

## SCHEDULE 1

### General Savings

#### **General savings for things done before the transfer date**

1.—(1) Subject to Schedule 2, this Order shall not affect—

- (a) any act done, any notice served, any application made or any decision taken; or
- (b) any requirement or limitation of time; or
- (c) any legal proceedings commenced; or
- (d) any order made by a Court

under, or in relation to any of the provisions amended or repealed as a consequence of the commencement of Schedule 1, 2 or 3 to the 2006 Act.

(2) In relation to the provisions amended or repealed as a consequence of the commencement of Schedule 1, 2 or 3 of the 2006 Act, legal proceedings may be brought or continued and remedies or penalties may be imposed and enforced in relation to acts done under, in relation to, or in contravention of any of those provisions before the transfer date, as if the amendments or repeals had not been made.

## SCHEDULE 2

Saving and transitional provisions in respect of Part 10A of,  
and Schedule 9A to, the 1989 Act, and Part 3 of the 2006 Act

## PART 1

### Registration on 1st September 2008

#### **Child minders registered under Part 10A of the 1989 Act**

1.—(1) Subject to paragraphs 2 and 3, this paragraph applies in respect of a person who, immediately before the transfer date, is registered as a child minder by the Chief Inspector<sup>(1)</sup> under section 79F(1) (grant or refusal of registration) of the 1989 Act.

(2) On the transfer date, the Chief Inspector must register the person as a childminder under section 64(1)(2) (entry on the register and certificates) of the 2006 Act.

(3) On the transfer date, the Chief Inspector must register the person as an early years childminder under section 37(1)(3) of the 2006 Act if immediately before that date the person is authorised<sup>(4)</sup> to provide child minding for children aged five and under.

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(1) For the definition of “the Chief Inspector”, see section 98(1) of the 2006 Act, as amended by paragraph 117 of Schedule 14 to the Education and Inspections Act 2006.

(2) Section 64(1) of the 2006 Act requires the Chief Inspector to register an applicant in Part B of the general childcare register as a childminder, if the person’s application for registration under section 62(1) is granted. The Chief Inspector has a duty to maintain Part B of the general childcare register under section 32 of the 2006 Act.

(3) Section 37(1) of the 2006 Act requires the Chief Inspector to register an applicant in the early years register, as an early years childminder, if the person’s application for registration under section 35(1) is granted. The Chief Inspector has a duty to maintain the early years register under section 32 of the 2006 Act.

(4) On granting an application for registration under section 79E of the Children Act 1989 (“the 1989 Act”), the Chief Inspector may impose conditions. A condition may have the effect of authorising a person to provide day care or, as the case may be, child minding, by reference to the age of the children for whom care is provided.

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(4) On the transfer date, the Chief Inspector must register the person as a later years childminder under section 56(1)(5) of the 2006 Act if immediately before that date the person is authorised to provide child minding for children aged six and over.

(5) Subject to paragraph 24, this paragraph applies even though immediately before the transfer date the person's registration is suspended by the Chief Inspector under regulation 3 of the Suspension Regulations.

### **Child minders registered under Part 10A of the 1989 Act: exceptions**

2.—(1) Paragraph 1 does not apply in respect of the following persons—

- (a) a person who has not provided child minding at any time during the period of three years ending on the transfer date;
- (b) a person to whom, by virtue of the Exemption from Registration Order, section 33(1) of the 2006 Act does not apply;
- (c) a person to whom, by virtue of the Exemption from Registration Order, section 52(1) of the 2006 Act does not apply.

(2) Sub-paragraph (2) of paragraph 1 does not apply in respect of a person who, before the transfer date, has communicated to the Chief Inspector the wish not to be registered as a childminder under section 64(1) of the 2006 Act.

(3) Sub-paragraph (3) of paragraph 1 does not apply in respect of a person who, before the transfer date, has communicated to the Chief Inspector the wish not to be registered as an early years childminder under section 37(1) of the 2006 Act.

(4) Sub-paragraph (4) of paragraph 1 does not apply in respect of a person who, before the transfer date, has communicated to the Chief Inspector the wish not to be registered as a later years childminder under section 56(1) of the 2006 Act.

3. The Chief Inspector may, on the transfer date, register a person referred to in paragraph 2(1) (b) or (c) as a childminder under section 64(1) of the 2006 Act if the child minder has not given notice to the Chief Inspector of the wish not to be so registered.

