

EXPLANATORY MEMORANDUM TO
THE EARLY YEARS FOUNDATION STAGE (MISCELLANEOUS AMENDMENTS)
AND CHILDCARE FEES (AMENDMENT) REGULATIONS 2021

2021 No. 432

1. Introduction

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

2. Purpose of the instrument

Reception Baseline Assessment

- 2.1 This instrument introduces the Reception Baseline Assessment (RBA), an assessment to be administered in schools, within the first six weeks of reception class to help measure the progress children make from starting school to the end of year 6. The aim of the assessment is to produce a primary accountability measure which will take account of pupils' progress throughout the whole of primary school.

Early Years Foundation Stage Reforms

- 2.2 This instrument brings in reforms to the Early Years Foundation Stage (EYFS) statutory framework for all early years providers in England to follow the new learning and development, assessment and safeguarding and welfare requirements outlined in the revised EYFS statutory framework ("the Document"), from September 2021. The aims of the reforms are to improve outcomes for all children at age 5, especially disadvantaged children and to reduce teacher and practitioner workload so that more time can be spent interacting with children in their care.

Transitional Arrangements

- 2.3 This instrument temporarily extends the transitional provision in the Childcare (Fees) Regulations 2008 ("the 2008 Regulations") to allow childcare providers (other than childminders) who operate for less than 4 hours per day and who automatically transferred on 1st September 2008 from the previous childcare register onto the early years register under the Childcare Act 2006 ("the 2006 Act"), to continue to pay the same annual fee rate until 31 August 2023 at the latest. This will help to reduce the financial burden on these providers whilst the department develops new fee arrangements for all early years providers.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

Reception Baseline Assessment

- 6.1 This instrument amends the definition of the Document in the Early Years Foundation Stage (Learning and Development Requirements Order 2007 (SI 2007/1772) (“the 2007 Order”) and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (SI 2012/938) (“the 2012 Regulations”) to refer to the updated Document which introduces the RBA as a teacher administered statutory assessment from the autumn term 2021, moving the beginning of school-level progress measures from key stage 1 to reception from 2028.
- 6.2 This instrument enables the Secretary of State to make delegated supplementary provisions in relation to the RBA, after consulting with the Office of Qualifications and Examinations Regulation and such other persons as the Secretary of State considers appropriate. These delegated supplementary provisions are in relation to the monitoring of assessment arrangements for the RBA; the assessment, recording and reporting of RBA; the time when, and the manner in which the RBA is to be administered; the investigation of the accuracy and correctness of RBA results; and the annulment or amendment of the results of the RBA.
- 6.3 This instrument also makes provision for the Secretary of State to investigate the accuracy or correctness of RBA results, if required, and following such investigation, to take actions which could include, if deemed appropriate, amending or annulling the result of an RBA, or part of RBA, for either an individual child, or a group of children. The Secretary of State must notify schools with the outcome of any investigation and provide reasons to a school on why any particular action was taken.
- 6.4 This instrument also requires schools to permit any person authorised by the Secretary of State to enter the premises on which the early years provision is provided, and if different, the premises on which the RBA is or was carried out, to observe the implementation of the assessment arrangements and to inspect, and take copies of, documents and other articles relating to RBA.
- 6.5 The detail of the RBA policy is outlined in the Document, which can be found here: [Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/682222/Early_years_foundation_stage_(EYFS)_statutory_framework_-_GOV.UK_(www.gov.uk).pdf)

Early Years Foundation Stage Reforms

- 6.6 The updated Document includes changes to the early learning goals and educational programmes, amendment of the assessment and moderation process in relation to the Early Years Foundation Stage Profile (EYFSP), and some other minor changes to the safeguarding and welfare requirements to clarify existing policies.
- 6.7 This instrument amends the 2007 Order to remove provisions associated with the statutory duty for local authorities to externally moderate 25% of EYFS Profile judgments made by schools in their local area. In particular, this instrument removes the provision to inspect and take copies of documents and other articles relating to EYFS Profiles and assessment arrangements.

