**EXPLANATORY MEMORANDUM TO**

**THE CHILDCARE (WELFARE AND REGISTRATION REQUIREMENTS) (AMENDMENT) REGULATIONS 2014**
**2014 No. 912**

**1.** This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

## 2. Purpose of these instruments

The Childcare (Learning and Development Requirements and Exemptions from Registration) (Amendment) Order 2014 and the Childcare (Welfare and Registration Requirements) (Amendment) Regulations 2014 ("these instruments") amend the registration, safeguarding and welfare requirements (including introducing a revised Statutory Framework for the Early Years Foundation Stage) that childcare providers are required to meet. They further align requirements for early years providers and later years providers and make changes to the requirements for providers registered voluntarily with Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"). These instruments also make consequential amendments as a result of provisions in the Children and Families Act 2014 ("the 2014 Act") which allow a childminder to register with a childminder agency ("CMA"). The Order also introduces an exemption from the requirement to register childcare in certain circumstances where care is provided by a family friend.

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

3.1 These instruments correct errors in the Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2012 (S.I. 2012/937) and in the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938), reported in the 5th Report of the 2012/13 Session published on the 12th July 2012 by the Joint Committee on Statutory Instruments. The explanatory note to the instruments now makes clear that the Statutory Framework for the Early Years Foundation Stage ("the EYFS Document") is available for inspection at the Departmental London address.

3.2 With regard to S.I. 2012/938 and the second ground upon which it was reported, the changes introduced by these instruments do not require the EYFS Document to be substantively revised and therefore the Department does not consider it appropriate to address the overlap identified by the Committee at this time.

## 4. Legislative Context

4.1 The Childcare (Welfare and Registration Requirements) (Amendment) Regulations 2014 make amendments to:

- the Childcare (Early Years Register) Regulations 2008, as amended (S.I. 2008/974);
- the Childcare (General Childcare Register) Regulations 2008, as amended (S.I. 2008/975); and
- the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938) ("Welfare Regulations").

The Childcare (Learning and Development Requirements and Exemptions from Registration) (Amendment) Order 2014 makes amendments to:

- the Childcare (Exemptions from Registration) Order 2008, as amended (S.I. 2008/979); and
- the Early Years Foundation Stage (Learning and Development Requirements) Order 2007, as amended (S.I. 2007/1772) ("the Learning and Development Order").

The amendments to the Welfare Regulations and the Learning and Development Order introduce a revised version of the EYFS Document, with effect from 1st September 2014, replacing the version published on 27th March 2012.

4.2 This is the first use of the powers in Part 3 of the Childcare Act 2006 ("the 2006 Act") (regulation of childcare provision in England) since the amendments made by the 2014 Act. It is the first use of the new power in sections 35(5), 36(5), 54(5) and 55(5) of the 2006 Act which prohibit childcare providers from being registered with both a CMA and the Chief Inspector at the same time.

4.3 As a result of the CMA provisions in section 84 of, and Schedule 4 to, the 2014 Act, a CMA will be able to register with the Chief Inspector. Childminders and providers of care on domestic premises where more than three childminders work together will then have the choice of either registering with a CMA or with the Chief Inspector.

4.4 Section 84 and Schedule 4 of the 2014 Act were commenced on 1st April 2014 for the purposes of making regulations and orders. As the instruments covered by this memorandum were being amended for other purposes (see paragraph 2), the opportunity was taken to make the consequential amendments relating to CMAs to avoid the need to amend the same instruments twice in a short space of time.

4.5 Further regulations introducing the registration requirements for CMAs and making further consequential amendments to other regulations are intended to be laid before the summer parliamentary recess. Section 84 and Schedule 4 will be commenced for all other purposes in September 2014 when these instruments and the rest of the regulations relating to CMAs are intended to come into force.

## 5. Territorial Extent and Application

These instruments apply to England.

## 6. European Convention on Human Rights

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

## 7. Policy background

7.1 Part 3 of the 2006 Act and the regulations and orders made under it regulate childcare in England provided by childminders and by other providers. Providers are required to be registered on one or both of the two registers maintained by the Chief Inspector. Most providers are registered on both the Early Years Register ("EYR"), for providers caring for children who are 0-5 years old, and the General Childcare Register ("GCR"). Part A of the GCR covers providers caring for children who are 5-7 years old and Part B covers providers who are voluntarily registered, such as nannies. All providers have to meet initial and ongoing registration requirements and safeguarding and welfare requirements. Most early years providers have to meet learning and development requirements.

7.2 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 said that Government would legislate to enable the creation of CMAs and publish proposals to improve the welfare and safeguarding requirements on early years and other childcare providers.

7.3 In July 2013, the Government published "*More affordable childcare*" (MAC):

www.gov.uk/government/publications/more-affordable-childcare

and launched a public consultation on "*The Regulation of Childcare*":

www.gov.uk/government/consultations/childcare-regulation

The consultation ran from 16 July to 30 September 2013. MAC stated that the existing regulatory system could discourage providers from offering childcare. "*The Regulation of Childcare*" consultation proposed changes intended to create a more consistent and coherent childcare registration system and promote a prosperous and growing childcare market. The proposals were intended to:

- make it easier for schools and other providers to offer out-of-hours care (i.e. outside the normal school day);
- reduce and remove unnecessary prescription;
- make it easier for parents to make informal childcare arrangements with friends; and
- streamline and strengthen measures and accountability to keep children safe.

