EXPLANATORY MEMORANDUM TO

THE CHILDCARE (PROVISION OF INFORMATION ABOUT YOUNG CHILDREN) (ENGLAND) (AMENDMENT) REGULATIONS) 2017

2017 No. 461

1. Introduction

1.1 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 makes amendments to the prescribed information early years providers are required to provide about young children in their care to the Secretary of State and their local authority. In particular, this instrument requires providers to supply information about children who receive the entitlement to an additional 15 hours of free childcare pursuant to the Childcare Act 2016 (c. 5) ("the 2016 Act") . They are also required to provide information about funding received through the disability access fund in respect of an individual child.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 This instrument amends the Childcare (Provision of Information About Young Children) (England) Regulations 2009 (S.I. 2009/1544, "the 2009 Regulations"). The 2009 Regulations prescribe individual child information that early years providers are required to provide under section 99(1) of the Childcare Act 2006 (c. 21) to their local authority and the Secretary of State. This information is set out in parts 1 and 2 of the Schedule to the 2009 Regulations.

4.2 The 2016 Act places a duty on the Secretary of State to secure that childcare is available free of charge for qualifying children of working parents for 30 hours a week in each of 38 weeks in any year, or the equivalent. This is in effect an additional 15 hours per week on top of the universal entitlement to the 15 hours currently available for all three and four year olds and is known as the "extended entitlement".

4.3 In light of the new policy, the 2009 Regulations have been amended to require early years providers to provide prescribed information about children in their care who are receiving the extended entitlement. In addition, providers are required to submit evidence of the child's eligibility for the extended entitlement. These Regulations also enable data to be collected to indicate whether the child is "stretching" their

entitlement i.e. taking up fewer than 30 hours a week over more than 38 weeks of the year.

4.4 The School and Early Years Finance (England) Regulations 2017 (S.I. 2017/44, "the 2017 Regulations") set out arrangements for increased support for children with disabilities under regulation 18 ("the disability access fund"). The 2017 Regulations enable the collection of data about whether a provider is in receipt of the disability access fund in relation to an individual child.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies only 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 is required.

7. Policy background

7.1 Since September 2010 all three and four year olds have been entitled to 570 hours a year of free childcare over no fewer than 38 weeks of the year (which equates to 15 hours a week for 38 weeks of the year). Parents are able to "stretch" their child's entitlement by taking fewer hours over more weeks of the year if this better suits their needs and the needs of their child.

7.2 Early years providers and schools already submit individual child level information about children taking up the existing entitlement for free childcare through the early years census and school census. The Department uses the data to calculate local authority funding allocations and take-up of the existing free entitlements.

7.3 The 2016 Act and related Regulations[1] provide for the extended entitlement for eligible children of working parents. The government intends to make this entitlement available from September 2017.

7.4 The amendments made by this instrument require early years providers and schools to submit information regarding the extended entitlement including evidence to confirm an individual child's eligibility for this additional free childcare[2]. The evidence of a child's eligibility for the extended entitlement will be used as an indicator by the Secretary of State to ensure that funding for the extended entitlement is correctly calculated. This data needs to be collected in respect of each individual child who is taking up the extended entitlement in order to match the data for an individual child across multiple settings if they are receiving their entitlement at more than one provider. Take-up of the extended entitlement will be published in the annual Statistical First Release: Provision for children under five years of age in England[3].

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[1] The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257).

[2] A description of the type of evidence that will meet the requirements of these Regulations will be provided in early years census and school census guidance published online by the Secretary of State at www.gov.uk/guidance/early-years-census and www.gov.uk/guidance/school-census respectively.

[3] Provision for children under five years of age in England statistical first releases are published at https://www.gov.uk/government/collections/statistics-childcare-and-early-years

Providers will also be asked to indicate whether the child is stretching their entitlement. Personal data relating to individual children will not be published.

