

**2008 No. 1953**

**CHILDREN AND YOUNG PERSONS, ENGLAND**

**The Early Years Foundation Stage (Welfare Requirements)  
(Amendment) Regulations 2008**

|                               |                           |
|-------------------------------|---------------------------|
| <i>Made</i> - - - -           | <i>17th July 2008</i>     |
| <i>Laid before Parliament</i> | <i>25th July 2008</i>     |
| <i>Coming into force</i> - -  | <i>1st September 2008</i> |

The Secretary of State for Children, Schools and Families makes the following regulations in exercise of the powers conferred by sections 39(1)(b), 43(3), 44(1) and (2), and 104(2) of the Childcare Act 2006(a).

In accordance with section 43(2), the Secretary of State has consulted Her Majesty's Chief Inspector of Education, Children's Services and Skills and such other persons as he considered appropriate.

**Citation and commencement**

1. These Regulations may be cited as the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2008 and come into force on 1st September 2008.

**Amendments to the Early Years Foundation Stage (Welfare Requirements) Regulations 2007**

2. The Early Years Foundation Stage (Welfare Requirements) Regulations 2007(b) are amended as follows.

3. In regulation 2 (interpretation)—

(a) for the definition of “the Document”, substitute—

““the Document” means the Document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 19th May 2008 with ISBN 978-1-84775-128-7;”;

(b) at the end, insert—

““instructor”, in relation to an independent school(c), means a person who provides education at the school which consists of instruction in any art or skill or in any subject or group of subjects in circumstances where—

(a) special qualifications or experience or both are required for such instruction, and

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(a) 2006 c.21.

(b) S.I. 2007/1771.

(c) See section 106 of the Childcare Act 2006 for the meaning of “independent school”.

- (b) the person or body of persons responsible for the management of the school is satisfied as to the qualifications or experience (or both) of the person providing education;

“overseas qualified teacher” means a person who has a qualification obtained as a result of successfully completing a programme of professional training for teachers in any country outside the United Kingdom which is recognised as such a programme of training by the competent authority in that country;

“the qualification requirement” means the requirement on page 31 of the Document which provides that “in registered settings other than childminding settings, all supervisors and managers must hold a full and relevant level 3 qualification (as defined by the Children’s Workforce Development Council (CWDC)) and half of all other staff must hold a full and relevant level 2 qualification (as defined by CWDC)”;

“the ratio requirements for childminders” means the requirements in section B of Appendix 2 on page 51 of the Document;

“the ratio requirements for early years providers other than childminders” means the requirements in section A of Appendix 2 on pages 49 to 51 of the Document;

“registered early years provider” means a person who is registered in the early years register under Chapter 2 of Part 3 of the Act.”.

4. In regulation 3 (specification of the welfare requirements), in paragraph (2), after “have effect” insert “, with the modifications specified in regulations 3A, 3B and 3C,”.

5. After regulation 3, insert—

**“Transitional arrangements for specified early years providers**

**3A.**—(1) Paragraphs (2) to (4) apply in the case of an early years provider who provides early years provision on domestic premises, where—

(a) immediately before 1st September 2008—

(i) the early years provider, or

(ii) in the case of an early years provider which is a domestic group provider, at least one person who is a partner in, or a director, secretary, other officer or member of the governing body of, the early years provider,

was registered under section 79F(1) of the Children Act 1989<sup>(a)</sup> as a child minder, and

(b) on 1st September 2008, the early years provider becomes registered under section 37(2) of the Act as an early years provider other than a childminder<sup>(b)</sup>.

(2) The provisions in Section 3 of the Document have effect in relation to an early years provider described in paragraph (1) with the modifications specified in paragraphs (3) and (4).

(3) The qualifications requirement, and any requirement in Section A of Appendix 2 to the Document for a level 2 or level 3 qualification, does not have effect until 1st March 2011.

(4) Until such time as the early years provider has met the qualifications requirement, and any requirement in Section A of Appendix 2 to the Document for a level 2 or level 3 qualification, the ratio requirements for childminders apply to that early years provider instead of the ratio requirements for early years providers other than childminders.

(5) In this regulation, “domestic group provider” means an early years provider who—

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(a) 1989 c.41.

(b) Section 96(5) of the Childcare Act 2006 provides that early years provision on domestic premises for reward is not early years childminding if at any time the number of persons providing the early years provision on the premises or assisting with the provision exceeds three.

- (a) provides early years provision on domestic premises,
- (b) is registered under section 37(2) of the Act as an early years provider other than a childminder, and
- (c) is a partnership, body corporate or unincorporated association.

### **Transitional arrangements for independent schools**

**3B.**—(1) The provisions in Section 3 of the Document have effect in relation to early years provision which is provided in an independent school with the modifications specified in paragraph (2).

(2) Until 1st September 2009—

- (a) the requirement in paragraph 9 in section A of Appendix 2 to the Document that “at least one other member of staff must hold a full and relevant level 3 qualification” does not apply, and
- (b) the requirements in paragraph 10 in section A of Appendix 2 to the Document that “at least one other member of staff must hold a full and relevant level 3 qualification (as defined by CWDC)” and that “at least half of all other staff must hold a full and relevant level 2 qualification (as defined by CWDC)” do not apply.

### **Further modifications for independent schools**

**3C.**—(1) The provisions in Section 3 of the Document have effect in relation to early years provision which is provided in an independent school with the modifications specified in paragraphs (2), (3) and (5).

