EXPLANATORY MEMORANDUM TO

THE CHILDCARE (DISQUALIFICATION) (AMENDMENT) REGULATIONS 2008

2008 No. 1740

1. This explanatory memorandum has been prepared by the Department for Children Schools and Families and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These Regulations are made under the Childcare Act 2006 (c. 21) ("the 2006 Act") and amend the Childcare (Disqualification) (England) Regulations 2007 S.I. 2007/723 ("the 2007 Regulations"). The 2007 Regulations set out the categories of persons who are disqualified from being registered in England as childminders or other providers of childcare under the 2006 Act. The 2006 Act reforms the regulation and inspection regime for childcare, and will be fully implemented from 1st September 2008.

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

3.1 None

4. Legislative Background

4.1 The 2007 Regulations make similar provision to the disqualification regulations made under the Children Act 1989 (the Day Care and Child Minding (Disqualification) (England) Regulations 2005 (S.I. 2005/2296) as amended by the Day Care and Child Minding (Disqualification) (England) (Amendment) Regulations 2007 (S.I. 2007/297) ("the 2005 Regulations")). The 2005 Regulations apply to applications for registration as childminders or providers of day care for children under the age of eight made under Part 10A of the Children Act 1989 and set out the categories of persons who are disqualified from such registration. Part 10A of the Children Act 1989 will be repealed in relation to England from 1st September 2008 and the 2005 Regulations will no longer be in force. The 2007 Regulations ensure that equivalent disqualification provisions apply to applications for registration made under Part 3 of the 2006 Act. These Regulations amend the 2007 Regulations as set out below.

4.2 The Regulations insert a new regulation 6A in the 2007 Regulations to ensure that persons barred from regulated activity relating to children within the meaning of section 3(2)(a) of the Safeguarding Vulnerable Groups Act 2006 (c. 47) ("SVGA") are disqualified from being registered in England as childminders or other providers of childcare under the 2006 Act.

4.3 The Regulations also amend regulation 8 of the 2007 Regulations to provide that Her Majesty's Chief Inspector of Education, Children's Services and Skills ("HMCI") may waive disqualification from registration for any or all of the purposes set out in subsections 76(2) and (3) of the 2006 Act. This replicates the power that currently exists under the 2005 Regulations to ensure that HMCI may give consent to partially waive the disqualification for one or more of the purposes of registration, being direct provision of

childcare, concern in the management of childcare, or employment in connection with the provision of childcare. HMCI cannot waive where the disqualification arises from the new regulation 6A (persons barred from regulated activity relating to children).

4.4 The 2007 Regulations currently provide that persons registered under Chapter 4 (voluntary registration) of the 2006 Act have a continuing duty throughout the period of their registration to provide information to HMCI in relation to any order, determination, conviction or other ground for disqualification from registration under the 2007 Regulations. These Regulations amend the 2007 Regulations to provide that persons who, from 1st September 2008, will be required to register under Chapter 2 (regulation of early years provision) or Chapter 3 (regulation of later years provision for children under 8) of Part 3 of the 2006 Act also have a continuing duty to provide such information.

4.5 Regulations 6 and 7 make minor amendments to references to orders and disqualifiable offences committed in Jersey and the Isle of Man.

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

7.1 The Government, through the 2006 Act, is reforming the regulation and inspection regime for childcare. The aim of the 2007 Regulations is to apply similar disqualification provisions to childcare provision registered under the 2006 Act as currently exist for provision registered under Part 10A of the Children Act 1989. HMCI will administer two registers: the Early Years Register (EYR) for provision for children up to the age of five, and the General Childcare Register (GCR), which is divided into two parts. Part A (compulsory registration) relates to childcare for children aged 5 to 7. Part B enables providers to register voluntarily. The voluntary register (Part B of the GCR) has been in force since 6th April 2007; the EYR and Part A of the GCR will be in force from 1st September 2008.

7.2 The 2007 Regulations provide for the disqualification in certain circumstances of childcare providers where registered on the EYR (Chapter 2) and the compulsory and voluntary parts of the GCR (Chapter 3 & 4). The 2007 Regulations list the offences, determinations and orders, from England and other jurisdictions within the British Isles, which disqualify individuals from being registered under the 2006 Act to work with children. They also provide for inclusion on the list of persons barred from teaching under section 142 of the Education Act 2002 (known as List 99) or the Protection of Children Act 1999 list of persons considered unsuitable to work with children as additional reasons for disqualification. These lists will be superceded in 2009 by the list of people barred from engaging in regulated activity with children under the SVGA, and the Regulations amend the 2007 Regulations to ensure that people who are included on that list are also disqualified from registration under the EYR and Parts A and B of the GCR.

7.3 Except where individuals are on the Protection of Children Act 1999 list, List 99, or the list of people barred from engaging in regulated activity with children under the SVGA, or where a court has ordered that a person must not work in contact with children following a conviction for certain offences against children, HMCI will have the discretion to waive a disqualification if the applicant for registration, a manager of childcare or a person employed in connection with the provision of childcare can show that he/she is not unsuitable to care for children. The 2005 Regulations made under the Children Act 1989 contain a similar power. When the 2007 Regulations came in to force, the 2005 Regulations applied, enabling partial waivers to be granted for employees or those involved in the management of childcare. However on 1st September 2008 the 2005 Regulations will no longer apply and the compulsory registers under Part 3 of the 2006 Act will come in to force. As a result the 2007 Regulations are amended in order to enable disqualification for employees and managers to be waived in relation to the registers under Part 3 of the 2006 Act. This will provide a consistency of approach with those whose disqualifications were waived under Part 10A of the Children Act 1989.

7.4 The instrument also provides minor amendments as described in paragraphs 4.4-4.5.

Consultation

7.5 The Government consulted publicly in summer 2005 on the proposed provision in the Childcare Bill which became the 2006 Act and set the legislative framework for the new registration arrangements. Local authorities, childcare provider organisations and parents were all involved in providing feedback, which informed the further development of proposals. Disqualification regulations relating to providers who must currently register under the Children Act 1989 were consulted on most recently from 13th October 2006 to 2nd January 2007. The findings from that consultation were used to bring into effect amending regulations under the Children Act 1989 and the 2007 Regulations under the 2006 Act thus ensuring that the 2007 Regulations were broadly the same in scope as the 2005 Regulations. The consultation showed that the regulations are viewed as an important safeguard for children. These Regulations amend the 2007 Regulations to apply similar provisions to those who are required to register under the EYR and the compulsory part of the GCR from 1st September 2008.

7.6 As required by the 2006 Act HMCI has been fully consulted.

8. Impact

8.1 No Impact Assessment has been prepared because there is no additional impact on any part of the private and voluntary sector and the costs to the public sector fall below £5 million. These regulations ensure continuity with current requirements and update legislative references.

9. Contact

Paul Oates at the Department for Children, Schools and Families Tel: 0207 273 5686 or e-mail: Paul.OATES@dcsf.gsi.gov.uk can answer any queries regarding the instrument.