

**EXPLANATORY MEMORANDUM TO
THE CHILDCARE (SUPPLY AND DISCLOSURE OF INFORMATION)
(ENGLAND) REGULATIONS 2007**

2007 No. 722

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

2. Description

2.1 This statutory instrument is made under the Childcare Act 2006 (“the 2006 Act”) and makes provision concerning the disclosure by Her Majesty’s Chief Inspector for Education, Children’s Services and Skills of information in relation to childcare providers registering on the voluntary part (Part B) of the General Childcare Register (also known as the Ofsted Childcare Register, or OCR), from April 2007.

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

3.1 None

4. Legislative Background

4.1 This instrument is one of a series of instruments to be laid to implement the 2006 Act. Also in this first phase of implementation, and related to these Regulations, are the Childcare (Voluntary Registration) Regulations 2007, the Childcare (Disqualification) Regulations 2007 and the Childcare (Provision of Information) (England) Regulations 2007. Full implementation is expected to be completed by September 2008.

4.2 Under the Children Act 1989, Her Majesty’s Chief Inspector for Education, Children’s Services and Skills has the function of regulating the provision of day care and child minding for children under the age of eight in England. The Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004 made under section 79N(5) of the same Act give the Chief Inspector the additional function, in prescribed circumstances, of disclosing certain information gathered while regulating such childcare to parents, the police and various organisations concerned with the provision of care for children or with protecting children.

4.3 Regulation 8 of the above regulations also provides for disclosure of information to other government departments and to local authorities carrying out statutory functions other than as “childcare organisations”.

4.4 The Childcare (Supply and Disclosure of Information) (England) Regulations 2007 made under sections 83(1) and (2), 84(1) and (3) and 104(2) of the Childcare Act 2006, require the Chief Inspector to carry out a similar function of disclosure of

information in respect of childcare providers registering on the voluntary part of the Ofsted Childcare Register from April 2007.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government, through the Childcare Act 2006, is reforming the regulation and inspection regime for childcare. Her Majesty's Chief Inspector for Education, Children's Services and Skills will administer two registers: the Early Years Register (EYR) for provision for children up to the age of five, and the Ofsted Childcare Register which is divided into two Parts. Part A (compulsory registration) relates to childcare for children aged five to seven and Part B (voluntary registration) relates to childcare that is not required to be registered by Ofsted.

7.2 Providers of childcare that is not currently registered by the Chief Inspector (including activity based provision, care provided in a child's own home and care or supervised activities for children of eight and over) will be able to join the voluntary part (Part B) of the Ofsted Childcare Register from April 2007. Providers of childcare for children from birth to seven that is currently registered by the Chief Inspector will be able to be registered on the Early Years Register or the compulsory part (Part A) of the Ofsted Childcare Register (compulsory registration for five to seven year olds) from September 2008. The present compulsory registration arrangements for birth to sevens childcare will continue until the Early Years Register and the compulsory part (Part A) of the Ofsted Childcare Register are in operation in September 2008.

7.3 The Children Act 1989 requires Ofsted to give information to local authorities to enable them to fulfill their duty to establish and maintain a service providing information, advice and assistance to parents seeking childcare. Ofsted is also required to provide information to Her Majesty's Revenue and Customs (HMRC) to assist them in administering the tax credits scheme and to various organisations where the safety of children is at risk.

7.4 In respect of childcare providers currently registered with Ofsted, these arrangements will continue until September 2008, when the new compulsory registers are introduced.

7.5 The purpose of the new disclosure regulations is to ensure that local authorities, Her Majesty's Revenue and Customs, various other organisations concerned with the safety of children, and parents will have, in addition to the information already being supplied by Ofsted, similar information about childcare providers joining the voluntary part (Part B) of the Ofsted Childcare Register. This will enable them to fulfill their duties in respect of all childcare providers registered by Ofsted from April 2007.

Consultation

7.6 Proposals for the new disclosure arrangements formed part of the public consultation on the Ofsted Childcare Register. Responses to that consultation are presented in the attached Regulatory Impact Assessment.

Publicity / guidance

7.7 The Chief Inspector will produce material to support providers in registering on the Ofsted Childcare Register and parents, local authorities, schools and others in understanding its requirements.

8. Impact

8.1 A Regulatory Impact Assessment covering the Ofsted Childcare Register is attached to this memorandum.

8.2 The Ofsted Childcare Register will support local authorities in carrying out their duty to secure sufficient childcare as authorities will be able to identify providers that have demonstrated the suitability of the childcare they offer. Schools will also use registration on the Ofsted Childcare Register as a means of identifying provision that is suitable to deliver childcare as part of their extended schools offer. Providers registered on the Ofsted Childcare Register will benefit from parents' understanding that essential standards have been met.

