 28** - Removing the requirement on the schemes to keep records of the personal details of each child for 75 years. In our view, this is a disproportionate length of time to keep records of children who are only staying in the scheme for a very short period of time. We are proposing to change this to a more proportionate period and suggest that this be 10 years.

- **Regulation 18** - A requirement on the schemes to provide education for children staying in the schemes. These schemes are short term holiday schemes for children and do not provide formal education for the children and it would not be appropriate for them to do so.
- **Regulation 14** - A requirement to provide clothing, pocket money and personal necessities. Children are staying within these schemes for short periods of time to have a holiday and remain the full responsibility of their parents or carers. Therefore, there should be no on-going responsibility on the part of the holiday schemes to provide clothing, pocket money or personal necessities for children staying in the schemes.
- **Regulation 20** - A requirement to provide access to dental or psychological care. As above, in our view the children should have access to dental or psychological care as part of the ongoing care and support provided by their parents or carers. It is not appropriate for the holiday scheme to be responsible for delivering these.
- **Regulation 25** - The requirement that the registered person within the home has a duty to ensure that there is a sufficient number of suitably **qualified** staff working at the home. In our view this is also a disproportionate burden. Holiday schemes for disabled children are largely staffed by volunteers, whilst it is vitally important that such volunteers are adequately trained, experienced and supported to carry out their roles it would be inappropriate to expect such volunteers to be suitably **qualified** or for the schemes to be responsible for volunteers gaining such qualifications. We therefore propose removing the requirement for staff working in children's homes to be suitably qualified, and propose replacing 'qualified' in the revised regulations for the schemes with '**suitably trained and experienced**'. However, we are maintaining the expectation that those running holiday schemes, i.e. registered managers, are suitably qualified and competent to run the schemes and we will retain the current provisions set out in the children's homes regulations in relation to the 'registered manager' of a scheme. Where holiday schemes were being delivered on different sites, we would expect each site to have a qualified manager responsible for the scheme.
- **Regulation 36** - The requirement for the registered provider to demonstrate that they are financially viable. In our view, this is over burdensome for holiday schemes for disabled children and we are proposing to dis-apply this regulation for the schemes.
- **Regulation 37** - the requirement for a notice of absence from a registered manager in respect of a children's home is also not relevant for these holiday schemes.

- **Regulation 39** - appointment of liquidators. This is also not required.

4.10 In addition, we are proposing to make a number of minor amendments to Schedules 3, 4 and 6. This includes:

Schedule 3 - we are proposing to remove some of the following detailed requirements from Schedule 3:

- The name and address of the child's placing authority (paragraph 6)
- Every school record received in respect of the child while accommodated in the home (paragraph 15)
- The date and result of any review of the placing authority's care plan for the care of the child (paragraph 19)
- The address and type of establishment or accommodation to which the child goes when he ceases to be accommodated by the home (paragraph 26)

Schedule 4 - we are proposing to remove the following:

- The child's address prior to being accommodated in the home, his address on leaving the home, his placing authority and the statutory provision under which he is accommodated paragraph (1c), d), e) and f). We anticipate replacing this with a record of the child's address.
- A record of those staff residing at the home (paragraph 2 g)

Schedule 6 - we are proposing to remove the following:

- Monitoring of compliance with the placing authority's care plan and the placement plan (paragraph 1)
- The standards of educational provision (paragraph 15)
- Records of appraisals of employees (paragraph 19) and
- Minutes of staff meetings (paragraph 20)

4.11 We are also proposing to reduce the number of inspections for the schemes from twice yearly, as is the case for children's homes, to once a year. This will enable Ofsted to review the quality of the schemes and to ensure that the vulnerable children using the schemes are being effectively safeguarded, whilst also ensuring that inspection is not being experienced by the schemes as overly burdensome. This will be done by amending the Fees and Frequency of Inspection Regulations and will mean, in effect, that the schemes will be inspected whilst they are in operation. In their approach to inspection, Ofsted will take into account the Regulations that apply to the schemes and their specialist nature.

- 4.12 We also propose to reduce the fees charged for the inspection of the schemes to better reflect the reduced regulatory framework that will be governing the schemes and the reduced number of inspections of individual schemes. We have set out the proposed reduced fees for holiday schemes at Annex A.
- 4.13 We are aware that one of the holiday schemes currently delivers holidays for disabled children across a number of sites. Currently each of these sites has to register as a separate provider and to pay a separate registration fee. We are considering whether we can change this so that one registration fee can cover provision that operates across a number of sites. We are considering in particular whether this is possible for provision that is run across a number of sites for a total of 28 days. For example, this may be 4 holiday schemes running for 7 days, or 2 holiday schemes running for 14 days. We would be interested in your views as to whether you think that this is a proportionate response and if not why not? We have not included this provision within the revised regulations attached at Annex B.

