EXPLANATORY MEMORANDUM TO

THE LEVELLING-UP AND REGENERATION ACT 2023 (MISCELLANEOUS AMENDMENT) REGULATIONS 2024

2024 No. 1019

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education ("DfE") and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Minister Morgan, Minister for Early Education at the DfE confirms that this Explanatory Memorandum meets the required standard.

2.2 Mike Davies, Deputy Director for Early Years Markets, Strategy and Workforce, at the DfE confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Mike Davies at the DfE telephone: 020 7392 136001 or email: [michael.davies@education.gov.uk] can be contacted with any queries regarding this Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument mostly makes amendments to secondary legislation which are consequential to the commencement, from 1 November 2024, of section 237 (childcare: use of non-domestic premises) and section 238 (childcare: number of providers) of, and Schedule 23 (use of non-domestic premises for childcare: registration) to, the Levelling-up and Regeneration Act 2023 ("the **LURA 2023**")[1].

4.2 Section 237 and 238 of, and Schedule 23 to, the LURA 2023 amend Part 3 of the Childcare Act 2006 ("the **CA 2006**") (regulation of provision of childcare in England) to:

a. increase from 3 to 4 the total number of people (including childminders[2] and/or assistants) that can work together under a childminder's registration in England. Consequently, this increases, from 4 to 5, the minimum number of people required

[1] Sections 237 and 238 of, and Schedule 23 to, the Levelling-up and Regeneration Act 2023 ("LURA 2023") were commenced on 1 November 2024 by the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000).

[2] Prior to 1 November 2024, "childminder" meant a person who provided childcare in respect of which a person was required to be registered by section 33(1) or 52(1) of the Childcare Act 2006 ("CA 2006"), or in respect of which a person was not required to be registered by section 33(1) or 52(1) of the CA 2006. From 1 November 2024, "childminder" means a person who provides childcare in respect of which a person is required to be registered by section 33(1), 34(1)(b), 52(1), or 53(1)(b) of the CA 2006, or in respect of which a person is not required to be registered by section 33(1), 34(1)(b), 52(1), or 53(1)(b) of the CA 2006.

to work together under a provider of childcare on domestic premises[3] ("**CoDP**") registration in England.

b. give childminders and providers of CoDP in England greater flexibility to operate from non-domestic premises if they want to; and

c. create a new category of childminder in England, "childminder without domestic premises", for those childminders who want to operate solely from non-domestic premises, such as a community or village hall.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 Childminders are an important part of the childcare market. They offer high-quality provision that can be tailored to the needs of parents and children and is, on average, more affordable and flexible than other types of childcare. Over the past ten years, however, the overall number of Ofsted-registered childminders has nearly halved (from 53,000 in March 2014 to 26,542 in March 2024), which is reducing choice for parents. In March 2024, childminders were providing more than 162,000 registered early years childcare places (down 39%, from 265,000 places in March 2014) with 98% of Ofsted-registered childminders rated good or outstanding at their last inspection.

5.2 Feedback from the sector and childminders themselves has shown they want:

- the opportunity to grow their business and take on more children.
- to work with more childminders and assistants, which would help reduce loneliness and encourage peer learning.
- fewer property barriers related to working from their home (such as DBS approval), which can prevent them from entering the profession.
- more opportunity to work outside of their domestic premises, as this can be a disruption to family life.

5.3 The new flexibilities introduced by the amendments made to Part 3 of the CA 2006 by sections 237 and 238 of, and Schedule 23 to, the LURA 2023, will allow childminders in England to work with more people, and will allow childminders and providers of CoDP in England to operate for more of their time from non-domestic premises, if they choose to do so. These flexibilities have the potential to support new and existing childminders to set up and expand their business, supporting the roll-out of the childcare entitlements.

[3] "Childcare on domestic premises" ("CoDP") means early or later years provision which would be early years or later years childminding, at least some or all of which is on domestic premises, but for section 96(5) or (9) of the CA 2006. A "provider of childcare on domestic premises" means a person who provides CoDP.

5.4 **Increasing the number of people that can work together under a childminder's registration will** support childminders in England to expand and grow their businesses. For example, they could work with another childminder or employ another assistant to care for more children (as the Early Years Foundation Stage ("EYFS") statutory framework[4] permits each childminder or assistant to care for the same number of children per adult) or provide more one-to-one support to children who would benefit from a greater level of help or personal care. This includes children with special educational needs, who might need more help to process information and achieve their potential, children with disabilities and children with an Education, Health and Care Plan[5] that may require more support to meet their day-to-day needs.

