EXPLANATORY MEMORANDUM TO

THE CHILDCARE (FEES) (AMENDMENT) REGULATIONS 2025

2025 No. 590

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Janet Daby, Minister for Children and Families at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

2.2 Harjit Athwal, Deputy Director for Early Years Quality, Recovery and Welfare, at the Department for Education, confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sana Ajmal at the Department for Education, email: sana.ajmal@education.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The Childcare (Fees) Regulations 2008 (S.I. 2008/1804) (the "2008 Regulations") prescribe the application and annual fees payable to His Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") by a person who applies to be, or who is, registered on the early years register ("EYR") under Chapter 2 of Part 3 of the Childcare Act 2006 (the "2006 Act"). To note, the Chief Inspector is statutorily responsible for the inspection and regulatory work of the Office for Standards in Education, Children's Services and Skills ("Ofsted").

4.2 This Instrument amends regulation 10(7) of the 2008 Regulations to extend the prescribed alternative annual fee arrangements, which apply to an early years childcare provider (other than a childminder) whose registration automatically transferred to the EYR from the Children Act 1989 (the "1989 Act") on 1 September 2008 (a "1989 Act provider"), for a further 2 years to apply to fees payable before 1 September 2027. Prior to this Instrument, the alternative fee arrangements in regulation 10(7) applied to annual fees payable by a 1989 Act provider before 1 September 2025.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Currently, the 2008 Regulations prescribe that the following application and annual fees are payable to the Chief Inspector by a person (other than a 1989 Act provider) who applies to be, or who is, registered on the EYR under Chapter 2 of Part 3 of the 2006 Act:

- Childminders - £35
- Childcare providers (other than childminders) who operate for less than 3 hours per day, 5 days per week, or 45 weeks per year ("2006 Act sessional day providers") - £35
- Childcare providers (other than childminders) who operate for 3 or more hours per day, 5 or more days per week, and 45 or more weeks per year ("2006 Act non-sessional providers") - £220.

5.2 Regulation 10(7) of the 2008 Regulations prescribes alternative fee arrangements for 1989 Act providers. A 1989 Act provider who operates for 4 or more hours per day, 5 or more days per week, and 45 weeks or more per year (a "non-sessional 1989 Act provider") pays a fee of £220, whereas a 2006 Act non-sessional day provider pays a fee of £220 if they operate for 3 or more hours per day. A 1989 Act provider who operates for less than 4 hours per day, 5 days per week, or 45 weeks per year (a "1989 Act sessional day provider") pays a reduced annual fee of £50, compared to the reduced annual fee of £35 a 2006 Act sessional day provider pays if they operate for 3 or less hours per day.

5.3 These alternative fee arrangements were put in place in order to avoid this particular group of childcare providers – sessional 1989 Act providers, particularly those operating for 3 or more but less than 4 hours per day – having to pay a significantly increased annual fee compared to the fees they were paying for registration under the 1989 Act.

5.4 The alternative fee arrangements prescribed by regulation 10(7) of the 2008 Regulations were initially provided for a period of 2 years, applying to annual fees payable by 1989 Act providers before 1 September 2010. The expiration of these alternative fee arrangements has been extended a number of times, with the most recent extension before this Instrument being made by regulation 3 of the Childcare and Inspection of Education, Children's Services and Skills (Fees) (Amendments) Regulations 2023 (S.I. 2023/276), extending the fee arrangements to annual fees payable by 1989 Act providers before 1 September 2025.

5.5 This Instrument amends regulation 10(7) of the 2008 Regulations to extend the alternative fee arrangements for a further 2 years, so that they apply to annual fees payable by a 1989 Act provider before 1 September 2027. This extension is a temporary measure to maintain the status quo while EYR fees policy is being reviewed and considered as a whole.

What was the previous policy, how is this different?

