

## Regulatory Triage Assessment

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| <b>Title of regulatory proposal</b>    | Legislation to extend the Ofsted fee level for sessional providers of childcare for a limited period. |
| <b>Lead Department/Agency</b>          | Department for Education  |
| <b>Expected date of implementation</b> | Regulations to be laid in June 2015<br>SNR 10   |
| <b>Origin</b>                          | Domestic  |
| <b>Date</b>                            | 31/03/15  |
| <b>Lead Departmental Contact</b>       | Alan Conlon   |
| <b>Departmental Triage Assessment</b>  | Low-cost regulation (fast track)  |

### **Rationale for intervention and intended effects**

We wish to amend the Childcare (Fees) Regulations 2008 to extend the period that a particular group of childcare providers – sessional daycare providers - can continue to pay their current annual registration fee rate to Ofsted to 31 August 2017. This is to keep costs and burdens for these small businesses down and stop them rising. As written, the current regulations for this particular kind of provider (around 7,100 in number) only prescribe the fee period until 31 August 2015, whereas it is indefinite for the other 65,000 providers. This extension is to give time for a full review of all of Ofsted's early years fees. If we do not extend these regulations these sessional daycare providers – mainly voluntary organisations – will become liable to pay the much higher rate of fees applicable to nurseries with immediate effect from 1 September 2015.

### **Viable policy options (including alternatives to regulation)**

The Government prescribes the level of the annual registration fees that childcare providers must pay to Ofsted through the Childcare (Fees) Regulations 2008, as determined by section 89 of the Childcare Act 2006. Not to do so would require the repeal of primary legislation.

By doing nothing, regulation 10(7) of the Childcare (Fees) Regulations 2008 would lapse and the fee rate for this group would immediately increase from 1 September 2015 which may put the viability of these providers in question, or risk that they will attempt to pass on cost increases to the parents using their provision.

Sessional daycare providers registered with Ofsted before 2008 were put on a lower fee rate through the regulations until 31 August 2015 in recognition of their particular status as mostly voluntary providers offering limited childcare provision on a not-for-profit basis to parents mainly in deprived areas. Without changing the regulations to extend the time limit these providers will become liable to pay the same fee as commercial nurseries, which is considerably higher. We intend to review all of the early years fee rates but this will require a full public consultation and six months notice to Ofsted of new rates and it will not be possible to complete this before 31 August. Making this minor, technical amendment now would allow sufficient time for the fees for this small and protected group to be considered as part of the wider fee review and also of any Spending Review process later this year. We consider that extending the period by two years should give the time required to develop recommendations for a full public consultation and then the necessary notice period to Ofsted and the sector of the agreed fee rates for the longer term.

**Initial assessment of business impact**

We envisage no additional cost or regulatory burdens on small businesses or voluntary organisations resulting from this measure. There are approximately 7,100 providers eligible to pay the category of fee in question – i.e they offer more than 3 hours, but less than 4 hours of early education and childcare per day. By keeping their fee rate at its current rate of £50 and preventing it from immediately rising to the higher rate of £220 the Government will be subsidising the difference between the rates. This equates to £170 per provider per annum or £1.2 million per annum overall. Continuing to subsidise at the current level means there are no additional costs to these small businesses/voluntary providers, when many of them are struggling financially (only 25% make a profit). The number of this kind of provider has fallen sharply from around 14,000 in 2001 to around 7,100 in 2013. Most of the fall in sessional provision has been in the more affluent areas so we hope continued support can help them to remain operating in the most deprived areas where they are increasingly concentrated now, and where parents have fewer childcare options. Continuing the subsidy also avoids the risk of these providers passing on higher costs to parents who already face high childcare costs.

**One-in, Two-out status**

The proposal is likely to be out of scope of One-in, Two-Out (OITO) rules, as it is concerned with fees related to regulatory enforcement and compliance activity. In this case the level of fee is not being changed, but the timeframe for an existing fee is being extended.

**Rationale for Triage rating**

This proposal should qualify for the fast-track as we consider it to be a technical, stop-gap measure to allow time for all of the early years fees to be considered in the round. The supporting analysis shows the direct gross cost to business will be less than £1 million per annum as the Government will continue to subsidise the fees for this group of childcare providers at the same level for another two years.

**Departmental signoff (SCS): Richard Vaughan**                      Date: 27/3/2015

**Economist signoff (*senior analyst*): Simon Palmer**                      Date: 30/3/2015

**Better Regulation Unit signoff: John Hubbard**                      Date:  
31/3/2015

## **Supporting evidence**

### **1. The policy issue and rationale for Government intervention**

All providers of childcare must register with Ofsted, which in turn quality assures their provision. The Childcare (Fees) Regulations 2008 (SI 2008/1804) prescribe all the fees payable to Ofsted by childcare providers registered under Part 3 of the Childcare Act 2006. They prescribe both the application fees for registration as a childcare provider, and annual fees thereafter, payable on the anniversary of the provider's registration date. These fees contribute to the costs incurred by Ofsted for delivering its registration and inspection activity. Application fees and annual fees are based on 3 "bands":

- Band 1: Childminders
- Band 2: Other childcare providers (not childminders) below the operating time thresholds of Band 3 providers
- Band 3: Other childcare providers (not childminders) which operate for at least three hours per day and at least 5 days per week and at least 45 weeks per year.

