EXPLANATORY MEMORANDUM TO
THE CHILDCARE (FEES) (AMENDMENT) REGULATIONS 2009

2009 No. 1507

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

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

2. Purpose of the instrument

These Regulations amend the Childcare (Fees) Regulations 2008 (2008 No.1804) ("the 2008 Regulations") to increase the fees payable to her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") in respect of registration by childcare providers in the early years register ("the EYR") under Part 3 of the Childcare Act 2006 ("the 2006 Act"). They increase the fee to accompany any application for registration in the EYR and the annual fee payable by providers registered in the EYR. No changes are made to the other fees prescribed by the 2008 Regulations.

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

3.1 The fee increases made by this instrument represent an increase above the rate of inflation (25% for childminders and 36% for other childcare providers) when compared with the existing application and annual fees, prescribed by the 2008 Regulations.

3.2 However, as mentioned in the Explanatory Memorandum to the 2008 Regulations (which can be found on the OPSI website at http://www.opsi.gov.uk/si/si2008/em/uksiem_20081804_en.pdf), the fees are still very low compared with the cost to Ofsted of administering the system and the rise itself is modest - £5 for childminders and Band 2 providers and £20 for other providers. This is set out below:

Band	Current rates	2009
1 - childminders	£25	£30
2 - early years childcare provision other than childminding operating for less than 3 hours per day, or less than 5 days per week, or less than 45 weeks a year.	£25	£30
3 - early years childcare provision other than childminding operating for at least 45 weeks per year and at least 5 days per week and at least 3 hours per day.	£180	£200

3.4 We estimate that the fee increases will represent 0.1% of average income for Band 1 providers, 0.04% for Band 2 providers and 0.01% for Band 3 providers. The fees for Bands 1 and 2 providers will represent approximately 2% of the costs to Ofsted of administering the EYR, and the fees for Band 3 providers will represent approximately 7% of the cost to Ofsted.

3.5 As noted in the Explanatory Memorandum to the 2008 Regulations, the fee increases made by this instrument are part of a series of phased increases in fee levels which are being introduced over the next few years.

4. Legislative Context

4.1 The 2008 Regulations prescribed all the fees payable by childcare providers to the Chief Inspector in respect of childcare provision registered under Part 3 of the 2006 Act. These Regulations amend the 2008 Regulations to effect a planned annual increase to the fees payable by those applying to register or already registered in the EYR. This is part of a planned process of rises to increase the proportion of fee revenue from the EYR towards the cost to Ofsted of providing its services. As explained at paragraph 3 of the Explanatory Memorandum to the 2008 Regulations, the EYR fees are low when compared with the costs to Ofsted of providing its regulatory and inspection services in respect of the EYR. However the fee levels for the General Childcare Register (GCR) were set in 2008 at a level that better reflected the cost to Ofsted of providing the service and so are not being increased this year.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Sections 35 and 36 of the Childcare Act 2006 enable the Secretary of State to prescribe fees in relation to an application for registration in the EYR and section 89 provides that the Secretary of State may prescribe in regulations periodic fees to be paid by registered childcare providers. The 2008 Regulations set the application fees and periodic (annual) fees for the EYR in three fee "bands" as set out in paragraph 3. Band 1 is for childminders; Band 2 captures sessional or after school care which does not operate all day, and playgroups which operate for short periods of time; and Band 3 is likely to capture full day care and out of school care operating all year round.

7.2 In the response to the consultation entitled "Childcare Act 2006: Future Approach to fees and subsidies", which set out the proposed fee levels up to 2010 for the EYR, the Government proposed to implement fee levels for 2009-2010 of £30 for bands 1 and 2 and £200 for band 3. A copy of this response can be found at http://www.dfes.gov.uk/consultations/downloadableDocs/Fees%20response.doc

7.3 The fee levels for the EYR up to 2010 were set out in paragraph 7.25 of the Explanatory Memorandum to the 2008 Regulations and in a Departmental Press Notice dated 19 June 2008 (Press Notice 2008/0120) which can be found at http://www.dcsf.gov.uk/pns/DisplayPN.cgi?pn_id=2008_0120.

7.4 No increases in the other fees prescribed by the 2008 Regulations are being made at this time.

8. Consultation outcome

8.1 The consultation "Childcare Act 2006: Future approach to fees and subsidies" which ran from 21 November 2007 until 20 February 2008, sought views on the proposed increases to fees payable in relation to the EYR from September 2008. The results of this consultation and the Government's response were provided in the Explanatory Memorandum to the 2008 Regulations.

