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|---|--|--|-------------------------|
| <b>Title:</b><br><b>Childcare (Early Years) Register Regulations 2012</b><br>IA No: DFE0019<br><b>Lead department or agency:</b><br>Department for Education<br><b>Other departments or agencies:</b> | <b>Impact Assessment (IA)</b>          |  |                         |
|   | Date: 01/01/2012                       |  |                         |
|   | Stage: Final                           |  |                         |
|   | Source of intervention: Domestic       |  |                         |
|   | Type of measure: Secondary legislation |  |                         |
| Contact for enquiries:<br><b>Andrew.Fisher@education.gsi.gov.uk</b>   |  |  |                         |
| <b>Summary: Intervention and Options</b>  |  |  | RPC: RPC Opinion Status |

| Cost of Preferred (or more likely) Option |                            |  |                              |                      |
|---|----------------------------|--|------------------------------|----------------------|
| Total Net Present Value                   | Business Net Present Value | Net cost to business per year (EANCB on 2009 prices) | In scope of One-In, One-Out? | Measure qualifies as |
| £0.34m                                    | £0.27m                     | -£0.03   | Yes                          | OUT                  |

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

We are amending the Early Years Register (EYR) to align with the EYFS statutory framework. EYFS reforms include ensuring that all childminders complete basic training before registration and before beginning to practise. This particular requirement will be a condition of registration and is therefore to be added to the EYR regulations.

Ofsted's cost savings exercise includes a simplification of the process for CRB and suitability checks on early years managers. We are amending the EYR to align with these changes, and to reinforce the general responsibility for employers to employ suitable people.

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

To require all childminders to complete EYFS training before registering. Currently, childminders may register and begin childcare before completing training, if not possible to complete training first. Our cost-neutral proposal ensures that children are not in the care of providers who do not know the EYFS and might not understand how to support children and protect them from harm.

To give group providers responsibility for obtaining CRB checks and suitability checks on managers, in line with providers' responsibility for ensuring employees are suitable. There is a small net benefit for providers, in terms of simplified processes, and a benefit for Ofsted in delivering cost reductions.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**

The EYR is essential because young children are vulnerable to poor quality support, and even serious harm, if left in the care of unsuitable people; the state defines the basic conditions which adults must meet if they are to practise in the early years. The new requirement for all childminders to complete EYFS training before registration attracted 76% support in the consultation. We have considered alternatives to regulation but these are not acceptable because of the risk to young children's development and safety; childminders have sole care of young children for significant lengths of time. On the second proposal, CRB checks and suitability checks, there is no alternative to amending the regulations because it would be unacceptable for providers to be unclear about their responsibility for ensuring their employees' suitability. The proposal is essential because the EYR must align with Ofsted's simplification of the process: Ofsted are proceeding with the simplification (they are not obliged to continue with the current process).

|   |              |          |            |                |
|---|--------------|----------|------------|----------------|
| <b>Will the policy be reviewed?</b> It will be reviewed. <b>If applicable, set review date:</b> 09/2016 |              |          |            |                |
| Does implementation go beyond minimum EU requirements?  |              |          | N/A        |                |
| Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.        | Micro Yes/No | < 20 Yes | Small Yes  | Medium Yes     |
| What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)          |              |          | Traded: NA | Non-traded: NA |

*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 SELECT SIGNATORY: \_\_\_\_\_ Date: \_\_\_\_\_

## Summary: Analysis & Evidence

## Policy Option 1

Description:

### FULL ECONOMIC ASSESSMENT

| Price Base | PV Base   | Time Period | Net Benefit (Present Value (PV)) (£m) |                |                       |
|------------|-----------|-------------|---------------------------------------|----------------|-----------------------|
| Year 2011  | Year 2011 | Years 10    | Low: Optional                         | High: Optional | Best Estimate: £0.34m |

| COSTS (£m)    | Total Transition<br>(Constant Price) Years | Average Annual<br>(excl. Transition) (Constant Price) | Total Cost<br>(Present Value) |
|---------------|--|---|-------------------------------|
| Low           | Optional                                   | Optional  | Optional                      |
| High          | Optional                                   | Optional  | Optional                      |
| Best Estimate | Nil  | Nil   | Nil                           |

**Description and scale of key monetised costs by 'main affected groups'**  
No monetised costs.

**Other key non-monetised costs by 'main affected groups'**  
There will be a very small administrative cost to providers when notifying Ofsted that a new manager has been appointed.

| BENEFITS (£m) | Total Transition<br>(Constant Price) Years | Average Annual<br>(excl. Transition) (Constant Price) | Total Benefit<br>(Present Value) |
|---------------|--|---|----------------------------------|
| Low           | Optional                                   | Optional  | Optional                         |
| High          | Optional                                   | Optional  | Optional                         |
| Best Estimate |  | 0.041m  | 0.34m                            |

**Description and scale of key monetised benefits by 'main affected groups'**  
There will be a small administrative saving for providers who will no longer be required to supply Ofsted with detailed information for the suitability check on new managers.