### **Day care providers registered under Part 10A of the 1989 Act**

4.—(1) Subject to paragraphs 5 and 6, this paragraph applies in respect of a person who, immediately before the transfer date, is registered by the Chief Inspector as a day care provider under section 79F(2) of the 1989 Act.

(2) On the transfer date, the Chief Inspector must register the person as a provider of childcare other than a childminder under section 64(2)(6) of the 2006 Act in respect of the premises to which the registration under section 79F(2) of the 1989 Act relates.

(3) On the transfer date, the Chief Inspector must register the person as an early years provider under section 37(2)(7) of the 2006 Act, in respect of the premises to which the registration under section 79F(2) of the 1989 Act relates, if the person is authorised to provide day care for children aged five and under.

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(5) Section 56(1) of the 2006 Act requires the Chief Inspector to register an applicant in Part A of the general childcare register as a later years childminder, if the person's application under section 54(1) is granted. The Chief Inspector has a duty to maintain Part A of the general childcare register under section 32 of the 2006 Act.

(6) Section 64(2) of the 2006 Act requires the Chief Inspector to register an applicant in Part B of the general childcare register as a provider of childcare other than a childminder, if the person's application for registration under section 63(1) is granted.

(7) Section 37(2) of the 2006 Act requires the Chief Inspector to register an applicant in the early years register as an early years provider other than a childminder, in respect of the premises in question, if the person's application for registration under section 36(1) is granted.

(4) On the transfer date, the Chief Inspector must register the person as a later years provider other than a childminder under section 56(2)(8) of the 2006 Act, in respect of the premises to which the registration under section 79F(2) of the 1989 Act relates, if the person is authorised to provide day care for children aged six and over.

(5) Subject to paragraph 24, this paragraph applies even though, immediately before the transfer date, the person's registration is suspended by the Chief Inspector under regulation 3 of the Suspension Regulations.

### **Day care providers registered under Part 10A of the 1989 Act: exceptions**

- 5.—(1) Paragraph 4 does not apply in respect of the following persons—
- (a) a person to whom, by virtue of the Exemption from Registration Order, section 34(1) of the 2006 Act does not apply;
  - (b) a person to whom, by virtue of the Exemption from Registration Order, section 53(1) of the 2006 Act does not apply.
- (2) Paragraph 4(2) does not apply in respect of—
- (a) a person who is registered as a day care provider under section 79F(2) of the 1989 Act to whom section 63(3)(9) of the 2006 Act applies; or
  - (b) a person who, before the transfer date, has communicated to the Chief Inspector the wish not to be registered as a provider of childcare other than a childminder under section 64(2) of the 2006 Act.
- (3) Sub-paragraph (3) of paragraph 4 does not apply in respect of—
- (a) a person to whom section 34(2)(10) of the 2006 Act applies; or
  - (b) a person who before the transfer date, has communicated to the Chief Inspector the wish not to be registered as an early years provider other than a childminder under section 37(2) of the 2006 Act.
- (4) Sub-paragraph (4) of paragraph 4 does not apply in respect of—
- (a) a person to whom section 53(2)(11) of the 2006 Act applies; or
  - (b) a person who, before the transfer date, has communicated to the Chief Inspector the wish not to be registered as a later years provider other than a childminder under section 56(2) of the 2006 Act.

6. The Chief Inspector may register a person referred to in paragraph 5(1)(a) or (b) on the transfer date as a provider of childcare other than a childminder under section 64(2) of the 2006 Act, in respect of the premises in question, if the day care provider has not communicated to the Chief Inspector the wish not to be so registered.

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- (8) Section 56(2) of the 2006 Act requires the Chief Inspector to register an applicant in Part A of the general childcare register as a later years provider other than a childminder, in respect of the premises in question, if the person's application for registration under section 55(1) is granted.
  - (9) The effect of section 63(3) of the 2006 Act is that a school mentioned in that section may not be registered in Part B of the general childcare register in respect of provision made for children who are three or over, where the provision is made by the school and at least one child is a registered pupil at the school.
  - (10) The effect of section 34(2) of the 2006 Act is that a school mentioned in that section is exempted from the requirement in section 34(1) to be registered in the early years register, in relation to provision made for children aged three and over, where the provision is made by the school and at least one child is a registered pupil at the school.
  - (11) The effect of section 53(2) of the 2006 Act is that a school mentioned in that section is exempted from the requirement in section 53(1) to be registered in Part A of the general childcare register, in relation to provision made for children up to the age of eight, where that provision is made by the school and at least one child is a registered pupil at the school.

