

**EXPLANATORY MEMORANDUM TO  
THE CHILDCARE (EXEMPTIONS FROM REGISTRATION) ORDER 2010**

**2010 No. 744**

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

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

**2. Purpose of the instrument**

2.1 This Order amends the Childcare (Exemptions from Registration) Order 2008 (“the 2008 Order”)<sup>1</sup>. The effect of the amendment is to exempt from registration under the Childcare Act 2006 (“the 2006 Act”)<sup>2</sup> a further category of childminding, namely childminding for the children of friends where this is not provided in return for a payment of money or money’s worth.

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

3.1 None.

**4. Legislative Context**

4.1 Section 18 of the 2006 Act defines childcare as “any form of care for a child and ... includes education for a child and any other supervised activity for a child”. There are exceptions for time spent at school and health care. Further, childcare does not include care provided for a child by a parent, step parent, person with parental responsibility, relative or foster parent in relation to a child. Childminding is defined at section 96 of the 2006 Act as childcare on domestic premises for reward.

4.2 Part 3 of the 2006 Act introduced a new reformed regulation and inspection system for childcare in England by Ofsted. Sections 33(1) and 52(1) of the 2006 Act contain the requirements for a person to register in order to provide childminding in England.

4.3 Sections 33(2) and 52(2) of the 2006 Act give the Secretary of State powers to specify circumstances where childminding is exempt from the requirement to register under those sections. The 2008 Order prescribes those circumstances. The categories of childminding exempted by the 2008 Order include:-

- any care for a particular child for two hours or less per day or which is only provided between 6pm and 2am;
- care for a child in the child’s own home or for children from two families in either family’s home (e.g. nannies or au pairs).

4.4 This instrument will add a further category of exempt childminding to the 2008 Order: childminding for the children of friends where this is not provided in return for payment. Payment is defined in the Order as a payment of money or money’s worth which does not include the provision of goods or services. This will allow the exemption from registration with Ofsted of childminding for the children of friends where this is in exchange for goods or services such as reciprocal childcare, ironing or gardening, but not for payments that could be considered as

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<sup>1</sup> S.I. 2008/1804.

<sup>2</sup> 2006 c.21.

equivalent to money such as store gift vouchers or the payment of the childminder's rent or mortgage.

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

This instrument applies to England.

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

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

## **7. Policy background**

### *What is being done and why*

7.1 The Government has a responsibility to take all reasonable steps to make sure that children are safe and have the best start in life when they are in the care of other people and parents have a right to expect this. Successive Governments over the past 60 years have regulated childcare by imposing specific requirements on providers. The legislation has been designed to be proportionate and to take account of the role and responsibility of parents for determining the most appropriate childcare arrangements for their children, including whether to use formal or informal care.

7.2 The 2006 Act was intended to provide a streamlined childcare regulatory system, with Ofsted as the single body responsible for registering and monitoring providers to ensure that registered childcare meets required standards. The requirements on childminders take account of the age of children attending their provision. Those caring for children aged 0-5 years are required to meet stricter requirements than those caring for children aged between 5 and 8.

7.3 However, the Government recognises that there needs to be a balance between regulating to protect children's interests and allowing parents to take decisions which are in the best interests of their families. Therefore the 2006 Act makes a number of exemptions from the need for childminders to register with Ofsted (see paragraph 4.3 above).

7.4 Unless exempted under the 2008 Order, anyone who looks after children (other than their own family) for reward must register as a childminder and meet the relevant registration requirements (as discussed in paragraph 7.2). The expression 'for reward' is not defined in the 2006 Act and has been interpreted broadly by Ofsted, to include any circumstance in which the person providing childcare derives a benefit or advantage from the arrangement, such as reciprocal childcare arrangements (where parent A looks after parent B's child in exchange for B looking after A's child), as well as care in exchange for other services such as ironing or gardening or "gifts" such as flowers or chocolates. However, the Government does not believe that it is appropriate to regulate informal care arrangements between friends where there is no monetary payment. The purpose of this instrument is to clarify this by formally exempting such arrangements from the requirement to register with Ofsted under the 2006 Act.

