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STATUTORY INSTRUMENTS

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**2012 No. 938**

**CHILDREN AND YOUNG PERSONS, ENGLAND**

The Early Years Foundation Stage  
(Welfare Requirements) Regulations 2012

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| <i>Made</i>                   | - - - - | <i>26th March 2012</i>    |
| <i>Laid before Parliament</i> |         | <i>27th March 2012</i>    |
| <i>Coming into force</i>      | - -     | <i>1st September 2012</i> |

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 39(1)(b), 43(1) and (3) and 44(1) to (4) of the Childcare Act 2006(1).

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

**Citation and commencement**

1. These Regulations may be cited as the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 and come into force on 1st September 2012.

**Interpretation**

2. In these Regulations—

“the Act” means the Childcare Act 2006;

“the Document” means the Document entitled “Statutory Framework for the Early Years Foundation Stage” published by the Secretary of State on 27th March 2012 on the website of the Department for Education;

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

**Specification of the welfare requirements**

3.—(1) Regulations 7, 8 and 9 specify welfare requirements under section 39(1)(b) of the Act.

(2) It is directed that the provisions in Section 3 of the Document have effect, for the purposes of specifying the welfare requirements under section 39(1)(b) of the Act.

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(1) 2006 c. 21. Section 44(1) was amended by paragraph 41 of Schedule 12 to the Apprenticeships, Skills, Children and learning Act 2009 (c. 22). See section 106 of the Childcare Act 2006 for the definition of “prescribed” and “regulations”.

(3) Early years providers to whom section 40 of the Act<sup>(2)</sup> applies must have regard to the matters in Section 3 of the Document in securing that the early years provision they provide complies with the welfare requirements.

#### **Requirement on the Chief Inspector**

4. The Chief Inspector must have regard to the welfare requirements specified in regulation 3 and the matters in Section 3 of the Document in exercising functions under Part 3 of the Act.

#### **Matters to be considered by the Chief Inspector**

5. Any allegation that an early years provider has—
- (a) failed to meet the welfare requirements; or
  - (b) failed to have regard to the matters in Section 3 of the Document

may be taken into account by the Chief Inspector in the exercise of functions under Part 3 of the Act.

#### **Proceedings under Part 3 of the Act**

6. Any allegation that an early years provider has—
- (a) failed to meet the welfare requirements; or
  - (b) failed to have regard to the matters in Section 3 of the Document

may be taken into account in any proceedings under Part 3 of the Act.

#### **Welfare of children: prohibition on corporal punishment**

7.—(1) A registered early years provider must not use corporal punishment on a child for whom early years provision is provided and, so far as is reasonably practicable, must ensure that corporal punishment is not used on any such child by—

- (a) any person who cares for, or is in regular contact with, children; or
- (b) any person living or working on the premises on which the early years provision is provided.

(2) A person will not be taken to have used corporal punishment for the purposes of paragraph (1) if the action was taken for reasons that include averting an immediate danger of personal injury to, or an immediate danger of death of, any person including the child.

(3) For the purposes of paragraphs (1) and (2) above, “corporal punishment” means anything done for the purposes of punishing the child (whether or not there are other reasons for doing it) which, absent any justification, would constitute battery.

#### **Provision of information**

8.—(1) A registered early years provider must notify the Chief Inspector of the occurrence of any of the events set out in the Schedule to these Regulations and must at the same time provide the Chief Inspector with the information specified in that Schedule in respect of that event.

(2) The notification and information referred to in paragraph (1) must be provided to the Chief Inspector—

- (a) where it is reasonably practicable to do so, in advance of the event occurring; and

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(2) Section 40 of the Act imposes a duty on early years providers to comply with the welfare requirements in addition to meeting the learning and development requirements.

- (b) in all other cases as soon as reasonably practicable, but in any event within 14 days beginning with the date that the event occurred.

(3) Where the registered early years provider is required to notify the Chief Inspector of a change of person under paragraphs 11(a) or 12(a) or (b) of the Schedule, 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.

### **Provision of information relating to disqualification**

**9.**—(1) A registered early years provider must provide the following information to the Chief Inspector—

- (a) details of any order, determination, conviction or other ground for disqualification from registration made or applying in relation to a person listed in paragraph (2) which results in that person being disqualified from registration under regulations made under section 75 of the Act (disqualification from registration);
- (b) the date when the order, determination or conviction was made or when any other ground for disqualification from registration arose;
- (c) the body or court by which the order, determination or conviction was made and the sentence, if any, imposed;
- (d) in relation to an order or conviction, a certified copy of the relevant order or court order.

(2) The persons in respect of whom the information referred to in paragraph (1) must be provided are—

- (a) the registered early years provider; and
- (b) any person who lives in the same household as the registered early years provider or who is employed in that household.

(3) The information referred to in paragraph (1) must be provided to the Chief Inspector as soon as reasonably practicable, but in any event within 14 days beginning with the date on which the registered early years provider became aware of that information or ought reasonably to have become aware of it if they had made reasonable enquiries.

### **Failure to comply with welfare requirements notice**

**10.**—(1) Where the Chief Inspector considers that a registered early years provider to whom section 40 applies has failed or is failing to comply with the welfare requirements the Chief Inspector may give a notice to the registered early years provider specifying—

- (a) in what respect the registered early years provider has failed or is failing to comply with those requirements; and
- (b) where appropriate—
  - (i) what action the registered early years provider should take to comply; and
  - (ii) the period within which the registered early years provider should take that action, such period to begin with the date of the notice.