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## Arrangements in respect of specified early years providers

7.—(1) This paragraph applies where immediately before the transfer date—

- (a) child minding is provided on domestic premises in circumstances in which, if it were to be provided on or after that date, it would not be early years childminding by virtue of section 96(5) of the 2006 Act<sup>(12)</sup>; and
- (b) the persons providing the child minding are all registered under section 79F(1) of the 1989 Act.

(2) If, before the transfer date, the Chief Inspector is given notice of the provision referred to in sub-paragraph (1), and the conditions in sub-paragraphs (6) and (7) are met, the Chief Inspector must register the person referred to in sub-paragraph (6)(a) as follows—

- (a) as an early years provider other than a childminder under section 37(2) of the 2006 Act, in respect of the premises in question; and
- (b) as a provider of childcare other than a childminder under section 64(2) of the 2006 Act, in respect of the premises in question.

(3) Where the conditions in sub-paragraphs (6) and (7) are complied with before the transfer date, the Chief Inspector must register the person referred to in sub-paragraph (6)(a) on that date in respect of the provision referred to in sub-paragraph (1), as provided for in sub-paragraph (2)(a) and (b).

(4) Where the conditions in sub-paragraphs (6) and (7) are not complied with until after the transfer date, the Chief Inspector must register the person referred to in sub-paragraph (6)(a) in respect of the provision referred to in sub-paragraph (1), as provided for in sub-paragraph (2)(a) and (b) as soon as is practicable, and that person shall, for the purposes of regulation 3A of the Early Years Foundation Stage (Welfare Requirements) Regulations 2007<sup>(13)</sup>, be treated as having been so registered on the transfer date.

(5) Where notice has been given in accordance with sub-paragraph (2) but the conditions in sub-paragraphs (6) and (7) are not complied with before the transfer date, section 33(1) of the 2006 Act does not apply to the provision referred to in sub-paragraph (1) until—

- (a) the conditions in sub-paragraphs (6) and (7) are met; or
- (b) where those conditions are not met before 1st April 2009, that date.

(6) The conditions are that by no later than 1st April 2009, the Chief Inspector is informed—

- (a) of the name and address of the person who is to be registered in accordance with sub-paragraph (2), including whether the person to be registered is an individual, partnership, body corporate or unincorporated association; and
- (b) of the full name of the person who will manage<sup>(14)</sup> the early years provision in pursuance of the registration.

(7) Where the Chief Inspector is informed that the person to be registered is a partnership, body corporate or unincorporated association—

<sup>(12)</sup> Section 96(5) of the 2006 Act provides that early years provision on domestic premises for reward is not early years childminding if at any time the number of persons providing the early years provision on the premises or assisting with the provision exceeds three.

<sup>(13)</sup> *S.I. 2007/1771*, as amended by the Early Years Foundation Stage (Welfare Requirements) Regulations 2008 (*S.I. 2008/1953*). Regulation 3A provides for a period of two and a half years for the staff of an early years provider other than a childminder to obtain the qualifications required by the Statutory Framework for the Early Years Foundation Stage document.

<sup>(14)</sup> Paragraph 6 of Schedule 2 to the Early Years Register Regulations 2008 requires an applicant for registration in the early years register as an early years provider other than a childminder to appoint an individual to manage the early years provision. Paragraphs 7 and 8 impose other requirements relating to the manager.

- (a) the notice must also include the full name of the person who will be the nominated individual<sup>(15)</sup>; and
- (b) that person must be a partner in, or a director, secretary, other officer or member of the governing body of, the body to be registered.

### **Arrangements in respect of specified later years providers**

**8.—**(1) This paragraph applies where immediately before the transfer date—

- (a) child minding is provided on domestic premises in circumstances in which, if it were to be provided on or after that date, it would not be later years childminding by virtue of section 96(9)<sup>(16)</sup> of the 2006 Act; and
- (b) the persons providing the child minding are all registered under section 79F(1) of the 1989 Act.

(2) If, before the transfer date, the Chief Inspector is given notice of the provision referred to in sub-paragraph (1), and the conditions in sub-paragraph (6) and (7) are met, the Chief Inspector must register the person referred to in sub-paragraphs (6)(a) as follows—

- (a) as a later years provider other than a childminder under section 56(2) of the 2006 Act, in respect of the premises in question; and
- (b) as a provider of childcare other than a childminder under section 64(2) of the 2006 Act, in respect of the premises in question.