**Other key non-monetised benefits by 'main affected groups'**  
Children and parents benefit from greater assurance that all childminders will be capable. Childminders will benefit from clarity about conditions of registration and assurance that professional standards are observed. Some local authorities may want to revisit their delivery/commissioning of training to anticipate and meet local demand from prospective childminders, and many LAs will welcome the change as it will remove an apparent anomaly and clarify the process.

| Key assumptions/sensitivities/risks   | Discount rate (%) |
|---|-------------------|
| There is a risk LAs may incur minor costs in training people who then do not register. There should be no increase in demand for training as a result of the change, and no increase in the time LAs spend planning/organising training. Lead times for the Ofsted registration process allow childminders to complete training before registration is complete and before beginning childcare - we do not expect any delay to the overall process. |                   |

### BUSINESS ASSESSMENT (Option 1)

| Direct impact on business (Equivalent Annual) £m: | In scope of OIIO? | Measure qualifies as |
|---|-------------------|----------------------|
| Costs: Nil      Benefits: 0.03m      Net: 0.03m   | Yes               | OUT                  |

## Rationale, background and evidence

### The Early Years Register

- All early years providers (care and education for children between birth and the end of the school year in which they reach age 5), must register with Ofsted on the Early Years Register (EYR), with some exceptions specified in regulations. The EYR specifies the conditions of registration, to protect children from harm which could result if they are in the care of unsuitable people or in unsuitable environments.
- These regulations are essential to mitigate the risk of serious harm to young children if left in the care of unsuitable people. As with other mechanisms to safeguard children, it is fully justified because there is a clear locus for the state in this regard, widely endorsed across society. With this in mind, the state should define the basic conditions which adults should meet if they are to practise in the early years, and these conditions should be non-negotiable – and is therefore defined in regulations. The Childcare Act 2006 (S38, 58, 66) established the power of the Chief Inspector to impose conditions on registration.
- The EYR ensures that Ofsted have the basic information they need to inspect all providers. Inspection is an essential lever in maintaining and improving standards in the early years sector.
- The government proposes two small amendments to the conditions of registration, concerning providers' responsibility for criminal records checks (CRB) on managers, and the training requirement for childminders.

### Childminders' Training

- Currently, the EYR regulations do not require childminders to complete specific training before registration. The Early Years Foundation Stage (EYFS) requires childminders, *wherever possible, to complete EYFS training prior to or shortly after registration*. As described in the impact assessment for EYFS Welfare and Safeguarding Requirements Regulations, the *revised* EYFS welfare and safeguarding requirements will require all childminders to complete training *before* registering. The proposal responds to concerns that it is not in children's interest to be in the care of people who do not know the EYFS and therefore might not understand how to protect children from harm. The EYFS consultation shows significant support for the requirement for childminders' EYFS training to be completed as a condition of registration. The EYR regulations must be aligned to the EYFS, to prevent confusion and ambiguity: therefore we need to introduce into the EYR regulations a requirement for childminders to complete training as a condition of registration.

### Criminal Records Checks and Suitability Checks

- Currently, the EYR regulations specify that providers applying for registration must supply to Ofsted key information to demonstrate suitability of managers. Currently, Ofsted complete two processes for managers – they verify CRB applications for managers and forward them to CRB, and also complete more general suitability checks by making contact with other agencies such as local authorities.
- To safeguard children, an enhanced Criminal Record Bureau (CRB) check must be completed to establish the suitability of all staff working with children. Currently, providers include the application for a CRB check for managers as part their registration documents which they send to Ofsted who then verify the application and forward to CRB. However, there is no statutory duty for Ofsted to make CRB applications on behalf of providers, and Ofsted intend to cease performing this part of the process (Ofsted are simplifying processes as part of a cost-savings exercise). We propose requiring group providers (providers other than childminders) to take responsibility for obtaining CRB checks on managers – consistent with providers' general responsibility for ensuring that their employees are suitable. Group providers will send CRB applications to another body for verification before forwarding to CRB. Group providers will continue to be required to notify Ofsted of any change in manager. Ofsted receive approximately 6,200 notifications per annum.