5.5 Increasing the premises freedoms, by allowing childminders and providers of CoDP in England to spend more of their time working from non-domestic premises if they want to do so, will support childminders and providers of CoDP in terms of how they run and grow their businesses. For example, they could spend more of their time providing childcare on premises with more space than their own homes, which may in turn allow them to work with more people and/or care for more children; and better meet the needs of their customers on premises with more modern facilities, including better access for disabled children and their parents. Childminders have shown, through the Pulse Survey of Childcare and Early Years Providers[6] (published April 2024) that they are keen to expand their provision, with 42% of childminders saying they would be 'very likely' or 'highly likely' to offer more places to children under 3.

5.6 Creating a new category of childminder in England ("childminder without domestic premises") who only operate from non-domestic premises will create more flexibility for a person to become a childminder where they do not have access to suitable domestic premises or do not want to work from their own home. This could be because of the potential disruption to their family life, or if they cannot obtain permission from their landlord – or planning permission from their local authority – to operate a childminding business from their home. Data from Tiney7 (a childminder agency8) showed that 12% of those who left the application process at the agency cited landlord or local authority objection as the reason. Settings this new category of childminder could operate from could include school premises or community halls where there may be surplus space.

5.7 As part of the department's Low Impact Assessment on these measures, we estimated the number childminders who may come into the profession each year if they are allowed to operate entirely from non-domestic premises, under the new category of "childminder without domestic premises". We know there is demand for the new category which, from the Low Impact Assessment, could be up to around 75 new

[4] There are two Early Years Foundation Stage ("EYFS") statutory frameworks; one for early years childminders with or without domestic premises, and one for group and school-based early years providers. The EYFS statutory frameworks are made by the Secretary of State for Education under section 44 of the CA 2006 for the purpose of specifying, in accordance with section 39 of the CA 2006, learning and development and welfare requirements applicable to early years providers in England.

[5] An education, health and care plan is defined in section 37 of the Children and Families Act 2014 (c. 6). It specifies the special educational needs of a child or young person aged up to 25. It identifies their educational, health and social needs and the additional support required to meet those needs.

[6] https://assets.publishing.service.gov.uk/media/66214242be5f81890e757d2d/Pulse_survey_of_childcare_and_early_years_providers.pdf.

[7] Source: committees.parliament.uk/writtenevidence/116837/html/

[8] A "childminder agency" is an early years or a later years childminder agency registered with Ofsted in the early years register, or in Part A of the general childcare register, under Chapter 2A or 3A of the CA 2006.

childminders each year, based on intelligence gathered from the sector about childminder applications refused due to premises issues. This is likely an underestimate, as there will be prospective childminders who do not even get to the application stage as they either do not want to operate from domestic premises or know in advance they would be refused permission. However, we cannot predict how many people this will be as there is no data available on this group. Additionally, factors such as the roll out of entitlement funding may also encourage more applicants than anticipated.

5.8 Implementing the above measures will help to resolve some of the issues encountered by existing and prospective childminders and will help grow the childminding sector in England by supporting more people to become childminders.

What was the previous policy, how is this different?

5.9 Before the commencement of sections 237 and 238 of, and Schedule 23 to, the LURA 2023 on 1 November 2024, at least half of a childminder's or a provider of CoDP's provision had to be on domestic premises. From 1 November 2024, a person who is registered as a childminder with domestic premises, or as a provider of CoDP, will be required to spend at least some or all of their time operating from domestic premises. This means they can work from non-domestic premises for more than half of their time if they choose, so long as they work at least some of their time from domestic premises.

5.10 Before 1 November 2024, childminders could also only work with up to two other people (other childminders and/or assistants), which equated to a total of three people working together under a childminder's registration. From 1 November 2024, all childminders (whether they are registered as a childminder with or without domestic premises), can work with up to three other people (other childminders and/or assistants), which equates to a total of four people working together under a childminder's registration.

