EXPLANATORY MEMORANDUM TO

THE CHILDCARE (CHILDMINDER AGENCIES) (CANCELLATION ETC.) (AMENDMENT) REGULATIONS 2023

2023 No. 1167

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument amends the Childcare (Childminder Agencies) (Cancellation etc.) Regulations 2014[1] (the "2014 Regulations") to provide that upon a childminder agency voluntarily terminating its registration with His Majesty's Chief Inspector of Education, Children's Services and Skills ("Ofsted") under Part 3 of the Childcare Act 2006 (the "CA 2006"), the registration of a childcare provider registered with that childminder agency is deemed to be terminated and those providers are deemed to be registered with Ofsted for a period of six months (unless the exceptions in paragraph 2.3 of this Explanatory Memorandum apply). To avoid becoming unregistered at the end of the six-month period, childcare providers who are deemed registered with Ofsted in accordance with these provisions will need to complete a registration with Ofsted or another childminder agency before the six-month deemed registration period expires.

2.2 Without these amendments, childcare providers registered with a childminder agency would become unregistered upon their childminder agency voluntarily terminating its registration with Ofsted. This would prevent those childcare providers from continuing to operate until they were able to complete a registration with Ofsted or with another childminder agency, causing disruption to their businesses, and for parents and children.

2.3 A childcare provider will not be deemed registered with Ofsted where the childcare provider informs Ofsted in writing prior to the childminder's registration being terminated that they do not wish to be deemed registered with Ofsted, or where it appears to Ofsted the childcare provider is disqualified from registration under section 75 of the CA 2006.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

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

4.2 The territorial application of this instrument is England.

[1] SI 2014/1922

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 Part 3 of the Childcare Act 2006 provides the legislative framework for the regulation of childcare in England. Most childcare providers providing childcare for children under eight for more than two hours per day are required to be registered with Ofsted or, in the case of childminders[2] and providers of childcare on domestic premises[3], with Ofsted or a childminder agency.

6.2 Childminder agencies were introduced from 1 September 2014 by section 84 of and Schedule 4 to the Children and Families Act 2014 as an alternative registration body for childminders and providers of childcare on domestic premises. Childminder agencies are required to register with Ofsted under Part 3 of the CA 2006 and are regulated and inspected by Ofsted. The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014[4] prescribes matters relating to the registration and inspection of childminder agencies. Unlike Ofsted, childminder agencies are required to offer additional services to their registered providers, such as training. Childminders and providers of childcare on domestic premises can choose to register with Ofsted or with a childminder agency but cannot be registered with both or with more than one childminder agency at a time. Ofsted does not directly inspect childcare providers who are registered with childminder agencies; childminder agencies are responsible for ensuring that their registered providers are compliant with the regulatory requirements.

6.3 The 2014 Regulations prescribe matters relating to the cancellation, suspension, and termination of the registrations of childcare providers registered with a childminder agency, and the effect of the cancellation of a childminder agency's registration with Ofsted on the childcare providers registered with that childminder agency.

6.4 Regulations 13 and 14 of the 2014 Regulations provide that, upon Ofsted cancelling a childminder agency's registration in accordance with section 69B of the CA 2006, any childcare providers still registered with that childminder agency at the point of cancellation[5] are deemed registered with Ofsted, unless the childcare provider informs Ofsted they do not wish to be deemed registered with Ofsted, or it appears to Ofsted the childcare provider is disqualified from registration.

6.5 The 2014 Regulations do not make similar provision for childcare providers registered with a childminder agency to be deemed registered with Ofsted upon a childminder agency voluntarily terminating its registration with Ofsted under section 70A of the

[2] Pursuant to sections 96(4) and (8) of the Childcare Act 2006, a "childminder" is a person who provides childcare, for reward, where at last half of the childcare is on domestic premises. Pursuant to sections 96(5) and (9) of the CA 2006, childcare is not "childminding" if at any time the number of persons providing or assisting with the childcare exceeds three.

[3] "Childcare on domestic premises" is not a legislative term. It is a term used to describe a person who provides childcare that would be childminding, except that at any time the number of persons providing or assisting with the childcare exceeds three.

[4] SI 2014/1920

[5] The "point of cancellation" is the later of the expiration of time for the childminder agency to appeal against Ofsted's decision to cancel their registration, or where an appeal is brought, the determination of that appeal (regulations 13(4) and 14(4) of the 2014 Regulations).

CA 2006. Consequently, a childcare provider's registration with a childminder agency is terminated upon the childminder agency voluntarily terminating its registration with Ofsted under section 70A of the CA 2006, as the childminder agency would cease to have the regulatory status as such under the CA 2006. Its childcare providers would become unregistered and could not continue lawfully providing childcare until they complete a registration with Ofsted or with another childminder agency, causing disruption to their businesses, and for parents and children.

