

**EXPLANATORY MEMORANDUM TO
THE CHILDCARE (DISQUALIFICATION) REGULATIONS 2009**

2009 No. 1547

AND

**THE EARLY YEARS FOUNDATION STAGE (WELFARE REQUIREMENTS) AMENDMENT
REGULATIONS 2009**

2009 No. 1549

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. Purpose of the instruments

2.1 The Childcare (Disqualification) Regulations 2009 replace and consolidate, with modifications, the Childcare (Disqualification) Regulations 2007 (S.I. 2007/723) (“the 2007 Disqualification Regulations”) and the Childcare (Disqualification) (Amendment) Regulations 2008 (S.I. 2008/1740) (“the 2008 amending Regulations”). The Regulations remove automatic disqualification of a person whose registration has been refused or cancelled due to the non-payment of fees, reinstate the power of Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) to waive disqualification for people applying to join the voluntary part of the General Childcare Register and cite an additional power in the preamble. The Regulations also bring up to date references to new legislation in Guernsey and Northern Ireland.

2.2 The Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2009 amend the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 (“the 2007 Welfare Regulations”). The amendment inserts a requirement on registered early years providers to provide information to the Chief Inspector relating to disqualification from registration.

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

3.1 None.

4. Legislative Context

4.1 Section 75 of the Childcare Act 2006 (“the Act”) makes provision about disqualification from registration under Chapters 2, 3 and 4 of the Act. The 2007 Disqualification Regulations made under section 75 set out the orders, determinations, offences and other grounds which result in disqualification from registration. They also provided for the Chief Inspector to waive disqualification from registration in certain circumstances, and contained a requirement to provide information to the Chief Inspector about the details of any such orders, determinations, convictions or other grounds for disqualification from registration.

4.2 When the 2007 Disqualification Regulations were first made, they only applied to providers registered in Part B of the General Childcare Register (“GCR”) (which is a voluntary register for providers not required to be registered in the Early Years Register (“EYR”) or in Part A of the GCR). This is because Part B of the GCR was the first of the new registers under the 2006 Act to be operative. The EYR and Part A of the GCR became operative on 1st September 2008, and the 2007 Disqualification Regulations were amended by the 2008 amending Regulations so that they also applied to childcare providers registered in the EYR and in Part A of the GCR.

4.3 Section 76 of the Act describes the consequences of disqualification from registration as they apply to the EYR, Part A of the GCR and certain other early years and later years provision of childcare in schools. It does not apply to Part B of the GCR. The 2008 amending Regulations amended regulation 8 (waivers) of the 2007 Disqualification Regulations so that the Chief Inspector could waive disqualification for all or any of the purposes set out in section 76(2) of the Act. In so doing, it inadvertently removed the power for the Chief Inspector to waive disqualification for the purposes of registration under Part B of the GCR.

4.4 The 2008 amending Regulations also amended regulation 10 (duty of disclosure) which requires the registered person to provide information to the Chief Inspector when they or certain other persons are convicted of an offence, or some other ground arises which leads to disqualification. Regulation 10 was amended so that it also applied to providers registered in the EYR and Part A of the GCR. However, the 2008 amending Regulations did not cite in the preamble the necessary powers to support the inclusion of the requirement on providers registered in the EYR or Part A of the GCR to provide information to the Chief Inspector about events leading to disqualification.

4.5 As a result of these omissions, and because other amendments are required to the 2007 Disqualification Regulations, the Department is revoking those Regulations and the 2008 amending regulations, and is replacing them with one new, consolidated, set of Regulations. The other changes being made relate to removing the refusal or cancellation of registration due to non-payment of certain fees as a grounds for disqualification, and updating references to legislation in Northern Ireland and Guernsey.

4.6 Section 39 of the Act requires welfare requirements to be specified as part of the Early Years Foundation Stage. Section 43 sets out the matters that may be dealt with by welfare regulations, which include the suitability of persons to care for or be in regular contact with children, and the provision of information. The 2007 Welfare Regulations therefore are the appropriate place for a requirement on providers registered in the early years register to provide information to the Chief Inspector in relation to disqualification, and those Regulations are therefore amended to include this requirement.

5. Territorial Extent and Application

5.1 These instruments both apply to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The 2007 Disqualification Regulations made under the Act were based on the previous disqualification regulations made under the Children Act 1989; the Day Care and Child Minding (Disqualification) (England) Regulations 2005 (S.I. 2005/2296). The regulations specifically define the categories of people who are disqualified from registration as childcare providers. They also provide for the Chief Inspector to waive disqualification in certain circumstances.

