

EXPLANATORY MEMORANDUM TO
THE EDUCATION (PROVISION OF INFORMATION ABOUT YOUNG CHILDREN) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No.3436

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.

2. Description

The Education (Provision of Information About Young Children) (England) (Amendment) Regulations 2007 prescribe a further category of persons to whom the Secretary of State may provide individual pupil information or individual child information. They also provide for the inclusion of further information (referred to in this memorandum as a 'data item') in the Early Years Census, which collects information about children under five years of age in the care of independent, private and voluntary providers. The data item to be collected is the total number of hours for which a Local Authority is paying for nursery education for a child between 1st January and 31st March inclusive in the year in which the information is collected where the funding covers more than 38 weeks that is the entitlement for three- and four-year-olds under the Code of Practice on the Provision of Free Nursery Education Places for Three- and Four-Year-Olds.

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

None.

4. Legislative Background

4.1 Section 537A of the Education Act 1996 allows for such individual pupil information as may be prescribed in Regulations to be collected in respect of all pupils at maintained schools, and for this information to be provided to the Secretary of State and other prescribed persons. Section 537A also gives the Secretary of State the power to make regulations providing for information collected in this way to be exchanged with other prescribed persons. Individual pupil information is already collected in relation to pupils in schools under the Education (Information About Individual Pupils) (England) Regulations 2006, S.I. 2006/2601, which were made under section 537A. This information is generally passed by schools to local authorities and then to the Secretary of State, and in some cases directly to the Secretary of State.

4.2 Section 99 of the Childcare Act 2006 contains provisions similar to those in section 537A of the Education Act 1996 but relating to private, voluntary and independent nursery education providers. The Education (Provision of Information About Young Children) (England) Regulations 2007, S.I. 2007/712 ("the principal Regulations") were the first Regulations made under that section.

4.3 The Education (Provision of Information About Young Children) (England) (Amendment) Regulations 2007 adds a further data item to the Census, in order to collect the total number of hours for which the Local Authority is paying for the child between 1st January and 31st March inclusive, in those cases where the authority is funding nursery education for a child for a period covering than 38 weeks in the year.

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

7.1 Regulation 2(2) amends the principal Regulations to prescribe a further category of persons to whom the Secretary of State may provide any individual pupil information or individual child information. This will ensure that such information, after it has been disclosed for inclusion in a database established and operated by the Secretary of State under section 12 of the Children Act 2004, may be viewed by users of such a database.

7.2 Regulation 2(3): the Early Years Census supports the Government's Ten Year Childcare Strategy, "Choice for Parents, the Best Start for Children" by collecting the necessary data needed to ensure that free early years education of 3 and 4 year olds is being funded and delivered appropriately.

7.3 The Census will collect information on the number of hours per week that a child attends an early years setting. This enables authorities to offer sessions of different length without it impacting on their Dedicated Schools Grant (DSG) funding. However, where Local Authorities spread their funding entitlement over more than 38 weeks, this would not have been captured in the Early Years Census and they could lose DSG funding as a result.

7.4 An additional data item is, therefore, being introduced by the amendment in regulation 2(3) for the collection in January 2008, to ensure that Local Authorities are able to record such circumstances.

7.5 Before the data item was added, consultation took place with financial representatives of those Local Authorities that currently provide funded nursery education for more than 38 weeks. They fully supported the addition of the data item. Subsequently the proposal was raised with all local authorities at some of the regular conferences dedicated to the Early Years Census data collection, and the Department wrote to all Directors of Children's Services to inform them of the proposals. Guidance on this new item is being issued to Local Authorities, prior to the collection.

8. Impact

The prescription of a further category of persons by regulation 2(2) is to ensure that the Secretary of State may provide individual pupil information or individual child information to a database established and operated by him under section 12 of the Children Act 2004. The amendment itself will not require the provision of information by any other person or body, as the provision of information for inclusion in such a database is provided for by section 12(9) of the Children Act 2004.

The change being introduced by regulation 2(3) will have a minimal impact: while the data item is requested of all Local Authorities who fund nursery education, only those authorities which are using the flexibility to fund children for more than 38 weeks a year will need to respond. A partial regulatory impact assessment on the overall Early Years Census was prepared in the Autumn of 2006, and can be found at <http://www.dfes.gov.uk/consultations>.

9. Contact

Simon Grigor in the Data Services Group in DCSF, Tel 020 7925 3859 or email simon.grigor@dcsf.gsi.gov.uk can answer any queries regarding this instrument.