5.6 Under the original EYR fees set in 2008, the annual fee payable by a 1989 Act sessional day provider was £25. This was modestly increased to £50 in 2010. It was intended that the fee would be increased gradually. However, fees have not been increased since 2010 for any of the provider fee bands. In 2011, the Government considered whether to remove the alternative fee arrangements for 1989 Act providers

but decided to retain subsidised fees to reduce burdens on these providers and help promote affordability of childcare. Not extending the alternative fee arrangements in regulation 10(7) to apply to fees payable by a 1989 Act provider before 1 September 2027 would result in a large fee increase from 1 September 2025 for 1989 Act sessional day providers who operate for 3 or more, but less than 4, hours per day.

6. Legislative and Legal Context

How has the law changed?

6.1 The 2008 Regulations prescribe the application and annual fees payable to the Chief Inspector by a person who applies to be, or who is, registered on the EYR under Chapter 2 of Part 3 of 2006 Act. Regulation 10(7) of the 2008 Regulations provides alternative fee arrangements for 1989 Act providers.

6.2 This Instrument amends regulation 10(7) of the 2008 Regulations to substitute "2025" with "2027". This has the effect of extending the alternative fee arrangements prescribed by regulation 10(7) to apply to annual fees payable by a 1989 Act provider before 1 September 2027, rather than to fees payable before 1 September 2025.

Why was this approach taken to change the law?

6.3 This is the only possible approach to extend the alternative fee arrangements prescribed by regulation 10(7) of the 2008 Regulations. Without this Instrument, the alternative fee arrangements would have applied to annual fees payable by 1989 Act provider before 1 September 2025, resulting in increased fees from 1 September 2025 for 1989 Act sessional day providers who operate for 3 or more, but less than 4, hours per day.

7. Consultation

Summary of consultation outcome and methodology

7.1 In July 2019, the Department for Education launched a public consultation about increasing the EYR fees from 1 April 2020[1], and the principles that should underpin a revised EYR fee model from April 2021. This was expected to be followed by a further consultation that would have included proposals for 1989 Act providers who are subject to the alternative fee arrangements in regulation 10(7) of the 2008 Regulations. However, the Department decided not to implement any fee increase from April 2020 and the Government response[2] informed the sector that any future fee proposals would be subject to a further public consultation.

7.2 On 17 March 2020, following the outbreak of the COVID-19 pandemic, the Department announced there would be no immediate rise in EYR fees following the 2019 consultation. Instead, Ministers decided to retain the alternative fee arrangements in regulation 10(7) of the 2008 Regulations for fees payable before 1 September 2023, and again for fees payable before 1 September 2025. Ministers decided to extend the regulation 10(7) arrangements again for a further two years (to fees payable before 1 September 2027) so 1989 Act sessional day providers can continue to pay a lower fee of £50 where they operate for less than 4 hours per day,

[1] Early years childcare fees consultation: https://consult.education.gov.uk/early-years-and-schools-strategy/early-years-childcare-fees-regulations/supporting_documents/Early%20years%20childcare%20fees%20regulations.pdf

[2] Government's response to early years childcare fees consultation: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/872851/Ofsted_Fees_Review_Government_Response_March_2020.pdf

rather than for less than 3 hours per day, to reduce their financial burden whilst the Department reviews the EYR fee arrangements.

8. Applicable Guidance

8.1 The Department will ensure that Ofsted is clear about the fee levels from September 2025. There is no need for new guidance to providers who are already paying fees at this level as there is no change being made to the current fee arrangement.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private, voluntary, or public sector is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because 1989 Act providers will continue to pay the same annual fees as they pay now (£50 for 1989 Act sessional day providers and £220 for non-sessional 1989 Act providers).

9.3 The legislation does not negatively impact small or micro businesses.

9.4 The amendment to the 2008 Regulations will not impose new requirements on firms employing up to 50 people. Instead, it will have a beneficial effect on 1989 Act sessional day providers, as they will not have to pay higher fees from September 2025 if they operate between 3 and 4 hours per day. As the change avoids cost for small businesses, no action is necessary to assist them.

9.5 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring of this legislation is that the operation of this Instrument will be kept under review on a periodic basis.

10.2 This Instrument does not include a statutory review clause, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, Parliamentary Under-Secretary of State (Minister for Children and Families), Janet Daby, has made the following statement: 'A review would be disproportionate when taking into account the economic impact of the regulatory provisions on the qualifying activity.'

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").