

**EXPLANATORY MEMORANDUM TO
THE CHILDCARE (EARLY YEARS REGISTER) REGULATIONS 2008**

S.I. 2008 No. 974

THE CHILDCARE (GENERAL CHILDCARE REGISTER) REGULATIONS 2008

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**THE CHILDCARE (EARLY YEARS AND GENERAL CHILDCARE REGISTERS)
(COMMON PROVISION) REGULATIONS 2008**

S.I. 2008 No. 976

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**

2.1 This explanatory memorandum covers three statutory instruments made by the Secretary of State for Children, Schools and Families. These statutory instruments are made under Part 3 of the Childcare Act 2006 (“the 2006 Act”) and make provision concerning the registration of certain childcare providers in registers operated by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the Chief Inspector).

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

3.1 None

4. **Legislative Background**

4.1 At present, childminders and other providers of childcare for children under the age of 8 are regulated by Part 10A of the Children Act 1989 (“the 1989 Act”).

4.2 Part 3 of the 2006 Act replaces (for England) that regime. Chapters 2, 3 and 4 of Part 3 of the 2006 Act require the Chief Inspector to maintain two childcare registers: the Early Years Register (EYR) and the General Childcare Register (GCR). Childminders (excluding nannies) and other providers of childcare for children from the age of 0 to the 1st September following their 5th birthday must register in the EYR. The GCR is divided into two Parts. Childminders (excluding nannies) and other providers of childcare for children from the 1st September following their 5th birthday up to the age of 8 must register in Part A of the GCR. Childminders (including nannies) and other providers who are exempt from registration in the EYR or Part A, and those who care for children aged 8 and over, may voluntarily register in Part B of the GCR. The Childcare (Voluntary Registration) Regulations 2007 (S.I. 2007/730) (“the 2007 regulations”) already enable people to register in Part B of the GCR.

4.3 The Childcare (Early Years Register) Regulations 2008 make provision relating to registration in the EYR, including the requirements for registering and the information that must be included in an application for registration. The Childcare (General Childcare Register) Regulations 2008 make similar provision for registration in Part A and Part B of the GCR (and therefore replace the 2007 Regulations which will be revoked). They also make provision governing the activities of registered childcare providers.

4.4 The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 make provisions which are common to registration in both the EYR and the GCR. These include provisions about the Chief Inspector's powers to suspend registration and a right of appeal against suspension, provisions about disclosure of information about childcare providers and other persons, and provisions about the information which must be included in registration certificates.

5. Territorial Extent and Application

5.1 These instruments apply to England.

6. European Convention on Human Rights

6.1 As the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 The Government's ten year strategy for childcare, *Choice for parents, the best start for children*, set out a commitment to rationalise and simplify the complex and confusing arrangements that exist for the regulation of childcare. Currently, the arrangements for regulation differ between education and childcare, and providers who are not eligible to register under the 1989 Act seek quality assurance from over 50 different schemes. The arrangements are confusing and involve the application of different sets of standards.

7.2 The 2006 Act reforms the regulation and inspection regime for childcare. The new regulatory framework brings together the existing separate registration and inspection arrangements for childcare and nursery education for under 8s in a coherent way. The Chief Inspector will administer two registers as described in paragraph 4.2 above. The registration regimes are designed to ensure that children are cared for in a safe and secure environment and are engaged in worthwhile activities.

The EYR

7.3 The EYR applies to the youngest and most vulnerable group of children (those aged 0 to 5 years). It is essential that these children are protected and thorough safeguards provided in legislation. Therefore the requirements contained in the Childcare (Early Years Register) Regulations 2008 are set at a higher threshold than those for the GCR as they relate to the youngest age-group. The Regulations contain more requirements that the Chief Inspector must be satisfied about before granting registration, and these will require a pre-registration visit to be carried out by Ofsted. The Regulations also require more detailed information to be provided about the applicant and other people who may have contact with the children.

The GCR

7.4 The requirements of the Childcare (General Childcare Register) Regulations 2008 are less onerous in certain respects than those relating to the EYR to reflect that children who are under compulsory school age have different requirements from school-aged children. However, the Childcare (General Childcare Register) Regulations 2008 still ensure that providers and others are suitable to provide childcare.