(2) The requirements in paragraph 9 in Section A of Appendix 2 to the Document also apply where an instructor or an overseas qualified teacher is working directly with the children for whom the early years provision is provided.

(3) The requirements in paragraph 10 in Section A of Appendix 2 to the Document also apply where an instructor or an overseas qualified teacher is not working directly with the children for whom the early years provision is provided.

(4) Paragraph (5) applies where early years provision is provided in a class in which the majority of pupils will reach the age of 5 or over within the school year.

(5) In paragraph 9 in Section A of Appendix 2 to the Document—

- (a) the reference to “one member of staff for every 13 children” is to be read as a reference to “one member of staff for every 30 children”; and
- (b) the requirement that “at least one other member of staff must hold a full and relevant level 3 qualification (as defined by CWDC)” does not apply.”

**6.** In regulations 7(1), 8(1), 9(1) and (2), 10(1) and (4), and 11(1) and (2), in each case for the words “an early years provider” substitute “a registered early years provider”.

**7.** In regulation 8 (provision of information), at the end, insert—

“(3) Where the registered early years provider is required to notify the Chief Inspector of a change of person under paragraph 10(b), 11(a) or 12(a) or (b) of the Schedule to these Regulations, the notification must include the new person’s—

- (a) full name, and any former name or alias,
- (b) date of birth, and
- (c) home address.”.

**8.** In the Schedule (events to be notified to the Chief Inspector)—

- (a) in paragraph 5, before the word “injury” (in both places it appears) insert “serious”;
- (b) in paragraphs 8 and 9, in each case omit the words “or registered address”;

(c) after paragraph 11, insert—

“**12.**—(1) In the case of an early years provider (other than an early years childminder) which is a partnership, body corporate or unincorporated association—

- (a) any change of the person who is the nominated individual, and
- (b) where the early years provider’s sole or main purpose is the provision of childcare, any change of a person who is a partner in, or a director, secretary or other officer or member of the governing body of, the early years provider.

(2) For the purposes of paragraph (1)(a), “the nominated individual” has the meaning given in paragraph 9 of Schedule 2 to the Childcare (Early Years Register) Regulations 2008(a).”.

21st July 2008

*Beverley Hughes*  
Minister of State  
Department for Children, Schools and Families

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(a) S.I. 2008/974.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make amendments to the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 (S.I. 2007/1771) (“the 2007 Regulations”).

Regulation 3 inserts new definitions into regulation 2 of the 2007 Regulations. In particular, regulation 3(a) replaces the definition of “the Document” so that it refers to the version of the document entitled “Statutory Framework for the Early Years Foundation Stage” (“the EYFS document”) published by the Department for Children, Schools and Families on 19th May 2008 with ISBN 978-1-84775-128-7. Section 3 of this Document contains welfare requirements which are specified under section 39(1)(b) of the Childcare Act 2006 (“the 2006 Act”).

Copies of the EYFS 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](mailto:dcsf@prolog.uk.com); ref: 00267-2008BKT-EN.). It is also available at [www.standards.dcsf.gov.uk/eyfs](http://www.standards.dcsf.gov.uk/eyfs).

Regulation 5 inserts three new regulations into the 2007 Regulations which modify the effect of the welfare requirements contained in the EYFS document in specified cases.

New regulation 3A contains a transitional provision relating to providers who were previously registered as child minders under Part 10A of the Children Act 1989, but who, on 1st September 2008, are transferred to the early years register as providers of childcare other than childminding. This is as a result of section 96(5) of the 2006 Act which provides that, where more than three childminders or assistants provide early years provision on domestic premises at the same time, this is not early years childminding. The transitional provision gives a period of two and a half years for the staff of an early years provider to obtain the qualifications required by the EYFS document for early years providers other than childminders. It also provides that until those qualifications have been obtained, the early years provider must comply with child to adult ratio requirements for childminders, rather than those for other early years providers.

New regulations 3B and 3C modify the effect of certain of the welfare requirements as they apply to early years provision in independent schools. Regulation 3B contains a transitional provision so that, for a one year period from 1st September 2008, certain requirements about qualifications for staff in independent schools are disapplied.

New regulation 3C applies certain requirements about ratios and qualifications to members of staff who are providing instruction in certain subjects or skills, or who qualified as teachers overseas. It also modifies the ratio requirements for a class in which the majority of children will reach the age of 5 or older during the school year.

Regulation 6 amends a number of provisions in the 2007 Regulations so that they only apply to an early years provider who is registered in the early years register (and therefore not to schools which are exempt from registration as a result of section 34(2) of the 2006 Act).

Regulation 7 amends regulation 8 of the 2007 Regulations which requires early years providers to notify Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) of certain events. It sets out the detailed information that must be passed on to the Chief Inspector when a provider is notifying a change of certain specified persons.

Regulation 8 makes minor amendments to the Schedule to the 2007 Regulations. In particular, it adds to the events which an early years provider must notify to the Chief Inspector.

No impact assessment has been prepared for this instrument because no additional impact on business, charities, voluntary bodies or the public sector is foreseen. An impact assessment relating to the Early Years Foundation Stage was prepared, and subsequently updated for the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (S.I. 2008/1743), and is annexed to the Explanatory Memorandum which is available alongside that instrument on the OPSI website: <http://www.opsi.gov.uk>.

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STATUTORY INSTRUMENTS

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