9. Contact

Jonathan Robinson at the Department for Education and Skills Tel: 0207 273 4744 or e-mail: jonathan.ROBINSON@dfes.gsi.gov.uk can answer any queries regarding the instrument.

Department for Education and Skills

Regulatory Impact Assessment

**for the Voluntary Part of the
Ofsted Childcare Register¹**

¹ This document should read in conjunction with the Regulatory Impact Assessment for the Childcare Bill which was first published in July 2005 and can be downloaded at www.surestart.gov.uk

Executive Summary

1. This RIA covers three sets of regulations which together form the voluntary part of the Ofsted Childcare Register (OCR):

- The Childcare (Voluntary Registration) Regulations 2007
- The Childcare (Disqualification) Regulations 2007
- The Childcare (Supply and Disclosure of Information)(England) Regulations 2007

2. The Childcare Act 2006 requires Ofsted to operate two registers: the Early Years Register (EYR), for care for children up to the age of five, and the OCR. The OCR will have two parts: the compulsory part, for childcare for five to seven year olds; and the voluntary part, for care for children of any age that is not required to be registered by Ofsted. The registration regulations set out the detailed provision about the information that providers will need to provide and continue to meet for registration.

3. The disclosure regulations allow Ofsted to pass information on registered providers to local authorities, HMRC and other organisations. The disqualification regulations set out the categories of persons who are disqualified from registering as childcarers. The disclosure and disqualification regulations apply the same provision as is currently applied to care registered by Ofsted under the Children's Act 1989 to care that will be registered under the Childcare Act 2006. They are vital to safeguarding children.

4. These arrangements were consulted on during 2005 as part of the consultation on the Childcare Act 2006. They were also consulted on in summer 2006 through the consultation on the OCR.

5. Care that is not required to be registered by Ofsted is care provided in the child's own home, activity based care and care for children aged eight and over. Estimates suggest that there are around 100,000 individuals and 50,000 group carers who would be able to be registered on the voluntary part of the OCR. The sector largely consists of small voluntary and private sector providers.

6. The three options considered are outlined below with costs and benefits:

Option 1 - maintain the status quo where such care cannot be registered by Ofsted. Care provided in the child's own home and childminders caring for children aged eight and over can be approved on the Childcare Approval Scheme. Care for children aged eight and over can be approved by accredited quality assurance schemes.

Benefits - There are no clear benefits to maintaining this system.

Costs - There would still be confusion among parents and providers about registration and approval. Parents' choice would be restricted. Nannies and childminders for children over eight could be approved on the CAS at a cost of £99 per annum. Assuming similar numbers as at present continue to be approved (around 4000) the cost for one year would be £369,000

Option 2 - allow such providers to register with Ofsted voluntarily, where it is appropriate to that provision, and operate a proportionate system of inspections.

Benefits - This system would allow a wide range of provision into the regulatory sphere. However, as it's voluntary, where registration would not be appropriate providers does not have to be registered. This would widen parental choice without putting an unnecessary burden on providers.

Costs – There would be an annual registration fee of £136 for Individual providers and £146 for group providers. This would cover the costs of registration and inspection by Ofsted. Providers would have to meet the requirements to be registered. However, they would only have to provide information that was necessary to enable Ofsted to ensure essential standards are met. These requirements are already considered best practice within the sector. If the requirements could not be met without a significant burden the provider would not have to register. Evidence from the operation of current approval schemes suggests that around 5,000 (4,000 childminders and 1,000 other providers) out of a potential 150,000 providers will choose to be registered. This would cost around £690,000

Option 3 - require all providers of all childcare to register with Ofsted and inspect all providers prior to registration and every three years (as is done at present for care for under eights).

Benefits – This approach would provide very high levels of protection for children and assurance for parents.

Costs - The costs of this option would be significant. 100,000 individuals and 50,000 group providers would have to register. The cost of registration by Ofsted would be £500 per annum for individuals and more for group providers. Inspections would cost a similar amount. This would be a total cost of over £30 million per annum. If providers had to meet this cost this would result in either many providers going out of business and substantial increases in costs for parents. This would restrict access to childcare for many parents and limit choice.

7. There is no evidence that these regulations will have any significant affect on small firms, competition or race equality.

Conclusion

8. Taking these costs and benefits into account the Governments intends to proceed with option 2.

9. These arrangements will be reviewed in July 2008, before the compulsory part of the OCR begins in September 2008.

Introduction

1. This Regulatory Impact Assessment covers three sets of regulations:
 - Childcare (Voluntary Registration) Regulations 2007;
 - The Childcare (Disqualification) Regulations 2007; and
 - Childcare (Supply and Disclosure of Information) (England) Regulations 2007.
2. These regulations are all covered by this RIA as they together make the detailed provision for the voluntary part of the OCR.

