

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (DISQUALIFICATION) REGULATIONS 2007

2007 No. 723

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

2. Description

2.1 This statutory instrument is made under the Childcare Act 2006 (“the 2006 Act”) and sets out the categories of persons who are disqualified from registration in England as providers of early years or later years childminding or other early years or later years provision under the 2006 Act. The regulations will apply to those joining the voluntary part (Part B) of the General Childcare Register (also known as the Ofsted Childcare Register, or OCR) (Chapter 4 of the 2006 Act) from 6th April 2007 and to those who register to provide early years provision under Chapter 2 of the 2006 Act and later years provision under Chapter 3 of the 2006 Act when these Chapters are commenced in 2008.

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

3.1 None

4. Legislative Background

4.1 This instrument is one of a series of instruments to be laid before Parliament to implement the 2006 Act. Also in this first phase of implementation, and related to these Regulations, are the Childcare (Voluntary Registration) Regulations 2007, the Childcare (Supply and Disclosure of Information) (England) Regulations 2007 and the Childcare (Provision of Information) (England) Regulations 2007. Implementation of the 2006 Act is expected to be completed by September 2008.

4.2 These Regulations are made in exercise of powers conferred by sections 67(2), (3)(i) and (6),, 74(2), 75(2) and (4) and 104(2) of the Childcare Act 2006. They follow as closely as possible the disqualification regulations made under the Children Act 1989, amendments to which came into force 28th February 2007 (the Day Care and Child Minding (Disqualification) (England) Regulations 2005 (S.I. 2005/2296) as amended by the Day Care and Child Minding (Disqualification) (England) (Amendment) Regulations 2007 (S.I. 2007/197) (the “2005 Regulations”). Those regulations were strengthened under the powers in the Childcare Act 2006 to better align them with changes which were being made to teachers barring regulations (the Education (Prohibition from Teaching or Working with Children) Regulations 2003, known as List 99) to avoid anomalies whereby some people may have been able to work in childcare settings but deemed unsuitable to work in schools.

4.9 The 2005 Regulations apply to applications for registration made under Part 10A of the Children Act 1989 and set out the categories of persons who are disqualified from registration in England as child minders or providers of day care for children under the

age of 8. Persons disqualified under the 2005 Regulations may not act as childminders or provide day care. Nor may they be employed in connection with day care provision or be directly concerned in the management of any provision of day care. The regulations which are the subject of this Explanatory Memorandum ensure that equivalent disqualification provisions apply to applications being made under the 2006 Act.

5. Territorial Extent and Application

5.1 This instrument applies 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

7.2 The Government, through the 2006 Act, is reforming the regulation and inspection regime for childcare. These Regulations apply the same standards to childcare provision registered under the 2006 Act as currently exist for provision registered under the Children Act 1989. Her Majesty's Chief Inspector for Education, Children's Services and Skills will administer two registers: the Early Years Register (EYR) for provision for children up to the age of 5, and the Ofsted Childcare Register, which is divided into two parts. Part A (compulsory registration) relates to childcare for children aged 5 to 7. Part B enables providers to register voluntarily and is described further in paragraph 7.3.

7.3 Providers of childcare that is not currently required to be registered by the Chief Inspector, including activity based provision, care provided in a child's own home and care or supervised activities for children of 8 and over will be able to join the Ofsted Childcare Register from April 2007 as a voluntary measure. Providers of childcare for children aged 0-7 that is currently registered by the Chief Inspector will be able to be registered on the EYR or the compulsory part (Part A) of the Ofsted Childcare Register (for 5 to 7 year olds) from September 2008. The present compulsory registration arrangements for 0-7s childcare (which are made under the Children Act 1989 (c. 41)) will continue until the Early Years Register and the compulsory part (Part A) of the Ofsted Childcare Register are in operation in September 2008.

7.4 These Regulations list the offences and care orders which disqualify individuals from being registered under the 2006 Act to work with children. As with the 2005 Regulations and the regulations providing for inclusion on List 99, these Regulations apply upon conviction of certain offences and where a caution (which also includes reprimands and warnings) has been given in respect of an offence by a police officer after a person has admitted that offence.

7.5 In addition to cautions, the circumstances in which a person may be disqualified include, in relation to the offences specified in the Regulations, where a person has been found to have been not guilty of an offence by reason of insanity and where they are found to have committed the act charged against them but to have been acting under a disability.

7.6 These Regulations define the offences for which a person may be disqualified from registration to include attempts; conspiracy or incitement; or aiding, abetting, counselling or procuring the commission of the offences specified in the Regulations.

7.7 These Regulations also provide that offences committed while overseas which involve acts which would, if they had been done within the United Kingdom, lead to an offence requiring disqualification under these Regulations will lead to disqualification under regulation 4.

7.8 Except where individuals are on the Protection of Children Act 1999 list, on List 99 or have been disqualified by a court following conviction, Ofsted will have the discretion to waive a disqualification if the applicant can show that he/she is not unsuitable to care for children.

Consultation

7.11 Disqualification regulations relating to providers who must currently register under the Children Act 1989 were consulted on most recently from 13th October 2006 – 2nd January 2007. Earlier versions of those regulations were also subject to full consultation. The consultation showed that the regulations are welcomed as being an important safeguard for children. The disqualification regulations described in this explanatory memorandum are the same in scope as the 2005 Regulations. Responses to that consultation are presented in the attached Regulatory Impact Assessment.

Publicity / guidance

7.12 The Chief Inspector will produce material to support providers in registering on the Ofsted Childcare Register and to assist parents, local authorities, schools and others in understanding its requirements.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum.

8.2 The Ofsted Childcare Register will support local authorities in carrying out their duty to secure sufficient childcare as authorities will be able to identify providers that have demonstrated the suitability of the childcare they offer. Schools will also use registration on the Ofsted Childcare Register as a means of identifying provision that is suitable to deliver childcare as part of their extended schools offer. Providers registered on the Ofsted Childcare Register will benefit from parents understanding that essential standards have been met.

9. Contact

Jonathan Robinson at the Department for Education and Skills Tel: 0207 273 4744 or e-mail: jonathan.ROBINSON@dfes.gsi.gov.uk can answer any queries regarding the instrument.