5.11 Before 1 November 2024, providers of CoDP had to work with three or more other people (a minimum of four people working together) under the CoDP provider's registration. From 1 November, a person who provides CoDP in England must operate with four or more other people, which equates to a minimum of five people working together under the CODP provider's registration. Transitional provision in Schedule 2 to the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000) provides that from 1 November 2024, a person who was registered as a provider of CoDP immediately before 1 November 2024, or who is registered as a provider of CoDP on or after 1 November 2024 by virtue of an application made, or notice given, to the Chief Inspector or to a childminder agency before 1 November 2024, can continue to work with a minimum of three other people (a total of four people working together) for the duration of that registration.

5.12 Before 1 November 2024, a person who worked with up to three other people (a total of up to four people working together), to provide childcare for reward on non-domestic premises only was not providing "childminding"[9] and the person had to

[9] Because, before 1 November 2024, sections 96(4) and (8) of the CA 2006 provided that childcare for reward was only childminding where "at least half of the provision" was on domestic premises.

register as a provider of childcare on non-domestic premises[10] ("**CoNDP**")[11]. From 1 November 2024, a person who works with up to three other people (up to four people working together in total), to provide childcare for reward on non-domestic premises only, is providing "childminding"[12], none of which is on domestic premises, and the person can choose to register as a provider of CoNDP, as the new category of "childminder without domestic premises", or as both. Transitional provision in Schedule 1 to the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000), provides that, from 1 November 2024, a person who was registered as a provider of CoNDP immediately before 1 November 2024, or who is registered as a provider of CoNDP on or after 1 November 2024 by virtue of an application made, or notice given, to the Chief Inspector before 1 November 2024, can continue to work with up to three other people, which equates to a total of up to four people, to provide childcare for reward on non-domestic premises (i.e. childminding, none of which is on domestic premises), under their existing registration.

5.13 The amendments made to Part 3 of the CA 2006 from 1 November 2024 by sections 237 and 238 of, and Schedule 23 to, the LURA 2023, replaced the single category of a "childminder" (who has to provide at least half of their provision from domestic premises) with two new categories of "childminder"; a "childminder with domestic premises" (who must provide "at least some or all" of their provision on domestic premises), and a "childminder without domestic premises" (who provides all of their provision on non-domestic premises). To ensure that a person who was registered as a "childminder" immediately before 1 November 2024, or who is registered on or after 1 November 2024 by virtue of an application made, or notice given, to the Chief Inspector or to a childminder agency for registration as a "childminder" before 1 November 2024, is correctly registered in accordance with the amended legislation, Schedule 3 to the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000) deeming those persons to be registered as a "childminder with domestic premises".

[10] Prior to 1 November 2024, "childcare on non-domestic premises" ("CoNDP") meant childcare in respect of which a person was required to be registered by section 34(1) or 53(1) of the CA 2006, or in respect of which a person was exempt from the requirement to register in section 34(1) or 53(1) of the CA 2006. From 1 November 2024, CoNDP means childcare in respect of which a person is required to be registered by section 34(1)(a) or 53(1)(a) of the CA 2006, or in respect of which a person is exempt from the requirement to register in section 34(1)(a) or 53(1)(a) of the CA 2006. A "provider of childcare on non-domestic premises" means a person who providers CoNDP.

[11] Or, where it was childcare in respect of which a person was exempt from the requirement to register in s.34(1) or 53(1) of the CA 2006, the person could voluntarily register as a provider of CoNDP under Chapter 4 of Part 3 of the CA 2006.

[12] From 1 November 2024, section 237(1) of the LURA amended the definitions of "early years childminding" and "later years childminding" in sections 96(4) and (8) of the CA 2006 respectively, to remove the requirement that "at least half of the provision" is on domestic premises. Section 238 of the LURA amended sections 96(5) and (9) of the CA 2006 to increase the number of other childminders or assistants a childminder can work with from two to three.

6. Legislative and Legal Context

How has the law changed?

Regulation of childcare in England

6.1 Part 3 of the Childcare Act 2006 provides the legislative framework for the regulation of childcare in England. Most childcare providers providing childcare in England for a child under the age of eight for more than two hours per day are required to be registered with the Chief Inspector in the early years register or in Part A of the general childcare register, or in the case of childminders and providers of CoDP, with the Chief Inspector or with a childminder agency, under Chapter 2 or 3 of Part 3 of the CA 2006. The requirement to register under Chapter 2 or 3 of Part 3 of the CA 2006 does not apply to certain educational institutions where the provision is for a child who has attained the age of two and meets the requirements in sections 34(2) (requirement to register: other early years providers) or 53(2) (requirement to register: other later years providers for children under eight) of the CA 2006[13].