Objective

3. The Government aims to give childcare providers who are currently not able to be registered by Ofsted - i.e. care for children aged eight and over, activity based provision or care provided in the child's own home - the opportunity to be registered voluntarily, if registration is appropriate for that provision. Registration will allow providers to demonstrate to parents that essential standards are being met.
4. The disclosure regulations will ensure that Ofsted gives local authorities, Her Majesty's Revenue and Customs (HMRC) and various other organisations concerned with children's safety, the information they require to fulfil their duties in respect of childcare providers joining the voluntary part of the OCR from April 2007.
5. The disqualification regulations will ensure greater protection for children. This is achieved by ensuring that there is clarity on what offences committed by applicants for registration, or care orders, might indicate that they are not suitable to work with children. These proposals mean that a disqualification can be applied to those who wish to register on the voluntary part of the OCR from April 2007.

Background

6. The Government's ten year strategy for childcare set out a commitment to rationalise and simplify the complex and confusing arrangements that currently exist for registration and inspection of childcare. The consultation document on the Childcare Bill published on 15 July 2005 outlined proposals designed to achieve this through a register for provision for children of five and over which comprised a single set of common standards. Following this, the Childcare Bill, introduced into Parliament on 8 November 2005, set out provisions to set up a general childcare register – this is to be known as the OCR.
7. The OCR will have two parts: the compulsory part, on which care for children aged five to seven will be required to register, unless exempt; and the voluntary part, on which providers of care that is not required to be registered by Ofsted can be registered voluntarily. These regulations cover the voluntary part of the OCR only. The compulsory part of the OCR will be brought into force in September 2008 under a different set of regulations.
8. Provision for children aged eight and over, activity based care and care provided in the child's own home are not currently required to be registered by Ofsted. Therefore, they will be able to be registered on the voluntary part of the OCR from April 2007, if they meet the requirements. The provision that will be required to register from September 2008 is currently being consulted on but is likely to be similar to the current situation.

9. Any childcare provision for children aged three and over that is provided by a school's governing body, on the school's site, where at least one pupil from the school attends, will not be registered by Ofsted. Schools will be advised of the requirements of the OCR and will be inspected through the school inspection system.

Disclosure of information

10. Disclosure of information under the Children Act 1989 is covered by the Child Minding and Day Care (Disclosure Functions) (England) Regulations 2004. Ofsted provides the required information to local authorities and Her Majesty's Revenue and Customs (HMRC), while information about childcare providers who are required to register with Ofsted is made available to parents. Ofsted can also pass information to parents and others in specific circumstances.

11. From April 2007 certain categories of childcare provider who are not currently able to register with Ofsted, will be able to join the voluntary part of the OCR. Ofsted will be required to provide prescribed information regarding these registered providers to local authorities to enable them to fulfil their new duties under the Childcare Act 2006, to HMRC for tax credit compliance purposes and in specific circumstances concerning the safety of children, to the police and other relevant organisations.

Disqualification from Registration

12. The Childcare Act 2006 (Disqualification) Regulations 2007 are made in exercise of powers conferred by sections 74(2), 75(2) and (4) and 104(2) of the Childcare Act 2006. They follow the amended disqualification regulations made under the Children Act 1989 which came into force 28th February. These regulations were strengthened under the powers in the Childcare Act 2006 to better align them with changes which were being made to teachers barring regulations (List 99). This was to avoid anomalies whereby some people may be able to work in childcare settings but deemed unsuitable to work in schools.

The regulations apply the same standards to provision registered under the Childcare Act 2006 as currently exists for provision registered under the Children Act 1989. The disqualification regulations list the offences and care orders which would disqualify individuals from being registered under the Childcare Act 2006 to work with children. Except where individuals are on the Protection of Children Act list, on List 99 or have been disqualified by a court following conviction, Ofsted will continue to have the discretion to waive a disqualification if the applicant can show that he/she is not unsuitable to care for children. In a case where such a waiver could be considered, Ofsted would decide whether or not the disqualification could be waived but the employer would still need to be satisfied that the applicant was otherwise suitable

Rationale for government intervention

13. Existing arrangements for the regulation of childcare provision are complex and do not support the delivery of good quality integrated services for children. Childcare providers, including schools, are required to register provision for children under the age of eight with Ofsted and comply with a range of standards and regulations. Childcare provision for children aged eight and over is not registered but settings can seek quality assurance kite-marking from nine accredited schemes which allow eligible parents to access financial support through the childcare element of working tax credits and employer supported childcare vouchers. Separately, childminders and carers for children in their own home can apply to the Childcare

Approval Scheme, which allows eligible parents to access financial support.