(3) Where the conditions in sub-paragraphs (6) and (7) are complied with before the transfer date, the Chief Inspector must register the person referred to in sub-paragraph (6)(a) on that date in respect of the provision referred to in sub-paragraph (1), as provided for in sub-paragraph (2)(a) and (b).

(4) Where the conditions in sub-paragraphs (6) and (7) are not complied with until after the transfer date, the Chief Inspector must register the person referred to in sub-paragraph (6)(a) in respect of the provision referred to in sub-paragraph (1), as provided for in sub-paragraph (2)(a) and (b) as soon as is practicable, and that person shall, for the purposes of paragraph 11(3) of Schedule 3 to the General Childcare Register Regulations 2008<sup>(17)</sup>, be treated as having been so registered on the transfer date.

(5) Where notice has been given in accordance with sub-paragraph (2) but the conditions in sub-paragraphs (6) and (7) are not complied with before the transfer date, section 53(1) of the 2006 Act does not apply to the provision referred to in sub-paragraph (1) until—

- (a) the conditions in sub-paragraphs (6) and (7) are met; or
- (b) where those conditions are not met before 1st April 2009, that date.

(6) The conditions are that by no later than 1st April 2009, the Chief Inspector is informed—

- (a) of the name and address of the person who is to be registered in accordance with sub-paragraph (2), including whether the person to be registered is an individual, partnership, body corporate or unincorporated association; and

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<sup>(15)</sup> Paragraphs 9 to 12 of Schedule 2 to the Early Years Register Regulations 2008 impose requirements relating to the “nominated individual”, where an applicant for registration in the early years register as an early years provider other than a childminder is a partnership, body corporate or unincorporated association.

<sup>(16)</sup> Section 96(9) of the 2006 Act provides that later years provision on domestic premises for reward is not later years childminding if at any time the number of persons providing the later years provision on the premises or assisting with the provision exceeds three.

<sup>(17)</sup> Paragraph 11(3) of Schedule 3 to the General Childcare Register Regulations 2008 provides for a period of two and a half years for the staff of a later years provider other than a childminder to obtain the qualifications required in paragraph 11(1) of the Schedule.

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(b) of the full name of the person who will manage(18) the childcare provision.

(7) Where the Chief Inspector is informed that the person to be registered is a partnership, body corporate or unincorporated association —

(a) the notice must also include the full name of the person who will be the nominated individual(19); and

(b) that person must be a partner in, or a director, secretary, other officer or member of the governing body of, the body to be registered.

#### **Day care providers registered under Part 10A of the 1989 Act: managers**

9.—(1) This paragraph applies in the case of a person who on the transfer date is registered by the Chief Inspector under section 37(2) of the 2006 Act in accordance with this Schedule.

(2) The person who is the “responsible individual”(20) for the purposes of section 79B(4)(b) and (5ZA) of the 1989 Act shall be treated as “the manager” for the purposes of paragraph 6 of Schedule 2 to the Early Years Register Regulations 2008.

10.—(1) This paragraph applies in the case of a person who on the transfer date is registered by the Chief Inspector under section 56(2) of the 2006 Act in accordance with this Schedule.

(2) The person who is the “responsible individual” for the purposes of section 79B(4)(b) and (5ZA) of the 1989 Act shall be treated as “the manager” for the purposes of paragraph 3 of Schedule 2 to the General Childcare Register Regulations 2008.

#### **Day care providers registered under Part 10A of the 1989 Act: nominated individuals where day care is the primary purpose of the organisation**

11.—(1) This paragraph applies in the case of a person who—

(a) immediately before the transfer date is registered as a day care provider under section 79F(2) of the 1989 Act;

(b) is a partnership, body corporate or unincorporated association whose primary purpose is the provision of day care; and

(c) is registered by the Chief Inspector under section 37(2) or under section 56(2) of the 2006 Act in accordance with this Schedule.

(2) Where the person is registered under section 37(2) of the 2006 Act, the individual who has been nominated by that person before the transfer date to deal with the Chief Inspector shall be treated as the “nominated individual” for the purposes of paragraph 9 of Schedule 2 to the Early Years Register Regulations 2008, despite the fact that the individual may not be a partner in, or a director, secretary, other officer or member of, the governing body.

