

EXPLANATORY MEMORANDUM TO
THE EARLY YEARS FOUNDATION STAGE (LEARNING AND DEVELOPMENT REQUIREMENTS) (AMENDMENT) ORDER 2012

2012 No. 937

THE EARLY YEARS FOUNDATION STAGE (WELFARE REQUIREMENTS) REGULATIONS 2012

2012 No. 938

AND

THE CHILDCARE (EARLY YEARS REGISTER) (AMENDMENT) REGULATIONS 2012

2012 No. 939

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 these instruments

2.1 The Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2012 (“the 2012 Order”) amends the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (“the 2007 Order”). The Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (“the Welfare Regulations”) revoke and consolidate, with amendment, the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 and amending regulations.

2.2 Together, the Welfare Regulations and the 2007 Order, as amended by the 2012 Order, give legal effect to the requirements set out in the revised document entitled “Statutory Framework for the Early Years Foundation Stage” (“the EYFS Document”). The revised EYFS Document replaces the 2008 version and was published on 27th March 2012.

2.3 The 2012 Order gives effect to, and specifies, the learning and development requirements which early years providers must meet, including the matters to which they must have regard. Articles 3, 5, 6 and 7 of the 2007 Order are amended to give effect to the revised chapter structure of the EYFS Document: Sections 1 and 2 of the Document now contain the learning and development requirements. Article 4 is amended to replace the reference to the Qualifications and Curriculum Development Authority (“QCDA”) with a reference to the Secretary of State following the abolition of the QCDA in the Education Act 2011.

2.4 The Welfare Regulations revoke and consolidate with amendment the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 and two sets of

amending regulations. Regulation 3 gives effect to and specifies the welfare requirements in the EYFS Document. It also requires providers to have regard to matters specified in Section 3 of the EYFS Document. Regulations 7, 8 and 9 respectively, specify welfare requirements relating to the prohibition on corporal punishment, the provision of information, including a Schedule containing a list of events the occurrence of which a provider must notify to Her Majesty's Chief Inspector of Education, Children's Services and Skills ("the Chief Inspector"), and the provision of information relating to disqualification. Regulation 10 provides for a welfare requirements notice to be issued by the Chief Inspector where a childcare provider has failed to comply with the welfare requirements and regulation 11 contains provisions on service of a welfare notice. Regulation 12 makes failure to comply with the requirements of regulations 7(1), 8(1), 8(2) or 10(2) an offence (under the power in section 43(3) of the Act).

2.5 The Childcare (Early Years Register) (Amendment) Regulations 2012 ("the EYR Amendment Regulations") amend the Childcare (Early Years Register) Regulations 2008 ("the 2008 Regulations"). The 2008 Regulations require childminders (but not nannies), and other providers caring for children from birth to the 1st September following their 5th birthday, to register in the Early Years Register ("EYR"). The EYR is operated by the Chief Inspector under Part 3 of the Childcare Act 2006 ("the Act"). The EYR Amendment Regulations amend the requirements for the EYR in two ways. First, to require childminders to complete a Local Authority-approved training course in the EYFS before they register, rather than after registration. Secondly, it amends the process to be followed by providers in completing criminal record checks on managers, so that the checks are done by employers and no longer by Ofsted.

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

3.1 None.

4. Legislative Context

4.1 The 2012 Order and the Welfare Regulations fulfil the Secretary of State's duty under section 39 of the Act to promote the well-being of young children by specifying learning and development requirements (by order) and welfare requirements (by regulations) which together are to be known as the EYFS.

4.2 Section 44(1) of the Act enables the Secretary of State to publish the requirements in a document, and to direct that they are to have effect as specified by order or regulations. The Welfare Regulations and the amendments to the 2007 Order give effect to the revised version of the EYFS Document.

4.3 The EYR Amendment Regulations are made under sections 35, 36 and 104 of the Act and they amend the 2008 Regulations which prescribe requirements in relation to the Early Years Register for childminders and other providers.