- Also, Ofsted currently undertake general suitability checks on new managers, by making contact with other agencies such as local authorities. This duplicates general suitability checks which employers should complete for any new staff members, and Ofsted will no longer be conducting these checks on managers. The change will mean that managers are treated in the same way as all staff. Currently, Ofsted do not make any suitability checks on staff other than managers; employers are currently doing this, and it is logical that they will also be clearly responsible for suitability checks on managers.
- We have consulted the key sector intermediary organisations with a stake in this process, and those organisations who have responded are in agreement with the change.

### **Evidence that quality matters, and that all providers should be regulated and inspected**

The evidence is clear that children's experiences in their early years strongly influence their outcomes in later life, across a range of areas from health and social behaviour to their employment and educational attainment. The most recent neuroscientific evidence highlights the particular importance of the first three years of a child's life. A strong start in the early years increases the probability of positive outcomes in later life; a weak foundation significantly increases the risk of later difficulties.<sup>1</sup> These findings are reflected in children's educational outcomes, which show a strong correlation between EYFS results and Key Stage 1 results.<sup>ii</sup> Children's experiences in their early years provide the essential foundations for both healthy development and their achievement through school.<sup>iii</sup> These links (explored further in DfE Research Report DfE-RR034) illustrate why it is important to ensure that children's early experiences equip them with the skills they need for life.

In the UK, the Effective Provision of Pre-School Education (EPPE) Project concluded that the benefits of a high quality pre-school setting largely persist through to the end of Key Stage (KS) 2.<sup>1</sup> It also found that disadvantaged children in particular benefit from good quality pre-school experiences, especially where they mix with children from different social backgrounds.<sup>2</sup> Although a quality early years experience is shown to be good for all children, it is also particularly helpful for children from poorer socio-economic backgrounds, specific ethnic minority groups and those for whom English is an additional language (EAL). As a recent review of research has shown,<sup>3</sup> there is evidence that early years interventions can narrow the gap between disadvantaged and other children in terms of their cognitive development. This is also the case for social and behavioural development.<sup>4</sup> Many children from disadvantaged backgrounds attend childminder settings.

The Early Years Foundations Stage was introduced to improve quality in early years provision. The 2007 consultation on the original EYFS revealed significant support for the framework. The government recognises that the EYFS has done much to raise standards. During summer 2011, the government conducted a full public consultation on the revised EYFS, and received strong confirmation that the EYFS should continue to be mandatory for all providers, and that therefore it should remain mandatory for all providers to register on the Early Years Register and to be inspected. As part of the consultation, we received strong support for the proposal to clarify that childminders must complete basic training before completing registration and beginning childcare.

### **Policy objectives**

#### **The proposed reforms are designed to achieve the following policy objectives:**

1. Clarity and consistency across relevant parts of the regulations and statutory framework, with regard to providers' responsibility for employing suitable people and completing appropriate training.
2. Ensuring that requirements are designed to keep children safe so that they grow in confidence and build secure relationships.

<sup>1</sup> Sylva, K., Melhuish, E. Sammons, P. Siraj-Blatchford, I. and Taggart, B. (2009) *Final report from the primary phase: pre-school, school, and family influences on children's development during Key Stage 2 (age 7–11)*, (Effective Pre-School and Primary Education 3–11 project (EPPE 3–11)), London: DCSF/ IOE

<sup>2</sup> Sylva, K., Melhuish, E. Sammons, P. Siraj-Blatchford, I. and Taggart, B. (2009) *Final report from the primary phase: pre-school, school, and family influences on children's development during Key Stage 2 (age 7–11)*, (Effective Pre-School and Primary Education 3–11 project (EPPE 3–11)), London: DCSF/ IOE

<sup>3</sup> Springate, I., Atkinson, M., Straw, S., Lamont, E. and Grayson, H. (2008) *Narrowing the gap in outcomes: early years (0–5 years)*, Slough: NFER

<sup>4</sup> Springate, I., Atkinson, M., Straw, S., Lamont, E. and Grayson, H. (2008) *Narrowing the gap in outcomes: early years (0–5 years)*, Slough: NFER

## Policy Options

### Childminder Training

Option 1 (proposed approach) – To require childminders to complete training before completing the registration process. Childminders may, currently, register and begin childcare before completing training. Currently, the EYFS requires childminders to complete training before registering 'wherever possible' and in most cases it is possible. This permits childminders to begin to practise before they have completed this training. The revised EYFS will omit this caveat, and will require training to be completed before registration; therefore, the Early Years Register regulations must be amended to continue to align with the EYFS.