Transitional Arrangements

- 6.8 The 2008 Regulations prescribe the fees payable by childcare providers to the Chief Inspector in respect of childcare providers registered under Part 3 of the 2006 Act. This amendment extends the transitional arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the Early Years Register (“EYR”) (introduced by the 2006 Act) and who provide childcare for less than 4 hours per day. This amendment allows the providers to pay the same annual fee rate for a further two years (to 31 August 2023).

7. Policy background

What is being done and why?

Reception Baseline Assessment

- 7.1 The RBA, which must be administered at the start of primary school, is designed to create a valid and reliable starting point from which to measure pupils’ progress. The RBA is a teacher-mediated, one-to-one assessment that is similar in content and style to on-entry checks the majority of schools already complete.
- 7.2 It is intended that the RBA will replace statutory key stage 1¹ assessments – which currently form the starting point of school progress measures. The assessment has been designed to assess children’s early mathematics, literacy, communication and language skills and pupil-level data will not be published. It will only be used at the end of key stage 2² as part of a school-level progress measure.
- 7.3 In 2013, the Department conducted a public consultation on primary school assessment and accountability³, on measuring progress from the end of key stage 1, using internally marked national curriculum test results (and teacher assessments collected by the Department to calculate progress measures), or introducing a baseline at the start of reception. In line with consultation responses, the Department opted to introduce the RBA on the basis that it would give schools credit for all of the work in primary school, including the crucial first three years.
- 7.4 The RBA was implemented on an optional basis in September 2015 using a multi-supplier model, which enabled schools to choose their preferred assessment.

¹ <https://www.gov.uk/national-curriculum>

² <https://www.gov.uk/national-curriculum>

³ <https://www.gov.uk/government/consultations/new-national-curriculum-primary-assessment-and-accountability>

⁵ <https://www.gov.uk/government/publications/educational-excellence-everywhere>

However, the multi-supplier model was unsuccessful as analysis showed the outcomes of the different assessments were not sufficiently comparable to each other for the Department to use them for accountability purposes.

- 7.5 The 2016 Schools White Paper, Educational Excellence Everywhere⁴, set out more explicitly the importance of accountability making a fair and robust judgement of all schools regardless of their circumstances. The then Secretary of State (Baroness Morgan of Cotes) was clear that the one way to encourage teachers to work in challenging schools was to ensure that published performance metrics took account of prior attainment of their intake. The Department was still concerned about the reliability of the baseline using key stage 1 teacher assessment.
- 7.6 Therefore, in 2017, there was a further consultation⁵ on the best starting point to measure the progress that children make in primary school, with the majority responding in favour of the RBA (56% agreeing that it is best to move to a baseline assessment in reception and only 28% disagreeing). Those in favour pointed to the benefit of progress measures for accountability purposes rather than pure attainment measures, as being a fairer way to evaluate school performance, particularly for schools in challenging circumstances and that credit should be given to schools for the progress made in reception, and years 1 and 2.
- 7.7 In 2018, the Department contracted with the National Foundation for Educational Research (NFER) to develop and deliver the RBA, including trials (2018/19), a national pilot (2019/20) and two years of statutory delivery from 2020 onwards. Between September and October 2018, NFER conducted a 6-week trial of the assessment in a nationally representative sample comprising of 317 schools.
- 7.8 Data produced from the 2019/20 pilot phase of the assessment was used to produce and publish the validity report⁶ for the RBA, setting out the evidence to show that the assessment is valid. The report uses evidence collected at all stages of the development process, along with other research, to show that the assessment is fit for purpose. It makes four main points– that the assessment is age-appropriate; that the assessment results provide a fair measure of pupil performance; that pupil performance is comparable within and across schools; and that the meaning of RBA data is clear to those responsible for making the progress measure. In demonstrating the evidence for these four points, the Department is able to show that the assessment is valid.
- 7.9 Due to the challenging circumstances faced by schools in the context of the coronavirus (COVID-19) pandemic, statutory implementation of the RBA in 2020/21 academic year was postponed. Instead, schools had the opportunity to participate in the RBA early adopter year, allowing them to familiarise themselves with assessment materials and administration before the RBA becomes statutory from September 2021.

