

**EXPLANATORY MEMORANDUM TO**  
**THE CHILDCARE (SUPPLY AND DISCLOSURE OF INFORMATION)**  
**(ENGLAND) (AMENDMENT) REGULATIONS 2008**

**2008 No. 961**

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families 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 makes amendments to the Childcare (Supply and Disclosure of Information) (England) Regulations 2007 SI 2007/722 (“the 2007 Regulations”). The instrument concerns the supply and disclosure by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) of information in relation to childcare providers registered on the Early Years Register (Chapter 2) and the compulsory and voluntary parts of the General Childcare Register (Chapters 3 & 4), from 1st September 2008 . The General Childcare Register is also known as the Ofsted Childcare Register.

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

3.1 None

**4. Legislative Background**

4.1 At present under the Children Act 1989, the Chief Inspector has the function of regulating the provision of day care and childminding for children under the age of eight in England. The Childminding and Day Care (Disclosure Functions) (England) Regulations 2004 SI 2004/3136 (“the 2004 Regulations”) made under section 79N(5) of the same Act gives the Chief Inspector the additional function, in prescribed circumstances, of disclosing certain information gathered while regulating such childcare to parents, the police and various organisations concerned with the provision of care for children or with protecting children. The 2004 Regulations provide for disclosure of information to other government departments and to local authorities carrying out certain statutory functions. It is anticipated that section 79N will be repealed in relation to England from 1<sup>st</sup> September 2008 and that the 2004 Regulations will no longer be in force.

4.2 Section 83 of the 2006 Act imposes a duty on the Chief Inspector to provide information, prescribed in regulations to local authorities to enable them to fulfil their duty under section 12 of the 2006 Act to establish and maintain a service providing information, advice and assistance to parents seeking childcare. The Chief Inspector is also required to provide information to Her Majesty’s Revenue and Customs (HMRC) to assist them in administering tax credits. Section 84 allows the Chief Inspector to disclose information (prescribed in regulations) about registered providers to such persons as he

considers appropriate, for the purpose of (a) assisting parents in choosing a childcare provider or (b) protecting children from harm or neglect. Section 84(3) enables the Secretary of State to make regulations requiring the Chief Inspector to disclose prescribed information.

4.3 The 2007 Regulations have been made under sections 83 and 84 and permit or require the Chief Inspector to disclose information in relation to childcare providers registered on the voluntary part (Part B) of the General Childcare Register. The difference in the range of information disclosable under the 2004 Regulations and the 2007 Regulations is not substantial

## **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**

7.1 The Government's ten year strategy for childcare, *Choice for parents, the best start for children*, set out plans to ensure more consistency in the level of information provided to parents and to reform the regulation of childcare.

7.2 Through the 2006 Act, the Government is reforming the regulation and inspection regime for childcare. The Chief Inspector will administer two registers: the Early Years Register (EYR) for provision for children up to the age of five, and the Ofsted Childcare Register which is divided into two Parts. Part A (compulsory registration) relates to childcare for children aged five to seven and Part B (voluntary registration) relates to childcare that is not required to be registered by Ofsted.

7.3 Providers of childcare that are not currently registered by the Chief Inspector (including activity based provision such as sports, drama, language or arts clubs, care provided in a child's own home and care or supervised activities for children of eight and over) are able to join the voluntary part (Part B) of the Ofsted Childcare Register which was introduced in April 2007. Providers of childcare for children from birth to seven that are currently registered by the Chief Inspector will be required to be registered on the Early Years Register or the compulsory part (Part A) of the Ofsted Childcare Register (compulsory registration for five to seven year olds) from September 2008. The present compulsory registration arrangements for childcare for children from birth to seven 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 The Early Years Register and Ofsted Childcare Register will support local authorities in carrying out their duty under section 6 of the 2006 Act to secure sufficient childcare for working parents, as authorities will be able to identify providers that have demonstrated the suitability of the childcare they offer. Schools will use information about providers registered on the Ofsted Childcare Register as a means of identifying suitable provision as part of their offer to provide extended care before and after the

school day. Parents will also know that providers registered on the Ofsted Childcare Register have met certain standards designed to ensure that children are safe and secure.

7.5 Sections 83 and 84 of the 2006 Act and the 2007 Regulations require the Chief Inspector to give information (at present, in relation to providers on the voluntary part (Part B) of the Ofsted Childcare Register) to local authorities to enable them to fulfill their duty to establish and maintain a service providing information, advice and assistance to parents seeking childcare. The Chief Inspector is also required to provide information to HMRC to assist them in administering the tax credits scheme, and is permitted or required to provide information to parents, and to various organisations where the safety of children is at risk.

7.6 This instrument amends the 2007 Regulations, so that the Chief Inspector is also permitted or required to carry out the same functions in relation to childcare providers registered on the Early Years Register (Chapter 2) and the compulsory part of the Ofsted Childcare Register (Chapter 3), from 1st September 2008. The Regulations also extend the requirement on the Chief Inspector to provide information about dates on which certain steps were taken (cancellation, suspension and removal from the register), the most recent inspection report and which register providers have joined.

7.7 These Regulations were consulted on extensively with Ofsted. However no public consultation exercise was undertaken as they bring the information disclosure provisions (currently in the 2004 Regulations) into conformity with the existing provisions made under the 2007 Regulations, and make no significant changes. The amendments include some additional information outlined in para 7.6 and permit the Chief Inspector to carry out the same functions in relation to childcare providers registered on the Early Years Register and the compulsory part of the Ofsted Childcare Register. The Regulations do not remove any of the existing requirements on, or powers of, the Chief Inspector.

## **8. Impact**

No Impact Assessment has been prepared because there is no impact on any part of the private and voluntary sector and the costs to the public sector fall below £5million

## **9. Contact**

Patrick Heisel at the Department for Children, Schools and Families Tel: 0207 273 5716 or e-mail: [patrick.HEISEL@dcsf.gsi.gov.uk](mailto:patrick.HEISEL@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.