The new requirement would remove the 'wherever possible' caveat and require training to be completed before registration is complete, in all cases. As shown by the consultation, this responds to parents' and providers' concerns that it is not in children's interest to be in the care of people who do not know the EYFS and therefore might not understand how to protect children from harm. The change does not introduce a new burden on childminders; they are already required to complete training, and we are proposing the removal of a caveat regarding the *timing* of the training.

**Option 2** – Leave requirements unchanged. This would leave the existing caveat in place, allowing childminders in some cases to begin caring for children before they have completed training. This would not be in children's or parents' interests, as completion of basic training in the EYFS is an important assurance about the suitability of childminders to take sole responsibility for the care of young children for significant lengths of time.

#### Costs and Benefits of Option 1

One-off monetised costs: nil.

Annual monetised costs: nil.

Non-monetised Costs:

A broad-brush sample suggests that 60-70% of childminders complete training before registration, with some variation by local authority. In the 30-40% of cases where childminders complete training after registration, there is a possibility that the effect of the proposed change will be to delay registration slightly while awaiting training. But this is a matter of coordinating specific timings during the start-up process, and the impact of the amended requirement should not be significant. We know that where childminders register before completing training, most will nevertheless complete training very soon after completing the registration process and before beginning to practise as childminders. So there should be no impact on childminders' ability to start operating. Childminders plan according to Ofsted's lead times for the registration process and the relevant local authorities' lead times for training. Moreover, training is not lengthy: on average, an introductory course is a single session lasting 2-3 hours. Local authorities, who determine training requirements, may also offer more detailed training – which is optional for childminders.

One-off monetised benefits: none.

Annual monetised benefits: none

Non-monetised benefits: children, parents and society will benefit from the assurance that all childminders will complete basic training in the EYFS before they begin to take sole responsibility for the care and safeguarding of young children for significant lengths of time. While some local authorities may want to revisit their delivery/commissioning of training to anticipate and meet local demand from prospective childminders, many will welcome the change as it will remove an apparent anomaly and ensure that expectations are

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aligned according to existing practice in many local authorities: many local authorities already require childminders to complete training before they begin to practise childcare.

## **CRB Checks**

**Option 1** (proposed approach) - To clarify that group providers are responsible for obtaining enhanced CRB checks to confirm that persons to be appointed as managers have no criminal records which would make them unsuitable to work with young children. This is consistent with group providers' general responsibility for ensuring that all people they employ are suitable. The EYR regulations currently require providers to send suitability applications to Ofsted who verify the application and forward it to CRB. Ofsted intend to cease performing this role – and in fact they have no legal duty to continue to do so. Verifying and forwarding the application can be done by any 'registered body'. The EYR regulations must therefore be amended to remove the specific reference to Ofsted.

**Option 2** – Leave the process unchanged. This would be unacceptable because Ofsted intend to cease performing the role of verifying and forwarding the application to CRB: if the EYR regulations were not updated and instead continued to require providers to send the application to Ofsted, the process would break down. The EYR regulations must therefore be amended to ensure that providers submit applications directly to CRB once those applications have been verified by a registered body.

## **Costs and benefits of Option 1**

One-off monetised costs: None

Annual monetised costs: £Nil pa

Non-monetised costs: There will be a very small additional administrative cost to providers when notifying Ofsted that a new manager has been appointed. Currently, providers make a single submission which notifies Ofsted that a new manager has been appointed, and which also fulfils the provider's duty to supply a CRB application form - Ofsted verify the application and then forward on to CRB. Under the new process, providers will send the CRB application form to another organisation – a 'registered body' – to verify the application and forward it to CRB. Providers will simply have to post the same information to a different address. Providers will notify Ofsted that a new manager has been appointed, by a simple email which only needs to state that a new manager has been appointed and need not contain details about the manager. The purpose of this information is to enable Ofsted to identify frequent changes of manager which might indicate increased risk and therefore trigger an earlier inspection. We have not monetised any notional cost for providers in making this simple notification, because it is an extremely small task – no specific paperwork will be necessary.

One-off monetised benefits: nil.