Consultation questions

4. Do you agree with the proposal set out in this consultation paper to retain the requirement on holiday schemes for disabled children to register as children's homes, but to scale these requirements back, reducing the number of inspections and charging a more proportionate fee?

5. Do you think the proposed revisions to the regulations are sufficient to ensure that children who use these schemes are sufficiently safeguarded?

6. Do you agree that it is appropriate to charge a reduced fee for the inspection and regulation of holiday schemes for disabled children?

7. Do you agree that regulation 31 could be dis-applied for holiday schemes subject to a risk assessment being approved? If no, please explain why?

8. Should a requirement to promote contact of the child with parents, relatives and friends remain for holiday schemes?

9. All children's homes are required to keep a record of certain personal details of each child. It is considered necessary to retain this requirement for holiday schemes. However we are seeking your view on the length of time these records should be kept. It is currently 75 years. Do you agree that 10 years might be appropriate, and if not, what might be a more appropriate timescale?

- 4.14 It is our intention to remove/dis-apply the following regulations for holiday schemes from the Children's Homes Regulations 2001:

- A requirement on the schemes to provide education for children staying in the schemes;
- A requirement to provide clothing, pocket money and personal necessities;
- A requirement to prepare a placement plan for children staying in a holiday scheme;
- A requirement to provide access to dental or psychological care;
- Changing the requirement to ensure that there is a sufficient number of suitably **qualified** staff, to a requirement that there is sufficiently **suitably trained and experienced' staff**;
- The requirement for the registered provider to demonstrate that they are financially viable;
- The requirement for a notice of absence from a registered manager in respect of a children's home, as this does not apply to a holiday scheme for disabled children;
- A requirement to appoint a liquidator;
- Alongside making changes to Schedule 3, 4 and 6 as set out above (paragraph 12).

Consultation question

10. Do you agree with these proposed changes? If not, please explain why?

- 4.15 In addition, we are proposing to reduce the number of inspections for the schemes from twice yearly, as is the case for children's homes, to once a year and to reduce the fee for inspection and regulation.

Consultation question

11. Do you agree with these proposed changes? If not, can you set out why?

- 4.16 We are considering whether we can change the current arrangements so that holiday schemes which operate across a number of sites can be covered by one registration fee. We are considering in particular whether this is possible for provision that is run across a number of sites for a total of 28 days. For example, this may be 4 holiday schemes running for 7 days, or 2 holiday schemes running for 14 days.

Consultation question

12. Do you agree with this proposal? If not, can you set out why?

13. Are there any further regulations that you would like to see dis-applied for holiday schemes for disabled children?

14. Do the arrangements we are proposing strike an appropriate balance between parental responsibility for children and inspection by an independent body?

15. Do you think the proposals in this section could have a positive or negative impact on one or more of the dimensions of equality? If so, how can we change or modify it, or minimise its impact, maximise potential or justify it?

16 Are there any other points that in your view should be taken into consideration?

5 Further sources of information

You may be interested in the following links:

- Office for Standards in Education, Children's Services and Skills - www.ofsted.gov.uk
- Association of Directors of Children's Services - www.adcs.org.uk
- British Association for Adoption and Fostering - <http://www.baaf.org.uk/>
- Local Government Association - <http://www.local.gov.uk/>
- Centre for Excellence and Outcomes in Children and Young People's Services - www.c4eo.org.uk
- Local Government Group - www.local.gov.uk
- Society of Local Authority Chief Executives - www.solace.org.uk
- Local authorities - <http://www.direct.gov.uk/en/dl1/directories/localcouncils/index.htm>

6 How To Respond

- 6.1 Consultation response forms can be downloaded at <http://www.education.gov.uk/consultations>

completed forms can be emailed to ffhschemes.consultation@education.gsi.gov.uk or sent by post to:

FAO Shelley Stewart Murray or Lydia Affie
Department for Education
Sanctuary Buildings
Great Smith Street
Westminster
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7 Additional Copies

- 7.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website:
<http://www.education.gov.uk/consultations/>

8 Plans for making results public

- 8.1 The report from this consultation and government response will be published on the Department for Education websites in December 2012