

**EXPLANATORY MEMORANDUM TO  
THE CHILDCARE (FEES) REGULATIONS 2008**

**2008 No. 1804**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

**2. Description**

These Regulations make provision about fees payable by childcare providers to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") in respect of childcare provision registered under Part 3 of the Childcare Act 2006 ("the 2006 Act"). They prescribe the fee to accompany any application for registration on the early years register ("the EYR") and Parts A and B of the general childcare register ("the GCR", also known as the "Ofsted Childcare Register") after 1st September 2008, and the periodic fee arrangements for persons registered in those registers. They also prescribe the fee to be paid to the Chief Inspector for a replacement certificate of registration.

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

3.1 The annual fees for the EYR represent an increase above the rate of inflation (25% for childminders and 16% for day care providers) when compared with the equivalent fees payable under the Child Minding and Day Care (Registration Fees)(England) 2005 ("the 2005 Regulations") which currently apply.

3.2 However, account needs to be taken of the fact that the current fees are extremely low when compared with the actual cost to Ofsted of providing its regulatory and inspection services. The new annual fee for childminders on the EYR represents less than 8% of the cost to Ofsted, and the annual fee for other early years providers represents less than 17% of the cost to Ofsted (based on approximate current costings). In addition, there have only been 2 small increases to these fee levels since 2001 (in 2006 and 2007

3.3 As the requirements and service of Parts A and B of the GCR are similar, it is sensible that the fees should be the same. The fee levels for the GCR take into account the cost of administering the register, including providing risk-based inspection and assessment of complaints. However if a childminder is registered on both the EYR and GCR they will only pay the fees for the EYR.

3.4 For the EYR, it has also been decided that there should be a phased increase in fees levels over the next few years (rather than a bigger increase now) to reflect the fact that early years providers have to start meeting new requirements to deliver the Early Years Foundation Stage (EYFS) and to provide stability during this time of change.

**4. Legislative Background**

4.1 This instrument is one of a number of statutory instruments implementing Part 3 of the 2006 Act. Part 3 replaces, for England, the system of registration and inspection of day care and childminding under Part 10A of the Children Act 1989. The 2005 Regulations (made under the 1989 Act and which currently govern fees for that register) and the fee provisions in the Childcare (Voluntary Registration) Regulations 2007 (SI 2007/730) will be replaced by these Regulations.

4.2 The Regulations will be amended from time to time to effect any increases to the fees.

## **5. Territorial Extent and Application**

This instrument applies to England.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

7.1 On 1st September 2008, Part 10A of the 1989 Children Act will be replaced in England by Part 3 of the 2006 Act. Under Part 10A, people providing childminding or day care for children aged from birth up to age 8 must register with Ofsted. The Childcare Act introduces two new registers:

- the EYR for the providers of childcare for children from birth to the September following their 5<sup>th</sup> birthday. All childcare providers on this register will be required, unless exempted, to deliver the Early Years Foundation Stage (EYFS);
- the GCR (or “Ofsted Childcare Register”) which is in two parts:
  - Part A for the compulsory registration of providers of childcare for children from the 1st September following their 5th birthday up to the age of 8; and
  - Part B for the voluntary registration of providers of childcare who are not required to register in either the EYR or Part A of the GCR.

### General

7.2 The Regulations set out the application fees for joining the EYR, Part A or Part B of the GCR, and also the annual fees which will be payable by a provider registered in those registers. The provisions and the exact fees have been developed on the basis of a number of considerations.

7.3 The current fee arrangements under the 2005 Regulations have created some potential unfairness. For example, holiday clubs which are open full time but only during school holidays pay the same fee as day care providers open full time all the year round, and sessional care providers open less than 4 hours per day but for most of the year pay the same fee as childminders. The new fee bands for the EYR, which were proposed in the consultation “Childcare Act 2006: Future Approach to Fees and Subsidies” which ran from 21 November 2007 until 20 February 2008, are designed to address some of these inequalities by taking into account the number of hours per day, days per week and weeks per year the provision is available, and consequently the likely level of income of the early years provider.

7.4 Although the average cost to Ofsted of processing an initial application is greater than the annual cost of maintaining a registration it was felt that this does not outweigh the advantages of a simpler system and therefore the application fee for all registers is set at the same level as the annual fee.

7.5 The Government has also decided that where, because of the nature of the childcare they are providing, a person will be required to join more than one register but with the same type of registration (for example, because they provide childminding for both under 5s and over 5s), they should only pay one annual fee which will be that of the register with the higher registration and ongoing welfare requirements. For these purposes, the EYR has the highest requirements, followed by Part A of the GCR, and lastly Part B of the GCR. The result of this is that a childminder caring for children aged from 3 to 7 will be required to be registered as a childminder in both the EYR and Part A of the GCR, but will only pay the annual fee for the EYR.