7.5 The government has introduced the disability access fund for 2017-18. Early years providers will be allocated £615 for each funded child in their care who is in receipt of disability living allowance under section 72 of the Social Security Contributions and Benefits Act 1992 (c.4). The new measure will be funded by the Department for Education and the early years census and school census will be used to collect the information needed to reimburse authorities. Early years providers will be required to indicate whether they are in receipt of the disability access fund in relation to a child. Full details can be found in the operational guide at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/580716/EYNFF_Operational_Guidance.pdf

Consolidation

7.6 There are no plans for consolidating regulations at present.

8. Consultation outcome

8.1 The introduction of the extended entitlement was extensively debated during the passage of the 2016 Act through Parliament. The government launched a consultation: "Early years funding: changes to funding for three- and four-year olds" on 3 April 2016 which closed on 6 June 2016. The consultation asked respondents for views on elements of the delivery of the extended entitlement which included increasing flexibility of the extended entitlement to better meet the needs of working parents, improving access to free early education for disabled children and those with additional needs and making the delivery model more efficient.

8.2 The disability access fund was proposed as part of the Early Years National Funding Formula consultation. The proposal received strong support. Further details can be found in the Government response to the consultation at the following link:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574040/Early_years_funding_government_consultation_response.pdf

8.3 As has been the established practice in relation to previous regulations underpinning the census collections, consultation with the sector has taken place via the Star Chamber Scrutiny Board[4], as well as with providers of management information systems to early years providers, schools and local authorities.

8.4 The Star Chamber Scrutiny Board have approved, on behalf of the sector, the changes to the data collections which will be made as a result of this instrument. The providers

[4] The Star Chamber Scrutiny Board helps to assess all new, or revised, data collections relating to children and young people. It aims to ensure that all new collections or revisions to existing collections are feasible, necessary, provide value for money and are designed in such a way as to add as small a burden to the frontline as possible. The group is formed of frontline local authority representatives involved in children's services data including education, social care and early years, plus serving head teachers from primary and secondary education.

of management information systems have also agreed to develop their systems in accordance with the published data collection technical specifications, which will put in place the functionality that allows early years providers to record this data and return it to the Department through the early years census and school census.

9. Guidance

9.1 The Department uses a number of different approaches to ensure early years providers, schools and local authorities are aware of any amendments being made to the early years census and school census. Changes to data collections are highlighted via data collection newsletters and bulletins to data providers. Preparation and guidance notes are also issued with background information on what data is being collected and why. These will be made available on the Department's website in early summer 2017 at https://www.gov.uk/topic/schools-colleges-childrens-services/data-collection-statistical-returns

9.2 In the guidance referred to above, we will remind authorities and providers that, as with all individual child data items, they must comply with their responsibilities under the Data Protection Act 1998(c. 29) when storing and processing personal and sensitive personal data.

10. Impact

10.1 The impact on business, charities or voluntary bodies is minimal.

10.2 The impact on the public sector relates only to maintained education in England and was considered as part of the Star Chamber Scrutiny Board process before approval to collect the additional data items was granted.

10.3 A full impact assessment has not been produced for this instrument as no significant impact on the private or voluntary sector is foreseen. The Department does not expect these Regulations to place any significant additional burdens on early years providers and schools as they are already expected to hold the data required about children at their setting as a matter of routine.

11. Regulating small business

11.1 This instrument applies to activities that are undertaken by small businesses such as childminders and private and voluntary early years providers. However, childminders and early years providers will only be subject to these additional requirements if they choose to deliver either the existing free entitlements or the extended entitlement.

11.2 No specific action has been taken to minimise the impact on small businesses as childminders and early years providers are not required to deliver either the existing free entitlements or the extended entitlement.

12. Monitoring & review

12.1 The obligations imposed under this instrument, alongside the content of the early years census and school census, will be reviewed on an annual basis as part of the ongoing maintenance of these data collections.

13. Contact

13.1 Chris Douglass at the Department for Education. Telephone: 01325 340513 or email: chris.douglass@education.gov.uk can answer any queries regarding the instrument.