(2) The registered early years provider must comply with the terms of the notice within the period specified in the notice.

(3) A notice under this regulation must be given in accordance with regulation 11.

### Service of the welfare requirements notice

- 11.**—(1) A notice may be given to a registered early years provider by the Chief Inspector—
- (a) by delivering it to the provider,
  - (b) by sending it by post,
  - (c) subject to paragraph (2), by transmitting it electronically.
- (2) If the notice is transmitted electronically, it is to be treated as given only if the following requirements are met—
- (a) the person upon whom the notice is required or authorised to be given must have indicated to the Chief Inspector a willingness to receive notices transmitted by electronic means and must have provided an address suitable for that purpose; and
  - (b) the notice must be sent to the address provided by the person.
- (3) An indication given for the purposes of paragraph (2) must be given for the purpose of the service of notices under this regulation.
- (4) For the purposes of section 7 of the Interpretation Act 1978 (references to service by post) a notice under this regulation is to be treated as properly addressed if it is addressed to the registered early years provider at the address notified to the Chief Inspector as the address to which correspondence to the registered early years provider should be sent.

### Offence

- 12.**—(1) A registered early years provider who, without reasonable excuse, fails to comply with the requirements of regulation 7(1), 8(1), 8(2) or 10(2) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Proceedings under this regulation may only be taken—
- (a) by the Chief Inspector, and
  - (b) after the Chief Inspector has allowed a period not exceeding one month, beginning with the date the Chief Inspector notified the registered early years provider of the decision to take proceedings, for the registered early years provider to make representations.

### Revocations

- 13.** The following regulations are revoked—
- The Early Years Foundation Stage (Welfare Requirements) Regulations 2007<sup>(3)</sup>;  
The Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2008<sup>(4)</sup>;  
The Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2009<sup>(5)</sup>.

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(3) [S.I. 2007/1771](#).  
(4) [S.I. 2008/1953](#).  
(5) [S.I. 2009/1549](#).

26th March 2012

*Sarah Teather*  
Minister of State  
Department for Education

## SCHEDULE

Regulation 8

### Events to be notified to the Chief Inspector

1. Any change to the address of the premises on which childcare is provided.
2. Particulars of any change to the premises on which childcare is provided that may affect the space available to children and the quality of childcare available to them.
3. Particulars of any proposal to change the hours during which childcare is to be provided which will entail the provision of overnight childcare.
4. Particulars of any allegation of serious harm to or abuse of a child committed by any person living, working or caring for children at the premises on which childcare is provided (whether that allegation relates to harm or abuse committed on those premises or elsewhere), and any other abuse which is alleged to have taken place on those premises, and of the action taken in respect of the allegation.
5. Particulars of any serious accident, serious illness, serious injury to, or death of, any child whilst in the care of the early years provider, and of the action taken in respect of the serious accident, serious illness, serious injury, or death.
6. Particulars of any incident of food poisoning affecting two or more children cared for on the premises on which childcare is provided.
7. Particulars of any other significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises on which childcare is provided to look after children.
8. Where childcare is provided by a body corporate, any change in the name or registered number of the company.
9. Where childcare is provided by a registered charity, any change in the name or registration number of the charity.
10. In the case of an early years provider who is not an early years childminder—
  - (a) any change in the name or address of the provider;
  - (b) any change of the person who is managing the early years provision.
11. In the case of an early years childminder—
  - (a) any change of the persons of 16 years or older living or working on the premises on which childcare is provided (providing that persons are not to be treated as working on the premises for the purpose of this paragraph if none of their work is done in the part of the premises in which children are cared for or if they do not work on the premises at times when children are there);
  - (b) any change in the name or address of the childminder.
- 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 sub-paragraph (1)(a), “the nominated individual” has the meaning given in paragraph 9 of Schedule 2 to the Childcare (Early Years Register) Regulations 2008(6).

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## EXPLANATORY NOTE

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

These Regulations, made under the Childcare Act 2006 (“the Act”), specify the welfare requirements that early years providers (“providers”) must meet. Together with the “learning and development requirements” specified under section 39(1)(a) of the Act, these form the “Early Years Foundation Stage”.

The “Statutory Framework for the Early Years Foundation Stage”, published by the Secretary of State for Education on 27th March 2012 is given the force of law. Copies of the document can be found on the website of the Department for Education at <https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012>

Regulations 3, 7, 8 and 9 specify welfare requirements. These include a prohibition on corporal punishment by providers to children in their care (regulation 7), a list of events the occurrence of which must be notified to the Chief Inspector (regulation 8 and the Schedule) and a requirement that a provider must give the Chief Inspector information about matters leading to disqualification from registration as a childcare provider under section 75 of the Act.

Regulations 10 and 11 set out the procedure to be followed by the Chief Inspector where a provider has failed or is failing to comply with the welfare requirements.

Regulation 12 makes it an offence if a provider fails to comply with the requirements set out in regulations 7, 8 and 10(2).

Regulation 13 contains revocations.

An impact assessment has been prepared for these Regulations and can be found at <http://www.ialibrary.bis.gov.uk/>