7.6 The application fees which are payable depend on which registers a provider is registered in, and in which order those registrations took place. The 2006 Act provides that a person registered in the EYR can become registered in Part A or B of the GCR without making an application and paying the relevant fee. Likewise, a person who is registered in Part A of the GCR can become registered in Part B without paying an application fee. However if this happens in reverse, and a person registered in Part A or B of the GCR subsequently wishes to join the EYR, they will have to apply and pay the EYR application fee. The more stringent registration requirements of the EYR entail additional costs to Ofsted in processing applications.

7.7 Where a person has two different types of registration in different registers (for example, they are registered as a childminder on the EYR, and as a provider of childcare (other than childminding) on Part A of the GCR) these are considered as completely separate registrations, and therefore the person would have to pay the application and annual fees for both registrations.

#### Early Years Register

7.8 The proposals put forward in the consultation (“Childcare Act 2006: Future Approach to Fees and Subsidies”) were that the application fees and annual fees for the EYR should be based on 3 “bands”:

- Band 1: Childminders
- Band 2: Other childcare provision (not childminding) which is provided for less than 3 hours a day, 5 days a week and 45 weeks a year, and therefore not caught by band 3 (this is likely to include sessional or after school care which does not operate all day, or reduced days or term / holiday time only)
- Band 3: Other childcare provision (not childminding) which operates for at least 3 hours per day and at least 5 days per week and at least 45 weeks per years (this is likely to capture full day care and out of school care operating all the year round). These bands for the EYR have been used in the Regulations.

7.9 In terms of the actual fees, the application and annual fee for childminders and for providers in Band 2 (above) is £25, and for providers in Band 3, £180. This represents a modest increase from the fees currently payable under the 2005 Regulations.

7.10 The Government also proposed in its consultation that there should be a transitional period for some childcare providers (not childminders) transferring from the 1989 Act register to the EYR. The purpose of this is to delay some of these providers being moved from the lower fee which is payable under the 2005 Regulations, to the highest fee band under the new arrangements to give them time to prepare for the increase. The new Regulations contain this transitional provision. Its effect is that, for a period of 2 years, the threshold between the lower and higher fee level is adjusted. This means that sessional care providers who were paying the lower fee under the 2005 Regulations (because they were operating for less than 4 hours per day), but who under the new Regulations should be paying the higher band 3 fees, will in fact pay the lower band 2 fees.

7.11 Following the consultation, the Regulations for the EYR do the following:

- Implement the new fee bands and the relatively small increase (from fees set out in the 2005 Regulations) for 2008 as proposed in the consultation exercise. Introducing the new fee bands will move towards addressing some of the current unfairness in the existing system:
- Make transitional arrangements for childcare providers transferring from the current Ofsted register under the 1989 Act to the EYR on 1 September 2008;

## General Childcare Register

7.12 Part B of the GCR (sometimes known as “the voluntary register”) came into existence on 6th April 2007 and, following an earlier consultation in summer 2006 when the proposed fees for the voluntary GCR as outlined in the accompanying RIA were £136 for individual providers and £146 for group providers, the application and annual fees (reflecting Ofsted’s costs in administering the register), was set at £100 for individual childminders (working on domestic premises) and £110 for other (mainly group) childcare providers.

7.13 Providers of childcare for children aged from 6 up to 8 are required to register in Part A of the GCR. However, they are not required to deliver the EYFS, and the requirements of the register are similar to those for registration in Part B of the GCR with the full cost to Ofsted of providing the service estimated to be the same. The Government therefore considered it appropriate for the fees for both parts of the General Childcare Register to be set at the same level, and this is reflected in the Regulations.

7.14 Taking into account inflation since September 2006 (when the fees for Part B of the General Childcare Register were set), the Regulations set the application and annual fees for both Part A and Part B of the GCR at:

- For childminders, £103 (an increase of £3 from the current equivalent fee for Part B of the GCR)
- For other childcare providers (not childminders), £114 (an increase of £4 from the current equivalent fee for Part B of the GCR).

## Fees for replacement certificates

7.15 The fee payable to Ofsted for a copy of a lost or destroyed certificate of registration, including a combined certificate for more than one register has been set at £7.00. This is the first increase in this charge since 2005 when it was set at £5.00.