8.2 The Government are now implementing the 2009 EYR fee increases, as set out in that consultation.

9. Guidance

Ofsted will publicise the fee increases via their website and in their newsletters to providers.

10. Impact

An Impact Assessment is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The Department consulted small businesses on the proposed changes as discussed in paragraph 8 above. The proposed increases for the EYR for 2009, which this instrument implements, are relatively small and did not attract strong criticism from small businesses. However, the more significant increase that was being proposed for 2010 led to many smaller providers, mainly childminders, saying that they would not be able to afford the proposed fee increases. The government responded by making a significant reduction in the proposed increase for 2010 as follows: to £35 for providers in bands 1 and 2 and £220 for band 3 providers. The proposed new fees for 2010 had originally been £100, £400 and £450 respectively.

12. Monitoring & review

The Government will monitor the impact of the increase for EYR providers as part of our ongoing work on the longer term future of fees from 2011 and beyond. The Government will conduct further consultation on the future of fees from 2011 and will announce further details of this work in due course.

13. Contact

Ian Polin at the Department for Children, Schools and Families, Tel: 020 7783 8148 or email: ian.polin@dcsf.gsi.gov.uk can answer any queries regarding the instrument.

1. Summary: Intervention & Options		
Department /Agency: **Department for Children, Schools and Families**	**Title:** **Impact Assessment of the Childcare (Fees) (Amendment) Regulations 2009**	
Stage:	**Version:**	**Date:** X **May 2009**
Related Publications:		

Available to view or download at:

http://www.

Contact for enquiries: Telephone:

What is the problem under consideration? Why is government intervention necessary?

Following a consultation (Childcare Act 2006: Future Approach to Fees and Subsidies) the Government committed itself to introduce a phased increase to fee levels for childcare registration. This is part of shift away from a heavily subsidised regulatory system to one in which providers pay a greater share of the cost of the regulatory system (for example for registration, inspections and handling of complaints). The current heavy subsidy is difficult to justify on efficiency grounds, as it is unnecessary to achieve universal provider registration and its associated positive externalities, or on equity grounds, as providers obtain significant private benefits from the existence of the register. The increase to EYR fee levels for 2009 is part of this work.

What are the policy objectives and the intended effects?

The amending Regulations will increase the fees payable to Ofsted in respect of childcare provision registered on the early years register (EYR) under Part 3 of the Childcare Act 2006. The fee increases are part of a series of phased increases in fee levels for the Early Years Register between 2008-2010 so that income generated by fees pays a greater share of the cost of maintaining the regulatory system.

What policy options have been considered? Please justify any preferred option.

The consulation proposed the immediate introduction of full cost recovery for both parts of the GCR (from September 2008) but a more gradual increase in fees for the EYR for 2008 and 2009 with a large increase in 2010. As a result of concerns raised by the sector it was decided to introduce a smaller rise for EYR fees in 2010 and to review nearer the time fee levels for 2011 and beyond.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? A review will take place in 2010 to determine future fee levels. The impact of the current increase (as that of 2008) will be taken into account in this work.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: *Dawn Primarolo* Date: 16th June 2009

Summary: Analysis & Evidence

Policy Option:	Description:

COSTS

ANNUAL COSTS	
One-off (Transition) **Yrs**	
£	
Average Annual Cost (excluding one-off)	
£ 720,205	

Description and scale of **key monetised costs** by 'main affected groups' The fee level being introduced for the EYR in 2009 represents an a above inflation rise for providers.

Total Cost (PV) **£ 6,709,790**

Other **key non-monetised costs** by 'main affected groups'

BENEFITS

ANNUAL BENEFITS	
One-off **Yrs**	
£	
Average Annual Benefit (excluding one-off)	
£ 720,205	

Description and scale of **key monetised benefits** by 'main affected groups' The increased fee revenue will enable the government to reduce its subsidy of the EYR by an equivalent amount. The current level of subsidy is unnecessary to achieve universal provider registration and its associated positive externalities, and so is not an efficient use of public resources.

Total Benefit (PV) **£6,709,790**

Other **key non-monetised benefits** by 'main affected groups' Providers will pay a more equitable share of the costs of a system from which they derive significant private benefits. A majority of respondents in the (November 2006-February 2007) consultation supported the principle of providers paying a larger share of the costs of the EYR.

Key Assumptions/Sensitivities/Risks Fee revenue assumption based on the latest provider figures for the EYR published by Ofsted (this shows provider figures to the end of March 2009). Risk is that provider numbers could fall. We also assume that band 3 providers will not reduce the amount of childcare they provide as a result of the fee increase.