### *Consolidation*

7.5 This is the first time the 2008 Order has been amended, so it was not thought necessary to consolidate the Order at this time.

## 8. Consultation outcome

8.1 The public consultation on creating this new category of exempt childminding ran between 3 December 2009 and 31 January 2010. There were 255 responses. The breakdown of responses was as follows:

	Child minder	Parent	LA	Other	Grand parent	Charity/ Vol sector	Child-care Sector	Foster Agency	Total
Agree	30	52	8	11	5	10	9	3	128
Disagree	76	11	15	9	2	5	8	1	127
Total	106	63	23	20	7	15	17	4	255

8.2 There was a slight majority in favour of the proposal with 128 in favour and 127 disagreeing. However, of those disagreeing 9 people felt that the proposal was not radical enough and thought that it should be extended to paid childcare arrangements between friends.

8.3 As part of the consultation, we offered meetings with major stakeholder organisations. The following stakeholders attended these meetings: the National Childminding Association (NCMA), National Children's Bureau (NCB), and the National Day Nurseries Association (NDNA). We also met with 33 parents at the St Thomas Children Centre in Birmingham (80% of whom agreed with the proposal).

### Parental choice

8.4 Many of the respondents who agreed commented that it was not the role of government to legislate on childcare arrangements between friends. Several said that there was no difference between parents choosing family members to look after their children or friends they could trust. A number of respondents said that the proposal gave parents more flexibility and better reflected real life. For example, it would enable them to work or study outside the hours when formal childcare is readily available (e.g. at night or weekends).

8.5 Some respondents made the point that in most cases the care would be provided only for short periods and would not substitute for longer term formal care. Some who supported the proposal said they would not have agreed if the proposal had extended to arrangements where parents paid for the care.

8.6 The government agrees that it is the right and responsibility of parents to choose the best childcare arrangements for their children and that it is not the place of government to legislate on arrangements made between parents and their friends.

### Safety, welfare and children's learning and development

8.7 Many respondents raised concerns around safeguarding and pointed out that childminders and other adults living or working on their premises are required to undergo Criminal Record Bureau checks by Ofsted whereas parents would not know whether people coming into contact with their children in informal arrangements were suitable or not. Others pointed out that most abuse took place outside of formal childcare arrangements. Respondents also raised issues about first aid, training, risk assessments of homes and public liability insurance (all of which are requirements for registered childminders).

8.8 A significant number of respondents said that informal care would not provide such a rich quality of environment as that provided by childminders. Several cited the learning and development opportunities provided by childminders caring for 0-5 year olds these are required to deliver the learning and development requirements of the Early Years Foundation Stage.

8.9 The government agrees that good quality childcare promotes the welfare and development of our children and it is investing over £1 billion in raising quality between 2008 and 2011 which includes training and development for registered childminders. However, it is not the government's role to intervene in informal arrangements between family and friends. Parents are responsible for satisfying themselves about the safety of their children when making informal care arrangements with friends, and the quality of care and development opportunities they will receive, just as when they ask family members to care for their children.

#### Impact on childminders

8.10 Several childminders who responded were concerned that the proposal would threaten the viability of childminding because parents might switch from a registered childminder to informal care. More widely, some commented that the proposal would undermine the professionalism of childminding and that there was a risk that some childminders would de-register to provide informal or illegal care.

8.11 The government recognises the essential role that childminders play in promoting parental choice and flexibility as well as for providing good quality childcare and there is no evidence to suggest that parents already using - or considering using - a professional childminder will seek to substitute this professional, good quality care with informal arrangements, particularly since informal arrangements would not be eligible for the childcare element of the Working Tax Credit.

#### Enforcement

8.12 Approximately 10% of respondents were concerned that there would be no effective way to check whether childcare was really being carried out without payment or whether the person providing the care was really a friend.