## Consultation

7.16 In Spring 2006 the Government consulted on a modest increase to registration fees for those registered on the 1989 Act register, and in the accompanying Regulatory Impact Assessment set out three longer-term objectives for the registered childcare sector:

- to implement a phased move away from a system of large government subsidies to one where providers pay a greater share of the costs of registration and ongoing regulation;
- to introduce fairer, more flexible and targeted arrangements, so that fees better reflect the cost of the service, and subsidies are directed at those who need them; and,
- in the longer term, to consider whether local authorities could assume a more significant role in subsidy arrangements, determining the extent of support offered based on knowledge of their local providers, in the light of their strengthened responsibility for facilitating the local childcare market.

7.17 The consultation responses broadly supported a fairer and more targeted approach, with 56% of respondents agreeing that changes in the balance of fees and support were needed, and 64% agreeing that it made sense to give local authorities a role in administering support to providers.

7.18 As mentioned above a further consultation relating to the new Childcare Act registers entitled “Childcare Act 2006: Future Approach to Fees and Subsidies” ran from 21 November 2007 until 20 February 2008 and sought views on the proposed structure and level of fees payable in relation to the EYR or the GCR from September 2008, as well as proposals for changes to the subsidy arrangements.

7.19 The proposals included:

- a new fee band structure for the EYR;
- modest increases in fee levels in 2008 and 2009 (compared with existing fees under the 2005 Regulations);
- a significant reduction in the fees subsidy in 2010, meaning that all providers would face a substantial increase in fee levels (to reflect more accurately the cost to Ofsted);
- new targeted support arrangements from 2010 administered by local authorities as part of their new childcare sufficiency duty under section 6 of the 2006 Act;

7.20 A total of 3639 responses were received, including 2,707 from childminders using a standardised campaign letter circulated by the National Childminding Association (“NCMA”). In addition, consultation meetings were held with the Day Care Trust, the NCMA, the National Day Nurseries Association, the Pre-School Learning Alliance, National Children’s Bureau, 4 Children and the Professional Association of Nursery Nurses, as well as representative from local authorities.

7.21 The written responses showed that 87% disagreed that the proposed approach would achieve a better and fairer balance between fees, while 67% disagreed that the proposed system made the most effective use of local authority knowledge and mechanisms to provide targeted local support. However, through further analysis and follow-up consultation meetings with the main stakeholders, the Government was able to identify and explore the issues that lay behind results from the written responses.

7.22 Overall, as in the 2006 consultation exercise, there was broad support behind the principles on proposals to reduce the blanket subsidy and target the funding locally. In particular, respondents to the consultation were in the main supportive of the new fee bands for the EYR and the proposed level of fees for all registers to be introduced in September 2008 and also the proposed fee increases for 2009.

7.23 The issues that lay behind the written responses and which were discussed during the consultation meetings were:

- Many smaller providers, mainly childminders, felt they would not be able to afford the fee because they were concerned about local authorities’ ability to manage the support arrangements fairly and effectively.
- Many of the respondents thought that the proposed fee increases in 2010 were too high, not least in the light of all the other changes currently taking place in the sector, and that delaying the subsidy changes to 2011 or later, or phasing them in more gradually, would enable better preparation.
- Local Authorities were concerned that this was a particularly busy time for childcare providers and for LAs given their new sufficiency duty, Childcare Act 2006 implementation and other changes, and that there would be benefit in phasing in the changes over a longer period during which further discussion could take place.

7.24 In its response to the consultation, the Government has recognised the need for stability in

the sector in the immediate term and has therefore decided to:

- implement the EYR fee bands and the fee levels for 2008 as proposed in the consultation, and these are now reflected in the new Regulations. This will help move towards a fairer system by addressing some of the current inequalities:
- implement the 2009 fee increases in due course, as proposed in the consultation:
- introduce incremental increases in 2010 that are significantly below the level of the increases proposed in the consultation:
- assess any further increases beyond 2010 nearer to the time.

7.25 The fee levels which were consulted on, and those the Government now intends to implement, are shown in tables 1.1 and 1.2 below (with the 2007 – 2008 fees which are set out in the 2005 Regulations included for comparison). The revised fees address the concerns expressed by many respondents that the fee increases proposed for the EYR in 2010 were too high and that the sector needed a period of stability before any significant changes to the subsidy arrangements were made.

Table 1.1 - Original proposal in the consultation:

Band	2007	2008	2009	2010
1 (childminders)	£20	£25	£30	£100
2 (other provision) <sup>1</sup>	£20	£25	£30	£400
3 (provision above time thresholds) <sup>2</sup>	£155	£180	£200	£450

Table 1.2 - Revised proposals

Band	2007 (already set)	2008	2009	2010
1 (childminders)	£20	£25	£30	£35
2 (other provision)	£20	£25	£30	£35
3 (provision above time thresholds)	£155	£180	£200	£220

## 8. Impact

A revised Impact Assessment is attached to this memorandum.