(3) Where the person is registered under section 56(2) of the 2006 Act, the individual who has been nominated by that person before the transfer date to deal with the Chief Inspector shall be treated as the “nominated individual” for the purposes of paragraph 6 of Schedule 2 to the General

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(18) Paragraph 3 of Schedule 2 to the General Childcare Register Regulations 2008 requires an applicant for registration in Part A of the general childcare register as a later years provider other than a childminder to appoint an individual to manage the later years provision. Paragraphs 4 and 5 impose other requirements relating to the manager.

(19) Paragraphs 6 to 9 of Schedule 2 to the General Childcare Register Regulations 2008 impose requirements relating to the “nominated individual”, where an applicant for registration in Part A of the general childcare register as a later years provider other than a childminder is a partnership, body corporate or unincorporated association.

(20) Section 79B(5ZA) of the 1989 Act provides that “the responsible individual” means the person working on the premises in the provision of day care (where one individual is working on the premises); or the person who is in charge (where two or more persons are working on the premises). Section 79B(4) of the 1989 Act provides that a person is qualified for registration for providing day care if, amongst other things, the responsible individual is suitable to look after children under the age of eight; or if the person is not looking after such children, the person is suitable to be in regular contact with them.

Childcare Register Regulations 2008, despite the fact that the individual may not be a partner in, or a director, secretary, other officer or member of, the governing body.

(4) For the purposes of this paragraph, in the event that an individual has not been nominated by the person before the transfer date to deal with the Chief Inspector, the Chief Inspector may appoint such an individual as the Chief Inspector considers appropriate to be the “nominated individual”.

**Day care providers registered under Part 10A of the 1989 Act: nominated individuals where day care is not the primary purpose of the organisation**

12.—(1) This paragraph applies in the case of a person who—

- (a) immediately before the transfer date is registered as a day care provider under section 79F(2) of the 1989 Act;
- (b) is a partnership, body corporate or unincorporated association whose primary purpose is not the provision of day care; and
- (c) is registered by the Chief Inspector under section 37(2) or under section 56(2) of the 2006 Act in accordance with this Schedule.

(2) Where the person is registered under section 37(2) of the 2006 Act, the individual who has delegated, direct responsibility for the provision of day care shall be treated as the “nominated individual” for the purposes of paragraph 9 of Schedule 2 to the Early Years Register Regulations 2008, despite the fact that the individual may not be a partner in, or a director, secretary, other officer or member of, the governing body.

(3) Where the person is registered under section 56(2) of the 2006 Act, the individual who has delegated, direct responsibility for the provision of day care shall be treated as the “nominated individual” for the purposes of paragraph 6 of Schedule 2 to the General Childcare Register Regulations 2008, despite the fact that the individual may not be a partner in, or a director, secretary, other officer or member of, the governing body.

(4) For the purposes of this paragraph, the individual who has delegated, direct responsibility for the provision of day care is either—

- (a) the individual whose name has been included in the application for registration (in accordance with paragraph 1C of the Schedule to the Child Minding and Day Care (Applications for Registration) (England) Regulations 2001<sup>(21)</sup>); or
- (b) the individual whose name has been provided to the Chief Inspector as having delegated, direct responsibility for the provision of day care in pursuance of paragraph 2(1)(e) of Schedule 2 to the National Standards Regulations<sup>(22)</sup>.

(5) For the purposes of this paragraph, where there is more than one individual who has delegated, direct responsibility for the provision of day care, the Chief Inspector may appoint one of them to be the “nominated individual”.

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(21) [S.I. 2001/1829](#). The Child Minding and Day Care (Applications for Registration) (England) Regulations 2001 were amended by the Child Minding and Day Care (Applications for Registration) (England) (Amendment) Regulations 2005 ([S.I. 2005/2448](#)). The effect of paragraph 1C of the Schedule to the amended Regulations is that where an applicant for registration for providing day care under Part 10A of the 1989 Act is an incorporated or unincorporated body, a partnership or a committee for whom day care is not its primary purpose, the applicant must provide details of the persons who have delegated, direct responsibility for the provision of day care.

(22) By virtue of paragraph 2(1)(e) of Schedule 2 to the National Standards Regulations, a provider of day care that is provided by a partnership, committee or corporate or unincorporated body whose prime purpose is not the provision of day care must notify the Chief Inspector in the event of a change to any person with delegated, clearly identifiable and direct responsibility for the care.

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### Certificates of registration

13.—(1) Where a person is registered on the transfer date in accordance with this Schedule, the Chief Inspector must, by no later than 1st February 2010, give to the person a certificate of registration in accordance with section 37, 56, 64 and 92 of the 2006 Act, as the case may be, as if the person had made an application for registration and that application had been granted.