8.13 The government does not agree that the proposal will increase the scope for illegal childminding or that this will be more difficult to enforce. People providing childcare in exchange for monetary payment have always been required to register and this will not change. However, it means that Ofsted will not take action where parents have made informal arrangements for non monetary payment with their friends. As is the case now, Ofsted will only take action in those cases where it has evidence that illegal childminding is taking place. If it receives a complaint about unregistered childminding it will investigate and, if there is evidence that the care should be registered, it will take appropriate action. However, if it considers that a child may be at risk of harm then it will inform the local authority – even where there is no evidence that the childminding is illegal.

#### Proposals not radical enough

8.14 Nine respondents said that the proposals did not go far enough and that childcare arrangements between friends should be exempt from registration even where parents pay for the care.

8.15 The government believes that monetary payment for childcare changes the nature of the arrangement so that it becomes a commercial arrangement, and it should be treated as such and all those who derive a living from this activity should be treated in the same way i.e. subject to the same regulatory regime. Several people at our consultation meeting with parents made this point and said that they would not support an exemption if it was extended to childcare which was paid for. The government believes that it is appropriate to regulate commercial childcare arrangements and has done so since 1948.

#### Foster carers

8.16 Several respondents commented that the arrangements should be extended to include foster carers (so that they are exempt from registration when caring for other children). They say that as

foster carers have been fully assessed, trained and approved by a fostering panel that the regulations should also exempt situations where foster carers are providing respite day care for a child who is looked after as part of their care plan.

8.17 The proposed exemption from registration for care arrangements between friends which are not for monetary payment applies equally to foster carers. The government will look separately at the issue of paid respite care and other childcare by foster carers and decide whether there is a case for further exemptions.

## **9. Guidance**

Ofsted will amend guidance to its inspectors and those enquiring about registration to take account of this exemption and DCSF will notify local authority Families Information Services.

## **10. Impact**

10.1 The proposals relate only to parents making arrangements for their children to be cared for by friends in circumstances where no money changes hands and as such there is no evidence that there will be any impact on business, charities or voluntary bodies.

10.2 Extending the exemption from the requirement to register as a childminder to non-monetary arrangements between friends will save financial resources provided by the public sector. This is because the cost to Ofsted of registration, inspection and enforcement for the Early Years Register (EYR, for 0-5 year olds) is largely subsidised by the tax payer. The cost of bringing all these arrangements into the regulatory system could be up to £215,895,000. This is the cost of registering such arrangements, inspecting and monitoring compliance with registration requirements and is based on figures from the DCSF 2008 Childcare and Early Years Survey for England (2008) which suggest that up to 185,000 parents might be using a friend or neighbour to care for their children without monetary payment. However, this figure is based on a survey of 7,000 parents and includes parents with children aged 0-14 whereas childcare providers are only required to register for provision for children aged 0-7. It is not possible to establish how many of these families should be registered under the existing regulatory regime as some arrangements are likely to be exempt because the care being provided is short term or is not in exchange for any reward, and not, therefore, required to register.

10.3 An Impact Assessment which considers the cost effectiveness of the proposal is attached to this memorandum.

## **11. Regulating small business**

We don't expect this change to have an impact on small business because we are not exempting commercial childcare arrangements from registration. Any knock-on impact on professional childminders is discussed in paragraph 8.10 above. The legislation will not impact on small business.

## **12. Monitoring & review**

The Government will monitor the impact of the exemption and will use as part of this feedback on Ofsted's enforcement activity.

## **13. Contact**

Patrick Towgood at the Department for Children, Schools and Families, Tel: 020 7783 8149 or email: [patrick.towgood@dcsf.gsi.gov.uk](mailto:patrick.towgood@dcsf.gsi.gov.uk), can answer any queries regarding the instrument.

