EXPLANATORY MEMORANDUM TO

THE DAY CARE AND CHILD MINDING (REGISTRATION FEES) (ENGLAND) (AMENDMENT) REGULATIONS

2006 No. 2081

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

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

2. Description

2.1 This Statutory Instrument increases the registration and annual fees payable by childcare providers from 2nd October 2006.

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

3.1 None

4. Legislative Background

4.1 Section 79E(2)(c) of the Children Act 1989 allows the Secretary of State to prescribe a fee for registration for day care or childminding. Paragraph 7 of Schedule 9A to the Children Act 1989 allows the Secretary of State to prescribe periodic fees to be paid by registered day care providers and childminders.

4.2 The current level of registration and inspection fees was set in the Childminding and Day Care (Registration and Annual Fees) Regulations 2001 (SI 2001/1886).

4.3 The Children Act 2004 amended section 79E of, and paragraph 7 of Schedule 9A to, the Children Act 1989 to provide that fees are to be paid at the time of application rather than at some point up until the grant or refusal of registration and to provide for fees to be paid other than annually.

4.4 The Day Care and Child Minding (Registration Fees) (England) Regulations 2005 (SI 2005 No. 2301) were made necessary by these amendments to the Children Act 2004, but did not change the level of fees or the periods at which they should be paid.

4.5 The purpose of the amending Regulations is to increase, from 2nd October 2006, the application and annual fees that day care providers and childminders pay to Ofsted.

5. Extent

5.1 This instrument applies only in relation 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 Registration fees for childminders (£14 on application for registration and £11 annually thereafter) are currently among the lowest of any such fees for children's services. Fees for day care providers (£121 and £94 for application and annual fees respectively), reflect that they are generally larger scale businesses, but still only represent a fraction of the costs of registration (3.5%) by Ofsted with 96.5% being met by the taxpayer.

7.2 As set out in the Regulatory Impact Assessment the Government has three longer term objectives:

- To implement a phased move away from a system of large government subsidies to one where providers pay a greater share of the cost of registration;

- To introduce fairer, more flexible and targeted arrangements, so that fees better reflect the cost of the service, and that subsidies are directed at those who need them; and,

- In the longer term, to consider whether local authorities could assume a higher profile role in subsidy arrangements, determining the extent of subsidy offered based on knowledge of their local providers, in the light of their strengthened responsibility for facilitating the local childcare market.

7.3 The consultation – Childcare Registration: Fees Proposal opened on 6th March 2006 and closed on 30th May 2006 with 78 people/organisations having responded.

7.4 The proposal was that the registration fees to be paid to Ofsted by day care providers and childminders should be increased from October 2006 to bring about a better balance between the fees that day care providers and childminders can afford to pay and the subsidy provided by central government. Three options were given in the Regulatory Impact Assessment, with the fee increase we are implementing shown as a phased increase under option 2.

7.5 44 (56%) respondents agreed with the proposal and 46 (61%) felt that the Regulatory Impact Assessment contained sufficient information to accurately inform them about the options and proposed changes. 49 (64%) respondents agreed that we should consider more local arrangements for administering subsidies using existing local authority support mechanisms.

7.6 The fees increase we are implementing in October 2006 is a first step in this direction.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The impact on the public sector is small considering that there has been no increase in fees since 2001 and in the same period average childcare prices have risen between 30 – 46 % depending on the type of provision used.

9. Contact

Andy Davey at the Department for Education and Skills Tel: 0207 273 5439 or e-mail: andy.davey@dfes.gsi.gov.uk can answer any queries regarding the instrument.

PARTIAL REGULATORY IMPACT ASSESSMENT FOR AMENDMENTS TO THE DAY CARE AND CHILD MINDING (REGISTRATION FEES) (ENGLAND) REGULATIONS 2005

TITLE OF PROPOSAL

1. The proposed regulations will amend the registration fees to be paid to Ofsted by day care providers and childminders.

