EXPLANATORY MEMORANDUM TO

THE CHILDCARE (CHILDMINDER AGENCIES) (CANCELLATION ETC.) REGULATIONS 2014

2014 No. 1922

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 these instruments

2.1 The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014, the Childcare (Childminder Agencies) (Cancellation etc.) Regulations 2014 and the Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014 ("these instruments") are made pursuant to the provisions for childminder agencies ("CMAs") in the Childcare Act 2006 ("the 2006 Act") as inserted by section 84 of, and Schedule 4 to, the Children and Families Act 2014 ("the 2014 Act").

2.2 The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 set out the requirements that those seeking to operate as a CMA have to meet, the information that must be submitted with an application for registration as a CMA and the fees for registration as a CMA.

2.3 The Childcare (Childminder Agencies) (Cancellation etc) Regulations 2014 make provision about the cancellation, termination and suspension of the registration of a CMA-registered childcare provider. They also set out the effect on a registered provider if a CMA's registration is cancelled.

2.4 The Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014 make consequential and other amendments to a number of sets of regulations under Parts 1 and 3 of the 2006 Act to account for CMAs.

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

None

4. Legislative Context

4.1 Part 3 of the 2006 Act and the instruments made under it regulate childcare in England. Currently anyone wishing to operate as a childminder is obliged to register on one or both of the registers maintained by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") under section 32 of the 2006 Act ("the early years and general childcare registers"), unless they are exempt. The

amendments to Part 3 of the 2006 Act made by section 84 of, and Schedule 4 to, the 2014 Act enable anyone wishing to offer childcare on domestic premises who would otherwise be obliged to apply to register with the Chief Inspector to register instead with a CMA (that is an agency which is itself registered on one or both of the early years and general childcare registers). Childminders and other providers of care on domestic premises will then have the choice of either registering with a CMA or with the Chief Inspector.

4.2 Section 84 of, and Schedule 4 to, the 2014 Act were commenced on 1st April 2014 for the purposes of making regulations and orders.

4.3 The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 are made in exercise of new powers in sections 51A to 51D, 61A to 61E, 83A and 84A of the 2006 Act. The Childcare (Childminder Agencies) (Cancellation etc) Regulations 2014 are also made in exercise of new powers in sections 69A and 69B of the 2006 Act. In each case this is the first exercise of these new powers.

4.4 The Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014 make amendments to:

- the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007 (S.I. 2007/3490);
- the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008, as amended (S.I. 2008/976);
- the Childcare (Fees) Regulations 2008, as amended (S.I. 2008/1804);
- the Childcare (Disqualification) Regulations 2009, as amended (S.I. 2009/1547); and
- the Childcare (Supply and Disclosure of Information) (England) Regulations 2007, as amended (S.I. 2007/722).

These amendments are a combination of consequential amendments made in exercise of existing powers under Parts 1 and 3 of the 2006 Act (for example the amendments to the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007 which are made to account for a childcare provider now being registered with a CMA) and consequential amendments made in the exercise of new powers (for example the amendments to the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 which deal with the content of a certificate of registration issued to a childcare provider by a CMA.

4.5 Section 84 of, and Schedule 4 to, the 2014 Act will be commenced for all remaining purposes on 1st September 2014 when these instruments and other consequential amendments relating to CMAs (including those made under the Childcare (Welfare and Registration Requirements) (Amendment) Regulations 2014 (S.I. 2014/912) and the Childcare (Learning and Development Requirements and Exemptions from Registration) (Amendment) Order 2014 (S.I. 2014/913)) are to come into force.

5. Territorial Extent and Application

These instruments apply to England.

6. European Convention on Human Rights

As these instruments are subject to the negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 In January 2013, the Department for Education published "*More great childcare: raising quality and giving parents more choice":*

www.gov.uk/government/publications/more-great-childcare-raising-quality-and-giving-parents-more-choice

It indicated that the Government would legislate to enable the establishment of CMAs. CMAs are one of the means by which the Government aims to make more childcare available for children, and to provide more choice and flexibility for parents. CMAs are aimed at encouraging more people to take up childminding, intended to improve the quality of childminding and designed to give parents more choice and help with securing childcare that meets their needs.

7. 2 In February 2013, the Government introduced provisions in the Children and Families Bill ("the Bill") to allow for the registration of CMAs on the early years and general childcare registers and the registration of certain childcare providers with CMAs, and other related amendments. A statement of policy intention and illustrative regulations were published in March 2013. The relevant amendments to the 2006 Act are now given effect through section 84 of, and Schedule 4 to, the 2014 Act.

7.3 During the passage of the Bill, a commitment was made that the Government would consult on the key requirements for the registration of CMAs. In March 2014, the Government launched a public consultation entitled "Childminder agencies and changes to the local authority role":

https://www.gov.uk/government/consultations/childminder-agencies-and-changes-to-the-local-authority-role

This was a joint consultation on the 'draft Childcare (Childminder Agencies) Regulations 2014' and the draft Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge) Regulations 2014' (see paragraph 7.6 below) together with accompanying statutory guidance for local authorities on early education and childcare.

7.4 The consultation ran from 28 March to 22 May 2014. The draft CMA regulations issued as part of the consultation contained proposals on the following matters: CMA registration requirements and fees payable to the Chief Inspector; the content of CMA registration certificates issued by the Chief Inspector; the action a CMA must take when it becomes aware that it is to be inspected by the Chief Inspector; and information sharing arrangements for CMAs.

7.5 The draft regulations on which the Department consulted form the basis of the Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 but now incorporate changes resulting from the consultation. Those changes are detailed below.