## 9. Contact

Andy Davey at the Department for Children, Schools and Families Tel: 0207 273 5704 or e-mail: can answer any queries regarding the instrument.

<sup>1</sup> Band 2 provision is early years childcare provision other than childminding operating for less than 3 hours per day, or less than 5 days per week, or less than 45 weeks per year.

<sup>2</sup> Band 3 provision is early years childcare provision other than childminding operating for 3 hours or more per day and 5 hours or more per week and 45 weeks or more per year.



## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b> <b>Impact Assessment of proposals for a future approach to fees and subsidies under the Childcare Act 2006</b>	
<b>Stage:</b> Implementation Stage	<b>Version:</b> 2	<b>Date:</b> 03 July 2008
<b>Related Publications:</b> "Childcare Act 2006: Future Approach to Fees and Subsidies" - consultation paper and response form		

### Available to view or download at:

<http://www.dcsf.gov.uk/consultations>

**Contact for enquiries:** Andy Davey

**Telephone:** 0207 273 5704

### What is the problem under consideration? Why is government intervention necessary?

Currently the registration fees charged to providers do not: reflect the different circumstances and costs that face different parts of the sector; or achieve the best possible balance between fees providers can afford to pay and cost of providing the service. The Government is intervening to introduce regulations to help address these issues and underpin possible future arrangements for administering this funding at a more local level to give quality and affordable childcare for those who need it.

### What are the policy objectives and the intended effects?

To introduce a simpler, fairer fees system that will better reflect the different types of settings and the relative incomes of different parts of the sector and move towards providing a better balance between what childcare providers can afford to pay and support from the tax payer. The policy will also develop arrangements for administering funding locally using existing local authority mechanisms, where support can be targeted to meet the needs of parents and children in their area.

### What policy options have been considered? Please justify any preferred option.

- 1) To retain the status quo with high untargeted levels of subsidy and potential inequalities.
- 2) To introduce a new banding structure and transfer funding currently used to subsidise fees centrally to local authorities to fund local support for the sector, which would generate significant fee increases from 2010 which will move towards fee income better meeting the cost of providing the service.
- 3) Preferred option following consultation is to introduce a fairer fee banding structure, moderate fee increases up to 2010 and review any further increases nearer the time. Arrangements will also be developed to target money locally to give quality and affordable childcare to those who need it.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

In 2010 as indicated in the Government's response to the consultation, when we will review any future fee increases. Any changes to the fee structure / levels beyond 2010 will be accompanied by a new IA

### **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

*Beverley Hughes*

*Date: 7th July 2008*

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' The fee levels being introduced in 2008, 2009 and 2010 are largely inflationary, those of 2010 being substantially lower than proposed in the consultation. The total costs have been calculated over 10 years, assuming that fee levels stay constant after 2010
	One-off (Transition) <span style="float: right;">Yrs</span>		
	<b>£ 0</b>		
	Average Annual Cost (excluding one-off)		
	<b>£ 820k</b>	10	<b>Total Cost (PV) £ 7.1m</b>
Other <b>key non-monetised costs</b> by 'main affected groups' There may be some costs associated with providers becoming familiar with the new fee arrangements, such as the cost of staff time. There may also be some costs associated with re-deployment of childcare staff as a result of increased fees.			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' With the exception of the fees for the General Childcare Register which aim to meet the cost to Ofsted of maintaining the register, the fees for the Early Years Register will remain heavily subsidised and will represent only a small percentage of the cost to Ofsted of delivering the service.
	One-off <span style="float: right;">Yrs</span>		
	<b>£ 0</b>		
	Average Annual Benefit (excluding one-off)		
	<b>£ 0</b>		<b>Total Benefit (PV) £ Not estimated</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' The new fee bands address current inequalities and by taking into account the length of time the provision is available introduce a fairer fees system broadly linked to the level of income. The bands will reduce distortions and improve incentives for providers to react to market signals in the childcare market.			

**Key Assumptions/Sensitivities/Risks** Assumptions are based on 2006 statistics covering the current system. Although we have taken in to account known changes, our volumes remain a forecast of the impact the new system will have. Risks that the fee increase could reduce the supply of childcare in some areas and that the fee changes do not change the behaviour of providers as expected.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ <b>Not estimated</b>
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What is the geographic coverage of the policy/option?	England				
On what date will the policy be implemented?	2008 to 2010				
Which organisation(s) will enforce the policy?	Ofsted				
What is the total annual cost of enforcement for these organisations?	£ NK for fees				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ N/A				
What is the value of changes in greenhouse gas emissions?	£ N/A				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">Micro</td> <td style="width: 25%; text-align: center;">Small</td> <td style="width: 25%; text-align: center;">Medium</td> <td style="width: 25%; text-align: center;">Large</td> </tr> </table>	Micro	Small	Medium	Large
Micro	Small	Medium	Large		
Are any of these organisations exempt?	<table style="width: 100%; border: none;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)
Increase of	£ None	Decrease of £ None
<b>Net Impact</b>		£ No impact