7.2 The 2007 Regulations provided for automatic disqualification from registration for providers who had been refused registration or had their registration cancelled – the most common reason being the non-payment of registration fees. As a result, many potential providers are therefore disqualified from re-registering, even though there are no concerns regarding their suitability to work with children.

7.3 The Chief Inspector is able to grant a waiver in these circumstances, however the process is administratively burdensome and time consuming for both providers and the Chief Inspector, as an application has to be made for each case which then requires the personal approval of the Chief Inspector.

7.4 These Regulations will remove the automatic disqualification from registration for providers where the sole reason for refusal or cancellation of registration is the non-payment of fees prescribed under Part 3 of the Act.

7.5 It should be noted that the Chief Inspector will retain discretion to refuse or cancel a registration if a provider continually refuses to pay the required registration fees, and that all other categories of automatic disqualification from registration remain.

7.6 The 2008 amending Regulations removed the power for the Chief Inspector to waive disqualification for people applying to Part B of the GCR. These Regulations reinstate this power which will bring the Chief Inspector's power to waive disqualification from registration for persons applying to that register into line with its existing powers to waive disqualification from the compulsory registers (EYR & Part A of the GCR) where applicants are considered suitable.

7.7 The new Regulations also cite section 59 of the Act in the preamble to ensure that the Regulations place a duty on providers registered in Part A of the GCR (those who provide later years childcare for children under 8) to provide information to the Chief Inspector relating to disqualification. As the Chief Inspector is required to cancel the registration of a person who becomes disqualified, this requirement to disclose information supports the Chief Inspector in carrying out this function.

7.8 In order to ensure that the same requirement applies to providers registered in the EYR, the 2007 Welfare Regulations are amended to impose this duty to provide information to the Chief Inspector on those providers.

8. Consultation outcome

8.1 The policy underpinning the 2007 Disqualification Regulations was not consulted on because it replicated arrangements for disqualification, including waivers and the requirement to disclose information to the Chief Inspector which applied to childcare providers under the previous legislation (Part 10A of the Children Act 1989, which the provisions in Part 3 of the Act replaced). These arrangements were consulted on from 13 October 2006 – 2nd January 2007. Insofar as these consolidating Regulations do not reflect a change in policy, the Department has not consulted on them further.

8.2 A consultation (on reinstating the power to waive disqualification for those applying to Part B of the GCR, and removing automatic disqualification from registration where the sole reason for such disqualification relates to non-payment of fees) was undertaken with the Devolved Administrations and policy colleagues in other British Isles Jurisdictions; 5 key stakeholder organisations: (the National Childminding Association, the National Daycare Nurseries Association, the Pre-School Learning Alliance, 4Children and the Daycare Trust); the Ministry of Defence and the Chief Inspector. The responses to the consultation unanimously supported the proposals.

8.3 There is a requirement in sections 43, 59 and 67 of the Act on the Secretary of State to consult the Chief Inspector, and such other persons as he considers appropriate before making or amending regulations made under those sections. In accordance with this requirement, the Secretary of State has consulted the Chief Inspector on the inclusion in the new Disqualification Regulations and in the 2007 Welfare Regulations of the requirement to provide information about disqualification. However, it was not considered necessary to consult other persons as there is no change to the existing policy position and therefore no change to practice for childcare providers.

9. Guidance

9.1 The Chief Inspector will communicate the arrangements to provider organisations.

10. Impact

10.1 No Impact Assessment has been prepared because there is no additional impact on any part of the private and voluntary sector and the costs to the public sector fall below £5 million. These regulations ensure continuity with current requirements and update legislative references.

11. Regulating small business

11.1 The legislation applies to small business. The proposed changes would remove some of the administrative burdens imposed on potential childcare providers by removing the need to apply for a waiver from disqualification on re-registration if a previous registration has been cancelled for failing to pay fees to the Chief Inspector. The amendment also improves their position in allowing them to join the voluntary part (Part B) of the GCR if they are disqualified from Part A of that register, or the EYR.

12. Monitoring and review

12.1 The Department for Children, Schools and Families will continue to monitor and review the scope of these Regulations. The Department will also continue to monitor and make the necessary amendments to references to legislation from other jurisdictions where they apply to the Schedules of these Regulations.

13. Contact

Ian Polin at the Department for Children, Schools and Families Tel: 020 7783 8148 or email: ian.polin@dcsf.gsi.gov.uk can answer any queries regarding the instrument.