2. The intention is that these new arrangements, planned for introduction in October 2006, should bring about a better balance between the fees that day care providers and childminders can afford to pay and the subsidy provided by central government.

PURPOSE AND INTENDED EFFECT

Objective

3. The Government has three longer term objectives:

- to implement a phased move away from a system of large government subsidies to one where providers pay a greater share of the cost of registration;

- to introduce fairer, more flexible and targeted arrangements, so that fees better reflect the cost of the service, and that subsidies are directed at those who need them; and,

- in the longer term, to consider whether local authorities could assume a higher profile role in subsidy arrangements, determining the extent of subsidy offered based on knowledge of their local providers, in the light of their strengthened responsibility for facilitating the local childcare market.

Background

4. Part 10A of the Children Act 1989, which was introduced by the Care Standards Act 2000, transferred the responsibility for childcare registration from local authorities to Ofsted. It allowed Ofsted to collect fees from day care providers and childminders instead of the previous local authority arrangements. The fee levels, however, have never been set to recover the full costs of the service provided by the regulator. Registration fees for childminders (£14 on application for registration and £11 annually thereafter) are currently among the lowest of any such fees for children's services. Fees for day care providers (£121 and £94 for application and annual fees respectively), reflect that they are generally larger scale businesses, but still only represent a fraction of the costs of registration by Ofsted. Overall the fee income collected by Ofsted amounts to only 3.5% of the costs. There has been no increase in the registration fee levels since 2001. However, according to childcare costs surveys conducted in 2001 and 2005 by the Daycare Trust, the average cost of a nursery place (full time nursery catering for under 2 year olds) has risen from £110 per week in 2001 to £141 per week in 2005 (28%) while the average cost of a place with a childminder has risen from £89 per week in 2001 to £127 per week in 2005 (42%).

5. Research was carried out in 2003 to find out to what level fees could be charged without affecting childcare providers' sustainability. However, the results of this research were

inconclusive due to the considerable variability in the business circumstances of different day care providers and the variety of factors that contributed to sustainable provision. The Government has made significant investments in childcare provision which has seen turnover rates among childcare providers fall by over 5% from April 2005 to December 2005.

6. Following this, in order to test the principles underlying a fairer system of subsidies, questions were included in a 2005 consultation on childcare legislation about what factors should be considered in determining the balance between costs and subsidies, and how subsidies should be administered. Although a significant proportion of respondents to this consultation argued in favour of a full subsidy, or a subsidy that was equally distributed, the majority acknowledged that it would be fairer to have arrangements that took into account factors such as the size of the organisation (with particular recognition of childminders), or whether or not they were located in an area of deprivation, poor employment or rural disadvantage. Although many respondents argued that subsidies should be administered solely by reducing fee levels or removing them altogether, a majority appreciated that local authorities were well placed to have a greater role in administering subsidies to ensure local needs, childcare demand and supply could be taken into account.

Rationale for government intervention

7. The risk that the proposals address is that the subsidy arrangements do not currently offer best value for tax payers' money. Subsidies for regulatory services such as that provided by Ofsted can be justified if they are appropriately targeted at those who cannot afford to pay the full costs of the service. The present arrangements involve very limited targeting (with different fee levels for childminders and sessional care providers on the one hand, and full day care providers on the other), and therefore it is difficult to justify against this test. Whilst it is clear that some providers would not be able to pay substantially higher fees without passing such additional costs on to parents, other providers could absorb such costs without passing them on to parents, or operate in areas where parents might be able to pay more. By April 2005, over 337,000 families were benefiting from the childcare element of the Working Tax Credit, which currently provides for a maximum of 70% of eligible childcare costs up to certain limits, £175 a week for families who pay childcare for one child and £300 a week for families who pay childcare for two children or more. By April 2005, the childcare element was benefiting families by an average of £51 per week, compared to £41.25 per week at November 2002 through Working Tax Family Credit. The Government is planning to increase the allowable proportion of the eligible childcare costs form 70 % to 80% from April 2006.