6.2 A person is not required to register, under Chapter 2 or 3 of Part 3 of the CA 2006, to provide later years provision to a child who has attained the age of eight, or to provide early years or later years provision to a child under the age of eight where the childcare is of a type specified by order made by the Secretary of State under section 33(2) (requirement to register: early years childminders with domestic premises), 34(3), 52(2) (requirement to register: later years childminders for children under eight with domestic premises), or 53(3) of the CA 2006[14] ("**exempt provision**"). A person[15] who provides exempt provision for a child for more than two hours per day can voluntarily register with the Chief Inspector in Part B of the general childcare register, or where a person is already registered with a childminder agency with that agency, under Chapter 4 of Part 3 of the CA 2006.

Commencement of LURA 2023 childcare provisions

6.3 Regulation 2 of the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000) brought sections 237 and 238 of, and Schedule 23 to, the LURA 2023, into force on 1 November 2024.

6.4 Section 237(1) of the LURA 2023 amended the definitions of early years childminding and later years childminding in section 96(4) and (8) of the CA 2006 respectively, to remove the requirement that at least half of the provision is on domestic premises. Section 238 of the LURA 2023 amended sections 96(5) and (9) of the CA 2006 by substituting the word "three" for "four". The effects of these amendments are that, from 1 November 2024, any childcare provided in England by up to four people for reward, whether on domestic or non-domestic premises, is early years or later years childminding.

6.5 Section 237(1) of the LURA 2023 introduces Schedule 23 to the LURA 2023. Schedule 23 to the LURA 2023 makes further amendments made to Part 3 of the CA 2006, to:

[13] The requirements in sections 34(2) or 53(2) of the CA 2006 are that the provision is made by an institution which is a maintained school, a non-maintained special school, or an independent educational institution (including an academy or private school), the provision is made by the proprietor of the institution or a person employed to work at the institution, and where the provision is made at a school where at least one child is a registered pupil.

[14] The Childcare (Exemptions from Registration) Order 2008 (S.I. 2008/979).

[15] Other than an educational institution to which section 63(3) of the CA 2006 applies.

a. amend the requirements relating to the registration of a person who provides early years or later years childminding so that they apply in relation to early years or later years childminding, at least some or all of which is on domestic premises, and so that a person who provides such provision is registered under Chapter 2 or 3 of the CA 2006 as an early years or a later years childminder with domestic premises, or under Chapter 4 of Part 3 of the CA 2006 as a childminder with domestic premises;

b. amend the requirements relating to the registration of a person who provides early years or later years CoDP so that they apply in relation to early years or later years provision, which would be early years or later years childminding, at least some or all of which is on domestic premises, but for section 96(5) or (9) of the CA 2006;

c. create new registration requirements relating to the registration of a person who provides early years or later years childminding, none of which is on domestic premises, so that a person who provides such provision can register in any or all of the following ways:

   i. under Chapter 2 or 3 of the CA 2006 as an early years or a later years childminder without domestic premises;

   ii. under Chapter 2 or 3 of the CA 2006 as an early years or a later years provider other than a childminder;

   iii. under Chapter 4 of the CA 2006 as a childminder without domestic premises; or

   iv. under Chapter 4 of Part 3 of the CA 2006 as a provider of childcare other than a childminder.

6.6 Schedules 1 to 3 to the Levelling-up and Regeneration Act 2023 (Commencement No.5 and Transitional Provisions) Regulations 2024 (S.I. 2024/1000) make transitional provision relating to persons already registered as childminders or as providers of CoDP or CoNDP immediately before 1 November 2024, and persons who are registered as childminders or as providers of CoDP or CoNDP on or after 1 November 2024 by virtue of an application made, or notice given, to the Chief Inspector or to a childminder agency for registration as a "childminder" before 1 November 2024. See paragraphs 5.11 to 5.12 above.

Amendments made by this Instrument

6.7 This Instrument makes amendments to secondary legislation which are consequential to the amendments to Part 3 of the CA 2006 made by sections 237 and 238 of, and Schedule 23 to, the LURA 2023.

6.8 Regulation 1 of this Instrument cites the title of this Instrument, confirms that it commences on 1 November 2024, and confirms that it extends to England and Wales, but applies in relation to England only.