6.6 Section 70A(1) of the CA 2006 permits a childminder agency to give notice to Ofsted at any time that it wishes to voluntarily terminate its registration with Ofsted. The termination of registration is not subject to any notice period, and section 70A(2) requires Ofsted to remove the childminder agency from the register upon receipt of the notice of termination given by the childminder agency under section 70A(1), unless Ofsted has already commenced the processes of cancelling the childminder agency's registration in accordance with section 69B of the CA 2006.

6.7 Section 69A of the CA 2006 gives the Secretary of State the power to make regulations about the cancellation, termination and suspension of the registration of a childcare provider with a childminder agency. The instrument provides for the terminations of the registrations, and, in some cases, the deemed transitional registrations with Ofsted.

6.8 To be eligible to provide the government's free early years entitlements places in accordance with section 7 of the CA 2006 and the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014[6], and sections 1 and 2 of the Childcare Act 2016 and the Childcare (Free of Charge for Working Parents) (England) Regulations 2022[7], an early years childcare provider must be registered with Ofsted or with a childminder agency under Part 3 of the CA 2006. The amendments made by this instrument mitigate disruption to the businesses of childminder agency registered childcare providers delivering the government's free early years entitlements places, and to parents and children who benefit from those free early entitlements places, by ensuring continuity of provision upon a childminder agency voluntarily terminating its registration with Ofsted. The amendments also mitigate the risk of a sudden reduction in the number of registered early years childcare providers impacting on a local authority's ability to meet its legislative duties to secure sufficient free early years provision in their area.

This instrument

6.9 This instrument inserts new regulations 15 and 16 into the 2014 Regulations, using the powers in section 69A(1) of the CA 2006, to provide that, unless the exceptions explained in paragraph 6.10 of this Explanatory Memorandum apply, upon Ofsted removing a childminder agency from the register under section 70A(2) of the CA 2006, the registrations of childcare providers registered with that childminder agency are deemed to have been terminated immediately before the removal of the childminder agency from the register by Ofsted, and are immediately deemed to be registered with Ofsted for a period of six months beginning with the day after the childminder agency is removed from the register. To avoid becoming un-registered at the end of that six-month period, childcare providers who are deemed to be registered

[6] SI 2014/2147
[7] SI 2022/1134

with Ofsted will need to complete a registration with Ofsted or with another childminder agency.

6.10 A childcare provider will not be deemed registered with Ofsted upon their childminder agency being removed from the register by Ofsted under section 70A(2) of the CA 2006 where the childcare provider informs Ofsted in writing that they do not wish to be deemed registered with Ofsted, or where it appears to Ofsted the childcare provider is disqualified from registration under section 75 of the CA 2006.

7. Policy background

What is being done and why?

7.1 Most childminders and providers of childcare on domestic premises who provide childcare for children under eight for at least two hours per day must register with Ofsted or with a childminder agency.

7.2 Legislation allowing for the creation and operation of childminder agencies was introduced in 2014, to give childminders and providers of childcare on domestic premises an alternative to registering with Ofsted, and a way to access certain services and support that Ofsted does not offer, such as training and help running a business. Childminder agencies must register with Ofsted; Ofsted is responsible for inspecting childminder agencies, and childminder agencies are responsible for assuring the quality of the providers that are registered with them.

7.3 Childminder agencies can give notice to Ofsted that it wishes to voluntarily terminate its registration with Ofsted at any time. Childminder agencies are not required to serve any notice period to terminate their registration, and Ofsted must remove the childminder agency from the register upon receipt of that notice unless Ofsted has already commenced the process of cancelling the childminder agency's registration. Since a childminder agency's ability to register childcare providers is dependent upon it being registered with Ofsted, the registrations of any childcare providers registered with a childminder agency automatically terminate upon the childminder agency being removed from the register by Ofsted.

7.4 Under Part 3 of the CA 2006, a childcare provider commits an offence if they provide childcare without being registered or, in the case of childminders, if they continue to provide unregistered childcare when an enforcement notice has been issued by Ofsted. In order to continue operating lawfully, childcare providers whose registrations are terminated upon their childminder agency being removed from the register by Ofsted must complete a registration with another childminder agency or with Ofsted. However, re-registration elsewhere can take months because of various background checks that have to be carried out and which are outside of the control of Ofsted and the childminder agencies (e.g. those carried out with medical practitioners, local authorities, and the Disclosure and Barring Service). A childminder agency is under no obligation to allow enough time for providers to complete a registration elsewhere before terminating their registration.