14. These combined arrangements can appear confusing to parents and are not the most effective way of administering a system to identify provision that has met a certain quality threshold. Indeed, each of these arrangements applies a different set of standards. This existing complexity will be replaced by two registers operated by Ofsted: the Early Years Register (EYR) for childcare for children under the age of five; and the OCR for childcare for children aged five to 18, and childcare for under fives which is exempt from registering on the EYR. As a result, all registered childcare and early years provision from birth to 18 will come under Ofsted's jurisdiction.

15. The OCR will be a simplified and streamlined framework but will also, on a voluntary basis, extend the regulatory framework to a wider range of providers. This will be the first opportunity many of these providers have had to register with Ofsted. Because registration is voluntary providers can choose whether registration is appropriate for them.

16. The OCR is designed to ensure that provision is safe, secure and suitable for children and that the process is proportionate for providers, keeping burdens to a minimum. The disqualification regulations will be amended so that those who are found to be unsuitable because of an offence can be disqualified from registration on the voluntary part of the OCR.

17. In addition, the new disclosure regulations will ensure that local authorities have better information about the childcare provider market within their area which will assist them in planning and in providing information to parents seeking childcare. Parents will be better able to navigate the childcare market because they will have a clear choice between providers which are registered (with Ofsted) and those which are unregistered. This should in turn provide them with a degree of reassurance that will enable them to make confident choices about balancing work and family life.

18. This will all support the Government's aim – as set out in its ten year strategy for childcare, *Choice for parents, the best start for children* – to give parents greater choice in balancing work and family life and to give children the best start in life.

Consultation

19. The Government consulted widely across Whitehall departments when developing proposals for the Childcare Bill, which included the establishment of a register for providers caring for children of compulsory school age and above. In developing the detail of how the OCR will work and the standards that should apply, the Government has worked closely (and will continue to do so) with Ofsted.

20. The proposals for setting up a childcare register for provision for children aged five and over were widely consulted on as part of the public consultation during summer 2005 on the proposed provisions within the Childcare Bill. Local authorities, childcare provider organisations and parents were all involved in providing feedback, which informed the further development of proposals. A key concern raised during this consultation was the proposal to allow childcare providers caring for children aged six and seven to be registered voluntarily.

21. In response, the Government amended its plans to ensure that providers who care for children in this age range will have to be registered. This means that all provision for children under the age of eight will, unless specifically exempted, be subject to registration.

22. The Government consulted on the more detailed requirements and arrangements for the OCR during summer 2006. Responses were received from individuals, childcare providers, national childcare organisations and local authorities. In addition, the Department held meetings with national organisations and around 50 childcare providers. Local authorities also held meetings with their childcare providers.

23. The consultation showed that many respondents thought that the proposed arrangements strike the right balance between providing reassurance that the provision will safeguard children and being proportionate and manageable. In particular, many respondents welcomed the opportunity for a wider range of providers to register on the voluntary part of the OCR. It was felt that this would provide parents with assurance that essential standards are being met.

24. Some respondents felt that registration should be compulsory for older children. However, the requirement that childcare up to the age of seven would have to register was set following consultation in 2005 on the Childcare Bill and is specified in the Childcare Act 2006. There are many types of provision for older children where registration would not be appropriate, such as some activity based care. By allowing providers to register voluntarily parents will be able to choose registered provision if it is appropriate.

25. Other respondents were concerned that the arrangements would not provide adequate assurance of quality. However, the arrangements will work in combination with other levers to drive up quality in the sector, such as extended schools support, new duties on local authorities to secure advice and guidance for providers and better information for parents.

26. A few respondents expressed concerns that the split between compulsory and voluntary registration might cause confusion among parents and providers. The Government will work with Ofsted to ensure that the new arrangements are widely communicated.

27. There are a small number of differences between the compulsory and voluntary parts of the OCR. Some respondents suggested that the requirements for voluntary registration should be exactly the same as for compulsory registration. However, as care for older children or activity based care varies widely, some of the requirements are not appropriate for all provision, in particular, the ratio and qualification requirements. Therefore, different requirements have been set to provide flexibility for the various types of care that may wish to register voluntarily.

28. Many respondents felt that a pre, or post, registration visit was essential. There were also concerns that a compliance driven process would not give sufficient assurance about children's well-being. However, the OCR will ensure that essential safeguards are in place around the suitability of adults, the safety of premises and safeguarding children. Providers will be required to demonstrate to Ofsted through documentation that these requirements have been met and will continue to be met and enhanced CRB checks will be carried out for all registered providers. The Government will work with Ofsted to ensure that the systems for checking documentation are robust.