(2) Until such time as a person registered in accordance with this Schedule is given a certificate of registration as provided for by this paragraph, any certificate of registration given to that person by the Chief Inspector in accordance with paragraph 6 of Schedule 9A(23) to the 1989 Act continues to have effect as if it had been given to the person under the 2006 Act.

(3) Sub-paragraph (1) does not apply in the case of a person who is no longer registered under the 2006 Act.

### Conditions

14.—(1) Subject to sub-paragraphs (2) to (7), where a person is registered in accordance with this Schedule, a condition imposed by the Chief Inspector under section 79F(3) of the 1989 Act which applied to a person immediately before the transfer date continues to have effect as if it were a condition imposed under section 38(1), 58(1), or 66(1) of the 2006 Act, as the case may be.

(2) In the case of a person who by virtue of paragraph 2(3) is not registered by the Chief Inspector under section 37(1) of the 2006 Act, a condition imposed under the 1989 Act which has the effect of authorising the person to provide child minding for children aged five and under ceases to have effect.

(3) In the case of a person who by virtue of paragraph 5(3)(b) is not registered by the Chief Inspector under section 37(2) of the 2006 Act, a condition imposed under the 1989 Act which has the effect of authorising the person to provide day care for children aged five and under ceases to have effect.

(4) In the case of a person who by virtue of paragraph 2(4) is not registered by the Chief Inspector under section 56(1) of the 2006 Act, a condition imposed under the 1989 Act which has the effect of authorising the person to provide child minding for children aged six and over ceases to have effect.

(5) In the case of a person who by virtue of paragraph 5(4) is not registered by the Chief Inspector under section 56(2) of the 2006 Act, a condition imposed under the 1989 Act which has the effect of authorising the person to provide day care for children aged six and over ceases to have effect.

(6) A condition which—

- (a) by virtue of sub-paragraph (1), continues to have effect as if it had been imposed under the 2006 Act;
- (b) has the effect of authorising a person to provide care by reference to a child's age or children's ages, and
- (c) refers to children who are aged five;

is to be treated as a condition imposed in respect of a child who has attained the age set out in sub-paragraph (7).

(7) The age is the age the child attains immediately before 1st September next following the date on which the child attains the age of five(24).

(23) By virtue of paragraph 6(1) of Schedule 9A to the 1989 Act, where an application for registration under Part 10A of the 1989 Act is granted in England, the Chief Inspector must give the applicant a certificate of registration.

(24) The definition of "young children" is as provided for in sections 19 and 98(1) of the 2006 Act.



### **Applications for registration under the 1989 Act: undetermined applications**

15.—(1) Where a person has applied for registration as a child minder under section 79E (applications for registration) of the 1989 Act and, immediately before the transfer date, the Chief Inspector has not granted or refused the person's application, the application shall be determined as if it had been made under section 35 and, as the case may be, section 54 of the 2006 Act.

(2) Where a person has applied for registration as a day care provider under section 79E of the 1989 Act and, immediately before the transfer date, the Chief Inspector has not granted or refused the person's application, the application shall be determined as if it had been made under section 36 and, as the case may be, section 55 of the 2006 Act.

(3) Where this paragraph applies, the Chief Inspector may only register the person if, had the application been made under the 2006 Act, the Chief Inspector would have been required by section 37 and, as the case may be, section 56 of that Act, to grant the application.

## **PART 2**

### **Notices and Appeals**

#### **Notice of intention to refuse an application for registration under section 79L(1)(a)**

16.—(1) This paragraph applies where the Chief Inspector has, before the transfer date, sent a notice to a person of intention to refuse an application for registration under section 79L(1)(a)(25) (notice of intention to take steps) of the 1989 Act.

(2) The notice shall, on and after the transfer date, be treated as notice given under section 73(2) (procedure for taking certain steps) of the 2006 Act.

(3) A person who has, before the transfer date, informed the Chief Inspector of the desire to object to the step being taken under section 79L(3) of the 1989 Act, shall be treated as having given notice under section 73(5) of the 2006 Act.

(4) An objection made before the transfer date under section 79L(3) of the 1989 Act to a step being taken shall be treated on and after that date as having been made in pursuance to section 73(5) of the 2006 Act.

(5) A notice sent to a person by the Chief Inspector in accordance with section 79L(5) of the 1989 Act before the transfer date shall be treated on and after that date as being notice given under section 73(7) of the 2006 Act.