Key: Annual costs and benefits: Constant Prices (Net) Present Value

- 1.
2. **Background to childcare registration**
3. The Childcare Act 2006 will introduce a new, reformed regulation and inspection system, operated by Ofsted. There will be two distinct registers:
4.
  - for provision for children up to the start of compulsory school age – the Early Years Register. Childcare providers on this register will have to meet the requirements of the Early Years Foundation Stage; and
5.
  - for registered provision in respect of children of compulsory school age – the Ofsted Childcare Register. This register will be in two parts: a compulsory part for children aged 6-7 years and a voluntary part for children aged 8 and over. The voluntary part is also for childcare for younger children which is not required to be registered on either register.
- 6.
7. The evidence to support our proposals for the new fee structure will be in two distinct parts, covering firstly the Ofsted Childcare Register and then the Early Years Register.
- 8.
9. **Ofsted Childcare Register**
- 10.
11. The Ofsted Childcare Register is in two parts: the voluntary and compulsory registers.
- 12.
13. The **voluntary part of the Ofsted Childcare Register**, which is for childcare providers who are not required to join either the Early Years Register or the compulsory part of the Ofsted Childcare Register, started in April 2007. Following consultation the registration fee was set at the full cost of providing the service which is £100 for individual providers and £110 for all other, mostly group, providers. The annual fee will be the same as the registration fee. Our proposal for the voluntary part of the Ofsted Childcare Register is that the current fee should be increased to cover inflation and from September 2008 should be set at £103 (an increase of 3%) for individual providers and set at £114 (an increase of approx 3.6%) for all other providers.
- 14.
15. Provision for children aged 6 and 7 years is required to join the **compulsory part of the Ofsted Childcare Register**, but they are not required to deliver the Early Years Foundation Stage and the requirements of the register are similar to those of the voluntary part with the full cost of providing the service estimated to be the same. It is sensible therefore for the fees for both parts of the Ofsted Childcare Register to be set at the same level, the options being whether we introduce the fee at this level in September 2008 or gradually over the period 2008 to 2010.
- 16.
17. The following table illustrates the current and proposed fee levels:
- 18.

Provision	Current fee levels		Proposed fee level September 2008
	Registration	Annual	
Childminders and other provision for less than 4 hours per day	£20	£15	£103
All other childcare provision	£155	£125	£114

19.

The table illustrates that for childminders joining the compulsory part of the Ofsted Childcare Register in September 2008 there will be an annual fee increase of £88 for existing childminders and an increase of £83 in the registration fee for new applicants.

On the other hand, other providers, because of the significantly higher fees that they are currently paying and because the fee for the compulsory part of the Ofsted Childcare Register cannot exceed the cost of providing the service, which is lower than for the current scheme, will benefit from a reduction in the annual fee of £11 with a reduction of £41 in registration fee for new applicants.

However, although no statistical evidence is available it is widely believed that the number of providers looking after children aged 6 and 7, but with none in the age group of 0-5, is very small, most currently registered providers looking after children with an age range of 0-7. Providers looking after children aged 0-7 under the new arrangements will be required to join both the Early Years Register and the compulsory part of the Ofsted Childcare Register, but will only pay the fees of the former register which has the highest registration and ongoing requirements. Those who do limit the range of children they wish to care for to 6 and 7 year olds (there is no requirement to register provision for children aged 8 and over) do so through choice.

We therefore believe it is justifiable for the fees for the compulsory part of the Ofsted Childcare Register to cover the full cost of providing the service from September 2008.

### **Post consultation**

***These proposals remained unchanged following the consultation and will be implemented from 1 September 2008***

*The Government notes the expressions of concern over the level of charge for 6-7 year olds on the compulsory part of the Ofsted Childcare Register from September 2008 and the increase faced by those providers who are currently registered by Ofsted but will transfer to this new register on 1 September 2008. However the Government remains convinced that as the requirements and service of both the compulsory and voluntary parts of the Ofsted Childcare Register are similar, it is sensible that the fees should be the same. The fee levels for the Ofsted Childcare Register take into account the administration of the register, including the risk-based inspection and assessment of complaints. However if a childminder is registered on both the Early Years Register and the Ofsted Childcare Register they will only pay the fee of the higher registration requirement i.e. the Early Years Register.*

### **Early Years Register**

All settings registered on the early years register (as well as provision in maintained and independent schools for children up to the end of the academic year following their fifth birthday) will be required to deliver the new Early Years Foundation Stage (EYFS). The EYFS sets the standards for care, learning and development in the early years and aims to ensure that children receive the same high quality of experience regardless of the type of setting they attend. It brings together the three existing frameworks for the early years (Birth to Three Matters, Curriculum Guidance for the Foundation Stage and the national standards for under eights day care and childminding). High quality early years settings will already be delivering provision that meets the requirements of the EYFS. However, for settings that do not offer the free entitlement for 3 and 4 year olds, this will be the first time that they have been expected to meet detailed legal requirements in relation to their support of children's learning and development.

