EXPLANATORY MEMORANDUM TO

THE CHILDCARE (FEES) (AMENDMENT) REGULATIONS 2017

2017 No. 768

1. Introduction

1.1 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"), Ofsted. The amendment extends the transitional provision which allows childcare providers (other than childminders) who operate for less than 4 hours per day and who automatically transferred on 1st September 2008 from the previous childcare register onto the early years register under the Childcare Act 2006, to pay a lower annual fee than would otherwise be the case. By extending the transitional provision this group will continue to pay the lower annual fee until 31st August 2019.

3. Matters of special interest to Parliament

Matters of interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The 2008 Regulations prescribe 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"). This amendment extends the transitional arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the Early Years Register ("EYR") (introduced by the Act) and who provide childcare for less than 4 hours per day. This amendment allows the providers to pay the same annual fee rate for a further two years (to 31st August 2019)

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 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

What is being done and why

7.1 As set out above, the 2008 Regulations prescribe 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 and other childcare providers below the operating time thresholds of Band 3 providers - £35
- Band 2: Certain sessional childcare providers (not childminders) - £50
- 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 - £220.

7.2 The consultation held in 2008, 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 Band 1, £220 for Band 3 and £50 for Band 2 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 1st September 2017 until 31st August 2019, the transitional provision for Band 2 providers, i.e. a particular group of about 8,000 sessional childcare providers who transferred from the previous register maintained under the Children Act 1989 to the EYR and who provide childcare provision for 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 having to pay a significantly increased annual fee. Under the previous system, the annual fee applicable to this group of providers was approximately £30. This was modestly increased to £50 in 2010, in recognition that these were mainly voluntary and not-for-profit providers of childcare. Without the transitional provision, they would be required to pay an annual fee of £220. The policy initially was to increase the Band 2 fee gradually. However, fees have not been increased since 2010 for any of the provider fee bands. In 2011 the Government 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. Expiry of the transitional arrangement would result in a large fee increase for Band 2 providers.

7.5 The Government intends to review fees, alongside other activity to promote affordability of childcare, in 2018.

Consolidation

7.6 This is a minor amendment to one provision within the Childcare (Fees) Regulations 2008, 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 2017. 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, charities or voluntary bodies. The effect of this amendment is to avoid a change in the burdens on certain childcare providers who would otherwise be required to pay higher annual fees from September 2017. The amendment maintains the status quo in terms of the fees the affected providers pay from 1 September 2017 to 31 August 2019.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to activities that are undertaken by small businesses.

11.2 The amendment will not impose new requirements on firms employing up to 50 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 2017.

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 2017 and beyond.

13. Contact

13.1 Alan Conlon at the Department for Education. Telephone: 020 7340 7408 or email: Alan.Conlon@education.gov.uk can answer any queries regarding the instrument.