EXPLANATORY MEMORANDUM TO

THE CHILDCARE (INSPECTIONS) REGULATIONS 2008

2008 No. 1729

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

These Regulations make provision about inspections by Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector") of childminding and other childcare provision registered under Part 3 of the Childcare Act 2006 ("the 2006 Act"). The Regulations prescribe the intervals at which early years provision must be inspected, and make other provision about notifications of inspections, and inspection reports.

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

None

4. Legislative Background

This instrument is one of a number of statutory instruments implementing Part 3 of the 2006 Act. Part 3 replaces, for England, the system of registration and inspection of day care and childminding under Part 10A of the Children Act 1989 ("the 1989 Act"). The Child Minding and Day Care (Inspections) Regulations 2005 ("the 2005 Regulations") (which are made under the 1989 Act and currently govern inspections) will be replaced by these Regulations.

5. Territorial Extent and Application

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 From 1st September 2008, these Regulations will govern inspections of childcare provision registered under Part 3 of the 2006 Act.

7.2 The 2006 Act introduces two new registers:

- the Early Years Register ("EYR") for providers of childcare for children from birth to the September following their 5th birthday.

- the General Childcare Register ("GCR") which is in two parts:

    - Part A for the compulsory registration of providers of childcare for children from the 1st September following their 5th birthday up to the age of 8; and
    - Part B for the voluntary registration of providers of childcare who are not required to register in either the EYR or Part A of the GCR.

These Regulations make provision about inspections of providers registered on the EYR and Part A of the GCR. There are no powers in the 2006 Act to make regulations about inspections of providers registered on Part B of the GCR.

Early Years Provision

7.3 The provisions about inspections of childcare registered in the EYR closely mirror the current provision made in the 2005 Regulations for childminders and day care providers registered under the 1989 Act.

7.4 The Regulations prescribe the intervals for inspection of early years provision. For providers transferring on 1st September 2008 onto the EYR from the register currently maintained under the 1989 Act, the Regulations provide that all such early years provision must be inspected by the end of July 2012 (which is 3 years following on from the current inspection cycle Ofsted are operating to under the 2005 Regulations), and thereafter that all provision will continue to be inspected at a minimum of just over every 3 years. For providers who join the EYR after 1st September 2008, the Regulations also require inspection at a minimum of just over every 3 years.

7.5 A 3 year inspection cycle was introduced in 2005, following full consultation, as part of a strategic alignment with other inspections carried out by Ofsted, so that where a range of childcare services are provided together, Ofsted could inspect them at the same time. These arrangements currently give Ofsted enough flexibility to inspect provision proportionately on the basis of risk, targeting poor performing providers and those where circumstances indicate a higher risk more frequently than better and lower risk performers. Ofsted's inspection arrangements are also complemented by its activities relating to complaints, investigation and enforcement of standards. This inspection cycle has worked well since its introduction and it is therefore carried forward in the new regulations. However, the Chief Inspector retains the power to inspect a provider more frequently than the prescribed cycle if that is considered to be necessary.

7.6 Inspections of early years provision will include an assessment of the provider's delivery of the Early Years Foundation Stage[1].

7.7 The 2006 Act enables the regulations to prescribe circumstances in which provision does not have to be inspected within the prescribed interval. However, the

[1] The EYFS is a statutory framework for early learning and childcare from birth until the end of the academic year in which the child turns five. It will apply to maintained and independent schools and to Ofsted registered childcare providers from 1st September 2008. The EYFS comprises welfare requirements and learning and development requirements, set out in the "Statutory Framework for the Early Years Foundation Stage" (published in May 2008 with ISBN reference number 978-1-84775-128-7).

Government considers that all providers should be inspected within just over three years from the end of the academic year following the EYFS coming into force on 1 September 2008, or following the date of their registration on the Early Years Register, whichever is later. It is important that in the early stages of implementation of the EYFS, childcare providers are given the support and guidance that an inspection can provide, and that inspection outcomes under the new framework are available to parents as soon as possible to help inform their choices about childcare.

7.8 The Regulations require a provider who learns that an inspection is taking place to inform parents of children who attend the early years provision. This is so that parents have an opportunity to be present at the inspection and speak to the inspector if they wish. The Regulations also require a provider to give a copy of the inspection report received from Ofsted to parents free of charge. This is essential so that parents are made aware if the childcare provision they are using receives an inadequate judgement. The Government considers that this requirement is likely to be more effective than the previous requirement in the 2005 Regulations whereby providers only had to make a copy of the report available for inspection.

7.9 If someone other than a parent requests a copy of a report, the provider must give them one, as long as any fee charged by the provider is first paid. This will ensure that the burden on providers is not too great, as a person is unlikely to request a copy unless they really need one and in many cases will be able to download a free copy from the Ofsted website.

7.10 The Regulations also require the Chief Inspector to send a copy of an inspection report to the local authority in whose area the childcare is provided. This will assist the local authority in their role in managing the childcare market. The assessment of childcare provision in their area which local authorities will be undertaking in accordance with section 11 of the 2006 Act will help them to determine what will be "sufficient" to meet the needs of parents locally. The Guidance for local authorities entitled "Securing Sufficient Childcare" states that there are a number of factors which can be regarded as the 'benchmark' of sufficiency, one of which is that local authorities will need to satisfy themselves that childcare places are high quality in terms of inspection judgements made by Ofsted.

