

EXPLANATORY MEMORANDUM TO

THE EARLY YEARS FOUNDATION STAGE (LEARNING AND DEVELOPMENT REQUIREMENTS) (CORONAVIRUS) (AMENDMENT) ORDER 2021

2021 No. 234

1. Introduction

- 1.1 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 enables the Secretary of State for Education to temporarily modify the requirement in the Statutory Framework for the Early Years Foundation Stage (EYFS)¹ for early years providers in England to complete the Early Years Foundation Stage Profile (EYFSP) in the academic year 2020/21.
- 2.2 It will not be a statutory requirement for early years providers to complete the EYFSP but providers are required to use their best endeavours to complete it and to provide the information to year 1 teachers and to parents if they are able to. Providers who are able to complete the EYFSP in 2020/21 will not be subject to statutory moderation by the local authority and the requirement to submit data to the local authority has been removed.
- 2.3 This change aims to reduce pressure on teachers and early years practitioners during the outbreak of Coronavirus (COVID-19) disease in England and is in line with temporary changes made for other statutory primary assessments in the academic year 2020/21. However, it recognises that the EYFSP is a valued teacher-observed assessment and tool in supporting children's development and the transition from reception to year 1. It is for that reason we are requiring teachers and early years practitioners to use their best endeavours to still complete the EYFSP for children in the summer term 2020/21 if circumstances allow.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure, there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.

¹ The Document can be found at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 The Secretary of State has a duty under section 39 of the Childcare 2006 Act (“the 2006 Act”) to promote the well-being of young children by specifying learning and development requirements (by Order) and welfare requirements (by Regulations). The learning and development requirements and the welfare requirements are together known as the Early Years Foundation Stage (EYFS as above). They are set out in The Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (S.I. 2007/1772) and The Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938) respectively.

6.2 Section 40 of the 2006 Act, places a duty on registered childcare providers and on schools that are exempt from registration, to implement and comply with the EYFS. Assessment arrangements are covered further in section 42 and that contains consultation requirements with Ofqual and other persons as the Secretary of State considers appropriate. Currently, the only formal assessment that takes place in the reception year is the EYFS Profile (EYFSP), which has to be completed in the final academic term before the child turns five. The EYFSP results from all early years providers, including childminders, academies and independent schools unless they have been granted an exemption, are sent to local authorities who in turn send those results to the Department for Education to form a national dataset.

6.3 Section 44 provides that changes for the EYFS may be included in a statutory instrument itself or instead the requirements can be included in a separate document (as is the case currently) but that the document would have legal force. Section 44 also provides that Ofsted and early years childminder agencies, in exercising their functions under the 2006 Act, must have regard to factors, standards and other matters prescribed by the instrument.

6.4 A change is required to the EYFS to remove the requirement for early years providers to complete the EYFSP assessment for the academic year 2020/21 (in line with other wider national curriculum assessments), but to place a best endeavours duty on them to complete it if they are able to. The requirement to complete the EYFSP was also [removed in the academic year 2019/20](#) and there was no best endeavours duty to complete the assessment that year, given that most children and teachers spent a large part of the spring and the summer terms 2019/20 away from face-to-face schooling, making it difficult for teachers to complete the observational assessment.

7. Policy background

What is being done and why?

7.1 The current EYFS framework became effective in April 2017. It sets the standards for learning, development and care of children from birth to five, including statutory assessments. This framework is mandatory for all early years’ providers in England.

7.2 The EYFS is a statutory requirement for over 16,000 primary and infant schools (maintained which receive their funding directly from local authorities, independent

which charge fees rather than being funded by the government, non-maintained and academies which are independent from the local authority), 24,000 group-based providers and 39,000 childminders.

