

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (SUPPLY AND DISCLOSURE OF INFORMATION)
(AMENDMENT) (ENGLAND) REGULATIONS 2015

2015 No. 357

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 This instrument amends the Childcare (Supply and Disclosure of Information) (England) Regulations 2007 by prescribing additional information that Her Majesty's Chief Inspector of Education, Children's Services and Skills may, or in certain circumstances must, make available to assist parents or prospective parents in choosing childcare providers.

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

3.1 None

4. Legislative Context

4.1 Section 84(1) of the Childcare Act 2006 ("the Act") enables the Secretary of State to make regulations requiring Her Majesty's Chief Inspector of Education, Children's Services and Skills (the "Chief Inspector") to make information available (prescribed in regulations) for the purposes of assisting parents or prospective parents in choosing an early years provider or for protecting children from harm or neglect. The information may be made available in such manner and to such persons as the Chief Inspector considers appropriate (section 84(2)). Section 84(3) of the Act allows regulations to require the Chief Inspector to provide prescribed information to prescribed persons. This instrument amends the Childcare (Supply & Disclosure of Information) (England) Regulations 2007 (SI 2007/722) so as to prescribe additional information for both purposes.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

Early years providers (who provide childcare for children from birth to the period ending 31st August after the child turns 5) and later years providers (who provide childcare for children from 5-8) are required, under the Act, to be registered on registers maintained by the Chief Inspector, unless the provider is registered with a childminder agency, or the provider benefits from an exemption from registration. The Chief Inspector inspects both early and later years providers and publishes an inspection report when an inspection has been carried out.

The current regulations allow the Chief Inspector to disclose information about registered providers, including the date of registration, the type of provision and any details of complaint, concerns and any compliance action.

This information is an important resource for parents looking for childcare in their area, but under the current arrangements it is possible for providers who have been registered in respect of premises in the past, to become de-registered and to register again as a new business. This effectively hides the earlier information unless the registration details of the earlier business(es) are known.

Unless the separate registration details are linked parents cannot see if a provider is registered in respect of more than one premises at the same time, or whether that provider has had their registration cancelled by the Chief Inspector or at the provider's own request. This cancellation could be for a number of reasons. For instance a family member of the original provider may subsequently become the registered provider of the same premises. This could be the result of a planned business succession in a family run nursery but it could also be due to compliance issues with the original provider, who may still retain involvement behind the scenes. In either case this background information is of interest to parents and prospective parents seeking childcare. The benefit of linking historical provider information will mean that the information about a registered provider with complaints and compliance issues will not be hidden. Under the current arrangements it is possible for providers to manipulate the registration process to hide a bad reputation, but equally a provider with a good reputation will also lose it when a new person takes over.

As a result of the amendments in these regulations this historical information will be explicitly made available to parents for up to five years on the website, in line with Ofsted's current practice. It is technically available to parents already but only if they have some prior knowledge and can identify each of the businesses in question beforehand. This amendment is designed to enable parents to trace information that they may not otherwise realise is of relevance to them.

Providers' interests are protected in that a cancelled registration (regardless if that provider re-registers or not) will not remain on Ofsted's website indefinitely. Currently

Ofsted retain information on de-registered providers for no more than five years and if a provider with a cancelled registration re-registers after five years, the earlier information will no longer be available on the website.

This regulatory change will not be an additional burden for providers. It will allow good providers to retain their good reputation when they must change registration for planned business purpose.

8. Consultation outcome

8.1 The initial driver for this amendment came from a high profile case and a media campaign in 2013 that exposed the potential for unscrupulous providers to manipulate the registration system. This received substantial support from parents. Ofsted also strongly supported the campaign and approached the Department for Education to help facilitate the change. We have consulted extensively with Ofsted on the practicalities and Ofsted has in turn consulted the providers and their representative bodies including their Early Years National Consultative Forum last summer on the proposed regulatory changes. The consultative forum is made up of provider organisations, academics, schools and private, voluntary and independent childcare providers. Ofsted has also consulted extensively on this matter through its “Big Conversation” debate forum. Taken together these discussions have ensured the regulations have taken account of the practicalities as well as the principles of getting the information to the people who need to see it in the most straightforward and useful way at the right time.

9. Guidance

9.1 The information on Ofsted’s website: www.gov.uk/government/organisations/ofsted provides access to historical information on an early years’ provision for parents/prospective parents.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as no or no significant impact on the private or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 The amendment to legislation does not impose an administrative burden on small business in that they are not required to provide additional information. The impact is that the customer will have fuller information in deciding which provider of childcare to choose.

12. Monitoring & review

12.1 The Chief Inspector will keep the operation of the new policy under review and will inform the Department of any issues as they arise.

13. Contact

Bev Grant at the Department for Education Tel: 0207 783 8151 or email:
bev.grant@education.gsi.gov.uk can answer any queries regarding the instrument.