### **Post consultation**

***The new fee bands and fee increases for 2008 and 2009 to be implemented as proposed, but new fee levels for 2010 will be substantially below the levels proposed in the consultation. Beyond 2010 fee level increases will be considered nearer the time.***

*The Government has taken careful note of the points made by those who responded to the consultation and understands that although there is some general support for the underlying principles and direction of travel that were proposed, there are concerns about the need for stability in the sector in the immediate term. The Government recognises that this is a particularly busy time for childcare providers and for local authorities given their new sufficiency duty, Childcare Act 2006 implementation and other changes, and notes that a number of*

respondents felt that there would be benefit in phasing in the changes over a longer period during which further discussion could take place.

As a result the Government intends to implement the new fee band structure and fee increases for 2008 and 2009 as proposed in the consultation and introduce only an incremental increase in 2010.

Table 1.1 and 1.2 shows a comparison between our original proposals and the fee levels the Government intends to implement:

**Table 1.1 - Original fee levels we consulted on**

Band	2007 (already set)	2008	2009	2010
1 (childminders)	£20	£25	£30	£100
2 (other provision) <sup>3</sup>	£20	£25	£30	£400
3 (provision above time thresholds) <sup>4</sup>	£155	£180	£200	£450
Sessional care providers moving to band 3 but not paying Band 3 fee levels until 2010	£20	£25	£30	£450 (as part of band 3)

**Table 1.2 – New fee levels to be implemented**

Band	2007 (already set)	2008	2009	2010
1 (childminders)	£20	£25	£30	£35
2 (other provision)	£20	£25	£30	£35
3 (provision above time thresholds)	£155	£180	£200	£220
Sessional care providers moving to band 3 but not paying band 3 levels at present	£20	£25	£30	£50

The Government remains of the view that there is benefit to the childcare sector in aiming to reduce the blanket subsidy of fees and shift to a more locally targeted approach, which respondents supported in principle, but recognises the immediate need for stability in the sector and for further discussions on a longer-term fees policy. Beyond 2010 the Government proposes to review any further increases nearer the time.

## Summary

These proposals simplify the existing fees system and remove some of the current inequities. They move towards achieving the Governments objectives, supported by a majority of respondents in the 2006 consultation, by providing a better balance between the fees that providers can afford to pay and subsidies from the taxpayer. Yet at the same time they provide a means of administering support through existing local authority mechanisms. Local authorities will be able to determine the extent and nature of the support based on their knowledge of local providers and parental demand to target support at those who need it.

## Post Consultation

**The Government's response to the consultation has simplified the existing fees system and made progress towards removing the current inequities, while recognising the immediate need for stability in the sector during a period of considerable change.**

## Criminal Records Bureau Checks Subsidy

<sup>3</sup> Band 2 provision is early years childcare provision other than childminding operating for less than 3 hours per day, or less than 5 days per week, or less than 45 weeks per year.

<sup>4</sup> Band 3 provision is early years childcare provision other than childminding operating for 3 hours or more per day and 5 hours or more per week and 45 weeks or more per year.

At present we meet the application cost for Criminal Records Bureau checks in full but need to consider whether this is the most appropriate use of tax payers' money, given the potential for providers' to either pass the cost on to customers, or alternatively to require potential employees to obtain and pay for the checks themselves. The cost of a current check is £36 so currently the subsidy is benefiting childcare providers to the value of approximately £3 million per year, depending on turnover levels of both providers and employees.

The Safeguarding Vulnerable Groups Act will make it illegal for anyone to engage in regulated activity unless they have applied to the Independent Safeguarding Authority Scheme. A consultation on the details supporting the new Scheme and the role of the Independent Safeguarding Authority was launched on 14<sup>th</sup> November 2007.

Our intention is to retain the current subsidy of Criminal Records Bureau checks, but to review the position when the details underpinning the Independent Safeguarding Authority Scheme are settled.