⁵ <https://www.gov.uk/government/consultations/primary-assessment-in-england>

⁷ <https://www.gov.uk/government/publications/reception-baseline-assessment-validity-report>

- 7.10 Statutory implementation of the RBA from September 2021 will enable the Department to publish progress measures from reception to key stage 2 in 2028. In the interim years, progress measures will continue to be published using key stage 1 assessments as the baseline. Once the RBA is fully established, the intention is to make current statutory key stage 1 assessments non-statutory.

Early Years Foundation Stage Reforms

- 7.11 In 2016, the Secretary of State for Education committed to a public consultation on primary assessment in England, including on assessment arrangements in the reception year - the Early Years Foundation Stage Profile (EYFSP).
- 7.12 The primary assessment consultation was conducted in March 2017⁷ and the Government's response⁸ published in September 2017 set out key proposals to ensure better alignment with the year 1 curriculum and to reduce unnecessary workload for teachers.
- 7.13 Following extensive consultation with early years experts and practitioners, in July 2018, the Government published a draft revised EYFS framework. This was piloted in 24 primary schools across England in the academic year 2018-19. The pilot was run by the Education Endowment Foundation and NatCen Social Research who conducted an independent evaluation, published in October 2019.
- 7.14 The evaluation of the pilot informed our final proposals, which were published in the EYFS reforms consultation document on 24 October 2019⁹. The overall aims of the reforms are to improve outcomes for all children at age 5, particularly disadvantaged children, and to reduce teacher and practitioner workload to enable more time to be spent interacting with children in their care. These aims underpinned each of the following proposals:
- 7.15 Revisions to the educational programmes to ensure a focus on early language and on the most important aspects within a broad curriculum.
- 7.16 Revisions to the early learning goals (ELGs) to make them clearer, more specific and easier for teachers to make accurate judgments.
- 7.17 Changes to the assessment and moderation process for the EYFSP – removing the 'exceeding' criteria from the EYFSP and removal of the statutory requirement for local authorities to externally moderate EYFSP judgements in 25% of schools; and
- 7.18 A proposed change to the safeguarding and welfare requirements to promote good oral health.
- 7.19 The EYFS reforms consultation period ended on 31 January 2020 and received 2,452 responses in total. The Government's official consultation response¹⁰ was published on 1 July 2020 and confirmed the points as set out above as final policy. A detailed summary of the consultation findings and the Government's response is set out at paragraph 9.8.

⁷ <https://consult.education.gov.uk/assessment-policy-and-development/primary-assessment/>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/644871/Primary_assessment_consultation_response.pdf

⁹ <https://consult.education.gov.uk/early-years-quality-outcomes/early-years-foundation-stage-reforms/>

¹⁰ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/896872/EYFS_reforms_consultation_-_government_response.pdf

- 7.20 The Government consultation response confirmed the Government’s intention to proceed with an early adopter year, allowing schools to voluntarily adopt the reforms a year in advance of statutory national roll-out in September 2021. Over 3,000 schools signed up to be early adopters and the early adopter year commenced on 1 September 2020. On 1 July 2020 the Government published the EYFS Early Adopter Framework¹¹ and Early Adopter Handbook¹² for early adopter schools to follow in lieu of the current framework for the 2020-21 academic year.
- 7.21 In 2021, the Government followed the legislative consultation process outlined in the Childcare Act 2006 when making further minor amendments to section 3 of the EYFS. For more information on this see para 9.9.