29. There were concerns among many of the respondents that the 10% inspection rate would not be sufficient to provide assurances about child safety. However, the Government believes that inspections should be carried out proportionally on the basis of risk to children, rather than on a pre-determined cycle. The prospect of unannounced spot checks will provide a strong incentive for compliance. Ofsted will also inspect in response to concerns raised with them. For

providers who are registered on the voluntary part of the OCR this will be the first time that their provision is subject to inspections by Ofsted.

30. Disqualification regulations for providers who must currently register under the Children Act 1989 were consulted on most recently from 13th October 2006 – 2nd January 2007. Earlier versions of the regulations were also subject to full consultation. The consultation showed that the regulations are welcomed as being an important safeguard for children. The disqualification regulations proposed in this RIA are the same in scope as the 2005 regulations as amended by The Day Care and Childminding (Disqualification) (England) (Amendment) Regulations 2007. They simply apply the disqualification regulations to those seeking registration under the Childcare Act 2006.

Sectors and groups affected

31. The proposals directly relate to provision in the private, voluntary and community sectors. A wide range of private, voluntary and community provision will be eligible to join the OCR, covering many different types of provider – group-based childcare, childminding, childcare in the child's own home, occasional and short-term care, activity-based provision, music or art-based provision and learning-based provision. The proposals also touch on state maintained school sector in that the schools, in developing extended service, will have to have regard to the requirements of the Register in delivering childcare themselves and, in developing extended services, work only with providers who are registered.

32. As this sector is currently unregulated and is wide ranging we have very limited information about the numbers who may want to register. Estimates suggest that there are about 100,000 nannies currently providing care. Our best estimate suggests that there may be around 50,000 providers of care for children aged eight and over and activity based care.

Options

Option 1 – maintain the existing systems

33. Maintaining the current system would mean that providers of childcare for over eights would not be able to be registered by Ofsted. They could continue to be approved on different kite marking schemes, only some of which would give access to financial support, or the Childcare Approval Scheme. Many providers, such as those providing activity based care would not be able to register at all.

34. The Childcare Act 2006 provides for the establishment of the voluntary part of the OCR. Maintaining the current system would mean not commencing parts of the Childcare Act 2006. The Regulatory Impact Assessment for the Childcare Bill examined a range of options from maintaining the current system to using primary legislation to establish full regulation. A summary of the cost/benefit analysis is set out below.

Option 2 – a proportionate approach

35. The Government's preferred option is to allow providers who are not required to register compulsorily on the OCR to register voluntarily. Providers will have to meet most of the requirements of the compulsory part of the OCR and they have to make clear at the application stage that they are doing so, including demonstrating that there is nothing in their background that does not make them unsuitable to care for children. Providers will also have to sign up to

additional requirements which govern on-going activity. The requirements will focus on processes and policies for ensuring children are safe and secure and the provision is suitable.

36. This more proportionate approach to regulation for childcare for older children takes account of the risks and directs resources to where they are needed most. Providers will have to provide enough information to enable Ofsted to ensure that the people, premises and provision are safe and suitable, without having to provide excessive amounts. Where the requirements are not appropriate to the type of provision providers will not have to register.

37. There will be no pre-registration visit and Ofsted will inspect a proportion of the registered provision on the basis of concerns or complaints and through random selection. This will provide a clear incentive for providers to meet the requirements.

Option 3 – full regulation (all providers registered and pre-registration visit and automatic inspection for all providers)

38. Full regulation would mean that all providers of childcare for children over five must register on the OCR. This would include a vast number of providers and, as the definition of what is childcare is more blurred for older children and activity based care, the type of provision would vary widely.

39. Currently provision which has to be registered is visited prior to registration so that Ofsted can check that the provision is meeting the registration requirements and is suitable. Depending on the type of provision, the visit on average takes around a day to complete. Some additional time is required to prepare the report.

40. Option 3 would introduce a similar regime for the OCR. Under this approach, all providers would first have to be visited by an Ofsted inspector who would verify that the provision met the requirements. This would be followed by an automatic inspection every few years according to an agreed cycle.

Costs and benefits

Option 1 – maintain the existing regime

Costs and Benefits

41. The complexities of the existing system demonstrate that there are no clear benefits of maintaining the status quo. Indeed, the RIA for the Childcare Act 2006 explored and rejected this option. The arrangements would still be complex, with different groups of provider approved by several different schemes and many childcare providers not approved at all. This would mean that they are subject to only limited checks and safeguards, and parents would not be able choose to use childcare that is registered once their children are aged eight and over. Parents who wish to use activity based care for younger children may be less inclined to do so as only traditional care will be able to register.