## 1. Summary: Intervention & Options

<b>Department /Agency:</b> <b>Department for Children, Schools and Families</b>	<b>Title:</b> <b>Impact Assessment of the amendment to the Exemption (from childcare registration)) Regulations 2008</b>	
<b>Stage:</b>	<b>Version:</b> Draft	<b>Date:</b> March 2010
<b>Related Publications:</b>		

### Available to view or download at:

<http://www.>

**Contact for enquiries:** [Patrick.towgood@dcsf.gsi.gov.uk](mailto:Patrick.towgood@dcsf.gsi.gov.uk)

Telephone:

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

At the moment all childcare on domestic premises for more than two hours per day which is carried out in exchange for 'reward' is required to register with Ofsted and comply with childminding requirements. The term 'reward' has been interpreted much more widely than the Government intended when the legislation was put before Parliament and this has meant that friends who look after each others' children in exchange for non monetary reward such as reciprocal childcare or for notional reward such as flowers or chocolates are required by Ofsted to register and to meet requirements that were designed to ensure that formal commercial childcare providers meet prescribed standards.

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

The objective is to remove statutory requirements from friends who make informal childcare arrangements between each other for no monetary payment. The result of this amendment will make it easier for parents to agree informal childminding arrangements with their friends without having to comply with regulatory requirements designed for formal childcare.

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

Exempt arrangements between friends not for monetary payment. This is the preferred option as it is clear to parents and extends their choice, allows consistent enforcement and limits the scope for unregistered childcare.

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** A review will take place in 2012 to determine how effectively the proposed amendment is working.

**Ministerial Sign-off** For SELECT STAGE Impact Assessments:

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

Signed by the responsible Minister:

*Dawn Primarolo* .....Date: 10th March 2010

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>	Description and scale of <b>key monetised costs</b> by 'main affected groups' DN – potential cost is children not being registered childcare - EPPE – research]	
	<b>One-off</b> (Transition) <span style="float: right;">Yrs</span>		
	<b>£ Nil</b>		
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ Nil</b>	<b>Total Cost (PV)</b>	
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>	Description and scale of <b>key monetised benefits</b> by 'main affected groups' This will save money to the cost to the taxpayer of subsidising registration fees.	
	<b>One-off</b> <span style="float: right;">Yrs</span>		
	<b>£ 215,895,000</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£</b>	<b>Total Benefit (PV)</b>	
Other <b>key non-monetised benefits</b> by 'main affected groups' The measure will remove from the scope of regulation informal childcare arrangements between friends.			

### Key Assumptions/Sensitivities/Risks

. A risk that unsuitable care arrangements could limit individual child's development and increase risk to child's welfare. Savings based on a small sample from a DCSF parents survey – which might exaggerate savings cited.

Price Base Year 2009	Time Period Years 10	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £ 0
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What is the geographic coverage of the policy/option?		England	
On what date will the policy be implemented?		1/09/10	
Which organisation(s) will enforce the policy?		Ofsted	
What is the total annual cost of enforcement for these organisations?		£ NK for fees	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		No	
What is the value of the proposed offsetting measure per year?		£ N/A	
What is the value of changes in greenhouse gas emissions?		£ N/A	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium      Large
Are any of these organisations exempt?	No	No	N/A      N/A

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

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



[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **Objective**

The objective is to enable parents to make informal, childcare arrangements which are not for monetary payment with their friends without being required to comply with the regulatory requirements which have to be met by registered childcare providers.

### **Background**

Childcare has been regulated in this country since 1948. In 1968, in response to concerns about the safety of children in unregistered care, the requirement to register was tightened up to bring all childminders providing childcare for 'reward' to be registered. However, the term 'reward' was never defined and it was up to local authorities to interpret it as they saw fit.

In 2001 the responsibility for registering and inspecting childcare passed to Ofsted and in 2002 Ofsted sought legal advice on the definition of the term 'for reward'. Ofsted issued guidance defining the term 'reward' quite broadly as 'goods, services or money', and included within this definition arrangements between parents and their friends to care for each others' children as well as childcare in exchange for low value gifts such as flowers.