Transitional Arrangements

- 7.22 The 2008 Regulations prescribe the application fees for registration as a childcare provider, and annual fees for those who are so registered. The application fees and annual fees for the EYR are based on three “bands”:
- 7.23 Band 1: Childminders and other childcare providers below the operating time thresholds of Band 3 providers - £35
- 7.24 Band 2: Certain sessional childcare providers (not childminders) who transferred from the previous register maintained under the Children Act 1989 to the EYR and provide childcare provision for less than 4 hours per day - £50
- 7.25 Band 3: Other childcare providers (not childminders) which operate for at least 3 hours per day and at least 5 days per week and at least 45 weeks per year - £220.
- 7.26 The consultation held in 2008, entitled “Childcare Act 2006: Future Approach to Fees and Subsidies”, set out proposals for EYR fee increases that would increase the contribution of EYR fee revenue to Ofsted’s costs of providing its services. In its response to the consultation the Government announced a phased increase in EYR fees over a 3 year period to 2010. The fees applicable from 1 September 2010 were £35 for Band 1, £220 for Band 3 and £50 for Band 2 providers subject to the transitional arrangements. There have been no further fee increases since 2010.
- 7.27 The amendment made by this Instrument to the 2008 Regulations is to extend, from 1 September 2021 until 31 August 2023, the transitional provision for Band 2 providers, i.e. a particular group of around 4,600 sessional childcare providers who transferred from the previous register maintained under the Children Act 1989 to the EYR and who provide childcare provision for less than 4 hours per day.
- 7.28 The transitional arrangement was put in place in order to avoid this particular group of childcare providers having to pay a significantly increased annual fee. Under the previous system, the annual fee applicable to this group of providers was approximately £30. This was modestly increased to £50 in 2010, in recognition that these were mainly voluntary and not-for-profit providers of childcare. Without the transitional provision, they would be required to pay an annual fee of £220. The policy initially was to increase the Band 2 fee gradually. However, fees have not been increased since 2010 for any of the provider fee bands. In 2011, the Government

¹¹ <https://www.gov.uk/government/publications/early-adopter-schools-eyfs-framework>

¹² <https://www.gov.uk/government/publications/early-adopter-schools-eyfs-profile-handbook>

considered whether to remove transitional arrangements for fees but decided to retain subsidised fees to reduce burdens on these providers and help promote affordability of childcare. Expiry of the transitional arrangement would result in a large fee increase for Band 2 providers.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans to consolidate the relevant regulations.

10. Consultation outcome

Reception Baseline Assessment

10.1 The Department launched a 12-week public consultation on primary assessment in March 2017¹³. The Government response to the consultation was published in September 2017, with a further response specific to the RBA published in March 2018.¹⁴

10.2 In total, the consultation received 4,165 responses from a diverse and informed range of sources. The consultation received responses from 1,102 headteachers, 400 reception teachers, 170 parents or guardians, 126 early years professionals, 120 local authorities, 88 special educational needs coordinators, 58 organisations representing teachers, school leaders or early years professionals. Because of its focus on primary assessment more generally, the consultation also received responses from 1,568 key stage 1 and 2 teachers. However, the number of people whose views have been considered as part of this process is far greater than 4,165. Representative organisations such as teaching unions canvassed their members, in some cases thousands of people, before responding and stakeholders also contributed via consultation events and meetings.

10.3 The majority of the consultation respondents and representative organisations supported the implementation of a RBA, in which the beginning of the school-level progress measures would be moved from the end of key stage 1, to the start of reception. The previous system failed to give schools credit for the crucial work done with pupils in reception, year 1 and year 2, and concerns were raised about using teacher assessment as a baseline. As such, the Government agreed to develop a new baseline assessment in reception to be ready for introduction in autumn 2021.

10.4 Furthermore, in accordance with section 42(A1) and 43(2) of the Act, the Secretary of State consulted the Office of Qualifications and Examinations Regulation, Ofsted, and other interested persons including the National Association of Head Teachers (NAHT), the National Education Union (NEU) and the Association of School and

¹³ <https://www.gov.uk/government/consultations/primary-assessment-in-england>

¹⁴ Both the 2017 consultation response and the 2018 RBA update can be found at: <https://www.gov.uk/government/consultations/primary-assessment-in-england>

College Leaders (ASCL) in February/March 2020. The consultation sought feedback on the draft statutory instrument.

