EXPLANATORY MEMORANDUM TO
THE CHILDCARE (FEES) (AMENDMENT) REGULATIONS 2012

2012 No. 2168

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 (S.I. 2008/1804) ("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) providing more than 3 hours but less than 4 hours per day, who were automatically transferred on 1st September 2008 from the previous childcare register onto the Early Years Register ("EYR"), paid a lower annual fee than would otherwise be the case. By extending the effect of the transitional provision until 31st August 2015 this group will continue to pay the lower annual fee.

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 Childcare Act 2006 ("the Act"). The effect of this amendment is to retain the transitional arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the EYR (introduced by the Act) and who provide childcare provision for more than 3 hours per day but less than 4 hours per day. A similar amendment was made by the Childcare (Fees) (Amendment) Regulations 2011 (S.I. 1628/2011).

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. The 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. There have been no further fee increases since 2010.

7.3 The amendment made by this instrument to the 2008 Regulations is to extend, from 21st September 2012 until 31st August 2015, 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 previous system, 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. The fee for such providers therefore will, for 2012-15, remain at £50. After the 2011 amendments ministers considered whether to remove transitional arrangements for fees but decided to retain subsidised fees to reduce burdens on these providers and help promote affordability of childcare. Changes were made to the welfare and learning and development aspects of the Early Years Foundation Stage in 2012 but these changes did not include fees.

7.5 The fees after this instrument will remain as follows:

Band	2011	2012-15
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

7.6 Ministers will consider fees again, alongside other activity to promote affordability of childcare, and it is likely that a decision will be made before the end of the current spending review period in 2015.

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 the effect of the amendment is to retain an existing fee rather than change it.

9. Guidance

9.1 The Department will ensure that Ofsted is clear about the fee levels from September 2012. There is no need for new guidance to providers who are already paying fees at this level.

10. Impact

10.1 There is no impact on business or civil society organisations because the effect of this amendment would be to avoid a change in the burdens on certain childcare providers who, without it, would otherwise be required to pay higher annual fees from September 2012. The amendment maintains the status quo in terms of the fees the affected providers pay from 2012-15.

10.2 There is no impact on the public sector.

10.3 An impact assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

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 2012.

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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