The Childcare Act 2006 defined 'childcare' in legislation for the first time and carried forward the requirement for people carrying out childcare for 'reward' to be registered. The Act also provided for a power to allow the Secretary of State by Order to define the circumstances in which childcare can be exempt from compulsory registration with Ofsted.

The regulatory regime is designed to be proportionate and to take account of parents' responsibilities for the care of their children, the nature of the provision, the age of children and the length of time that they spend in the provision. Childcare for 0-5 year olds is required to meet higher standards (this is registered on the Early Years Register, EYR) than that for children aged 5-7 (on the General Childcare Register (GCR)). The EYR prescribes welfare and learning and development requirements, while that for the GCR sets out requirements on ratio and qualification requirements but does not specify learning and development requirements. Following a consultation between 22 January 2007 and 23 April 2007 some categories of childcare were exempted from registration. For example, care provided in the child's own home or where childminding is only provided for short periods of time. This proposal will extend the exemption to arrangements which parents make with their friends to care for their children where there is no monetary payment.

### **Rationale for Government Intervention**

The government believes that it is disproportionate to apply the same requirements to arrangements that parents make for informal arrangements with their friends as those which are set for professional childminders. This would add costs (see below) to the regulatory system for the registration, inspection, and monitoring of parents making informal arrangements. This is not cost effective and is an intrusion into the rights and responsibilities of parents to determine their own informal arrangements.

## **The option**

To exempt from registration all childcare arrangements between friends which are not for monetary payment. This would give friends who do not take money for their services the same status as members of a child's family, most commonly grandparents who have never been required to register to look after their own grandchildren. It puts beyond doubt the definition of childminding "for reward" and removes the need for parents operating informal childcare with friends to register with Ofsted.

This approach is consistent with existing legislation designed to apply a proportionate regulatory regime for childcare which is easy to understand, cheaper and easier to administer, and takes account of parents' responsibilities for their own children. On the other hand it will mean less rigorous checks will be made on people providing childcare (albeit informal care between parents and their friends), and it may increase the risk that people will attempt to provide "formal" childcare for reward but avoid registration. There is also a risk that some childminders might de-register to provide "informal" care. But we expect these risks to be minimal for two reasons. Eligible parents using registered childcare are able to claim the childcare element of the Working Tax Credit (WTC) and it is unlikely that they would seek to use unregistered informal care for longer term childcare as this would not be affordable. Similarly, registered childminders are already monitored against prescribed standards and it is unlikely that they would seek to provide informal care which would undermine their professional status and be financially unsustainable.

## **Costs & savings**

The cost of bringing all these arrangements into the regulatory system could be up to £215,895,000. This is the cost of registering such arrangements, inspecting and monitoring compliance with registration requirements. It is difficult to cost out the option fully as we do not have specific data on how many parents use such arrangements. Figures from the DCSF 2008 Childcare and Early Years Survey for England (2008) suggest that up to 185,000 parents might be using a friend or neighbour to care for their children without monetary payment. However, this figure is based on a survey of 7,000 parents and includes parents with children aged 0-14 whereas childcare providers are only required to register for provision for children aged 0-7. It is not possible to establish how many of these families should already be registered as some arrangements are likely to be exempt anyway because the care being provided is short term and not required to register in any case.

## **How the figure was worked out:**

Up to 185,000 parents who might be using a friend or neighbour to care for their children without monetary payment multiplied by a unit cost for each registration of £1,167 (Ofsted 2008 figure).

## **Consultation**

The consultation on creating this new category of exempt childminding ran between 3 December 2009 and 31 January 2010. There were 255 responses. The breakdown of responses was as follows:

	Child minder	Parent	LA	Other	Grand parent	Charity/ Vol sector	Child-care Sector	Foster Agency	Total
Agree	30	52	8	11	5	10	9	3	128
Disagree	76	11	15	9	2	5	8	1	127
Total	106	63	23	20	7	15	17	4	255

There was a slight majority in favour of the proposal with 128 in favour and 127 disagreeing with the proposal to exempt from registration arrangements between friends which are not for monetary payment. However, of those disagreeing 9 people felt that the proposal was not radical enough.

