

EXPLANATORY MEMORANDUM TO

**THE EARLY YEARS FOUNDATION STAGE (EXEMPTIONS FROM
LEARNING AND DEVELOPMENT REQUIREMENTS) (AMENDMENT)
REGULATIONS 2012**

2012 No. 2463

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

2. Purpose of the instrument

The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012 (the “2012 Regulations”) amend the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (the “2008 Regulations”). The learning and development requirements of the Early Years Foundation Stage (“EYFS”) are set out in the revised document entitled “Statutory Framework for the Early Years Foundation Stage”, published on 27th March 2012 and available on the website of the Department for Education at: <https://www.education.gov.uk/publications/standard/AllPublications/Page1/DFE-00023-2012> and for inspection on request at the Department for Education. The Secretary of State has the power, under regulations, to exempt early years providers from the learning and development requirements, and the 2012 Regulations make amendments to the way in which that power may be exercised.

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

None.

4. Legislative Context

The Secretary of State has the power to direct, in the circumstances and to the extent prescribed by regulations, that the learning and development requirements of the EYFS do not apply, or apply with modifications, to a particular early years provider or a particular description of early years providers. Regulations may also make provision about the conditions which may be imposed by the Secretary of State on making a direction. The 2012 Regulations make changes to the circumstances in the 2008 Regulations in which the Secretary of State may exercise the direction-making power, and also make changes to the extent of such directions. The 2012 Regulations also make provision about conditions which the Secretary of State may impose on making a direction.

5. Territorial Extent and Application

The Regulations apply only 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 EYFS sets the standards for the provision of care and education for children between birth and the academic year in which they turn five. The requirements of the EYFS must be met by all early years providers, and the EYFS is designed to be an inclusive framework which can accommodate the needs of individual children, and the many different approaches employed by early years providers. Nevertheless, the 2008 Regulations provided for exemptions to be granted to providers who were unable to secure that the early years provision met the learning and development requirements because the provision was governed by established principles relating to the learning and development of young children which could not be reconciled with the learning and development requirements, and to providers temporarily unable to deliver the learning and development requirements.

7.2 The 2012 Regulations implement changes recommended by Dame Clare Tickell as part of her independent review in 2010 of the EYFS, as well as responding to issues reported by practitioners and others involved in the early years sector. The main change under the 2012 Regulations is to give the Secretary of State the power to direct that independent schools which are not Academies are exempt from the learning and development requirements of the EYFS, so that they are required only to comply with the Independent School Standards for young children. The EYFS welfare requirements will continue to apply. This means that the position for independent schools with exemptions for young children becomes similar to that for children of compulsory school age in independent schools, who are not required to follow the National Curriculum.

7.3 Exemptions for providers on the grounds of established principles remain in place under the 2012 Regulations, but the provisions governing exemptions for providers temporarily unable to deliver the learning and development requirements have been revoked because no providers have applied on this basis since the 2008 Regulations came into force.

7.4 To minimise administrative burdens on independent schools and the Department, the Secretary of State intends to exercise the power to make a direction to independent schools as a particular description of early years provider. This also reflects the fact that all independent schools will be applying for exemptions on an identical basis, and is designed to make the administration of exemptions for potentially large numbers of independent schools simpler. The Secretary of State can therefore make a single direction granting an exemption from the learning and development requirements to all independent schools which fall within the circumstances set out in the direction and which satisfy the conditions in the direction. Schools are only exempt from the learning and development requirements if they comply with the conditions in a direction, and the Secretary of State intends to require schools who wish to be covered by the direction to notify the Department of this wish,

rather than going through an individual application procedure. The Secretary of State also intends to impose a condition regarding the quality of the early years provision, based upon schools' most recent inspection report judgements in key relevant areas, which must be met by an independent school before an exemption can be extended to that school. The Secretary of State also requires schools to seek the views of parents as to whether to take up an exemption.

7.5 Burdens on providers applying for exemptions on the grounds of incompatibility with their established principles are also being reduced in the 2012 Regulations by requiring them to notify, rather than seek the views of, the relevant local authority, when seeking an exemption. Furthermore, these providers under the 2012 Regulations are required to seek the views of parents as to whether they should take up an exemption, rather than having to obtain the agreement of the majority of parents before requesting an exemption. The time limit on exemptions has also been removed so that providers do not need to apply for renewal of their exemptions. An exemption will only cease to be effective if a provider no longer falls within the relevant circumstances, or fails to satisfy the relevant conditions.

8. Consultation outcome

8.1 Consultation on the detailed content of proposals for exemptions ran from 3rd May until 1st June 2012. A limited consultation was felt to be effective because the changes introduced affect a minority of early years providers and are of limited public interest. All those likely to be affected by the proposed changes were alerted to the consultation and invited to respond. The consultation was targeted at key parties with an interest in exemptions, particularly the Steiner Waldorf Schools Fellowship, the Independent Schools Council, all four school inspectorates and local authority early years managers. Face-to-face consultations with parents at independent schools and Steiner schools were also held, as well as with key representatives from the early years sector. During the consultation, the Department for Education (DfE) received 205 written responses. These mostly indicated support for the proposals.

8.2 The majority of respondents (66%) agreed with the proposal to extend the possibility of exemptions to children aged 3 and over in independent schools which met the quality threshold set by the Secretary of State. However, opinions varied between different groups – for example, 88% of independent schools agreed with this proposal compared to only 44% of all other respondents, including most local authorities and early years organisations. The majority of parents with children at independent schools agreed that independent schools should be offered the possibility of exemptions and most said they would support such an exemption in the school their child attended. The overwhelming majority of respondents agreed with the proposals to simplify the exemptions procedure. 80% of people agreed that the existing route to exemptions based on 'established principles' should be maintained. Most respondents (70%) agreed with using a single direction from the Secretary of State for independent schools seeking exemptions although a significant minority (30%) disagreed or were unsure.

9. Guidance

9.1 Alongside the new regulations, a revised guidance document on the exemptions process for early years providers and local authorities was published 1st

October 2012. This is available on the Department's website at <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/deliver/education/a0068102/early-years-foundation-stage-eyfs>. The Direction for independent schools is published in draft form in Annex C of this Guidance. Arrangements have been made for the Guidance and Direction to be directly e-mailed to all independent schools as well as key representatives of the foundation years sector. A copy will also be available for inspection on request at the Department for Education.

9.2 There is also revised guidance available for parents seeking individual exemptions for their child on the Department's website at <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/deliver/education/a0068102/early-years-foundation-stage-eyfs>. Although the process for individual child exemptions has not changed since 2008 the guidance has been reviewed and updated.

10. Impact

10.1 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum at www.legislation.gov.uk. This includes an assessment of the impact of this instrument on early years businesses and the public sector (particularly local authorities).

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The majority of early years providers are small businesses, so to minimise the impact of the requirements on them, the reforms are intended to reduce the burden on providers wishing to be granted exemptions by making the process more streamlined (for example, by removing the necessity for renewals). Burdens on practitioners in independent schools which are subject to an exemption will also be reduced because they will no longer have to produce EYFS Profiles (assessments of each child's progress) for children at age 5.

12. Monitoring & review

The effect of the amendments will be monitored on a continuous basis by the Department for Education as part of regular contact between policy officials and sector representatives.

13. Contact

Deborah Sanders
Tel: 0207 783 8156
Deborah.sanders@education.gsi.gov.uk