(6) Where this paragraph applies, a notice continues to have effect only to the extent that it could have been given under section 73 of the 2006 Act.

#### **Notice of intention to take steps under section 79L(1)(b) to (d) of the 1989 Act**

17.—(1) This paragraph applies where—

- (a) a person is registered in accordance with this Schedule;
- (b) the Chief Inspector has, before the transfer date, sent a notice to the person of intention to take one of the steps mentioned in section 79L(1)(b) to (d)(26) of the 1989 Act; and
- (c) that step has not taken effect.

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(25) The effect of section 79L(1)(a) of the 1989 Act in England is that the Chief Inspector must give notice of not less than 14 days before refusing an application for registration.

(26) The effect of section 79L(1)(b) to (d) of the 1989 Act in England is that the Chief Inspector must give notice of not less than 14 days before cancelling a registration; removing or varying any condition to which a registration is subject or imposing a new condition; or refusing to grant an application for the removal or variation of any condition to which a registration is subject.

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(2) The notice sent to the person under section 79L(1) shall, on and after the transfer date, be treated as being notice given under section 73(2) of the 2006 Act.

(3) A person who has, before the transfer date, informed the Chief Inspector of the desire to object to the step being taken under section 79L(3) of the 1989 Act, shall be treated as having given notice under section 73(5) of the 2006 Act.

(4) An objection made before the transfer date under section 79L(3) of the 1989 Act to a step being taken shall be treated on and after that date as having been made in pursuance to section 73(5) of the 2006 Act.

(5) A notice sent to a person by the Chief Inspector in accordance with section 79L(5) of the 1989 Act before the transfer date shall be treated on and after that date as being notice given under section 73(7) of the 2006 Act.

(6) Where this paragraph applies, a notice continues to have effect only to the extent that it could have been given under section 73 of the 2006 Act.

#### **Appeals against steps mentioned in section 79L(1) of the 1989 Act**

**18.**—(1) This paragraph applies where an appeal has been made before the transfer date to the Tribunal<sup>(27)</sup> under section 79M(1) of the 1989 Act against a step taken by the Chief Inspector mentioned in section 79L(1), in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) The appeal shall be treated, from the transfer date, as being an appeal under section 74 (appeals) of the 2006 Act.

(3) Where this paragraph applies, an appeal falls to be decided as if the step in respect of which the appeal is brought had been taken under the 2006 Act.

#### **Appeals: Protection of children in an emergency**

**19.**—(1) This paragraph applies where an appeal has been made before the transfer date to the Tribunal under section 79M(1) of the 1989 Act against an order under section 79K (protection of children in an emergency) of the 1989 Act, in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) The appeal shall be treated, from the transfer date, as being an appeal under section 74(3) of the 2006 Act.

#### **Appeals: disqualification**

**20.**—(1) This paragraph applies where an appeal has been made before the transfer date to the Tribunal under section 79M(1) of the 1989 Act against a determination by the Chief Inspector under regulation 9 (waivers) of the Disqualification Regulations 2005, in respect of which the Tribunal has not reached a decision under section 79M(2).

(2) The appeal shall be treated, on and after the transfer date, as being an appeal brought under regulation 9 of the Disqualification Regulations 2007.

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(27) By virtue of section 98 and 69(11) of the 2006 Act, “the Tribunal” means the Tribunal established by section 9 of the Protection of Children Act 1999 (c. 14).

### **Notice under section 79D (requirement to register) of the 1989 Act**

21. Where, before the transfer date, the Chief Inspector has served an enforcement notice under section 79D(2)(28) of the 1989 Act, the notice continues to have effect on and after the transfer date as if it had been served under section 33(4) or 52(4) of the 2006 Act, as the case may be.

### **Notice under the National Standards Regulations**

22.—(1) Subject to sub-paragraph (2), a notice given by the Chief Inspector to a person under regulation 8(1) (notice) of the National Standards Regulations shall be treated, from the transfer date, as having been given under regulation 9 (failure to comply with welfare requirements notice) of the Early Years Foundation Stage (Welfare Requirements) Regulations 2007(29).

(2) The notice shall only continue to have effect as provided in sub-paragraph (1) where a person is registered under section 37(1) or (2) of the 2006 Act by the Chief Inspector in accordance with this Schedule, and to the following extent—

- (a) the person in receipt of the notice has failed to meet, or would have failed to meet, the welfare requirements specified in Section 3 of the EYFS Statutory Framework; or
- (b) the person in receipt of the notice has failed to have regard to, or would have failed to have regard to, the guidance in Section 3 of the EYFS Statutory Framework.