As part of the consultation, we also offered meetings with major stakeholder organisations. The following stakeholders attended these meetings: the National Childminding Association (NCMA), National Children's Bureau (NCB), and the National Day Nurseries Association (NDNA). We also met with 33 parents at the St Thomas Children Centre in Birmingham (80% of whom agreed with the proposal).

## Parental choice

Many of the respondents who agreed commented that it was not the role of government to legislate on childcare arrangements with their friends. Several said that there was no difference between parents choosing family members to look after their children or friends they could trust. A number of respondents said that the proposal gave parents more flexibility and better reflected real life. For example, it would enable them to work or study outside the hours (eg at night or weekends) when formal childcare is not so readily available.

Some respondents made the point that in most cases the care would be provided only for short periods and would not substitute for longer term formal care. Some who supported the proposal said they would not have agreed if the proposal had extended to arrangements where parents paid for the care.

The government agrees that is the right and responsibility of parents to choose the best childcare arrangements for their children and that it is not the place of government to legislate on arrangements made between parents and their friends.

## Safety, welfare and children's learning and development

Many respondents raised concerns around safeguarding and pointed out that childminders and other adults living or working on their premises are required to undergo Criminal Record Bureau checks by Ofsted whereas parents would not know whether people coming into contact with their children in informal arrangements were suitable or not. On the other hand, others pointed out that most abuse took place outside of formal childcare arrangements. Respondents also raised issues about first aid training risk assessments of homes and Public liability insurance (PLI) which gave the potential for compensation in the event of accidents or injury to children.

A significant number of respondents said that informal care would not provide such a rich quality of environment as that provided by childminders. Several cited the learning and development opportunities provided by childminders caring for 0-5 year olds.

The government agrees that good quality childcare promotes the welfare and development of our children as is evidence in the research by EPPE. However, it is not the government's role to intervene in informal in arrangements between family and friends and parents have the responsibility of satisfying themselves about the safety of their children when making informal care arrangements with friends, just as they have when they ask family members to care for their children.

## Impact on childminders

Several childminders who responded were concerned that the proposal would threaten the viability of childminding and that parents might switch to informal care. More widely, some commented that the proposal would undermine the professionalism of childminding and that there was a risk that some childminders would de-register to provide informal or illegal care.

The government recognises the essential role that childminders play in promoting parent choice and flexibility as well for providing good quality childcare and it does not believe that parents already using - or considering using – a professional childminder will seek to substitute this professional, good quality care with informal arrangements, particularly since informal arrangements would not be eligible for the childcare element of the Working Tax Credit.

## Enforcement

About 10% of respondents were concerned that there would be no effective way to check whether childcare was really being carried out without payment or whether the person providing the care was really a friend.

The government does not agree that the proposal will increase illegal childminding or that this will be more difficult to enforce. People providing childcare in exchange for monetary payment have always been required to register and this will not change. There is, therefore, no change to the challenge of enforcing this requirement.

If Ofsted receives a complaint about unregistered childminding it will investigate and, if there is evidence that the care should be registered, it will take appropriate action.

Proposals do not go far enough

Nine respondents said that the proposals did not go far enough and that all childcare arrangements between friends should be free from registration even where parents pay for the care.

The government believes that monetary payment for childcare changes the nature of the arrangement so that in effect it becomes a commercial arrangement. Several people at our meeting with parents made this point and said that they would not support an exemption if it was extended to childcare which was paid for. The government believes that it is appropriate to regulate commercial childcare arrangements and has done so since 1948.

Foster carers

Several respondents commented that the arrangements should be extended to include foster carers. They say that as foster carers have been fully assessed, trained and approved by a fostering panel that the regulations should be amended to include situations where foster carers are providing respite day care for a child who is looked after as part of their care plan.

The proposed exemption from registration for care arrangements between friends which are not for monetary payment applies equally to foster carers.

### **Small Firms Impact Test**

The proposal will not impact on small business.