Price Base Year 2009	Time Period Years 10	**Net Benefit Range** (NPV) **£**	**NET BENEFIT** (NPV Best estimate) **£ 0**

What is the geographic coverage of the policy/option?				England	
On what date will the policy be implemented?				2009-2010	
Which organisation(s) will enforce the policy?				Ofsted	
What is the total annual cost of enforcement for these organisations?				£ NK for fees	
Does enforcement comply with Hampton principles?				Yes	
Will implementation go beyond minimum EU requirements?				No	
What is the value of the proposed offsetting measure per year?				£ N/A	
What is the value of changes in greenhouse gas emissions?				£ N/A	
Will the proposal have a significant impact on competition?				No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large	
Are any of these organisations exempt?	No	No	N/A	N/A	

Impact on Admin Burdens Baseline (2005 Prices) (Increase - Decrease)

Increase of £ None Decrease of £ None **Net Impact** **£** No impact

Key: **Annual costs and benefits: Constant Prices** **(Net) Present Value**

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Objective

The main objective of the Childcare (Fees) (Amendment) Regulations is to make an incremental rise in the fees payable by childcare providers to Ofsted in respect of childcare provision registered on the Early Years Register (EYR) so that fee revenue pays a greater proportion of the overall costs to Ofsted of running the register.

The fee increases are part of the Government's decision to introduce phased increases up to, and including, 2010.

Background

The Childcare (Fees) Regulations 2008 make provision about fees payable by providers to Ofsted in respect of childcare provision register in either the EYR, Part A (the compulsory part) or Part B (the voluntary part) of the general childcare register (GCR), both of which are maintained by Ofsted, under Part 3 of the Childcare Act 2006

Section 35 of the Childcare Act 2006 enables the Secretary of State to prescribe a fee in relation to any application for registration for early years providers on the EYR. Section 89 of the said Act provides that the Secretary of State may prescribe in regulations periodic fees to be paid by registered childcare providers registered on the EYR.

The 2008 Regulations prescribe the fee to accompany any application for registration on the EYR and Parts A and B of the GCR after 1st September 2008, and annual fees which must be paid by those registered in one of the Childcare Act registers. The Regulations also prescribe the fee to be paid to Ofsted for a replacement certificate of registration. However, the Government are not proposing to amend the level of this particular fee or the level of the GCR fees at this time.

The application fees for registration in the EYR, Part A of the GCR or Part B of the GCR differ depending on whether a person applies to be registered as a childminder or as a childcare provider other than a childminder. For the EYR only, the application fees for early years providers other than childminders also differ depending on the number of hours, and how frequently, the early years provision will be provided.

Rationale for Government Intervention

The EYR sets out registration requirements for providers caring for 0-5 year olds including the requirement to deliver the Early Years Foundation Stage. The requirements ensure that relevant checks are carried out on staff (for example enhanced Criminal Records Bureau checks), set qualification requirements for staff, welfare requirements covering how provision is organised, and learning and development requirements. These arrangements are designed to ensure that children receive the same high quality of experience regardless of the type of setting they attend. The Effective Provision of Pre-School Education study has found that attending *high quality* early years childcare settings has a positive impact on the attainment of children in English and Maths at the age of ten, and so a universal register and quality standards can to a considerable extent be considered a public good which the government ought to subsidise.

The EYR regulatory system is overseen by Ofsted and involves the processing of applications, provision of advice and support to providers and parents, inspections of settings and follow up activity, for example monitoring and enforcing notices to improve and deal with complaints. Currently the subsidy is around 95% of the total cost of running the system. However, the regulatory system also has benefits for the 80,000 registered providers by enabling them to demonstrate to parents and others that they have met criteria set out in the registration

requirements and, through the inspection system, to show to how well they are meeting standards. This common set of public standards means high quality providers do not run the risk of being undercut by other providers not meeting the same quality standards as a result of imperfect information held by parents on quality. All registered providers are able to access training and support through their local authorities.

Background

Consultation

The consultation – 'Childcare Act 2006: Future Approach to Fees and Subsidies' ran from 21st November 2007 until 20th February 2008 and sought views on the proposed structure and level of fees payable to Ofsted by childcare providers joining the Early Years Register.

The proposals included: A new fee band structure; modest increases in fee levels in 2008 & 2009 with a significant reduction in the fees subsidy in 2010 which meant that all providers would face a substantial increase in fee levels; and new targeted support arrangements from 2010 administrated by local authorities as part of their new childcare sufficiency duty.

