EXPLANATORY MEMORANDUM TO THE

DAY CARE AND CHILD MINDING (SUITABILITY) (ENGLAND) REGULATIONS 2005

2005 No. 2297

1. This explanatory memorandum has been prepared by Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 These regulations prescribe the information which an applicant for registration as a child minder or provider of day care must consent to be disclosed. Failure to give this consent or to withdraw consent subsequently entitles the Chief Inspector to regard the applicant as not suitable to look after children under the age of 8 or as not suitable to have regular contact with such children.

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

3.1 None.

4. Legislative Background

4.1 Section 79B(5A) of the Children Act 1989 ("the 1989 Act") was inserted by section 152 and paragraph 1 of Schedule 13 to the Education Act 2002. These regulations are the first exercise of this power.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 No statement is required.

7. Policy background

7.1 Section 79B(5A) of the 1989 Act was inserted by the Education Act 2002 to provide that the Chief Inspector could refuse to register someone simply on the grounds that they had not consented to certain checks being carried out. The policy intent is to provide the greatest degree of protection of

children by ensuring that the Chief Inspector can undertake prescribed checks in order to confirm that an individual is suitable to care for children.

7.2 We consulted over a 12 week period between 1 April and 24 June 2005 with organisations and individuals that have an interest in the day care and childminding.[1] 134 responses were received. This included 47 from local authority Early Years Teams and 62 from individual child minders or day care providers. 92% of respondents were supportive of these regulations. 2% were not supportive and 6% were unsure. A summary of responses to the consultation is held by the contact named below

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

9. Contact

Paul Oates at the Department for Education and Skills Tel: 0207 273 5686 or e-mail: Paul.OATES@dfes.gsi.gov.uk can answer any queries regarding the instrument.

[1] http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1305. Consultation closed on 24 June 2005

Full Regulatory Impact Assessment (RIA) for the proposed Child Minding and Day Care (Suitability) (England) Regulations 2005

Purpose and intended effect of measure

The proposed new regulations set out the checks that Ofsted may carry out to confirm that an individual is suitable to care for children.

Objective

To protect children by setting out the checks that may be undertaken to establish suitability and making registration conditional upon agreement to checks being undertaken.

Background

Part XA of the Children Act requires Ofsted to establish whether an individual is suitable to look after children. These suitability determinations are made after certain checks have been carried out, including checks against police records through the Criminal Records Bureau. Amendments to Part XA were introduced by the Education Act 2002 to clarify that Ofsted could refuse to register someone simply on the grounds that they had not consented to these checks, and these regulations give effect to that by prescribing the checks which may be carried out.

Risk assessment

These proposed regulations set out checks that Ofsted may undertake in order to confirm that an individual is suitable to care for children. Although the criteria in standard 1 of the national standards lay out the checks needed to establish suitability they are not prescribed and are therefore subject to the legal challenge that the checks should be made at all. If somebody did not consent to the proposed checks, Ofsted would be in an awkward position – unable to confirm suitability through the third party checks, and yet unable to refuse registration on the grounds of the applicant's refusal to consent to the checks.

Options

These regulations have been proposed in order to address deficiencies in the current arrangements which have come to light since Ofsted took over responsibility for regulating childcare under the Children Act 1989. In working up the proposed regulations, we have considered and rejected a number of different approaches and detailed policy options. Maintaining the status quo is also clearly an option, but without the new regulations Ofsted will have to continue to work with what it considers to be an unsatisfactory legal basis for refusing registration on the grounds that an applicant has not consented to third party checks on their suitability to look after children.

Costs and benefits

The suitability regulations set out checks that Ofsted may undertake in order to confirm that an individual is suitable to care for children. They do not introduce new checks or procedures. Ofsted has not identified any additional costs associated with these regulations, and we do not believe that there would be any cost impact on providers.

Business sectors affected

The registered childminding and day care sector. This covers childcare providers in the private, voluntary and public sectors, the majority of which would be self employed childminders (around 70,000 are currently registered) and small businesses operating day care services (there are about 30,000 day care providers).

Equity and fairness

By clarifying the grounds upon which an individual is deemed suitable to be a childminder or day care provider we can be sure that applications for registration are all tested in the same way.

Small firms' impact test

Discussions with representatives of provider organisations whose membership covers the majority of providers in the sector have not identified any specific additional costs, or any significant impact that would be incurred as a result of these proposals. At this time, with the agreement of the Small Business Service, we do not intend to carry out stage one of the impact test. However should the consultation uncover any hidden costs or unintended consequences of the proposals this position will be reviewed.

Competition assessment

No issues identified.

Enforcement and sanctions

Ofsted do not anticipate any difficulties with the suitability regulations.

Consultation

We consulted on these regulations between 1 April and 24 June 2005. No significant issues arose as a result of that consultation and 92% of the respondents agreed that the regulations would provide a better legal basis to establish suitability. We are now proposing that these regulations are brought into operation in October 2005.

Monitoring and review

We will evaluate the effectiveness of these regulations within the first 24 months of operation by undertaking a review with Ofsted to establish whether they have

improved the decision making process. Following this evaluation we will consider a further revision of the regulations if the need for changes is identified.

Summary & recommendation

Our aim in proposing these regulations is to provide the legal certainty needed by Ofsted to ensure that there are no challenges to their decisions on a provider's suitability to care for children. Doing nothing or watering down these regulations would not achieve those aims. The Government therefore recommend these regulations for the reasons outlined in this RIA.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed …Beverley Hughes.

Date: 16th August

Beverley Hughes,

Children's Minister, DfES/DWP

Contact point; Russell Ewens, Dave Bell and Paul Oates

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