EXPLANATORY MEMORANDUM TO THE CHILDCARE (INSPECTIONS) (AMENDMENT AND REVOCATION) REGULATIONS 2012

2012 No. 1698

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 omits provisions in the Childcare (Inspections) Regulations 2008 (S.I. 2008/1729) ("the 2008 Regulations"). The effect is to revoke regulations on the intervals at which early years provision must be inspected, related provisions about not inspecting early years provision at independent schools and notification of inspections. Provisions relating to inspection reports for early and later years providers are also omitted.

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

3. 1 None

4. Legislative Context

4.1 Under section 49(2)(a) of the Childcare Act 2006 ("the Act"), the Secretary of State has the power to prescribe intervals at which early years provision must be inspected. The Secretary of State can also require the Chief Inspector to inspect early years provision at any time under section 49(2)(b) of the Act. In future the Secretary of State will require the Chief Inspector to inspect early years provision under section 49(2)(b) of the Act and the requirements will be set out in a letter from the Secretary of State to the Chief Inspector.

4.2 Under Part 3 of the Act the Secretary of State may also prescribe:

- the circumstances in which the Chief Inspector is not required to inspect early years provision at independent schools (under section 49(4) of the Act);
- persons to whom the Chief Inspector must provide copies of early and later years inspection reports (currently local authorities are prescribed under sections 50(2) and 61(2) of the Act);
- persons to whom notice of inspections should be given; persons to whom copies of inspection reports should be given; and cases where a fee can be charged for providing copies of reports in certain circumstances (sections 49(6), 50(3) and 61(3)).

The Secretary of State no longer intends to exercise these powers to prescribe any of these matters in regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 The Government is keen to reduce the need for regulations where these are not mandatory and to ensure that inspections are appropriately targeted.

7.2 Ofsted currently has the flexibility to schedule inspections of early years providers up to August 2012 so that it can, for example, inspect providers with a good record later in the cycle. Ofsted policy is to target inspection at poorer performing settings in order to increase quality. It is anticipated that faster quality improvement of poorer performing settings will lead to better experiences and outcomes for children in those settings. Overall there is a higher proportion of poorly performing settings in disadvantaged areas and therefore better targeted inspections will have the greatest impact on children in disadvantaged areas. This is consistent with the Government's policy to narrow the gap between outcomes for disadvantaged and non-disadvantaged children, by increasing the number of high quality free childcare places for disadvantaged 2 year olds.

7.3 In future the Secretary of State intends to rely on the power under section 49(2)(b) of the Act to require the Chief Inspector to inspect early years provision. The Secretary of State will set out the inspection requirements in a letter to the Chief Inspector. The letter will ask the Chief Inspector to provide copies of early and later years inspection reports to local authorities and will also set out the circumstances under which the Chief Inspector is not required to inspect independent schools.

7.4 The Government is in the process of streamlining guidance relating to early years providers and proposes to consolidate different pieces of guidance into one. The Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938) ("the Welfare Regulations") and the Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2012 (S.I. 2012/937) introduce the Statutory Framework for the Early Years Foundation Stage (EYFS) published by the Secretary of State on 27th March 2012 ("the Document"). By virtue of section 44 of the Act, matters which are specified in instruments under section 39 of the Act (this includes welfare requirements) can be contained in the Document. The provision of information is one of the matters that are covered at Section 3 in the Safeguarding and Welfare requirements. The Document requires providers to inform parents about inspection and to provide them with copies of Ofsted inspection reports. It is not necessary for these requirements to be replicated in the 2008 Regulations.

7.5 Under the Document, parents will still be given a free copy of an inspection report. In addition, Ofsted publishes all its inspection reports on its website at < http://www.ofsted.gov.uk/inspection-reports/find-inspection-report > and most early years and later years providers also routinely make available their Ofsted reports to prospective parents and, for example, publish them via their own websites. In these circumstances it is no longer necessary to require in regulations that early years or later years providers give copies of the reports to people other than parents at the setting and we are omitting those provisions. The provision which permits providers to charge for copies of the reports is also omitted.

7.6 The Government is considering the future for the registration of later years providers and does not propose to make changes now to the requirements for later years providers, other than for consistency between registers. As a result the regulations requiring later years providers to inform parents of inspections, if they know that inspection is due to take place, and to provide parents with copies of reports will be retained for the time being.

8. Consultation outcome

8.1 The Minister of State wrote formally to the Chief Inspector on 12 January 2012 to seek his views and the Chief Inspector has given his support in principle to the proposed amendments. An informal consultation via email has also been carried out with stakeholders representing provider organisations:

- National Childminding Association (NCMA) representing childminders;
- Pre-School Learning Alliance (PLA) which represents providers caring for 3-5 year olds;
- 4Children which represents interests of children of all ages from birth to 19 years old;
- National Day Nurseries Association (NDNA);
- Day Care Trust, a national charity that provides information for parents, childcare providers, employers, trade unions and local authorities.

8.2 Not all of the organisations responded to the proposals, but none of the organisations opposed the proposals and of those that did respond,

- 4Children indicated that they thought the proposals were sensible.
- PLA were content with the proposals.
- NCMA were content with moving the requirements on early years provision to the Document and accept the moving of the regulations relating to the frequency of inspection to a letter from the Secretary of State. They also wanted to be informed if there were any change to the proposed inspection period which will be contained in the letter from the Secretary of State to Her Majesty's Chief Inspector.

9. Guidance

9.1 The Secretary of State will write to the Chief Inspector setting out the requirements relating to the inspection of early years providers, the arrangements under which the Chief Inspector is not required to inspect independent schools and the requirement to send copies of inspection reports to local authorities. The intention is that the letter will be published.

9.2 The Document can be found online at: < http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs >

10. Impact

10.1 An impact assessment is to be published with other supporting documents alongside this Explanatory Memorandum at www.legislation.gov.uk

11. Regulating small business

11.1 The legislation applies to small businesses.

12. Monitoring & review

12.1 The effect of the amendments will be monitored on a continuous basis by the Department for Education as part of regular contact between policy officials and sector representatives.

13. Contact

Mr Richard Green at the Department for Education can answer any queries regarding the instrument. His contact details are:
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