The aim of the policy is to move gradually to a position where a greater proportion of the cost of running the regulatory system is met through fee revenue. There were responses from the provider organisations (National Childminding Association, NCMA; National Day Nurseries Association, NDNA; Pre-school Learning Alliance; Day Care Trust; 4 Children; & National Children's Bureau) as well as individual providers. There was concern about proposed fee increases - particularly from smaller providers and in particular about the proposed large increase in 2010, although there was support for the underlying principles on reducing the subsidy. As a result of the responses a much smaller increase was proposed for 2010 with a review of arrangements for 2011 and beyond to take place nearer the time. For the GCR it was decided to set the fee at the cost of providing the service.

Fee levels announced in June 2008 following the consultation

Band	2008	2009	2010
1 (childminders)	£25	£30	£35
2 (other provision)	£25	£30	£35
3 (provision above time thresholds)	£180	£200	£220

Band 2: is provision is provision other than childminding operating for less than 3 hours per day, or less than 5 days per week, or less than 45 weeks per year.

Band 3: is provision operating for at least 45 weeks per year AND at least 5 days per week AND at least 3 hours per day. This will cover full day care and out of school care operating all the year round.

Options

There are two options with regard to this matter:-

1. To introduce the amendment to the regulations in order that fees can be risen as stated in the consultation response.

2. Not to implement the rise.

Costs and Benefits

Sectors and Groups affected

The amendment proposals directly relate to provision in the private, voluntary and community childcare sectors.

Benefits

This policy transfers resources from providers to the government and has zero net economic costs or benefits. The additional revenue that will be derived from the increase in fee levels can

be estimated at £720, 205. This will mean that the subsidy to Ofsted to operate the EYR can be reduced by the same amount, which the government is committed to do.

EYR fee revenue – assumptions
Numbers of providers (as at 31 March 2009):- Childminders - 60,301 (£5 rise x 60,301 = £301, 505) Daycare providers - 27,635 (of which estimated 9,200 in band 2 and 18,635 in band 3). Band 2 - £5 rise x 9,200 = £46,000. Band 3 - £20 rise x 18,635 = £372,700 Total £ from EYR fee increase = £720, 205.
Mean income from fees (Providers Survey 2007) Childminders - £8,700 Full Daycare - £151,000 Sessional care - £13,800 (Roughly equivalent to Band 2) Average hourly fees Childminders - £3.60 Full day care - £3.20

The current subsidy of over 95% is difficult to justify on efficiency or equity grounds. As registration is compulsory, the subsidy is unnecessary as an incentive for providers to register and thus delivers no public benefit. Reducing the subsidy would have the benefit that providers paid a more equitable share of the costs of a system from which they derive significant private benefits.

Costs

For Band 1 (childminders) and Band 2 (other provision) there will be an increase of £5 – to £30 for registration fees. Using figures from the 2007 Providers Survey we estimate that the fee represents 0.1% of the mean income for childminders. For Band 2 providers we estimate that the fee represents 0.04% of mean income. For Band 3 there will be an increase of £20 to £200; we estimate this represents 0.01% of mean income. We think it is reasonable to expect that providers can absorb fee increases of this size without going out of business. As the size of the fee increases are not directly related to the number of children cared for, they represent an increase in the fixed costs of childcare provision but not the marginal cost and so there is no incentive for providers to reduce the amount of childcare provided at market prices. Band 3 providers (those providing childcare for at least 45 weeks a year, 5 days a week, 3 hours a day) will pay more, but, given the size of the fee increase, we do not expect this will cause these providers to reduce their level of provision.

Small Firms Impact Test

The fee increases proposed are linked to provider income and very small in relation to the total income of providers, so we do not expect them to have a detrimental impact on small firms.

Competition Assessment

We have completed the competition assessment and are satisfied that our proposals will not have a significant impact on competition, the principles supporting our proposals having been established in the 2006 consultation “Childcare Registration and Inspection: Fees Proposal”.

Enforcement, sanctions and monitoring

The amended regulations on fees will be implemented by Ofsted. Where information and other requirements are placed on childcare providers through these regulations, Ofsted is the registration authority that will enforce those requirements.

Ofsted will be responsible both for monitoring the overall implementation of the regulations.

Post-implementation Review

It is intended that a review will take place in 2010, following the incremental increase to the fees. This will allow for further consultation in order to define the way ahead after 2010.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	*Results in Evidence Base?*	*Results annexed?*
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

Annexes

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