6.9 Regulation 2 of this Instrument amends the definition of "the Document" in article 2 of the Early Years Foundation Stage (Learning and Development Requirements) Order 2007[16] (interpretation) to give legal effect to updated EYFS statutory frameworks applicable from 1 November 2024[17], and to apply the requirements in the

[16] S.I. 2007/1772

[17] The EYFS statutory frameworks were amended, with effect from 1 November 2024, as a consequence of the amendments made to Part 3 of the CA 2006 by sections 237 and 238 of, and Schedule 23 to, the LURA 2023,

EYFS statutory framework for childminders to a person registered as an early years childminder with or without domestic premises under Chapter 2 of Part 3 of the CA 2006.

6.10 Regulation 3 of this Instrument amends the Childcare (Early Years Register) Regulations 2008[18]. Regulations 3(2) and (3) amend regulation 3 (prescribed requirements for registration) and 4 (information to accompany application for registration), so that from 1 November 2024 the requirements in Schedule 1 (applications for registration: early years childminders) apply in relation to the registration of an early years childminder with or without domestic premises under Chapter 2 of Part 3 of the CA 2006, and the requirements in Schedule 2 (applications for registration: other early years providers) apply in relation to the registration of an early years provider of CoNDP (including where the provision is, or includes, early years childminding, none of which is on domestic premises) and an early years provider of CoDP under Chapter 2 of Part 3 of the CA 2006, and to early years provision provided by an educational institution in England who is exempt from registration by section 34(2) and 53(2) of the CA 2006.

6.11 Regulation 4 of this Instrument amends the Childcare (General Childcare Register) Regulations 2008[19]. Regulation 4(2) amends the definition of "childminder's assistant" in regulation 2 (interpretation) to clarify that a childminder's assistant means a person who assists a registered childminder on domestic or non-domestic premises.

6.12 Regulations 4(3) and (4) amend regulations 4 (prescribed requirements for registration) and 5 (information to accompany application for registration), so that from 1 November 2024:

a. the requirements in Schedules 1 (applications for registration: later years childminders) and 3 (requirements governing activities: section 59) apply in relation to the registration of a later years childminder with or without domestic premises under Chapter 3 of Part 3 of the CA 2006;

b. the requirements in Schedules 2 (applications for registration: other later years providers) and 3 apply in relation to the registration of a later years provider of CoNDP (including where the provision is, or includes, later years childminding, none of which is on domestic premises) and a later years provider of CoDP under Chapter 3 of Part 3 of the CA 2006 and to later years provision provided by an educational institution in England who is exempt from registration by section 34(2) and 53(2) of the CA 2006;

c. the requirements in Schedules 4 (applications for registration in Part B of the general childcare register: childminders) and 6 (requirements governing the activities of persons registered voluntarily) apply in relation to the registration of a childminder with or without domestic premises under Chapter 4 of Part 3 of the CA 2006; and

d. the requirements in Schedules 5 (applications for registration in Part B of the general childcare register: other childcare providers) and 6 apply in relation to the registration of a provider of CoNDP (including where the provision is, or includes,

primarily to apply the requirements in the EYFS statutory framework for childminders to a person registered as an early years childminder without domestic premises.

[18] S.I. 2008/974

[19] S.I.2008/975

early years or later years childminding, none of which is on domestic premises) and to a provider of CoDP under Chapter 4 of Part 3 of the CA 2006.

6.13 Regulation 4(5) amends regulation 11(3) (information to accompany application for registration), so that the requirements in paragraphs 15 and 16 in Part 2 of Schedule 4 (information relating to the childminding) do not apply to a person who makes an application for registration as a childminder without domestic premises in Part B of the general childcare register under section 63(1)(b) of the CA 2006 (applications for registration on the general register: other childcare providers) if that person is not providing early years or later years childminding when the application is made.

6.14 Regulation 4(6) to (9) make further amendments to Schedules 2, 3, 5, and 6, to ensure that from 1 November 2024 the relevant requirements in those Schedules apply to persons registered as childminders with or without domestic premises and to providers of CoNDP and CoDP, under Chapter 3 or 4 of Part 3 of the CA 2006.