10.5 This consultation received four responses:

- A. Ofqual welcomed the use of delegated supplementary provisions for implementing further guidance for the assessment.
- B. The National Education Union (NEU) raised some concerns that the secondary legislation does not require the Department to publicly state with whom RBA data is being shared. The Department is conscious of the possible unintended consequences of sharing RBA data with external bodies and has therefore committed to the data being used only for the purpose of the progress measure and not to be shared for any other purpose, including research purposes. NEU also requested that the statutory instrument should ensure that schools must inform parents of the RBA taking part. This has been included in the delegated supplementary provisions, rather than in the statutory instrument.
- C. Ofsted raised some questions about the future of the policy and its impact on accountability arrangements for first and infant schools. In regards to the statutory instrument, there were questions raised about the actions that could be taken by the Secretary of State with regard to a previously inserted regulation 6B(3)(b) which had stated that schools ‘must comply with any request from the Secretary of State as to be action to be taken by the provider’. To ensure the legislation is clear and justified, we have removed this regulation from the statutory instrument.
- D. Sigplus+ raised questions about the practicalities of investigating and sanctioning maladministration, but welcomed the SI giving provision to do so.

10.6 Views were subsequently sought in February 2021 from those consulted in the February/March 2020 consultation, regarding the statutory implementation of the RBA from September 2021, following its postponed introduction due to COVID-19. The consultation received eight responses:

- A. The NEU raised some policy concerns in relation to the RBA becoming statutory from September 2021, particularly in the context of the Covid-19 pandemic; teacher workload; and validity of the assessment. We have addressed these policy concerns by reassuring NEU of the purpose of the RBA, and that once the RBA is introduced, the removal of statutory key stage 1 assessments will reduce overall teacher workload. We have also explained that throughout the assessment development process, work has been done to ensure that the assessment is valid and fit for purpose and the evidence for this can be found in the RBA validity report, published in February 2020. The NEU also raised some legal concerns regarding the relationship between RBA and the EYFS in a legal context, and consultation with the Information Commissioner’s Office (ICO). We have provided the legal rationale for taking the approach to incorporate the RBA policy within the EYFS framework; and have confirmed that ICO have been consulted prior to amending legislation.
- B. Though not formally consulted, Early Education, a national charity supporting early years practitioners with training, resources and professional networks also raised similar policy and legal concerns as NEU, which have been addressed as above.

C. NAHT, ASCL, Ofsted, Ofqual, Surrey South Farnham Educational Trust, and Beecroft Primary School support the proposed legislative amendments to implement the RBA.

10.7 Additionally, when consulted under article 36(4) of the General Data Protection Regulation 2016, the ICO confirmed that they would continue to monitor the use of data through an ongoing dialogue between the ICO and the DfE officials responsible for the National Pupil Database.

Early Years Foundation Stage Reforms

10.8 The outcome of the consultation which took place between 24 October 2019 and 31 January 2020 is as follows:

- Educational programmes and ELGs: The consultation indicated broad agreement that the proposed educational programmes and early learning goals were clearer than the existing ones and that they support children’s learning and development, with some suggested changes which were considered as part of the final proposals.
- The assessment and moderation process: There was mixed support for the proposal to remove statutory local authority moderation with the common view from respondents being in favour of retaining it. The findings of the EYFSP pilot evaluation,¹⁵ conducted independently by NatCen, indicated that in the absence of external moderation and associated evidence gathering and paperwork, teachers found that their workload had reduced, allowing them to focus on teaching. Government therefore decided to proceed with the proposal to remove statutory LA moderation. The consultation indicated broad support for the proposal to remove the ‘exceeded’ criteria and Government’s response confirmed the intention to proceed with this proposal.
- Small policy change to safeguarding and welfare requirements: The consultation indicated strong support for the proposal to explicitly include "oral health" in the existing requirement to "promote the good health of children", and Government’s response confirmed the intention to proceed with this proposal.