Annual monetised benefits: £0.041m pa

There will be a small administrative saving for providers who will no longer be required to supply Ofsted with detailed information for the general suitability check on new managers. This information, including previous employment history, is in addition to that which is supplied for a CRB check. Providers will no longer need to supply the additional information as it will be providers' responsibility to make suitability checks. We have assumed a time saving of 20 minutes of management time at £12.80 per hour, uplifted by 21% to reflect non-wage costs, for the 26,170 group providers registered on the EYR. We assume 8000 manager checks per year, based on information from Ofsted.

Non-monetised benefits: it is beneficial for regulations to be consistent about group providers' general responsibility for ensuring that all people they employ are suitable. The current requirement in the EYR regulations for providers to send CRB applications via Ofsted is unnecessary, and gives Ofsted responsibility for sending applications to CRB – which is unnecessary and bureaucratic. The simplification of the suitability check process will be welcomed by providers – they will benefit from the removal of Ofsted's extra suitability check, as well as from the associated removal of the requirement to provide to Ofsted detailed information about new managers.

## **Risks and assumptions**

Currently, some childminders take places on training courses but do not then practise as childminders. The number of these 'unproductive' training places might increase very slightly because more childminders could be completing training earlier in the pre-registration process – in some cases before they have made a firm commitment to practise as childminders. Such cases already exist, and it has not been possible to obtain estimated numbers, as local authorities do not collect the data

Based on information from Ofsted and the sector, there should be no delay to registration for childminders. This is a matter of coordinating specific timings during the start-up process, and the registration process allows sufficient time to allow childminders to complete basic training before registration is confirmed. So there should be no impact on childminders' ability to start operating. Childminders plan according to Ofsted's lead times and according to the relevant local authorities' lead times for training. LAs provide training either 'on demand' or on a school-termly basis, and feedback from the sector confirms that there are no cases of childminders experiencing delays. Ofsted lead times are 2-3 months, which allows adequate time for childminders to complete an introductory course - a single session lasting 2-3 hours (local authorities also offer more detailed training - which is optional for childminders).

There should be no increase in demand for training as a result of the change, and no overall increase in the time LAs spend in planning and organising training - as this is already delivered with the effect that most childminders complete the training before registration. However, some local authorities may want to revisit their delivery/commissioning of training to anticipate and meet local demand from prospective childminders.

There should be no increased risk as a result of the removal of Ofsted's suitability check for managers of group providers. The Ofsted check duplicates suitability checks made by group providers as responsible employers. The change to the process will reinforce providers' responsibility and remove an unnecessary duplication by Ofsted. The change will mean that managers are treated in the same way as all staff. Currently, Ofsted do not make any suitability checks on staff other than managers; employers are currently doing this, and it is logical that they will also be clearly responsible for suitability checks on managers.

## **Small Firm Impact Test**

We are applying for the moratorium for micro-businesses to be waived for the purposes of these regulations because early years providers, of whom a significant proportion are micro-businesses, are all in a position of sole responsibility for young children. The Early Years Register (EYR) is essential for protecting children from harm, as described above. The proposed changes to the EYR are essential amendments to existing requirements and processes, ensuring that the EYR remains aligned with the EYFS and with Ofsted practice, with minimal impact on providers. Moreover, the proposed changes to the EYR are cost-neutral.

## **Competition Assessment impact test**

The amended regulations will not directly limit the number or range of suppliers.  
The amended regulations will not indirectly limit the number or range of suppliers.  
The amended regulations will not limit the ability of suppliers to compete nor reduce suppliers' incentives to compete vigorously.

## **One-In-One-Out (OIOO)**

From the Childcare and Early Years Providers Survey 2010 (table 4.7), using a weighted average based on number of places, we infer that 20% of registered non-childminder providers are provided by the public sector and that 80% are provided by the private and voluntary sector. The monetized costs and benefits above relate to non-childminding providers, and we therefore attribute monetised costs and benefits proportionately to business at 80%. The policy is designed to reduce existing burdens with any costs due to the changes being minimal, and so it qualifies as an OUT for ONE-IN-ONE-OUT purposes.

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<sup>i</sup> HM Government (2010) *Maternity and Early Years, Making a good start to family life*, London: DfE/DH

<sup>ii</sup> DCSF (2008) *How strong is the relationship between Foundation Stage Profile (2005) and Key Stage 1 (2007)*, DEP2008-1634, Deposited in House of Commons Library

<sup>iii</sup> Dyson, A. Hertzman, C. Roberts, H. Tunstill, J. and Vaghri, Z. (2009) *Childhood development, education and health inequalities, Report of task group, Submission to the Marmot Review*