CONSULTATION

Within government

8. We have discussed our proposals with colleagues in Ofsted and Her Majesty's Treasury, who are the key stakeholders in this policy area. They have indicated that they are broadly content with what we are proposing and the timescale.

Public consultation

9. Following initial consultation on general principles (see reference to 2005 consultation above), the Government is consulting on more specific proposals for changes in 2006, and to inform work on arrangements for future years.

OPTIONS

10. The Government has considered three options.

1. Do nothing

Maintain the status quo in respect of the scale and administration of subsidies, with any registration fee increases limited to inflation since 2001, when these fees were last increased. This option would minimise the financial impact on childminders and day care providers, but would not achieve the objectives outlined above. The inequity of the current arrangements would be perpetuated, and the Government would not address the risk identified previously that tax payers' money is being directed at businesses that could afford to pay a higher proportion of the costs.

2. Phased approach

A phased approach over a number of years, starting with a modest increase in 2006, higher than inflation, but in line with the increase in costs that providers have charged parents. The proposed increase in registration fees for 2006 would include inflation since 2001. It is envisaged that this could lead to a further increase in registration fees in 2007 to establish a system of annual up rating, and reflect any new registration arrangements under the Childcare Bill that are able to be commenced in that year. A more substantial fee increase and restructuring of the subsidy arrangements for the costs of Ofsted registration could follow in 2008, to coincide with the introduction of the new regulatory framework for early years providers, and in the context of the forthcoming Comprehensive Spending Review. This is the Government's preferred option.

3. Substantial movement towards full cost recovery

Move to a position in 2006 where the fees represent a substantial movement towards full cost recovery, and where subsidies are better targeted. This option would enable the Government to achieve more quickly the objectives set out in paragraph 3 above, but the increases in costs to providers could not easily be matched with new arrangements for administration of the subsidy within that timescale – for example, there would be limited scope for adjusting local authority budgets if it was thought appropriate to administer more of the subsidy through local authorities. This would therefore result in significantly higher costs for childminders and day care providers that would deter new providers from entering the market, and threaten the viability of existing providers, particularly in disadvantaged areas where such costs could not easily be passed on to parents.

COSTS AND BENEFITS

11. The costs and benefits of the above options are shown below. More detail is shown in table 2 in appendix A. This assessment is limited to the proposals for change in 2006. Further assessments will be made as proposals are developed for future years.

Sectors and groups affected

12. Private and voluntary day care providers and childminders regulated by Ofsted under the Children Act 1989. There are currently about 71,000 childminders, most of who operate on a self

employed basis, and 35,000 day care providers, the majority of whom would be classed as small businesses.

Benefits

13, The benefits of the three options are set out below:

1. Do nothing

This option would not realise the benefits that the Government is seeking in terms of more targeted subsidy arrangements. The Government has estimated that outside disadvantaged areas, day care providers could afford to pay more, with the larger providers meeting a much larger proportion of the costs of registration. Overall, it is estimated that providers could afford to pay up to £16m towards the costs (the assumptions underlying this estimate are detailed in appendix A). Under this option, therefore, the amount of subsidy which is directed towards those who do not need it would be up to £16m.

2. Phased approach

This option will enable the Government to begin to realise the benefits of a fairer system, because it will reduce the amount of subsidy which is directed towards those who do not need it (£15.5m as opposed to £16m under option "1" above).

3. Substantial movement towards full cost recovery

Under this option, a fairer system would be achieved more quickly, but the benefits of having less of the subsidy going towards those who could afford to pay would be unlikely to be fully realised, because new subsidy arrangements – particularly if local authorities were to be given more responsibility in this area – would take time to develop and target effectively.

