

**EXPLANATORY MEMORANDUM TO  
THE CHILDCARE (GENERAL CHIDCARE REGISTER)  
(AMENDMENT) REGULATIONS 2012**

**2012 No. 1699**

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
  - 2.1 These Regulations amend the current regulations to introduce:
    - a requirement that childcare providers obtain an enhanced criminal record certificate in respect of a manager of a childcare setting;
    - a requirement that childcare providers notify Ofsted when a new manager of a setting has been appointed;
    - the circumstances in which a childminder can leave children with a childminder's assistant;
    - a requirement for childminders to have completed approved training before they can register as a childminder.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
4. **Legislative Context**
  - 4.1 This instrument amends the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975) ("the 2008 Regulations") which set out the registration requirements and ongoing requirements to be met by childcare providers who apply to register on the General Childcare Register ("GCR").
  - 4.2 The changes in these Regulations reflect changes made by the Childcare (Early Years Register) (Amendment) Regulations 2012 (S.I. 2012/939) and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938).
5. **Territorial Extent and Application**
  - 5.1 This instrument applies to England.
6. **European Convention on Human Rights**
  - 6.1 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 reasons for these changes are twofold. Firstly, following a review of its internal processes, Ofsted proposes to stop carrying out certain activities. Secondly, following the recommendations in the summer of 2011 of the Tickell review, some changes are being made to the Early Years Foundation Stage ("EYFS"), one of which needs to be mirrored in the GCR. These

changes will ensure that the 70,000 providers who are on both the Early Years Register (EYR) and the GCR are not required to fulfil conflicting requirements. The Tickell review was an independent review led by Dame Clare Tickell in 2010-11. The EYFS sets the standards for the provision of care and education for children between birth and the academic year in which they turn five.

- 7.2 The 2008 Regulations require providers to supply Ofsted with information relating to managers. Ofsted use this information to carry out enhanced Criminal Records Bureau (“CRB”) checks in respect of the managers although the 2008 Regulations did not expressly state that Ofsted should perform the check. In future Ofsted will no longer perform the CRB check on managers and will therefore no longer require the same level of information relating to managers. In order to continue to ensure children’s safety, regulations 5 and 7 of these Regulations amend the 2008 Regulations to require childcare providers to obtain the enhanced CRB certificate in respect of a manager of a setting, in the same way that they already obtain CRB certificates in respect of other staff in the setting.
- 7.3 Providers will need to notify Ofsted where there has been a change in manager, but will not need to supply any additional information about the manager to Ofsted. Ofsted will continue to take into account the level of turnover in managers as one of the factors in deciding when it is appropriate to inspect a setting. It is not considered that the new requirements will increase burdens on providers overall since providers are currently required to collect the necessary information in order to supply it to Ofsted. Our impact assessment shows a small net saving to business.
- 7.4 Currently, Ofsted would need to grant permission on an individual basis, by way of registration conditions, if a childminder wished to leave their home for short periods of time whilst leaving children in the care of an unregistered assistant (for instance a childminder might wish to leave younger children at home whilst collecting older children from school). From September 2012, Ofsted will stop issuing routine registration conditions. As an alternative, these Regulations amend the 2008 Regulations to set out the circumstances in which it will be permissible for a childminder to leave children with a childminder’s assistant. Regulation 3 defines “childminder’s assistant”. Regulations 6 and 8 set a time limit of two hours per day as the maximum time an assistant can provide childcare in the childminder’s absence; and require parental consent. (Two hours per day is the maximum level that a person can look after children without registering as a childminder in their own right).
- 7.5 Under the 2008 Regulations, childminders have six months from the point of registration to complete approved training although they can start looking after children as soon as they are registered. The training is provided by local authorities and is intended to help childminders to understand the legal requirements relating to childminding. It also covers topics such as understanding the implications of looking after other people’s children and how to run a micro-business (one with fewer than 10 employees). The Department considers that childminders should understand these issues before they start looking after children and so regulation 4 of these Regulations amends the 2008 Regulations to ensure that childminders complete the training before registration. The same requirement is being made of childminders who register on the EYR, ensuring consistency between the two registers.

## **8. Consultation outcome**

- 8.1 The Minister of State wrote formally to the Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") on 12 January 2012 to seek his views and the Chief Inspector has given his support in principle to the proposed amendments.
- 8.2 An informal consultation via email on changes relating to checking managers and on childminder assistants has been carried out with stakeholders representing provider organisations: National Childminding Association (NCMA) representing childminders; Pre-School Learning Alliance (PLA) which represents providers caring for 3-5 year olds; 4Children which represents interests of all children from birth to 19 years old; National Day Nurseries Association (NDNA); Day Care Trust a national charity that provides information for parents, childcare providers, employers, trade unions and local authorities. 4Children indicated that they thought the proposals were sensible and PLA were content with the proposals. NDNA welcomed most of the proposals, but had reservations with regard to consistency between the proposal to allow childminders to leave children with an assistant and the regulations regarding staff deployment for nurseries, which require a minimum of two people to be present at all times. They felt group providers would have concerns that children should never be left with an assistant. However, since childminders already routinely leave children with assistants (with permission from Ofsted), and since all childminder assistants will be CRB checked, the Department does not consider that this objection should override the proposal. NCMA were supportive of the proposals and were of the view that providing information up front on childminder assistants is a fair approach. The NCMA would welcome even more training before registration.
- 8.3 As part of the consultation on the revised EYFS, there was widespread consultation on the proposed requirement that childminders should complete training in advance of registration. This question received an overwhelmingly positive response. Over three quarters of respondents to the online consultation agreed that childminders should be trained fully before looking after children. Of the childminders who responded, 72% supported the proposal.

## **9. Guidance**

- 9.1 The Chief Inspector will communicate the changes, all of which are in line with the revised EYFS, to providers who will be affected by them. The EYFS Statutory Framework, published on 27 March 2012, can be found online at < <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs> >

## **10. Impact**

- 10.1 An impact assessment is to be published alongside this Explanatory Memorandum at [www.legislation.gov.uk](http://www.legislation.gov.uk)

## **11. Regulating small business**

- 11.1 The legislation applies to small businesses.

## **12. Monitoring & review**

- 12.1 The effect of the amendments will be monitored on a continuous basis by the Department for Education as part of a regular contact between policy officials and sector representatives. In addition, it is anticipated that in September 2016, there will be a broad review of all the regulatory changes made here and in the EYFS.

## **13. Contact**

- 13.1 Mr Richard Green at the Department for Education can answer any queries regarding the instrument. His contact details are: Tel: 0247 666 0076  
Email: [richard.green@education.gsi.gov.uk](mailto:richard.green@education.gsi.gov.uk)