Option 2 – a proportionate approach (Government’s recommendation)

Benefits

42. This would bring a wide range of providers into the regulatory sphere should they choose to register. As it is voluntary they do not have to join but can choose to if it is appropriate for

their provision. For providers, in order both to be registered and to remain on the register, they would have to ensure that they were suitable to care for children and meet the prescribed requirements – which are largely based on ensuring the processes and policies are in place to safeguard children. However, they would go through a proportionate process to demonstrate this and the costs associated with this would be manageable. There would not be automatic inspections but Ofsted would have the right to inspect at any time, particularly if there was a concern raised about the provision. Registration will also enable providers to work with schools to support them in developing their extended services.

43. For parents, the benefits will be that more provision can potentially be registered and using such provision will provide greater reassurance that their child is likely to be safe and secure – information provided by local authorities will clearly distinguish between provision that is registered and provision which is not.

44. It is vital that registered people are suitable to look after children or be in regular contact with them. To this end, we believe that the disqualification regulations need to be made to apply to those who register on the voluntary part of the OCR. These regulations already apply to all other Ofsted registered provision and it is right that those on the voluntary part of the OCR should have the same safeguards. Ofsted also needs this legal certainty if they are faced with a challenge against a refusal decision based on the evidence of offences.

Costs

45. The Government intends that the voluntary part of the OCR pays for itself through fees from providers. This means that the cost to Government will be greatly reduced in order that resources can be directed to areas of greatest need.

46. In setting the fees, the Government have considered the impact on affordability and type of provider and therefore what, if any, subsidies are needed (and, if so, for how long). The fees for registration will be £100 for childminders and £110 for all other childcare providers. Providers will also need to meet the costs of CRB checks (currently £36). These costs take account of the administration of the register, including the risk-based inspection and assessment of complaints.

47. To keep costs down the requirements for the voluntary part of the OCR would be kept to a minimum. Only information that is necessary for ensuring that essential standards have been met will be required. The requirements are all things that would already be considered best practice by responsible providers. There would also be a duty on local authorities to provide advice and training to providers, which will help providers to meet the requirements.

48. While there are vast numbers of providers who could potentially choose to be registered, we expect that the majority of providers would not choose to register. Parents who employ nannies will be able to take a very active role in ensuring the quality of care being provided so would choose not to encourage their child-carer to register. Of the around 100,000 nannies who could apply to the Childcare Approval Scheme only 4,000 are currently approved and numbers are increasing gradually.

49. Parents have different expectations about care for older children and activity based care. Older children are generally less vulnerable and so registration by Ofsted may not be considered as important by parents. Older, school aged, children will also spend less time in formal childcare therefore the demand from parents will not be as high in some circumstances.

Information shows that take up on QA schemes is limited. There are around 1000 providers for over eights approved on QA schemes. We would assume that similar numbers will choose to apply to become registered on the voluntary part of the OCR.

50. Based on our experience of the Childcare Approval Scheme (CAS) we anticipate that from April to September 2007 registrations on the OCR will be in the hundreds. From September 2007, when the CAS closes to new applications, we expect to see a steady migration of the 3,500 providers currently approved to the OCR. We anticipate a maximum of 5,000 providers will be registered on the OCR by April 2008, most of whom will move from the CAS and the over sevens quality assurance schemes. The slow build and fact that many of the providers would have gone through approval processes to remain approved on the CAS or QA schemes means that there will only be a limited number of additional providers affected.

Option 3 – full regulation (all providers registered and pre-registration visit and automatic inspection for all providers)

Benefits

51. **This approach would provide a very high level of protection and security for children. The pre-registration visit would provide an opportunity for Ofsted to check and confirm that the premises are safe and secure, and the regular inspection will help to ensure that standards were being maintained.**

Costs

52. There will be significant costs associated with this option. As set out in the Regulatory Impact Assessment of the Childcare Bill, the intention is that the OCR operates on a full cost-recovery basis. This approach will reduce costs to government and therefore to the taxpayer but will transfer these to the provider, and, given the scale of the costs, this will have considerable knock-on effects.

53. It currently costs Ofsted over £500 to process an application for registration as an individual childminder, and substantially more for registration of a group childcare provider. The costs of inspection are of a similar order. If the OCR was to operate on a similar basis, with pre-registration visits and inspection every 3 years, using the extent of detailed requirements that are in the current national standards, the costs would be over 5 times those of option 2 above.