Early years provision in Independent Schools

7.11 In exercise of the power in section 49(4) of the 2006 Act, the Regulations provide that the Chief Inspector is not required to inspect early years provision in an independent school if that provision is instead inspected by a body approved by the Secretary of State. The Secretary of State has approved, subject to certain conditions, the Independent Schools Inspectorate ("ISI") to carry out inspections of early years provision in independent schools affiliated to the Independent Schools Council ("ISC"). ISI already inspects education provision in ISC member schools, which account for just under half of all independent schools in England.

7.12 The Regulations specify the prescribed circumstances in which an inspection by the approved body will suffice. These are that, at least 2 months before the Chief Inspector would otherwise be required to have inspected a particular independent school, the approved body has inspected it and has sent a report covering the matters set out in section 50(1) of the Act to the Chief Inspector. If this does not happen, the Chief Inspector will have 2 months to arrange to inspect the school. Other safeguards will be

contained within a Memorandum of Understanding agreed between ISI and Ofsted.

Part A (Compulsory) of the General Childcare Register

7.13 There are two differences between the way the 2006 Act deals with inspection of early years provision, and inspection of provision registered in Part A of the GCR. Firstly there is no power to prescribe intervals at which inspections must take place. Instead the Chief Inspector is required to inspect later years provision at any time when the Secretary of State requires this, and may also inspect at any time the Chief Inspector considers this to be appropriate. The arrangements for these inspections are that the Chief Inspector proposes to schedule inspections using a risk-based approach, taking into account the ages of the children being cared for and any relevant historical data, rather than operating to a pre-determined cycle.

7.14 Secondly there is a power in the Act, but not a duty, for the Chief Inspector to make a report of an inspection.

7.15 The prescribed requirements in the Regulations relating to notifying parents of an inspection, providing copies of any reports produced by the Chief Inspector and enabling providers to charge a fee for providing copies of reports are exactly the same as for providers on the early years register. The policy reasons for these provisions are also the same as for the early years register.

Part B (Voluntary) of the General Childcare Register

7.16 Whilst there are no specific provisions in the 2006 Act about inspections of childcare provision registered in Part B of the GCR, there are powers in section 77 for the Chief Inspector to enter childcare premises to check that early years or later years provision (including that registered in Part B) is complying with requirements or conditions imposed under the 2006 Act. No provision is made in these Regulations about provision registered in Part B of the GCR.

Consultation

7.17 In April 2005 the DfES consultation entitled “Early Years Regulations” proposed new regulations under Part 10A of the Children Act 1989, some of which related to inspections. The consultation proposed a three year period between inspections, that parents should be notified of forthcoming inspections and that they should be provided with a copy of an inspection report. The majority of respondents were content with these proposals, although some wanted more frequent inspections, and there was concern about the cost to providers of providing inspection reports to parents. The concerns over more frequent inspections are addressed by the flexibility the prescribed intervals afford, as these allow the Chief Inspector to take a risk-based approach to scheduling inspections, so that where there is a higher risk of poor performance, a provider can be targeted early on. Provision with a good track record can be inspected towards the end of the inspection period. In addition to this flexibility, the Chief Inspector has the power to inspect more frequently if this is considered appropriate. The Department also considered that the cost of providing reports to parents were outweighed by the need for parents to know that their child is well supported and safe, particularly where Ofsted judge a setting to be inadequate. However the Regulations allow a provider to charge a fee to anyone who requests a copy of the report, including parents who have previously been given one.

7.18 As the new Regulations carry forward the existing arrangements contained in the 2005 Regulations, no further consultation has been carried out.

7.19 However Ofsted have consulted on a number of proposals underpinning their inspection of the Early Years Foundation Stage (EYFS). In Ofsted's consultation entitled "Inspecting provision in the Early Years Foundation Stage from September 2008" which ran from 22 November 2007 to 1 February 2008, they outlined their proposals and sought the sector's views on a number of aspects relating to the inspection of early years settings. The consultation was conducted with childcare providers, stakeholders and others.

7.20 The evaluation of the consultation shows that Ofsted's plans for inspecting the EYFS from September 2008 were well received and supported by the great majority of respondents. In particular, the simultaneous inspection of provision in schools was welcomed as a means of streamlining inspection and reducing the burden on both providers and Ofsted. However, there was concern that there should be parity and consistency in the inspection process and the judgements across the sector. These concerns are being addressed by Ofsted's new inspection framework, which will provide comparable judgements across the sector with consistent approaches to reporting which will help parents to make choices about the childcare they use.

8. Impact

An Impact Assessment has not been prepared for this instrument as these Regulations do not have any additional impact on the public sector or on Ofsted compared with the current regime, as they simply continue the existing arrangements.

9. Contact

Andy Davey at the Department for Children, Schools and Families Tel: 0207 273 5704 or e-mail: andy.davey@dcsf.gsi.gov.uk can answer any queries regarding the instrument.