### **Competition Assessment**

### **Enforcement, sanctions and monitoring**

The proposal will not affect the current monitoring regime apart from remove from registration requirements parents making informal arrangements with their friends.

### **Post-implementation Review**

It is intended that a review will take place in 2012, which will include information from Ofsted on whether the new arrangement has impacted on enforcement activity. The review will also consider whether the proposal has impacted on childminder numbers.

## Specific Impact Tests: Checklist

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

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

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

## Annexes

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## **Options considered ahead of consultation**

1 To limit the exemption to reciprocal childcare arrangements and arrangements where goods or services are given in return but are of such low value that they are not a proper reward for the childcare provided. In effect this would mean that childcare by a friend in return for goods or non childcare services worth as much as a proper reward would have to be registered with Ofsted.

The advantage of this option is that it limits the scope for childminders to de-register because it would be financially unsustainable for them to do so (by running their business in exchange for goods or services in instead of cash). But in practice this is likely to be difficult to enforce as well as confusing since even though we know from figures (from the 2008 Childcare Providers Survey) that the mean income of childminders is £9,800 it would be very difficult to establish whether or not the provision of goods or services constituted a 'full' reward in exchange for the childcare and whether in any particular case the care being offered fell within or outside the scope of regulation. The result would inevitably lead to an increase in referrals to Ofsted either from parents seeking advice in individual cases or from people concerned that illegal childcare was being provided. It would be difficult and costly to assess the value of reward in individual cases. Such a lack of clarity is likely to make enforcement of the regulatory system more difficult, to increase the cost to the regulatory system and to result in inconsistent judgements by Ofsted as to what constitutes a full reward

### **Cost and savings**

This is difficult to cost because we do not have information about how much parents pay for informal care so cannot determine the scale with accuracy. However, figures from the DCSF Childcare and Early Years Survey (2008) suggest that 28,000 parents pay money for informal care. But we don't have information about numbers of families paying through goods or services or how much value such payments are worth and whether these are near that for formal childcare fees. On the other hand there would be increase to regulatory costs because referrals to Ofsted from parents and providers about individual arrangements would increase with people wanting to know whether their arrangement was inside or outside the scope of regulation.

2. Exempt all childcare provided by a friend, even where this is in return for monetary payment.

This option would remove more people from the scope of regulations than the above or the preferred option. But it would also increase the scope for unregulated commercial childminding because most childminders and parents see each other as being 'friends' and trust is a greater determinant in parents choice of childminders than for other types of childcare (DCSF Childcare and Early Years Survey of Parents, 2008). But it could also provide scope for people more generally to provide childcare to friends on a commercial basis which could reduce demand for registered childminders or lead to fall in numbers of registered childminders. On the other hand, this risk might be mediated because registered childcare attracts the childcare element of the Working Tax Credit (WTC) which pays towards the costs of childcare and without this financial support parents would not be able to pay commercially viable rates. There would be increased risks to children because CRB checks would not be required and children would not benefit from the protection and the learning and development offered by registered care.

3. To leave the regulations as they are.

The advantage of this option is that - on the face of it at least - more children would be placed in regulated provision. On the basis of costings of the option in the IA this would bring the care used by up to 185,000 families within the regulatory system at a cost of ££215,895,000 (the cost of running the system, for example conducting inspections and enforcement action). It is difficult to establish how much of this care should already be registered as some arrangements are likely to be exempt because the care being provided is short term and not required to register. However, the government does not believe that it

should intervene in informal arrangements between friends which otherwise would have the same status as care by family members. The reason parents use such care is because it can be more flexible than formal registered care and is available when some registered care is less easy to access (for example in the evenings and at weekends and at short notice) and can help parents access work or training. It is also used by families for back-up childcare and would create uncertainty over whether regular playdates and sleepovers between young children would be regulated. It is likely that rather than use formal childcare for such arrangements parents would forgo these opportunities, so it cannot be assumed that all these arrangements would subsequently be registered.