10.9 The updated framework also includes a small number of other minor amendments to the safeguarding and welfare section. Apart from the minor change relating to promoting the ‘good oral health’ of children, changes to this section of the framework did not need to be included in the wider public consultation conducted on 24 October 2019 as they are minor changes to reflect updates in the law, or to correct or clarify misleading references identified since the previous update to the EYFS statutory framework in 2017. We have consulted with Her Majesty’s Chief Inspector (HMCI) on a continuous basis throughout the drafting of the changes to the EYFS framework and formally as part of the consultation launched on 18 February 2021, as required under section 43 of the Childcare Act 2006.

10.10 Government is also obliged by section 45 of the Childcare Act 2006 to consult when making an order under section 39(1)(a) of the Childcare Act 2006 to revise the EYFS statutory framework. As a full public consultation had already been conducted on the

¹⁵ [Early Years Foundation Stage Profile \(EYFSP\) Reforms.pdf \(educationendowmentfoundation.org.uk\)](https://www.educationendowmentfoundation.org.uk/early-years-foundation-stage-profile-eyfsp-reforms)

substantive reforms and the official Government response published, a proportionate consultation was carried out to meet obligations under section 45:

- In accordance with section 45 of the Act, the Secretary of State gave notice of the proposals to bodies representing the interests of early years providers and allowed them an opportunity to respond. The responses were taken into consideration and informed the draft documentation.
- On 18 February 2021, the Secretary of State then published the draft statutory instrument and draft EYFS framework and allowed a month for comments prior to the signing of the instrument.
- As a result of the consultation several technical changes to Section 3 were made to the framework to ensure the changes are clear and understood.

Transitional Arrangements

- 10.11 In July 2019, the Department for Education launched a public consultation¹⁶ about increasing the Early Years Register fees from 1 April 2020, and the principles that should underpin a revised Early Years Register fee model from April 2021. This was expected to be followed by a further consultation that would have included proposals for sessional providers who are subject to the transitional arrangements. However, the Department decided not to implement any fee increase from April 2020 and the Government response¹⁷ (published March 2020) provided assurances to the sector that any future fee proposals would be subject to a further public consultation.
- 10.12 On 17 March 2020, following the outbreak of the COVID-19 pandemic, the Department announced¹⁸ there would no rise in the fees following the 2019 consultation. Due to the ongoing focus on Covid-19 work to develop - and consult on - a new Early Years Register fee model has been postponed. Therefore, ministers decided to retain the transitional arrangements (until 31 August 2023) so this group of providers would continue to pay a lower fee (of £50 instead of £220 per year, as set out above) to reduce the financial burden on these providers whilst the Department develops new fee arrangements.

11. Guidance

Reception Baseline Assessment

- 11.1 Schools have been made aware of the forthcoming change through the Government response to the Primary Assessment consultation; through operational communications directly to all primary schools; and media coverage.
- 11.2 The detail of the RBA policy is outlined in the Document, which can be found here: [Early years foundation stage \(EYFS\) statutory framework - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/early-years-childcare-fees-regulations)
- 11.3 The Standards and Testing Agency will publish annual statutory guidance to schools in April on assessment and reporting arrangements for the RBA. This will set out

¹⁶ <https://www.gov.uk/government/consultations/early-years-childcare-fees-regulations>

¹⁷ <https://www.gov.uk/government/consultations/early-years-childcare-fees-regulations>

¹⁸ <https://www.gov.uk/government/news/free-childcare-offers-to-continue-during-coronavirus-closures>

schools' legal duties on administering the assessment. It will also set out schools' legal duty relating to the reporting of assessment information for those pupils.