Costs

14. The costs of the three options are set out below:

1. Do nothing

A cost increase to take account of inflation since 2001 would involve registration fee increases of around 13%. The day care provider[1] fees would rise from £121 to £137 on application and from £94 to £107 annually, and the childminder fees from £14 to £16 and from £11 to £12 respectively. A 13% increase in registration fees can be compared with increases in the cost of day care places to parents that have risen by 30% on average over the same period (the equivalent increase for childminding places is 46%)[2], and with increases in the level of government funding in support of childcare which has risen by over 200%, also since 2001. The Government has therefore assumed that all providers could afford to pay such an increase. Where local authorities currently subsidise these

[1] In the regulations this only covers day care providers operating for 4 or more hours per day. Day care providers operating for less time pay the childminder rate.
[2] These figures are taken from "The Price Parents Pay" report published by the Daycare Trust in July 2001 and the Daycare Trust 2005 Childcare Costs Survey.

costs, for example through a childminder start up grant, the additional costs should easily be manageable in view of the increased level of funding they now receive.

2. Phased approach

The Government's preferred option is to raise registration fees by more than inflation – an increase of around 30% compares favourably with the 30% plus increase in the costs of childcare to parents, and the 200% plus increase in government funding noted under option 1 above. Registration fees would increase from £14 to £18 for childminder applications, with the annual fee for childminders rising from £11 to £14. Day care application fees would rise from £121 to £150, and annual fees from £94 to £120. These increases would result in additional costs of about £0.5m on providers. We estimate that most providers could afford to pay this increase. Although a proportion of providers (childminders, small day care providers and those in disadvantaged areas) might need help – although there is no information currently available to quantify this figure – it is unlikely that this would generate an additional call on local authority funds. Even if providers passed the full increase in annual fees to parents the amounts would be minimal. If a childminder with the average number of places (4.5) passed on the full annual increase of £3, this would cost each parent using that childminder less than 6 pence per month. If a full day care provider with the average number of places (43) passed on the full annual increase of £26, this would cost each parent using that provider 5 pence per month.

3. Substantial movement towards full cost recovery

A more significant move towards full cost recovery could be achieved by reducing the subsidy in respect of Ofsted registration from the current 96.5% to 90% of the full costs. This would involve marked increases in fees of over 150%. Day care registration fees would rise to £310 (applications) and £240 (annual), and childminding fees to £36 and £28. The Government believes that the scale of these increases would be too disruptive to achieve in a single step. It is also unlikely that local authorities could find the funds that would be required to support providers to ensure continued sustainability.

SMALL FIRMS IMPACT TEST

15. Childminders are an important part of the market of childcare providers. Most childminders are self employed and there are also a significant number of small operators in the group care market – running play groups, day nurseries, etc.

16. In 2005 we included some questions in the Childcare Bill consultation asking what factors should determine the balance between costs and subsidies and, where childcare providers need help with fees, how a subsidy should be administered.

- On the issue of balance between costs and subsidies, 41% of respondents felt the size of the organisation should be the determining factor, 33% wanted all CRB checks to be free, 27% thought subsidies should be distributed equally and 26% considered that areas of deprivation should be considered.

- In terms of administering subsidies 29% of respondents suggested that subsidies should be administered through local authorities as they can ensure local needs are met and would have a degree of control over settings in their area. A smaller percentage (16%)

wanted the subsidy paid direct to providers and a similar percentage (15%) felt there must be a level playing field and that subsidies should be available for all provision including childminders.

We stated in this consultation that we proposed to consult further in 2006 on proposals for introducing fairer and more targeted arrangements so that fees better reflect the cost of the service and that subsidies are directed at those who need them.

17. The fee increase proposed for October 2006 is small considering that there has been no increase in fees since 2001 and in the same time period average prices have risen between 30-46% depending on the type of provision used.

18. We believe that there are no significant negative impacts for small businesses and therefore there is no need to carry out stage two of the test. We have consulted the Small Business Service about this proposal and they agree that it should not have a disproportionate impact on small businesses.

COMPETITION ASSESSMENT

19. We have carried out a full competition assessment and have not identified any competition concerns.

ENFORCEMENT, SANCTIONS AND MONITORING

20. Enforcement action is not required in the case of fees payable on application for registration by Ofsted. Ofsted will not process an application without payment of the required fee. In the case of annual registration fees, Ofsted can take action to cancel a registration if the required fee is not paid.