- 7.3 Section 1 of the EYFS sets out what providers must do to promote the learning and development requirements of children in their care and to ensure they are ready for year 1. This includes the seven educational programmes and the seventeen early learning goals. These goals summarise the knowledge and understanding children should have gained by the end of the reception year. Section 2 details the types of assessments practitioners should be undertaking, including the assessment at the end of the EYFS, the EYFSP, which assesses children's development against the 17 early learning goals.
- 7.4 The Secretary of State for Education decided to remove the requirement for early years providers to complete the EYFS Profile assessment during the academic year 2020/21. This was in light of the national coronavirus (COVID-19) restrictions introduced in January 2021, where schools should only allow vulnerable children and children of critical workers to attend until 8 March 2021, and due to the uncertainty and pressures faced by the education workforce during this time. The decision is in line with that taken for other statutory primary assessments in the academic year 2020/21.
- 7.5 The Department recognises that if the disruption caused by coronavirus (COVID-19) and associated restrictions has eased by the summer term 2021 and schools are able to complete the EYFSP, it may help identify the additional support that children need following time away from face-to-face schooling. It also recognises that the EYFSP is a valued tool in supporting children's development and the transition from reception to year 1. It is for that reason we are requiring teachers and early years practitioners to use their best endeavours to still complete the EYFSP for children in the summer term of the academic year 2020/21 if the circumstances in the summer term allow, and to provide this important information to parents and to year 1 teachers.
- 7.6 This will be a judgement for schools and teachers depending on their individual circumstances. Schools that decide they are able to complete the EYFSP and provide this information to parents and year 1 teachers will not be subject to statutory external moderation. There will be no requirement to submit data to the local authority or to confirm whether they have completed the EYFSP to the Department for Education. This means there will be no national dataset for 2021, as for 2020.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

- 9.1 This instrument does not consolidate legislation.

10. Consultation outcome

- 10.1 We complied with our statutory duty to consult with Ofqual as set out in section 42 of the 2006 Act. Ofqual had no concerns with the proposal, which is in line with the

decision taken by the Secretary of State for Education for other statutory primary assessments in the academic year 2020/21.

11. Guidance

- 11.1 A guidance note for early years providers setting out the temporary disapplications and modifications to the EYFS during the outbreak of Coronavirus (COVID-19) disease in England has been published on the government [website](#).
- 11.2 This sets out how these changes should be implemented by affected settings and can be found alongside EYFS framework to make it clear which elements of the framework can be disapplied by affected settings during this period. The guidance sets out the decision that the EYFSP will not be mandatory in the academic year 2020/21 but that teachers and early years practitioners should use their best endeavours to complete it.

12. Impact

- 12.1 There is no or no significant financial impact on business, charities or voluntary bodies.
- 12.2 The impact on the public sector will be that schools and early years providers are not required to complete the EYFSP in the academic year 2020/21 if their individual circumstances mean it is not possible to do this. Schools and providers who are able to use their best endeavours and complete the EYFSP will have reduced burdens in relation to the removal of statutory moderation of EYFSP assessments by the local authority and the removal of the requirement to submit EYFSP data in academic year 2020/21. The impact on local authorities will be the reduced burden in relation to not moderating and assessing the EYFSP in their areas in 2020/21.
- 12.3 An Impact Assessment has not been prepared for this instrument because the impact of the change is deemed to be low and reduces burdens on businesses, the public sector and local authorities.

13. Regulating small business

- 13.1 The legislation applies to activities that are undertaken by small businesses.
- 13.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is to amend the legislation to reduce the regulatory burden on small businesses. However, the legislation mainly applies to activities that are undertaken by the public sector. In cases where a child remains in a pre-school setting, for example a private nursery, in the academic year in which they turn five, rather than attending reception provision, a nursery would be required to complete the EYFSP. In these unusual cases, the approach taken reduces the regulatory burden on small businesses by removing the statutory requirement to complete the EYFSP in the academic year 2020/21 and partake in statutory moderation activities.

14. Monitoring & review

- 14.1 The regulation does not include a statutory review clause and has effect for the academic year 2020/21 only.

15. Contact

- 15.1 Anna Jones at the Department for Education, Telephone: 07384 905956 or email: anna.jones@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Harjit Athwal, Deputy Director for Early Years Strategy, Quality and Covid Response at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Vicky Ford MP, Parliamentary Under Secretary of State for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.