Early Years Foundation Stage Reforms

- 11.4 The Government will publish the revised version of the EYFS statutory framework upon laying of this statutory instrument. The Government will also publish a revised EYFSP Handbook prior to September 2021, which provides additional, non-statutory guidance for schools and early years providers to support assessment of each child's attainment at the end of the EYFS, as well as setting out the statutory duties for local authorities in relation to the EYFS profile assessment. The Government published new non-statutory curriculum guidance to support all early years providers in delivering the revised EYFS requirements and ensuring they have a strong and holistic curriculum to support children's learning and development from 0-5 years old.

Transitional Arrangements

- 11.5 The Department will ensure that Ofsted is clear about the fee levels from September 2021. There is no need for new guidance to providers who are already paying fees at this level.

12. Impact

- 12.1 The impact on business, charities or voluntary bodies with regards to transitional arrangements is that the group of providers will continue to pay the same fee as they pay now (£50) rather than a significantly increased fee (£220).
- 12.2 The impact on the public sector is, with regard to RBA, that schools with a reception cohort will need to administer the RBA to reception pupils in accordance with the published annual statutory guidance to schools on assessment and reporting arrangements for the RBA. This will set out schools' legal duties on administering the assessment. It will also set out schools' legal duty relating to the reporting of assessment information for pupils. The introduction of the RBA will enable the removal of current statutory key stage 1 assessments, reducing the overall burden of statutory assessments for schools. With regard to the EYFS reforms, the impact on the public sector is that schools and early years providers will need to familiarise themselves with the requirements in the revised EYFS statutory framework and plan accordingly. This will include revising their approach to curriculum and assessment and promoting the good oral health of children alongside the existing requirement to promote the good health of children. Schools and providers will have reduced burdens in relation to EYFSP assessments due to the removal of statutory moderation of EYFSP judgements by local authorities. Local authorities will also have reduced burdens in relation to not moderating and assessing the EYFSP in their areas.
- 12.3 An Impact Assessment has not been prepared in relation to the EYFS reforms because the impact of this change is deemed to be low and reduces burdens on businesses, the public sector and local authorities. An Impact Assessment has not been prepared in relation to the transitional arrangements as fees and charges are subject to a statutory exclusion (set out in section 22(4)(a)(i) of the SBEE Act 2015).
- 12.4 An Equalities Impact Assessment on the RBA will be published prior to the statutory implementation of the RBA. As per the Public Sector and Equalities Duty, this will set out a detailed assessment of the impacts of the RBA on pupils with protected

characteristics. An Equalities Impact Assessment on the EYFS reforms has been prepared for the changes, which is available upon request. This sets out a detailed assessment of the impact of the EYFS reforms on those with protected characteristics and the government's plans to monitor this to ensure those with protected characteristics are not adversely affected by the changes.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people) the approach taken is to consult with sector organisations regarding EYFS reforms, representing small businesses on the regulatory changes as well as the minor drafting changes to the safeguarding and welfare section of the framework to ensure the changes are understood and do not create undue burdens. Free online resources will also be made available to support the sector to implement the changes. With regards to transitional arrangements, no specific action is proposed because this legislation does not impose new requirements. Instead, it will have a beneficial effect on those affected by the transitional arrangements as they will not have to pay higher fees from September 2021.

14. Monitoring & review

- 14.1 The approach to monitoring of this legislation is the operation of this instrument will be kept under review on a periodic basis.

15. Contact

- 15.1 Rumana Begum at the Standards and Testing Agency can be contacted with any queries regarding the RBA at Rumana.Begum@education.gov.uk
- 15.2 Jenny Balachandran at the Department for Education can be contacted with any queries regarding the EYFS reforms at Jenny.Balachandran@education.gov.uk
- 15.3 John Trakos at the Department for Education can be contacted with any queries regarding the transitional arrangements at John.Trakos@education.gov.uk
- 15.4 Colin Watson (Acting Chief Executive at the Standards and Testing Agency), and Harjit Athwal (Deputy Director of the Early Years Strategy, Quality and Central Covid-19 Response Division) at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 Nick Gibb, Minister for School Standards at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.