54. There are around 100,000 nannies who would be forced to register. In addition there are an estimated further 50,000 providers for over eights and activity based care who would also be forced to register. Therefore there would be approximately 150,000 providers who would be forced to register. The total cost of regulating care for children over eight, activity based care and nannies would be over £30 million per annum.

55. If these costs were to be transferred to providers through fees for registration and an annual renewal charge, they would have a significant impact on the sustainability of the provision. It is likely that providers would seek to pass on much of the cost to parents. As a result some parents would find that they are unable to afford to use registered provision and would look to informal care or find that they are unable to use childcare at all. This would then restrict their ability to take up employment.

56. An alternative would be to use public funds to subsidise the large cost to providers. The Government's role is to ensure taxpayers' money is used effectively and efficiently and directed where it is needed most. This option would not offer best value for money compared with the recommended option 2.

57. Requiring all childcare to register would result in a vast number of additional childcare providers registering. As the line between what is or is not childcare is less clear for care for older children and for activity based care, the type of provision registered would vary widely. For many of these providers some of the requirements may not be appropriate to the type of provision and would introduce a significant extra burden if they had to be met. As a result, this may increase the cost to parents of particular types of care or restrict the type of care that is providers are willing to provide.

58. Regardless of the cost, many less formal providers of activities would not wish to register and so would provide illegally or would not provide activities at all. This would be likely to significantly reduce the availability and choice of provision for older children and, where it is available, make it less safe.

59. Alternatively, if the prices were set at the levels identified above but the register remained voluntary for many providers, very few of them would apply to be registered, meaning that the benefits for parents would not be realised.

Race equality impact assessment

60. No reason has been identified for these proposals to have any adverse impact on families from black and minority ethnic groups or to lead to discrimination between groups.

61. All providers which apply to join the OCR will have to meet prescribed requirements which relate predominantly to the safety of children. One of the proposed requirements is that registered providers must have a policy to ensure the provision is inclusive and accessible, promotes anti-discriminatory practices and cultural diversity, and takes account of the needs of the child. The process for joining will be accessible and is being designed to avoid unnecessary burdens on providers.

62. Parents will be one of the key beneficiaries of these proposals. The OCR is intended to provide them with greater confidence about the childcare they use

Small firms impact test

63. Childcare and other out-of school hours activities are largely provided by small voluntary and private sector providers. Childminders in particular form a key part of the childcare market. We estimate that there are approximately 50,000 providers who are not currently registered by Ofsted who would therefore be able to apply to the voluntary part of the OCR. The low number of providers registered on over sevens QA schemes suggests that most of these providers will not choose to be registered.

64. As registration is voluntary the OCR will not impose any significant additional burdens on providers. Providers do not need to register where it is not appropriate to them e.g. if the nature of their provision means the requirements would cause an excessive burden or if there is insufficient demand from parents for registered care, such as for particular types of sports provision.

65. Where providers do choose to register the requirements should not cause a significant burden for most providers. The requirements build on the current National Standards and

establish essential standards and practices. They focus around ensuring the suitability of the people caring for the children, the safety of the premises used to deliver the provision, and the establishment of appropriate policies to consider complaints, to secure inclusive provision and to safeguard children. These are therefore issues most providers are addressing as a matter of course. In addition, local authorities will have a duty under Section 13 of the Childcare Bill to secure information, advice and training for providers. The support they will be able to offer includes helping providers to meet the requirements for registration.

66. It is worth highlighting here one particular requirement – the need to have public liability insurance. We recognise that this will place a financial cost on the provider. The average cost of public liability insurance is £100- £150 per year. However this requirement will ensure that, if there was a serious accident resulting through the fault of the provider, parents and their child will have recourse to some financial support. Moreover, there is a precedent for including this – the supporting criteria to the current national standards include a requirement that providers hold suitable public liability insurance. This is also something that the consultation showed an overwhelming agreement that this was an essential safeguard and was already best practice within the sector.

Competition assessment

67. A simple competition assessment is sufficient to gauge the effect of the OCR will have on competition. The Government does not envisage that the number and size of providers would be changed significantly through the introduction of this register.

68. Provision for children under the age of eight must be registered by Ofsted. Under the Government's proposals, all providers who care for children aged eight and over and any provider that is exempt from registration (such as nannies) will, unlike now, be able to be registered – they can apply voluntarily and will have to meet broadly the same requirements as those who are required to register on the OCR. Once registered, all providers will have the same status. Because the OCR will be aimed at ensuring the provision is safe and secure, as wide a range as possible of providers will be able to register. Therefore the OCR will have a neutral impact.

69. In order to streamline the arrangements and maintain a proportionate approach, provision made directly by a school governing body for pupils on the school site will not be able to join the OCR. This is because schools will already be addressing most of the requirements of the OCR around safe recruitment practices and suitable premises in delivering their educational activity and any such provision will be picked up through the main school inspection. However, the Government will expect schools – through guidance – to have regard to the requirements of the OCR in setting up their provision.