7.4 Further proposals to improve the childcare registration system, which were also included in "*The Regulation of Childcare*" consultation, require primary legislation.

7.5 Until these amendments, there have been a significant number of differences between the requirements for early and later years providers. One of the aims of the amendments in these instruments is to align, as far as possible, the requirements for early years providers and those providers on the GCR, without placing additional burdens on providers registered voluntarily. For example, until these amendments, providers on Part A of the GCR were not required to designate a practitioner to take lead responsibility for safeguarding children whereas providers on the EYR were required to designate such a practitioner. Nor were providers on Part A of the GCR required to train staff to understand their safeguarding policies and procedures but providers on the EYR were under an equivalent duty.

7.6 The revised EYFS Document includes changes resulting from the consultation, and the opportunity has also been taken to make some minor corrections to, and clarifications of, the 2012 EYFS Document arising out of queries by providers and their representative organisations. For example, following representation from the National Day Nurseries Association on behalf of its members, the revised EYFS clarifies the requirements regarding disqualification of a registered provider and employees in registered settings. The revised EYFS Document also clarifies the position with respect to school teachers' non-contact time. It also includes updates such as the new Early Years Professional and Early Years Teacher qualifications and clarifies what is expected from the progress check at age two.

7.7 These instruments also include amendments which are consequential on the new provisions in Part 3 of the Act relating to CMAs. Childminders and other providers of childcare on domestic premises will have to meet the same registration, safeguarding and welfare requirements whether they are registered with a CMA or with the Chief Inspector. Amendments in the regulations therefore make clear that, where a prospective childcare provider is required to provide certain information or documents as part of the registration process, an applicant who seeks registration in one of the registers maintained by the Chief Inspector will provide that information to the Chief Inspector, and an applicant who seeks registration with a CMA will provide that information to the agency.

7.8 We have also inserted a new registration requirement for both early and later years providers which precludes prospective providers from registering with the Chief Inspector and a CMA or with two different CMAs. The rationale for those changes is that a provider must hold all relevant registrations either with the Chief Inspector or with a childminder agency so that it is clear who has regulatory responsibility for a particular provider. Other amendments in the regulations and the Order ensure that, in the exercise of their functions, CMAs are under an obligation to have regard to the matters in the EYFS Document and the welfare requirements applicable to providers caring for older children and providers who are registered on a voluntary basis. A failure on the part of a CMA to have regard to those matters may be taken into account by the Chief Inspector and in any proceedings brought under Part 3 of the Act.

7.9 Following consultation, the amendments to the Order introduce an exemption from registration for family friends caring for children for up to 3 hours per day on domestic premises for reward.

7.10 The Welfare Regulations were consolidated in 2012. The other instruments listed in paragraph 4.1 are likely to be amended again within the next two years to take account of the proposals in the "*Regulation of Childcare*" consultation (e.g. proposals for one registration for other providers covering multiple premises) which will require changes to the 2006 Act and the instruments made under it. We are not in a position to consolidate the instruments at this stage. We will ensure an informal consolidated online text of all the instruments listed in paragraph 4.1 is available over the next couple of months starting with the Childcare (Early Years Register) Regulations 2008 (S.I. 2008/974), as amended and the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975), as amended. The revised EYFS Document is a consolidated version which will replace the 2012 version.

## 8. Consultation outcome

8.1 There were 379 responses to "*The Regulation of Childcare"* consultation. Responses were received from a range of respondents including early years and childcare representative organisations, local authorities, providers and parents. There was broad support (71%) from respondents for the policy objective in question 1 to simplify the childcare registration system, while strengthening the requirements to protect children from harm. There was also broad support (79%) for aligning the safeguarding and welfare requirements covering children from birth to age seven in question 5 and a number of comments were offered by respondents on the detail of the proposed changes in response to question 10.

8.2 There was also significant support (79%) for the proposal in question 2 which proposed that, for children attending Reception (age 4-5) class, providers of before/after school and holiday care should not have to meet the learning and development requirements. This requirement has been removed from the revised EYFS Document.

8.3 There was less support (28%) for the proposal in question 3 to increase the amount of time that a child can be looked after informally from two to three hours a day before providers need to register. The Government was sympathetic to the arguments made by a number of respondents and therefore amended the proposal so that the threshold for compulsory registration is raised to three hours where care is provided 'in friendship' for reward and in domestic settings only. A new exemption has been introduced in the Order in this instrument.

8.4 The proposals to remove the requirement for local authorities to approve childminder training courses in question 6 and first aid training in question 7 were supported by 14% and 49% of respondents respectively. The Government made clear in its response to the consultation that it agreed with respondents about the importance of high quality training and that by opening up the market, there would be improved access to training from a range of providers.