## **Post Consultation**

*These proposals remained unchanged following the consultation.*

## **Competition Assessment**

We have completed the competition assessment and are satisfied that our proposals will not have a significant impact on competition, the principles supporting our proposals having been established in the 2006 consultation "Childcare Registration and Inspection: Fees Proposal".

## **Small Firms Impact Test**

We believe that our proposals will have a positive impact for small providers as they are aimed at introducing a fairer, simpler fees structure by removing current inequities, introducing an additional fee band and linking fee levels to potential income.

The administration of support through local authorities' mechanisms as part of their new duty to secure sufficient childcare, rather than the current global subsidy, will target it at those providers who most need it as well as linking it to the needs of customers, parents and children seeking childcare.

The long lead time between now and 2010 will allow the sector time to prepare for the higher fee levels, and these will coincide with the transfer of additional fee income to local authorities to ensure that they will immediately receive sufficient extra money to make a difference to the support they are able to offer providers.

## **Race / Disability / Gender Equality**

As stated above we believe that our proposals will bring about a fairer, more flexible system to meet individual needs of both providers and those seeking childcare.

## **Rural Proofing**

The changes we are proposing will allow decisions to be made locally about how to use the additional funding in order to manage the market to meet the childcare needs of parents in that area, be it rural or urban.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	No	No
Rural Proofing	Yes	No

# Annexes

## Annex 1

**Table 1**

### Total and average discounted costs

year	year	Bands	Bands discounted	cOCR	cOCR discounted	vOCR	vOCR discounted
0	2008	£867,820	£867,820	£50,000	£50,000	£10,325	£10,325
1	2009	£748,845	£723,522	£50,000	£48,309	£10,325	£9,976
2	2010	£748,845	£699,055	£50,000	£46,676	£10,325	£9,638
3	2011	£748,845	£675,415	£50,000	£45,097	£10,325	£9,313
4	2012	£748,845	£652,575	£50,000	£43,572	£10,325	£8,998
5	2013	£748,845	£630,507	£50,000	£42,099	£10,325	£8,693
6	2014	£748,845	£609,186	£50,000	£40,675	£10,325	£8,399
7	2015	£748,845	£588,585	£50,000	£39,300	£10,325	£8,115
8	2016	£748,845	£568,682	£50,000	£37,971	£10,325	£7,841
9	2017	£748,845	£549,451	£50,000	£36,687	£10,325	£7,576
<b>totals</b>		<b>£7,607,425</b>	<b>£6,564,798</b>	<b>£500,000</b>	<b>£430,384</b>	<b>£103,250</b>	<b>£88,874</b>

total discounted costs  
**£7,084,057**

average undiscounted annual costs  
**£821,068**

## Annex 2

### The Consultation Proposals

#### Early Years Register

All settings registered on the early years register (as well as provision in maintained and independent schools for children up to the end of the academic year following their fifth birthday) will be required to deliver the new Early Years Foundation Stage (EYFS). The EYFS sets the standards for care, learning and development in the early years and aims to ensure that children receive the same high quality of experience regardless of the type of setting they attend. It brings together the three existing frameworks for the early years (Birth to Three Matters, Curriculum Guidance for the Foundation Stage and the national standards for under eights day care and childminding). High quality early years settings will already be delivering provision that meets the requirements of the EYFS. However, for settings that do not offer the free entitlement for 3 and 4 year olds, this will be the first time that they have been expected to meet detailed legal requirements in relation to their support of children's learning and development.

In considering the level of fees for the Early Years Register we have sought to take forward the Government's three longer-term objectives, which were set out in the 2006 fees consultation and supported by the majority of respondents:

- 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 more significant role in subsidy arrangements, determining the extent of support offered based on knowledge of their local providers, in the light of their strengthened responsibility for facilitating the local childcare market.

In arriving at our proposed fee structure for the Early Years Register we also considered two other options. Firstly we looked at retaining the current fee system with its two fee bands for registration and annual fees. While the status quo would minimise the financial impact on childcare providers by maintaining the same balance between fees and subsidies the inequity of the current arrangements would not be addressed. Neither would any progress be made towards achieving the Government's long-term objectives supported by the majority of respondents to the 2006 consultation on fees.

We also considered whether we should retain the current fee bands but significantly reduce the current subsidy in short stages, with the intention that income from registration and annual fees would meet the full cost of providing the service by 2010. However we decided that the extent of the fee increases necessary to achieve this aim could potentially destabilise the sector and would

not meet the Government's objective of achieving a better balance between what providers can afford to pay and subsidies from the taxpayer

We therefore decided to proceed with a single proposal that address the current inequities and moves significantly towards achieving the Government's objectives by introducing a new fees system that would:

- create 3 fee bands aligned broadly to income levels
- have a single fee for both registration and annual renewal
- introduce modest fee increases in 2008 and 2009
- significantly reduce the level of subsidy in 2010
- from 2010 transfer the additional income from fee increases to local authorities as part of their sufficiency funding to enable them to offer locally targeted support as part of their new duty to secure sufficient childcare under the Childcare Act 2006.