The 2007 consultation, "Childcare Act 2006: Future Approach to Fees and Subsidies" proposed fee increases for providers on the Early Years Register to increase their contribution to Ofsted's full economic costs of quality assuring early years settings. The Government response announced a phased increase in the fees over a three year period to 2010. The fees applicable from 1st September 2010 were £35 for Band 1, £50 for Band 2, and £220 for Band 3. The different fee rates reflected the size of providers: Band 1 are individual childminders who can by law not look after more than six children in total; Band 2 are typically before and after school clubs or holiday play schemes operating for limited hours; Band 3 are full time day care providers (typically private, independent and voluntary sector nurseries). The consultation envisaged steeper fee rises from 2010 but this was not implemented in recognition of other increased costs that childcare providers were having to bear and of the difficult economic environment they were operating in. There have been no registration fee increases in any of the bands since 2010.

In setting the band 2 fee rate the Government recognised the particular circumstances of "sessional" childcare providers". These were typically pre-schools and play schemes, and were not considered to be full time day care providers as they did not run for four or more hours a day. Technically, they were group providers like nurseries and would be liable to pay the Band 3 fee rate. However recognising that for these 'sessional' providers the Band 3 fee rate represented a significantly increased fee (at 2008 prices, the fee would have risen from £30 per year to £200 per year), transitional provisions were included in the Fees regulations to allow them to enjoy a 'discount' from the Band 3 fee for a period of time. A reduced fee was therefore set for these 'sessional' providers, where they provided childcare for between three and four hours a day. This 'discount' was due to expire on 1 September 2012 but DfE Ministers decided that levels should remain as they were for all providers until 2015 and the regulations were amended accordingly to extend the period for Band 2 providers.

The Department recognises that a full fee review of all 3 bands is due and intends to instigate this in 2015. The proposed change to the regulations is to maintain the fee level for sessional daycare providers at the current rate for a sufficient time to allow the fee review to take place and for new rates to be considered for all types of providers.

## **2. Policy objectives and intended effects**

The Government's overarching policy objective is to ensure there is sufficient provision of high quality, affordable childcare that meets the needs of parents, and helps them either to find or remain in work. We also want to ensure that Government is not placing unnecessary burdens on childcare providers which inhibit their operation (including cost burdens), causing negative impact on the supply of childcare in the market.

Through this regulation change we want to keep one of the cost pressures on sessional daycare providers – their Ofsted fees – at an affordable rate until all such fees can be properly considered in the round and set at appropriate rates that support a buoyant future market for childcare and also allow Ofsted to recoup more of the economic cost of its regulatory activity in line with HM Treasury expectations.

Sessional daycare providers are particularly vulnerable to cost pressures as they are often located in areas of the highest deprivation, where parents have fewer childcare options as commercial nurseries are reluctant to locate there because parents are less likely to pay for additional hours of childcare. The sessional daycare providers are a more viable option in those areas as they are mainly voluntary organisations providing the Government's free entitlement offer to parents of fifteen hours per week of childcare and early education for 2, 3 and 4 year-olds. However, since 2001 the number of sessional providers has almost halved, falling from 14,000 providers in 2001 to 7,100 in 2013 (a 49% decrease). Only 25% of sessional daycare providers reported that they made a profit in 2013, and 21% reported that they operate at a loss. We, therefore, need to think carefully how we support them.

## **3. Policy options considered, including alternatives to regulation**

Option 1: (Preferred Option) S.89 of the Childcare Act 2006 provides for regulations to be made enabling the payment of fees by childcare providers to the Chief Inspector for the discharge of his registration and inspection functions. The Childcare (Fees) Regulations 2008 prescribed all the fees payable by childcare providers to the Chief Inspector in respect of childcare providers registered under Part 3 of the Childcare Act 2006. Given the requirement to make or change the fees is set in legislation there is no real alternative at present but to amend through legislation. Accepting that a full fee review is due we are proposing that the best option is to maintain the fee at the same level for a limited period calculated to give sufficient time for the wider review. That is why we are proposing to keep the existing arrangements for two more years. Extending the fee level for an indefinite period was another consideration, which would make it like the fees arrangement for childminders and nurseries. However, the high level of subsidy for the sessional daycare provider fee was always intended to be a short-term arrangement and making it indefinite would require a separate public consultation and could send a message that it would always be kept at a heavily subsidised rate, even if the Government made clear that a full fee review would be conducted in due course.