8.5 The proposal to simplify the requirements around risk assessment in question 7 was supported by 57% of respondents. One of these instruments and the EYFS Document take forward the proposal to remove the detailed requirements around risk assessment policies and procedures and instead replace it with a general duty that providers must take all reasonable steps to ensure staff and children are not exposed to risks.

8.6 There was support from 16% of respondents for the proposal in question 9 to remove staffing and qualification levels for providers (other than childminders) of out-of-hours care for children who are at school (age 4-5 in school Reception year and age 5-7) during the day. The Government considered carefully those views and the changes made by these instruments align the staffing requirements for out-of-hours providers with the requirements for maintained schools. This

means that where out-of-hours care is provided for children in school Reception year (age 4-5) and aged 5-7, there must be sufficient staff as for a class of 30 children during the school day. Providers will be responsible for ensuring the safety and welfare of the children and that at least one person present has an appropriate first aid qualification.

8.7 The proposal in question 4 is a matter for primary legislation. An analysis of the consultation responses and the Government's response was published on 13 February 2014:

www.gov.uk/government/consultations/childcare-regulation

8.8 Given the focus of the proposed reforms was on aligning requirements for early years and later years providers, the consultation and subsequent response did not specifically distinguish between the proposed requirements for providers on Part A of the GCR and those on Part B. It has been decided that the amendments to Part B should not be as extensive to those to Part A, because the provision made under Part B is voluntarily registered, and is different in nature by virtue of the type of provider (i.e. mainly nannies providing care in the child's own home where the Government thinks it important to maintain continuity of existing requirements, including for nannies to be qualified before they can register with Ofsted).

8.9 There has been no specific consultation on the amendments to this legislation in relation to CMAs, which are consequential amendments to account for the introduction of CMAs by virtue of provisions in the 2014 Act. We will be consulting on draft regulations, including key requirements for registration, for those wanting to register as CMAs separately.

8.10 The Secretary of State has consulted Her Majesty's Chief Inspector as required under sections 43(2), 59(2) and 67(2) of the 2006 Act. Following the February 2014 consultation response, the following organisations have been further consulted about elements of the EYFS Document: Ofqual, 4Children, National Day Nurseries Association, St John Ambulance and The Red Cross.

8.11 The revised EYFS was published on 31 March 2014 and reflects the Government's response to the regulation consultation and consequential amendments to support the introduction of CMAs from 1 September 2014.

## 9. Guidance

The EYFS Document has been revised to reflect the relevant changes arising from these registration changes and the introduction of CMAs, and is available on the GOV.UK website at:

www.gov.uk/government/publications/early-years-foundation-stage-framework--2

Ofsted will update its information for providers and inspectors before the changes take effect in September 2014.

## 10. Impact

10.1 The impact on business, charities or voluntary bodies of the registration changes is assessed as Zero Net Cost within an overall package that is deregulatory in nature. The amendments are principally concerned with giving schools and other out-of-hours providers more flexibility over how to organise their provision.

10.2 There is minimal impact on the public sector. Maintained schools are not affected by the changes to the GCR and these regulations are not principally concerned with amending the requirements which apply to maintained schools that are also on the EYR.

10.3 A Validation Impact Assessment for the new exemption from registration for family friends caring for children for up to 3 hours per day on domestic premises for reward is attached to this memorandum and published on www.legislation.gov.uk. A further Validation Impact Assessment covering the other childcare registration changes in these instruments has been submitted to Regulatory Policy Committee following earlier confirmation that the proposals were eligible for 'fast track' consideration. Once RPC confirmation is received, the second Validation Impact Assessment will also be published on www.legislation.gov.uk.

10.4 There is no need for an Impact Assessment for the consequential changes related to CMAs due to the deregulatory nature of the CMA provisions and the fact that they do not compel persons to establish, or register with, a CMA. The amendments are concerned with giving childminders and other providers of care on domestic premises the choice of registering with a CMA or the Chief Inspector. No organisation will be required to register on the EYR or the GCR as a CMA, and no childminder will be required to register with a CMA.

## 11. Regulating small business

11.1 The legislation applies to small businesses such as childminders, other providers of childcare on domestic premises and nannies. The legislation will also apply to those small businesses that register as CMAs.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken with Part A of the GCR is to differentiate, where appropriate, between childminders and other providers. There are no additional regulatory burdens for providers on Part B of the GCR (mainly nannies).

11.3 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 in relation to this legislation.

## 12. Monitoring & review

The changes to the registration system aim to make it easier for providers to provide care from 8am – 6pm. The Childcare and Early Years Provider Survey and the Annual Schools Census will be used to monitor the effect of the regulatory changes. Early years and childcare providers will continue to be subject to registration checks and inspection by Ofsted. CMAs will provide information and data on the childminders that register with them to the Chief Inspector for inspection purposes and to local authorities for the purposes of helping them fulfil their duties in relation to childcare sufficiency.

## 13. Contact

Alison Britton at the Department for Education Tel: 020 7340 8263 or email: alison.britton@education.gsi.gov.uk can answer any queries regarding the instrument.