## **PART 3**

### **Other saving and transitional provisions in respect of the 1989 Act**

#### **Section 79C of the 1989 Act and the National Standards Regulations**

23. Despite the amendment made to section 79C(30) of the 1989 Act, in exercising functions under Part 3 of the 2006 Act, the Chief Inspector may have regard to—

- (a) anything done, or alleged to have been done, by a person registered under Part 10A of the 1989 Act to comply with the duty imposed by regulation 4(2) of the National Standards Regulations; and
- (b) any failure, or alleged failure, by a person registered under Part 10A of the 1989 Act, to comply with the duty imposed by regulation 4(2) of the National Standards Regulations.

#### **Suspension**

24.—(1) This paragraph applies where immediately before the transfer date a person's registration is suspended by the Chief Inspector under regulation 3 (power to suspend registration) of the Suspension Regulations.

(2) The person's registration is, on the transfer date, treated as suspended by the Chief Inspector under regulation 8 (suspension of registration) of the Common Provisions Regulations.

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(28) The effect of section 79D(2) of the 1989 Act in England (before 1st September 2008) is that the Chief Inspector may serve an enforcement notice on a person who appears to have contravened the requirement in section 79D(1) not to act as a child minder unless registered under Part 10A of that Act. By virtue of section 79D(4), a person in respect of whom an enforcement notice has effect who contravenes section 79D(1) without reasonable excuse is guilty of an offence.

(29) By virtue of regulation 10 of the National Standards Regulations a person who, without reasonable excuse, fails to comply with the terms of a notice given under regulation 8 is guilty of an offence.

(30) By virtue of the amendment made to section 79C of the 1989 Act, the National Standards Regulations cease to have effect on 1st September 2008. Regulation 4 of those Regulations gives the Chief Inspector power to take account of the duty imposed on a registered person under regulation 4(2), and any failure or alleged failure of such a person to comply with that duty.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) Where a person has appealed to the Tribunal under regulation 8 (rights of appeal) of the Suspension Regulations and the Tribunal has not reached a decision, the appeal shall, on and after the transfer date, be treated as having been made under regulation 12(1) (appeal against suspension) of the Common Provisions Regulations.

(4) Nothing in this paragraph shall affect the period or periods of time for which a person's registration may be suspended.

### **Disqualification: waivers**

**25.**—(1) Where the Chief Inspector has given consent to waive a disqualification under regulation 9 (waivers) of the Disqualification Regulations 2005 (and has not withdrawn that consent), the consent continues to have effect as if it had been given under regulation 8 (waivers) of the Disqualification Regulations 2007.

(2) Where—

- (a) a person has requested that the Chief Inspector give consent to waive a disqualification under regulation 9 of the Disqualification Regulations 2005; and
- (b) immediately before the transfer date, the Chief Inspector has not made a determination in respect of the request,

the Chief Inspector must make a determination in respect of the request as if it had been made under regulation 8 of the Disqualification Regulations 2007.

(3) A consent given by a local authority under regulation 9(4) of the Disqualification Regulations 2005 continues to have effect.

### **Protection of children in an emergency**

**26.** Where the Chief Inspector has applied to a justice of the peace for an order under section 79K of the 1989 Act and, immediately before the transfer date, the justice of the peace has not made the order, the application shall, from that date, be treated as having been made under section 72 of the 2006 Act.

### **Inspections**

**27.**—(1) Where—

- (a) the Chief Inspector has conducted an inspection under section 79Q of the 1989 Act; and
- (b) immediately before the transfer date, has not reported in writing on the matters mentioned in subsection (6)(a) to (d) of that section,

the Chief Inspector must report in accordance with that section.

(2) Section 79R(3) of the 1989 Act continues to have effect in respect of a copy of a report on an inspection made under section 79Q before the transfer date.

(3) Section 79R(3A) of the 1989 Act and regulations 5 and 6(31) of the Inspection Regulations continue to have effect in respect of an inspection under section 79Q before the transfer date.

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(31) Regulation 5 of the Inspection Regulations makes provision in respect of the destination of reports. In particular, it requires a registered person to provide a copy of a report to parents and any person who requests it. Regulation 6 makes provision in respect of fees for the provision of copies of a report to persons who request it.