## Benefits

This option would address the current inequities and make significant movement towards achieving the Government's long-term objectives.

The current fee structure has created some potential unfairness, for example holiday clubs open full time but only during school holidays pay the same fee as full day care providers open full time all the year round, and sessional care providers open less than 4 hours per day but for most of the year pay the same fee as childminders. The new bands we are proposing under this option would address these inequalities by taking into account the length of time the provision is available and consequently the level of income. We intend to introduce these bands subject to the operational structure being able to support their use.

The new bands are:

- **Band 1:** Childminders
- **Band 2:** Other provision not captured by band 1 or 3 (likely to include sessional / after school care operating reduced days or term / holiday time only)
- **Band 3:** Provision operating for at least 45 weeks per year AND at least 5 days per week AND at least 3 hours per day. This will cover full day care, plus sessional care and out of school care operating all the year round.

The modest fee increases we are proposing for 2008 and 2009 recognise the changes the sector is going through as new provision and duties are implemented, particularly local authorities developing effective systems for managing the market as part of their new duty to secure sufficient childcare to meet the needs of parents and children in their area.

From 2010 we are proposing a more significant reduction in the subsidy, with the additional fee income being transferred to local authorities further to support them in meeting their new duty under the Childcare Act 2006, to secure sufficient childcare to meet the needs of parents and children in their area. The key benefit of this proposal is that it moves from a blanket subsidy of all providers to allowing decisions to be made locally about how best to use the money to support the operation of the market. Adding this money to the childcare sufficiency fund enables the local authority to use it to best effect without the need to set up separate mechanisms that might be

unduly bureaucratic.

The proposed fee levels are set out in the table below:

<b>Band</b>	<b>2007 (already set)</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>
1 (childminders)	£20	£25	£30	£100
2 (other provision)	£20	£25	£30	£400
3 (provision above time thresholds)	£155	£180	£200	£450
Sessional care providers who would otherwise be in band 3	£20	£25	£30	£450 (as part of band 3)

Those sessional care providers who, using the new fee band definitions would be in Band 3 will remain in a transitional band with their fee levels continuing to be linked to individual carers until 2010, when they will move to Band 3 and pay the appropriate fees for that band.

The long lead in time between now and 2010 allows the sector time to prepare for the higher fee levels. These increases coinciding with the transfer of additional fee income to local authorities will mean that they will be able to introduce new local support arrangements alongside increased fees coming into effect.

- In calculating the amount of additional fee income that might be available for transfer to local authorities we have made a number of assumptions: As the fees for both parts of the Ofsted Childcare Register will be in full payment of the service to be provided there will be no additional income available for transfer to local authorities from this register. All additional fee income will come from fees for the Early Years Register which will still be heavily subsidised.
- We have based the number of providers joining the Early Years Register on the existing number of providers but adjusted the figures to take into account the likely impact of the changes to types of providers who are currently required to be registered by Ofsted but from September 2008 will be exempted from this requirement, for example crèches.
- With the caveat that these figures are best estimates, the additional fee income for transfer to local authorities from 2010 is:

<b>Band</b>	<b>Volumes</b>	<b>Fee (£s)</b>	<b>Total (£s)</b>
Band 1	75,392	100	7,539,200
Band 2	11,529	400	4,611,600
Band 3	24,209	450	10,894,050
<b>Total</b>	<b>111,130</b>		<b>23,044,850</b>

Deducting the current fee income from the total fee income for 2010 will result in approximately **£19, 572,035** being available for transfer to local authorities that year.

Although the fee levels in 2010 are significantly higher than the current levels, they will still be less than 25% of the cost to Ofsted of running the service, and based on the figures provided in the 2006 Childcare and Early Years Providers survey will be no more than approximately 1.5% of the mean net annual income for the relevant part of the sector.

We have two other proposals in respect of fees:

- Although the average cost to Ofsted of processing an initial application is greater than the annual cost of maintaining a registration we feel that this does not outweigh the advantages of a more simplified system. Therefore we are proposing that for all registers the initial fee should be the same as the annual fee.
- We are also proposing that where, because of the nature of the childcare they are providing, a provider is required to join more than one register they will only pay one fee, that of the register with the higher registration and ongoing welfare requirements. For example, a provider caring for children aged 3-7 will be required to join both the Early Years Register and the compulsory part of the Ofsted Childcare Register but will only pay the fee for joining the Early Years Register.