EXPLANATORY MEMORANDUM TO
THE CHILDCARE (FEES) (AMENDMENT) REGULATIONS 2011

2011 No. 1628

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 These Regulations amend the Childcare (Fees) Regulations 2008 (2008 No. 1804) ("the 2008 Regulations") which prescribe application fees and annual fees payable by registered childcare providers to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"). The amendment extends the operation of the transitional provision which ensured that childcare providers (other than childminders) who were automatically transferred on 1st September 2008 from the previous childcare register onto the Early Years Register paid a lower annual fee than would otherwise be the case. By extending the effect of the transitional provision for a further year to 31 August 2012 this group will continue to pay the lower annual fee; otherwise it would increase substantially for them from 1st September 2011. No changes are made to the level of other fees prescribed by the 2008 Regulations.

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

3.1 None

4. Legislative Context

4.1 The 2008 Regulations prescribed all the fees payable by childcare providers to the Chief Inspector in respect of childcare providers registered under Part 3 of the 2006 Act. They were amended from 1st September 2010 to increase the fees relating to the Early Years Register, and these Regulations now make a further amendment to retain the transitional arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the EYR and who provide childcare provision for more than 3 hours per day but less than 4 hours per day.

5. Territorial Extent and Application

5.1 This instrument applies to England.

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 As set out above, the 2008 Regulations prescribed the application fees for registration as a childcare provider, and annual fees for those who are so registered. As explained at paragraph 7.8 of the Explanatory Memorandum to the 2008 Regulations, application fees and annual fees for the EYR are based on 3 "bands":

- Band 1: Childminders
- Band 2: Other childcare providers (not childminders) below the operating time thresholds of Band 3 providers
- Band 3: Other childcare providers (not childminders) which operate for at least 3 hours per day and at least 5 days per week and at least 45 weeks per year

7.2 The consultation entitled "Childcare Act 2006: Future Approach to Fees and Subsidies" set out proposals for EYR fee increases that would increase the contribution of EYR fee revenue to Ofsted's costs of providing its services. In its response to the consultation the Government announced a phased increase in EYR fees over a 3 year period to 2010. The fees applicable from 1st September 2010 were £35 for Bands 1 and 2, £220 for Band 3 and £50 for providers subject to the transitional arrangements.

7.3 The amendment made by this instrument to the 2008 Regulations is to extend, until 31st August 2012, the transitional provision applicable to a particular group of sessional childcare providers who transferred from the previous register maintained under the Children Act 1989 to the EYR and who provide childcare provision for more than 3 hours per day but less than 4 hours per day.

7.4 The transitional arrangement was put in place in order to avoid this particular group of childcare providers being required to pay a significantly increased annual fee. Under the old statutory system (the Childcare Act 1989 register), the annual fee applicable to this group of providers was approximately £30. Without the transitional provision, they would be required to pay an annual fee of £200. The policy initially was to increase this fee gradually. However, as fees are not being increased in 2012 for Bands 1, 2 and 3, it would be inappropriate to make a change only for the transitional group. In addition, Ministers are considering fees policy more broadly in the context of the future regulation of Early Years and new financial burdens on the providers generally. It is therefore thought appropriate to maintain the current position until these considerations have taken place. The fee for such providers therefore will, in 2012, remain at £50.

7.6 The fees after this instrument will remain as follows:

Band	2011	2012
1 (childminders)	£35	£35
2 (other providers)	£35	£35
3 (providers above time thresholds)	£220	£220
Sessional care providers subject to transitional provisions moving to Band 3 but not paying Band 3 levels at present	£50	£50

7.5 Ministers have decided not to increase fees from September 2011 and the Government is considering fees as part of its new approach to regulating Early Years childcare more generally. It intends to consult on future changes to fee levels.

- Consolidation

7.7 This is a minor amendment to one provision within the 2008 Regulations which does not merit a consolidation of the Regulations.

8. Consultation outcome

8.1 There has been no consultation on extending the transitional arrangement because we are only seeking to retain rather than change it in any way.

9. Guidance

9.1 The Department will ensure that Ofsted is clear about the fee levels from September 2011. There is no need for new guidance to providers who are already paying fees at this level.

10. Impact

10.1 The impact on business affected by the amendment is to maintain the status quo in terms of the fees they pay in 2012.

10.2 The impact on the public sector is minimal.

10.3 No Impact Assessment has been carried out as the effect of this amendment is to avoid a change in the burdens on certain childcare providers who, without it, would be required to pay higher annual fees from September 2011.

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The amendment will not impose new requirements on firms employing up to 20 people. Instead it will have a beneficial effect on those

affected by the transitional arrangements as they will not have to pay higher fees from September 2011.

11.3 As the change avoids cost for small business, no action is necessary to assist them.

12. Monitoring & review

12.1 The Government will monitor the impact of the fees paid by EYR providers as part of ongoing work on the longer term future of fees from 2012 and beyond.

13. Contact

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