7.6 Regulations governing the manner in which a local authority is to discharge its duty to secure early years provision free of charge and accompanying statutory guidance to local authorities on early education and childcare will be laid before Parliament and published separately.

8. Consultation outcome

8.1 There were 678 responses to the consultation. Some respondents only responded to some of the questions.

8.2 There was broad support (55%) from respondents in response to question question 1 (the proposed number of hours of CPD which a CMA must secure for its registered providers). There was also support (50%) in response to question 2 (the proposed number of hours of support time and number of visits by CMAs to their childminders). In relation to both of these questions, 11% of respondents stated that were not sure if the Government's proposals achieved the right balance.

8.3 There was less support (34%) for the proposal in question 3 to require CMAs to conduct a minimum of one quality assurance visit per year after a provider's first year of registration, with an additional 13% of respondents saying that they were not sure about this. 53% of respondents did not agree with the proposal. However, a number of respondents made the point that provided the requirement in regulations is a minimum requirement, with CMAs being free to undertake additional visits to providers they feel warrant closer scrutiny, then this could work well. The Government had confirmed in the consultation that this is intended to be a minimum requirement. This is reflected in the Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 and accompanying advice (see paragraph 9 below).

8.4 The final question asked if respondents had any comments on the registration requirements for CMAs. This question elicited the fewest responses and, of those, a large proportion were out of scope, with respondents expressing their opposition to CMAs in general terms and others expressing uncertainty about how CMAs will operate in practice, how they will work with local authorities and the safeguarding implications of childcare providers registering with agencies.

8.5 An analysis of the consultation responses and the Government's response was published on 8 August 2014:

https://www.gov.uk/government/consultations/childminder-agencies-and-changes-to-the-local-authority-role

8.6 The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 reflect the Government's response to the consultation. In light of the responses to the consultation, in which some respondents expressed confusion as to the inter-relationship between support and CPD which must be provided by early and later years CMAs to their registered providers, we have clarified these requirements. The regulations make clear that the requirement on early years childminder agencies is to provide 20 hours of practice support, of which 16 must be focused on continuous professional development. In relation to later years childminder agencies, the requirement is to provide 10 hours of practice support, of which 8 must be focused on continuous professional development. The CPD need not be provided by the CMA itself and a CMA can contract with an external provider for its delivery. Practice support is any training, advice or assistance which supports a registered provider in the running of that provider's childcare practice. Any advice or training given to a provider in the context of a quality assurance visit can count towards the requirements for 'practice support'. In response to consultation responses, we also make clear that CMAs must provide practice support and CPD to each childminder registered with the agency.

8.7 For the purposes of regulation 23 of the Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014, the Secretary of State has consulted Her Majesty's Chief Inspector as required under sections 59(2) and 67(2) of the 2006 Act.

8.8 There has been no formal consultation on the remaining provisions of the Childcare (Childminder Agencies) (Miscellaneous Amendments) Regulations 2014 or the Childcare (Childminder Agencies) (Cancellation etc.) Regulations 2014. However, throughout the passage of the 2014 Act, the Government met with members of its Task and Finish Group (a group of individuals and organisations with expertise in the early education and childcare field who participated in meetings and workshops to discuss aspects of the establishment and operation of CMAs with a view to informing the content of the registration requirements), the CMA trial organisations (individuals and organisations who volunteered to test aspects of the agency model such as, for example, how agencies might undertake quality assurance visits to childminders' homes), 4Children and Ofsted. The Government also met with a number of organisations during the consultation period to discuss its proposals: Ofsted, 4Children, National Day Nurseries Association, Pre-School Learning Alliance; Family and Childcare Trust, and the Professional Association for Childcare and Early Years. The Government has also met with and discussed the CMA proposals with other organisations who have expressed an interest in establishing a CMA.

9. Guidance

The Government will be producing advice to assist anyone wanting to set up a CMA, providers who may seek to register with a CMA and for other organisations who might work with CMAs. This will be available on the GOV.UK website at:

https://www.gov.uk/government/policies/improving-the-quality-and-range-of-education-and-childcare-from-birth-to-5-years/supporting-pages/childminder-agencies

Ofsted will produce detailed guidance on how it will register CMAs, and will update other information for providers and inspectors.

10. Impact

An Impact Assessment has not been prepared for these CMA regulations. The changes brought about by the CMA provisions are assessed as deregulatory in nature and, in so far as they do not compel anyone to establish, or register with, a CMA there is no impact on the private or voluntary sectors. These instruments simply set out the matters which anyone considering establishing a CMA will need to demonstrate and the requirements which anyone registered as a CMA will need to meet.

11. Regulating small business

11.1 The legislation applies to small businesses such as childminders and other providers of childcare on domestic premises where more than three childminders work together. The legislation will also apply to those small businesses that register as CMAs.

11.2 No specific action was taken to minimise the impact on small businesses that register as CMAs. The role of CMAs will be to ensure that childminders and other providers of childcare on domestic premises that register with them meet all the relevant requirements set out in the legislation. Furthermore, small businesses will be free to choose whether or not to take on this role by registering as a CMA. Therefore, it was not considered appropriate or necessary to differentiate between small businesses and larger businesses that register as a CMA. All CMAs, large or small, will be expected to meet the same requirements.

12. Monitoring & review

The introduction of CMAs supports the Government's aim to make more childcare available for children, and to provide more choice and flexibility for parents. It is intended that the Childcare and Early Years Provider Survey and the Early Years Annual Census will be used to monitor the effect of the regulatory changes. Childcare providers who do not register with CMAs will continue to be subject to registration checks and inspection by Ofsted.

13. Contact

David Duffett at the Department for Education Tel: 020 7340 8149 or email: david.duffett@education.gsi.gov.uk can answer any queries regarding the instrument.