Enforcement, sanctions and monitoring

70. All providers which apply to be registered with Ofsted will have to meet prescribed requirements. Ofsted will have the power to check that they are complying with these requirements. Inspections will be carried out on the basis of complaints or concerns about the provision as well as randomly.

71. Ofsted will have the power to take enforcement action where providers are failing to meet the requirements – this means suspending or cancelling registration as it judges appropriate.

72. The features of the OCR will be communicated to parents over the coming year. The demand from parents for registered provision will then, to some extent, drive the market. Registered providers will be required to inform parents about the requirements of the OCR and should have in place a complaint procedure, which ultimately enables parents to address complaints to Ofsted. Parents will therefore be aware of what to expect and can take action if the requirements are not being met.

Implementation and Delivery Plan

73. Regulations allowing applications to the voluntary part of the OCR will come into force in April 2007. From this date all providers of childcare who are not currently expected to register with Ofsted will be able to apply to be registered on the voluntary part of the OCR.

74. Providers registered with quality assurance schemes will continue to be eligible for working tax credits until September 2007. After this point quality assurance schemes will no longer give access to working tax credits.

75. Nannies can continue to apply to Childcare Approval Scheme until September 2007. Once they have been approved they will remain approved by the Childcare Approval Scheme, until one year after their approval was given

Post Implementation Review

76. The regulations will be reviewed in July 2008, before the regulations for the compulsory part of the register come in to force. If evidence indicates that the arrangements do not appear to give the necessary reassurance to parents and providers that essential standards of childcare are being met, the arrangements will be reconsidered.

Summary and Recommendation

77. Three options have been presented and their costs and benefits assessed. Full regulation would provide greater assurances about the safety and suitability of provision. However, the associated costs would be very high. There would be a significant financial burden on providers which is likely to be passed on to parents, making registered childcare unaffordable for many parents and driving childcare providers out of business. The requirements for registration would be difficult for some providers to meet, which would put a significant burden on these providers and restrict the type of provision which they are willing to provide, limiting parent's choices. Alternatively, if the price was high but the register remained voluntary, very few providers would apply to be registered, negating the value of the register overall.

78. Maintaining the current system would have limited benefits. The current complex and confusing system would continue. Providers would not have to go through the process of registering or meet the expense. However, equally they would not have the option of registering.

79. A proportionate response would provide greater flexibility by allowing providers to be registered, if it is not appropriate to their provision. Parents will have greater choice about their childcare, which will influence the care that is provided. As the system for registration will be as streamlined as possible, and the level of inspections will be proportionate to the risk to children, the cost of registration will be kept to a minimum. Because Ofsted can inspect unannounced and in response to complaints, providers will have a strong incentive to comply with the requirements.

80. Therefore the Government’s recommendation is that Option 2, a proportionate approach, would be the most suitable approach to the regulation of childcare for over eights, activity based care and care provided in the own home.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No clear benefits, as complexities would remain and serve to undermine the expansion of extended school and children’s centre services.	£99 for approval on the CAS. Estimate approximately 4000 people approved. Therefore costs £369,000 per annum.
2	<p>For providers – a proportionate process that minimises administrative burdens; allows a wider range of providers to be registered; clarifies accessibility to Working Tax Credits and other financial support</p> <p>For parents – as more provision can potentially be registered, provides greater reassurance that their child is likely to be safe and secure; clarity about provision which qualifies for access to financial support</p> <p>RECOMMENDED</p>	<p>£100 for childminders and £110 for all other childcare providers, plus CRB costs.</p> <p>Approx 5000 carers registered.</p> <p>The total cost would be around 690,000</p>
3	This approach would provide a high level of protection and security for children. The pre-registration visit would provide an opportunity for Ofsted to check and confirm that the provision was suitable and that the premises are safe and secure, and the regular inspection ensure that standards were being maintained	Cost of administering the scheme per provider would amount to over £200 per annum for childcare providers. This would affect approximately 100,000 individuals and 50,000 group providers, giving a total cost of over £30m

Declaration and publication

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

Signed ...*Beverley Hughes*.....

Date 6th March 2007

**Beverley Hughes
Minister for Children
Department for Education and Skills**

Contact point for enquiries and comments:

**Name: Jon Robinson
Department for Education and Skills**
**Address: Ground Floor
Caxton House
6-12 Tothill Street
London SW1H 9NA**

Telephone number: 0207 273 4744
Email address: jonathan.ROBINSON@dfes.gsi.gov.uk