7.5 This means that when a childminder agency wishes to terminate its registration, there is a significant risk of disruption to the childminder agency's registered childcare providers' businesses, and for parents and children. Parents who want to continue receiving childcare and the early years entitlements to government-funded hours (such as the offer of 30 hours of free childcare) would have to find another provider. This may not be easy if, for example, their previous provider specialised in special

educational needs and disabilities, or if a large number of providers in their area are registered with the same childminder agency.

7.6 As part of a review of the childminder agency system in general, whose aim is to make changes that will maximise the potential of childminder agencies to increase the number of childminders, we have for some time been considering ways to remove this risk of disruption. As of October 2023, the formal phase of the review is complete, and the department are considering next steps.

7.7 However, on 6 September 2023 the largest childminder agency in England, with around 700 providers, announced that it would close, and wishes to be removed from the register by Ofsted under section 70A(2) of the CA 2006, on 30 November 2023. We need to act urgently to prevent the childcare providers registered with this childminder agency becoming unregistered on 30 November. The only viable option that can be implemented before 30 November is to amend the 2014 Regulations so that a closing childminder agency's providers are deemed to be registered with Ofsted the point at which the childminder agency's registration is terminated. A deemed registration period of six months balances safeguarding considerations against providing sufficient time for most of those childcare providers to complete a registration with Ofsted, or with another childminder agency, if they wish to continue providing childcare. Provision is made for childcare providers to choose to opt out from being deemed to be registered with Ofsted and preventing childcare providers being deemed to be registered with Ofsted where it appears the provider is disqualified from registration promotes the safeguarding of children.

7.8 This approach is consistent with the approach taken when Ofsted decides to cancel a childminder agency's registration. This might happen if, for example, Ofsted judged a childminder agency to be ineffective and felt that it did not have the capacity to improve. At the point of the cancellation of a childminder agency's registration by Ofsted, that childminder agency's providers are automatically deemed to be Ofsted-registered providers (as set out in regulations 13 and 14 of the 2014 Regulations).

7.9 We will continue working with childminder agencies and the wider sector to consider other ways to address the risk of childcare providers registered with childminder agencies becoming unregistered in the longer term as part of the ongoing childminder agency system review.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 No issue arises as to consolidation.

10. Consultation outcome

10.1 As part of our ongoing review of the childminder agency system over the past several months, we have explored a range of options for dealing with this risk with interested parties, including Ofsted, childminder agencies and representatives from the childminding sector.

10.2 Due to the need to address this risk urgently, and in the short-term the only viable approach to address this risk by 30 November being to amend the 2014 Regulations in

the way set out in this explanatory memorandum, a formal public consultation was neither desirable nor feasible.

10.3 The department continues to explore other options for addressing this issue in the longer-term, and we will continue to engage with the sector and, if appropriate, consult on any further proposals to address this risk.

11. Guidance

11.1 The Department for Education has published guidance on establishing and running a childminder agency: A guide for childminder agencies (publishing.service.gov.uk). This guidance does not currently include content on closing a childminder agency. Updates to the guidance will be made to reflect any changes the Minister decides to make to the childminder agency regulatory system as a result of our review of the childminder agency system has ended. We expect this to be in the first half of 2024.

12. Impact

12.1 The impact on childminding businesses and providers of childcare on domestic premises that would be disrupted by the closure of a childminder agency is positive. By seamlessly becoming Ofsted registered at the point of the childminder agency's registration termination, their businesses will continue uninterrupted, even if they later move to another childminder agency. In this way, the impact for families will be positive, by avoiding the need for them to find alternative childcare provision.

12.2 There is no significant impact on the public sector. Ofsted will need to onboard providers, and the effect of this will depend on the size of the closing childminder agency, but the overall impact is not likely to be significant.

12.3 A full Impact Assessment has not been prepared for this instrument because it falls below the threshold.

12.4 There is no, or no significant, impact on the public sector.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 However, the legislation does not place additional requirements on them but instead removes the risk of disruption to these businesses.

14. Monitoring & review

14.1 This legislation will be monitored using Ofsted data on: the number of new childminder registrations; and the number of childminders who choose not to register with Ofsted and instead leave the profession. It will also be monitored through close and ongoing contact with childminder agencies themselves.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015, the Minister for Children, Families and Wellbeing has made the following statement: "The net annualised impact of this instrument falls below the threshold of £10 million for including within the instrument a statutory review clause. However, will monitor the impact of the instrument through regular and close contact with Ofsted and the childminder agencies; and through our regular contact with local authorities."

15. Contact

15.1 Neil Dube at the Department for Education, email: neil.dube@education.gov.uk can be contacted with any queries regarding the instrument

15.2 Mike Davies, Deputy Director for Early Years Markets, Strategy and Workforce at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 David Johnston, Minister for Children, Families and Wellbeing at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.