6.15 Regulations 4(7)(d) and 4(9)(b) insert a new paragraph 9A in Schedule 3 (suitability of other persons) and a new paragraph 11A in Schedule 6 (suitability of other persons) respectively, to require a person registered as a later years childminder without domestic premises under Chapter 3 of Part 3 of the CA 2006, or as a childminder without domestic premises under Chapter 4 of Part 3 of the CA 2006, to inform a person with parental responsibility for a child to whom the person is providing the childminding that they are not permitted to provide childminding on any domestic premises under that registration.

6.16 Regulation 4(9)(a) amends paragraph 11(3) of Schedule 6 so that the requirements of paragraph 11 of Schedule 6 do not apply to any non-domestic premises used by a childminder (whether with or without domestic premises) or to a provider of CoDP, who is registered under Chapter 4 of Part 3 of the CA 2006.

6.17 Regulation 5 of this Instrument amends the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008[20]. Regulation 5(2) amends the definition of "registered person" in regulation 2 (interpretation) to refer to a person registered under Chapter 2, 3 or 4 of "Part 3" of the CA 2006. Regulations 5(3) and (4) amend regulations 6 (content of certificate of registration issued by the Chief Inspector) and 7A (content of certificate of registration issued by a childminder agency), so that from 1 November 2024 a certificate of registration issued by the Chief Inspector, or by a childminder agency, to a person registered as a childminder with or without domestic premises under Part 3 of the CA, must specify how that person is registered.

6.18 Regulation 6 of this Instrument amends the Childcare (Exemptions form Registration) Order 2008[21]. Regulation 6(2) amends article 2 (exemptions), so that from 1 November 2024, where a person provides early years or later years childminding, none of which is on domestic premises, the requirement to register as an early years or a later years provider other than a childminder under section 34(1)(a) or 53(1)(a) of the CA 2006, or as an early years or a later years childminder without domestic premises under section 34(1)(b) or 53(1)(b) of the CA 2006, does not apply the circumstances specified in articles 3(1)(b) or (c) to (e) (exempt childminding), 6 (exempt activity-based provision) or 8 (exempt provision during home education)

[20] S.I. 2008/976
[21] S.I. 2008/979

6.19 Regulation 7 of this Instrument amends the Childcare (Fees) Regulations 2008[22]. Regulation 7(2) amends regulation 2A (fees that do not apply to certain childcare in respect of non-domestic premises), so that from 1 November 2024, the requirements referred to in regulation 2A continue to not apply to non-domestic premises used by a person registered as a provider of CoDP.

6.20 Regulations 7(3) to (13) amend regulations 3 to 9, 11, 13, 14 and 16, so that from 1 November 2024 the same fees are payable by a person who is, or who has applied to be, registered with the Chief Inspector as a childminder with or without domestic premises under Chapter 2, 3 or 4 of Part 3 of the CA 2006, and to ensure that those who are, or who have applied to be, registered with the Chief Inspector as a provider of CoDP or as a provider of CoNDP under Chapter 2, 3 or 4 of Part 3 of the CA 2006, continue to pay the same fees as they did before 1 November 2024.

6.21 Regulation 8 of this Instrument amends the Early Years Foundation Stage (Welfare Requirements) Regulations 201223. Regulation 8(2) amends the definition of "the Document" in regulation 2 (interpretation) to give legal effect to updated EYFS statutory frameworks applicable from 1 November 2024, and to apply the requirements in the EYFS statutory framework for childminders to a person registered as an early years childminder with or without domestic premises under Chapter 2 of Part 3 of the CA 2006. Minor clarificatory and drafting changes (unrelated to the commencement of LURA) are also made to the EYFS documents, including clarification that only staff who hold Qualified Teacher Status, Early Years Teacher Status or Early Years Professional Status can work in the Level 6 staff:child ratios. Regulation 8(2) of this Instrument amends regulation 8(2A) to refer to the updated paragraph numbers on the EYFS documents.

6.22 Regulation 8(4) amends regulation 8A (approval of the suitability of additional premises), so that from 1 November 2024 regulation 8A(2) applies to early years childminding with or without domestic premises in respect of which a person is required to be registered by section 34(1) or 34(1)(b) of the CA 2006, and regulation 8A(3) continues to apply if the proposed provision is early years CoDP in respect of which a person is required to be registered by section 34(1A) of the CA 2006.

6.23 Regulation 9 of this Instrument amends regulations 13, 14, 15 and 16 of the Childcare (Childminder Agencies) (Cancellation etc.) Regulations 2014[24], so that from 1 November 2024 the requirements in those regulations apply to a person registered as childminder with or without domestic premises with a childminder agency under Part 3 of the CA 2006.