IMPLEMENTATION AND DELIVERY PLAN

22. The responses to the consultation were published on the Department for Education and Skills Consultation website on 29th June 2006. Details of the new fees were published in Sure Start News Issue 40 (electronic version) on Friday 30th June 2006 and on the DfES Local Authority website on Monday 10th July 2006. They are also being published in Ofsted Direct: Early Years Edition 3, which will be sent electronically to a mix of providers, local authorities and interest groups on 28th July 2006.

23. Ofsted has already updated their helpline brief and will be changing all their letters and publications so that all applicants for childcare registration and registered providers will be aware of the amount of the new fee by the time payment is due. The regulations will come into force on 2nd October 2006.

POST-IMPLEMENTATION REVIEW

24. A post implementation review will take place as part of the longer term fees review, the objectives of which were set out in paragraph 3 of this document and which is timed to coincide with the introduction of the Ofsted Childcare Register and new regulatory system under the Childcare Act 2006.

DECLARATION AND PUBLICATION

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

Signed …*Beverley Hughes*……

Date ……27th July 2006……

Contact

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APPENDIX A: ANALYSIS OF COSTS AND BENEFITS

Table 1: current costs (2005)

Type of childcare provider	**Current costs and subsidies**						
	Application fee (£)	**Annual fee (£)**	**Total fee income (£m)**	**Total fees as a proportion of costs[4] (%)**	**Subsidy level (%)**	**Total cost of subsidy (£m)**	
Day care providers	121	94	3.0	3.5	96.5	85[5]	
Childminders	14	11					

[3] This **estimate of the extra that some providers can pay** is based on the following **assumptions**:

a. all childcare providers could afford to pay the additional costs of inflation (13%, as calculated under option 1);
b. all childminders could not afford to pay any more than the additional costs of inflation (option 1 increase);
c. all day care providers in disadvantaged areas could not afford to pay any more than the additional costs of inflation (option 1 increase);
d. day care providers outside disadvantaged areas can afford to pay higher fees which better reflect the costs of regulation, according to their size, as follows – settings with 100 or more places can afford to pay the full costs (100%), settings with 76-100 places can afford to pay 75% of the full costs, settings with 51-75 places can afford to pay 66%, and settings with 0-50 places can afford to pay 50%.

[4] Assumes overall Ofsted costs amounting to £88m in 2005-06.

[5] Total cost of subsidy is £85m for Ofsted's registration.

Table 2: the costs and benefits of identified options for 2006

Option	Type of childcare provider	Costs					Benefits	
		Registration fees (new amounts)					Total cost of subsidy (£m)	Estima
		Application fee (£)	Annual fee (£)	Total fee income (£m)	Subsidy level[7] (%)	Increase in fees over 2005 level (%)		£m
1	Day care providers	137	107	3.4	95.6	13	77.4[8]	16
	Childminders	16	12					
2	Day care providers	150	120	3.9	95	28	76.9[9]	15
	Childminders	18	14					
3[10]	Day care providers	310	240	7.7	90	156	69.3[11]	11
	Childminders	36	28					

[6] See footnote to table 1 above for the assumptions on which this is based. We estimate that providers could afford to pay up to £20m towards the costs of regulation.
[7] This based on the net costs, taking into account fee income, as a proportion of total Ofsted costs, which are assumed to be £77m in 2006-07, a significant reduction on 2005-06 costs due mainly to Ofsted restructuring during the year.
[8] Total cost of subsidy is £73.6m for Ofsted's registration and associated costs.
[9] Total cost of subsidy is £73.1m for Ofsted's registration and associated costs.
[10] For this option we have assumed a significant increase in fees that would enable us to move towards full cost recovery more quickly. A 150% increase in registration fees would bring the subsidy down from the current 96.5% to 90%.
[11] Total cost of subsidy is £69.3m for Ofsted's registration and associated costs.