7.5 In addition, the Regulations set out requirements for the childcare which is provided once an applicant is registered. These cover matters such as the safety of the premises and activities, the suitability of staff and other people on the premises, and the manner in which children are looked after. (For the EYR, these sorts of requirements are contained in the Early Years Foundation Stage which providers must comply with, rather than in the Regulations themselves.)

Common Provisions

7.6 The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 contain provisions which are common to the registration of providers in both the EYR and GCR. There is power to suspend a person's registration which is intended as a short-term measure whilst the Chief Inspector considers whether to cancel the registration permanently. This consideration might involve conducting an extensive investigation involving other agencies such as the police, or seeking other information from third parties. The power is exercisable only in relation to concerns about the risk of harm to a child, and the regulations place certain time limits and other safeguards on what the Chief Inspector can do. In addition, there is a right of appeal against suspension, which is currently to the Care Standards Tribunal but when the relevant provisions of the Tribunals, Courts and Enforcement Act 2007 are in force, it will be to the First-tier Tribunal established under that Act.

7.7 The regulations also contain provision which allows the Chief Inspector to refuse or cancel registration if unable to verify or check certain types of information which are relevant to whether the prescribed requirements for registration are met because consent to disclosure has not been given by the applicant or another person.

Consultation

7.8 The Government consulted publicly in summer 2005 on the proposed provision in the Childcare Bill which became the Childcare Act 2006 and set the legislative framework for the new registration arrangements. Local authorities, childcare provider organisations and parents were all involved in providing feedback, which informed the further development of proposals. A key concern raised during this consultation was the proposal to allow childcare providers caring for children aged six and seven to be registered voluntarily. In response, the Government amended its plans to ensure that providers who care for children in this age range will still have to be registered.

7.9 The Government consulted on the more detailed requirements and arrangements for the EYR and GCR during summer 2006. Responses were received from individuals, childcare providers, national childcare organisations and local authorities. In addition, the Department held meetings with national organisations and around 50 childcare providers. Local authorities also held meetings with childcare providers in their areas. The consultation showed that many respondents thought that the proposed arrangements

struck the right balance between providing reassurance that the provision will safeguard children and at the same time being proportionate and manageable.

7.10 Some respondents were concerned that the arrangements would not provide adequate assurance of quality. However, the arrangements will work in combination with other levers to drive up quality in the sector, such as extended schools support, new duties on local authorities to secure advice and guidance for providers and better information for parents.

7.11 Many respondents felt that, in relation to the GCR, the proposal to inspect 10% of providers would be insufficient. The GCR inspection cycle will be carried out proportionately on the basis of risks to children rather than automatically to a pre-determined cycle. Ofsted will at any time be able to request evidence that registered providers are meeting the requirements, and will carry out a number of inspections randomly. The prospect of unannounced spot checks, and an inspection as a result of any complaint, will provide a strong incentive for compliance. However the inspection arrangements will be kept under review and changes made if necessary. There were also concerns that a compliance driven process would not give sufficient assurance about children's well-being. However, the GCR will ensure that essential safeguards are in place around the suitability of adults caring for children and having regular contact with them. Providers will be required to demonstrate to the Chief Inspector that certain requirements, such as having a first aid certificate, and suitability to care for children (which will involve enhanced Criminal Records Bureau checks being carried out) have been met. Ofsted will ensure that appropriate systems are in place for checking documentation.

7.12 Further consultation on draft regulations was undertaken from April to June 2007, focusing on the detail of the SIs. The majority of respondents agreed with the proposed regulations. A total of 37 responses were received, including those from the main childcare organisations and 14 local authorities. The response to the consultation was generally positive with over 60% of respondents supporting the proposals.

Guidance

7.13 The Chief Inspector will produce material to support childcare providers who wish to be registered, and to help parents, local authorities, schools and others in understanding the requirements of these regulations.

8. Impact

Impact assessments for the Childcare (Early Years Register) Regulations 2008 and the Childcare (General Childcare Register) Regulations 2008 are attached to this memorandum. No impact assessment has been prepared for the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 because no impact on the private, charity or voluntary sector is foreseen and the costs to the public sector fall below £5 million.

9. Contact

Patrick Heisel at the Department for Children, Schools and Families Tel: 0207 273 5716 or e-mail: patrick.HEISEL@dcsf.gsi.gov.uk can answer any queries regarding the instrument.