

**EXPLANATORY MEMORANDUM TO
THE QUALIFICATIONS AND CURRICULUM AUTHORITY (ADDITIONAL
FUNCTIONS) ORDER 2008**

2008 No. 1744

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

This Order, made under Section 23 of the Education Act 1997 (“the 1997 Act”) as amended by the Childcare Act 2006, confers functions on the Qualifications and Curriculum Authority (“QCA”) in relation to the learning and development requirements limb of the Early Years Foundation Stage (“EYFS”).

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

3.1 None

4. Legislative Background

4.1 The QCA was established by section 21 of the 1997 Act. Section 23(2) of that Act sets out the QCA’s functions in relation to the curriculum and assessment.

4.2 Section 39 of the Childcare Act 2006 puts the Secretary of State under a duty to promote the well-being of young children by specifying learning and development requirements (by order) and welfare requirements (by regulations). Together, the learning and development requirements and welfare requirements are to be known as the Early Years Foundation Stage (“EYFS”). The requirements are set out in the Statutory Framework for the Early Years Foundation Stage (published in May 2008 with ISBN reference number 978-184775-128-7), which has statutory force. Section 40 places a duty on early years providers to secure that their early years provision meets the learning and development requirements, and complies with the welfare requirements.

4.3 From September 2008, the EYFS will replace the Foundation Stage, as provided for in Part 6 of the Education Act 2002 (the Curriculum in England). Unlike the Foundation Stage, the EYFS will not be part of the National Curriculum.

4.4 Paragraph 2 of Schedule 1 of the Childcare Act amended section 23 of the 1997 Act, providing the Secretary of State with power to give the QCA (by

order) additional functions with respect to young children for whom early years provision is made in England. Accordingly, this Order gives the QCA those functions.

5. Territorial Extent and Application

5.1 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 The EYFS is a statutory framework for early learning and childcare from birth until the end of the academic year in which the child turns five. It brings together the existing frameworks for learning and care into a single, clear framework which removes the distinction between learning and care for young children. It will apply to maintained and independent schools and Ofsted registered childcare providers from 1st September 2008. It is a distinct phase, separate from the national curriculum.

7.2 The EYFS comprises welfare requirements and learning and development requirements. These are set out in the Statutory Framework for the Early Years Foundation Stage. Copies of this document can be obtained from DCSF Publications, PO Box 5050, Sherwood Park, Annesley, Nottingham NG15 0DJ (Tel 0845 60 222 60; email dcsf@prolog.uk.com; ref: 00267-2008BKT-EN.). It is also available at www.standards.dcsf.gov.uk/eyfs.

7.3 In order to ensure continuity and coherence within the EYFS and with later stages of education, the QCA's functions will relate to the whole of the birth to five age range covered by the EYFS. Its functions will relate to the learning and development requirements only. It would be beyond its remit as a curriculum body to have functions in relation to the welfare requirements.

7.4 The functions conferred on the QCA by the instrument are:

- to keep under review all aspects of the learning and development requirements;
- to advise the Secretary of State on matters related to the learning and development requirements referred to them, or that the QCA sees fit;
- to advise the Secretary of State on, and if so requested, to carry out programmes of research and development for purposes connected with the learning and development requirements;
- to publish and disseminate information relating to the learning and development requirements, for example, guidance on the completion of the "EYFS Profile" (the EYFS Profile is a way

- of summing up each child's development and learning achievements at the end of the EYFS, based on practitioners' ongoing observation and assessment);
- to make arrangements for the auditing of the quality of the assessment arrangements made in pursuance of the learning and development requirements.

7.5 These functions mirror, so far as is possible, the functions the QCA currently performs in relation to the Foundation Stage. The QCA requires these functions in order to ensure that the learning and development requirements in the EYFS remain appropriate and that assessments made from the Early Years Foundation Profile are robust.

Consultation

7.6 The Department has consulted the QCA in accordance with section 23 (2ZB) of the Education Act 1997. The QCA is content with the provisions in the Order. The Department has not consulted beyond the QCA because the Order has no direct impact on parents or early years practitioners. For the most part, the Order makes an amendment which is consequential on the introduction of the EYFS, which was consulted upon in accordance with the statutory consultation procedure provided for in section 45 of the Childcare Act 2006.

8. Impact

8.1 An impact assessment has not been produced for this instrument as no impact on business, charities or voluntary bodies is foreseen, and the impact on the public sector is minimal. Although the Order provides the QCA with a function, it does not set out specific requirements that the QCA would impose on early years practitioners, or parents.

8.2 A full Regulatory Impact Assessment for the EYFS was published in June 2007. It is available at:
http://www.opsi.gov.uk/si/si2007/em/uksiem_20071771_en.pdf (as an attachment to the Explanatory Memorandum for the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (S.I. 2007/1772) and the early Years Foundation Stage (Welfare Requirements) Regulations 2007 (S.I. 2007/1772)).

9. Contact

Sally Pickles at the Department for Children, Schools and Families email: sally.pickles@dczf.gsi.gov.uk can answer any queries regarding the instrument.