Option 2: It would be possible to amend the regulations to increase the fees for this group of providers by a more modest amount from September rather than retain them at the current level. However, as a review of all the fees is due it was felt that it made better sense to consider all of the fees and the impact of any increases in the round. Changing the fee rate for one group of providers in isolation would entail a full public consultation for that one segment of the market on its own and then having to do the same for the rest of the market at a later date. It would also make it difficult to predict the effect on the market.

Option 3: Doing nothing would mean the fee rate for this group of providers would rise from £50 to £220 with immediate effect from 1 September 2015. Although this would not be a huge increase in purely cash terms it would represent an immediate 340% increase in the fee, and providers have no option but to pay. As it has been held down for so long such a sudden and unwelcome increase could impact on the sustainability of businesses and voluntary organisations already struggling to break even. The Ofsted fees cannot be looked at in isolation as a cost pressure. Over 60% of sessional day care providers are run on a charitable or not-for-profit basis (Source: DfE Childcare and Early Years Provider Survey 2013). They often rely on the use of public buildings, such as church halls, to deliver childcare limited to the three hours per day free entitlement and do not have scope to expand to offer full day care. As such, they are particularly vulnerable to any increase in their overhead costs. Providers have reported above inflation increases across the board in their general operating costs in recent years, such as for staffing, utilities, IT, fuel, insurance and premises.

#### **4. Expected level of business impact**

There is no increase in costs or regulation for small businesses or voluntary organisations envisaged from the implementation of this measure. Rather the effect will be to maintain the status quo for two more years for one type of childcare provider (sessional daycare providers) with regard to one of their business expenses – the annual payment of registration fees to Ofsted. The fees for the other types of providers (childminders and nurseries) will remain as they are as the regulations do not place a time limit on how long their particular fee rates apply, as they do with the sessional daycare providers. As such, no bias in cost pressures on other providers will result from this measure.

The numbers of sessional daycare providers, eligible to pay this fee rate, is approximately 7,100 (Source: DfE Childcare and Early Years Provider Survey 2013). This represents a significant part of the childcare market which we would want to preserve, as they provide approximately 250,000 childcare places. For comparison there are approximately 46,000 childminders and 19,000 nurseries offering childcare places in England.

There is evidence to suggest that many childcare providers are already struggling in the current economic climate. Only 25% of sessional providers reported that they made a profit in 2013, with 43% just breaking even and 21% making a loss. The proportion making a profit falls to 15%, looking just at the 30% most disadvantaged areas. Some providers have felt unable to pass on cost increases to parents in recent years, but childcare costs have tended to rise at above the rate of inflation over the last 5 years (Source: Family and Childcare Trust Childcare Costs Survey 2015). International evidence suggests that childcare costs in England as a proportion of net family income are amongst the highest in the OECD. This problem is likely to be concentrated in disadvantaged areas, where businesses are already more marginal and parents are less likely to be able to accept price rises.

Allowing the time limit in the current regulations to expire would further increase costs on these particular childcare providers, which could affect their sustainability. Providers of the Government's 15 hours per week of free childcare places are prohibited from charging more to the parents for those hours, so sessional providers reliant on that funding cannot pass on additional costs to parents for those specific hours. They also have no opportunities to cross-subsidise their free entitlement income from other sources like other types of provider can, such as by offering additional hours to parents at a higher rate.

Sufficiency of childcare places is already a concern; nearly half of local authorities reported insufficient childcare available for working parents in their areas in 2014 (Source: Family and Childcare Trust Childcare Costs Survey 2015). The pattern of the market in recent years shows that the number of full day care providers has risen every year since 2001 (129% increase overall) while the number of sessional daycare providers has halved in that period. The pattern shows a consolidation of sessional day care providers in the most deprived areas so we feel it is essential that we do all we can to protect those providers and the parents who rely on them.

Current fees do not reflect the cost of registration and inspection. All three registration fee rates for childcare providers are heavily subsidised by the Government to help keep childcare affordable for working parents, ranging from c.70% subsidy for nurseries to c.90% subsidy for childminders. Maintaining the current fee rate for sessional daycare providers for another two years, compared to allowing it to increase to £220, would entail a cost commitment from Government of approximately £1.2m each year. This is based on the Government continuing to fund the difference between the current fee rate for sessional daycare providers (£50 p.a.) and the rate it would rise to (£220) if we made no change to the regulations. The difference is £170 for 7,100 providers amounting to £1.2m per annum.

Continuing this level of subsidy is already factored into the overall Ofsted budget settlement for 2015-16, but not for 2016-17. We intend to conduct a review of the fee rates as early as possible in the next administration with the intention of re-calibrating all three fee rates to allow Ofsted to progressively recoup more of the full economic costs of their registration and inspection activity and reduce Government subsidy.