6.24 Regulation 10 of this Instrument amends the definition of "early years childminder" in regulation 1(2) (citation, commencement and interpretation) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014[25], so that from 1 November 2024 that definition includes a person registered as an early years childminder or with without domestic premises under Chapter 2 of Part 3 of the CA 2006, and to ensure that from 1 November 2024 the definition continues to include a person registered as an early years provider of CoDP under Chapter 2 of Part 3 of the CA 2006.

[22] S.I. 2008/1804
[23] S.I. 2012/938
[24] S.I. 2014/1992
[25] S.I. 2014/2147

6.25 Regulation 11 of this Instrument amends the definition of "childminder" in regulation 4 (definitions) of the Childcare (Free of Charge for Working Parents) (England) Regulations 2022[26] so that from 1 November 2024, that definition includes a person registered as an early years childminder with or without domestic premises under Chapter 2 of Part 3 of the CA 2006, and to ensure that from 1 November 2024 the definition continues to include a person registered as an early years provider of CoDP under Chapter 2 of Part 3 of the CA 2006.

Why was this approach taken to change the law?

6.26 The LURA 2023 achieved Royal Assent on 26 October 2023. In order to ensure that childcare providers in England are appropriately regulated by Part 3 of the CA 2006 from 1 November 2024, following commencement of the amendments made to Part 3 of the CA 2006 by sections 237 and 238 of, and Schedule 23 to, the LURA 2023 childcare provisions, it is necessary to make consequential amendments to secondary legislation. The new flexibilities for childminders and providers of CoDP could not be effectively introduced without these amendments.

7. Consultation

Summary of consultation outcome and methodology

7.1 Over the summer and autumn 2022, key sector stakeholders, (including childminders, Ofsted, childminder agencies, and early years membership organisations) were engaged on a range of proposed new flexibilities, including those being brought in through the LURA 2023. They were generally supportive of the LURA 2023 measures – many existing childminders expressed an interest in the new category, with some saying that, without these changes, their business will struggle and may be forced to close.

7.2 The clarification in the EYFS documents (paragraph 6.21 above) that only staff who hold Qualified Teacher Status, Early Years Teacher Status (EYTS) or Early Years Professional Status can work in the Level 6 staff: child ratios was consulted on in 2023. 70% of respondents agreed with the proposal. In the consultation response[27] published in October 2023, the Department confirmed its policy position but said it did not intend to amend the wording of the EYFS at that time, pending consideration of routes to EYTS. The Department is now making the change to ensure that its policy position is properly reflected in the EYFS.

8. Applicable Guidance

8.1 The relevant guidance is the Early Years Statutory Framework for childminders and the Early Years Statutory Framework for group and school-based providers. These are published[28] and will be updated in consequence of these statutory changes.

[26] S.I. 2022/2147

[27] https://assets.publishing.service.gov.uk/media/653a7a0ee6c9680014aa9bc6/Early_years_foundation_stage_regulatory_changes_-_consultation_response.pdf

[28] https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because a regulatory impact assessment – as well as an equality impact assessment and family test – were carried out in May 2023 on the measures that were subject to the amendments in the Levelling-Up and Regeneration Bill 2023 (LURB 2023). As the changes related to this Instrument are consequential amendments, no further impact assessment is required to be completed.

Impact on businesses, charities and voluntary bodies

9.2 Based on the department's Low Impact Assessment, which was prepared ahead of tabling amendments in the LURB 2023: The impact on business, charities or voluntary bodies is estimated to be around -£0.03m per year.

9.3 The legislation does not negatively impact small or micro businesses. The measures will support small childcare businesses (namely, childminders and CODPs) to grow and prosper.

9.4 There is no, or no significant, evidence of impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The instrument does not include a statutory review clause. A statutory review provision is not required as the EANDCB is below the threshold. However, DfE will continue to monitor the impact of the changes via any future data and/or issues that are brought to our attention by the childcare sector (including Ofsted and childminder agencies)

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The previous Minister David Johnston has made the following statement regarding Human Rights:

"In my view the provisions of the Levelling-Up and Regeneration Act 2023 (Miscellaneous Amendment) Regulations 2024 making "amendments to Part 3 of the Childcare Act 2006 made by the Levelling Up and Regeneration Act 2023" are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").