STATUTORY INSTRUMENTS

2012 No. 2463

CHILDREN AND YOUNG PERSONS, ENGLAND

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012

Made - - - -	*25th September 2012*
Laid before Parliament	*1st October 2012*
Coming into force - -	*26th October 2012*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 46 and 104(2) of the Childcare Act 2006(**a**):

Citation and commencement

1. These Regulations may be cited as the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 and come into force on 26th October 2012.

Amendments to the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008

2. The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008(**b**) are amended as follows.

3. In regulation 1(2) (citation, commencement and interpretation), in the appropriate place insert—

"independent school" has the meaning given in section 463 of the Education Act 1996(**c**);.

4. For regulation 2 (power of the Secretary of State to confer exemptions), substitute—

"**2.** The Secretary of State may direct that the learning and development requirements(**d**) apply with modifications, or do not apply—

(a) in respect of a particular early years provider, in the circumstances prescribed in regulation 3, and to the extent prescribed in regulation 4; and

(b) in respect of a particular description of early years providers, in the circumstance prescribed in regulation 4A, and to the extent prescribed in regulation 4B.".

(**a**) 2006 c. 21. See section 106 of the Childcare Act 2006 ("the Act") for the definitions of "prescribed" and "regulations".
(**b**) S.I. 2008/1743.
(**c**) Section 463 was substituted by section 172 of the Education Act 2002 (c. 32).
(**d**) See section 39(1)(a) of the Act for the meaning of "learning and development requirements". Section 41 of the Act makes further provision about the content of the learning and development requirements.

5. In regulation 3 (prescribed circumstances relating to principles governing the early years provision)—

(a) for paragraph (b), substitute "the early years provider has sought the views of the parents of children for whom the early years provision is provided as to whether the direction should be requested;" and

(b) for paragraph (d), substitute "the early years provider has informed the relevant local authority that it is requesting a direction.".

6. For regulation 4 (extent of a direction: principles governing the early years provision), substitute—

"**4.**—(1) A direction made under regulation 2(a) may provide that any educational programme, early learning goal or assessment arrangement—

(a) applies with such modifications as are specified in the direction; or

(b) does not apply.

(2) A direction made under regulation 2(a) may not extend to early years provision where the circumstance referred to in regulation 3(c) is not met.".

7. After regulation 4 insert—

"Prescribed circumstance relating to independent schools

4A. The circumstance referred to in regulation 2(b) is that the particular description of early years providers is an independent school which is not an Academy within the meaning of section 579(1) of the Education Act 1996(**a**).

Extent of a direction: independent schools

4B.—(1) A direction made under regulation 2(b) may not extend to early years provision for a child or children who has not (or have not) attained the age of three.

(2) A direction made under regulation 2(b) may not extend to early years provision where the requirements of a condition imposed by the Secretary of State under regulation 4C(2)(d) on making a direction are not satisfied.

Conditions which may be imposed on making a direction

4C.—(1) The Secretary of State may, on making a direction under regulation 2, impose a condition requiring an early years provider to make clear in any information published for parents about the early years provision that the early years provision is exempt provision.

(2) The Secretary of State may, on making a direction under regulation 2(b), impose conditions—

(a) requiring an early years provider to seek the views of the parents of children for whom the early years provision is provided as to whether the early years provision should be exempt provision;

(b) requiring an early years provider to inform the relevant local authority that it intends to notify the Secretary of State that it wishes the early years provision to be exempt provision;

(c) requiring an early years provider to notify the Secretary of State that it wishes the early years provision to be exempt provision;

(d) regarding the quality of education and associated provision at the independent school which must be met for the early years provision to be exempt provision; and

(**a**) 1996 c. 56. Relevant amendments were made to section 579(1) by the Academies Act 2010 (c. 32), Schedule 2, paragraph 6.

(e) requiring an early years provider to notify the Secretary of State and the relevant local authority if it is no longer able to satisfy the requirements of a condition imposed under regulation 4C(2)(d).

(3) In this regulation, "exempt provision" means early years provision which does not meet the learning and development requirements, or which meets the learning and development requirements subject to modifications, in accordance with a direction made under regulation 2.".

Temporary inability to deliver the learning and development requirements

8. Omit regulations 5 and 6.

Elizabeth Truss
Parliamentary Under Secretary of State
Department for Education

25th September 2012

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (the "2008 Regulations").

Part 2 (exemptions in respect of early years providers) of the 2008 Regulations sets out the circumstances in and extent to which the Secretary of State may direct that an early years provider is exempt from the learning and development requirements, which are set out in sections 39 to 41 of the Childcare Act 2006. These Regulations make amendments to Part 2 of the 2008 Regulations, and in particular provide that the Secretary of State may exempt a particular description of early years provider which is an independent school which is not an Academy. The Regulations also make provision about conditions which may be imposed by the Secretary of State on making a direction. The Regulations revoke regulations 5 and 6 of the 2008 Regulations which enable an exemption to be granted where the early years provider is temporarily unable to meet the learning and development requirements.

An impact assessment has been prepared for these Regulations and can be found, together with the Explanatory Memorandum, at www.legislation.gov.uk.

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