5. Territorial Extent and Application

5.1 These instruments apply 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 Early Years Foundation Stage (“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 EYFS is statutory for all registered early years providers, and for independent schools, maintained schools, and non-maintained special schools (which are, by virtue of section 34(2) of the Act, not required to join the EYR). The revised EYFS Document replaces the 2008 version, implementing reforms which are supported by the recommendations of an independent review led by Dame Clare Tickell in 2010-11.

7.2 The learning and development requirements must be met by all early years providers (although there are flexibilities for wrap around or holiday providers and providers may be granted exemptions by the Secretary of State). The EYFS requires providers to meet children’s individual needs and prepare them to make the most of their school years. There is significant flexibility in the requirements to accommodate the needs and circumstances of every child. The EYFS is fully inclusive of all children’s needs, reflecting their ethnicity, culture, religion or belief, home language, family background, SEN, disability, gender or ability. The revised requirements include a set of early learning goals and assessment arrangements which have been significantly simplified, in response to feedback from the sector, giving professionals more room for judgement and more time for interacting with children. Building on the existing requirement for providers to assess progress on an ongoing basis and report to parents, the revised EYFS introduces a requirement to complete a progress check on children at age two, improving the early identification of needs to enable extra support if necessary. Practitioners are required to share the progress check with parents.

7.3 The Welfare Regulations and the welfare requirements in the revised EYFS replace the current welfare requirements, defining the standards providers must meet in the interests of children’s welfare and safety. The revised requirements include the following.

- Providers must, as part of their action to safeguard children, ensure staff are trained to identify signs of possible abuse or neglect and to respond appropriately.
- Providers do not need to complete written risk assessments for every outing.
- Where childminders use assistants, children may be left with assistants for no more than two hours in a given day.

7.4 The EYR applies to the youngest and most vulnerable group of children (birth to five years). It is essential that thorough safeguards are provided in legislation for young children's protection.

7.5 The EYR Amendment Regulations implement two changes to the EYR requirements. First, childminders must complete Local Authority-approved training in the EYFS, before they register. The current requirement, in the EYFS, allows childminders to complete Local Authority-approved training 'whenever possible' within six months of registration, allowing them to complete the training after registration if necessary. The amendment will require childminders to complete EYFS training before registration in all cases, to ensure that all early years childminders are suitable to care for young children before they begin to do so. This amendment was strongly supported by responses to the EYFS consultation.

7.6 The second change to the 2008 Regulations is to simplify the process for criminal record checks and suitability checks on managers, in line with administrative changes being made by Ofsted. Currently, for new managers, providers are required to send criminal record check applications to Ofsted for verification before forwarding them to Criminal Records Bureau. This function will no longer be fulfilled by Ofsted, and providers will instead apply for criminal record checks on managers in the same way as for other staff. Also, providers are currently required to send to Ofsted detailed information about new managers in order that Ofsted can complete a general suitability check. Ofsted will no longer be completing these checks and providers will instead only be required to inform Ofsted that a new manager has been appointed. The overall effect of these changes is to give to employers full responsibility for all suitability checks on managers (including criminal record checks), consistent with employers' responsibility for suitability checks on other staff.

8. Consultation outcome

8.1 Section 45 of the Act sets out the procedure which the Secretary of State must follow before making a learning and development order which specifies early learning goals or educational programmes. Section 45(2)(a) and (b) requires the Secretary of State to give notice of his proposals to bodies representing the interests of early years providers, and to any other persons with whom consultation appears to be desirable. These requirements were fulfilled by an extensive consultation from July to September 2011, on a revised EYFS which was developed to implement the recommendations of an independent review led by Dame Clare Tickell. The Secretary of State also consulted the Office of Qualifications and Examinations Regulation in pursuance of section 42(A1) of the Act.

8.2 During the consultation, the Department for Education (DfE) received around 2,300 written responses from a wide range of stakeholders. The DfE also held further in-depth discussions with interested groups including head teachers; early years lead officers; childminders; owners of early years settings; representatives from the private, voluntary and independent sector; parents; Special Educational Needs Coordinators; and academics specialising in child development. The responses demonstrated support for the revised EYFS. Respondents highlighted aspects for which they would need supplementary guidance. The progress check at age two was welcomed, and many agreed that the general structure and content of the areas of

learning, and the early learning goals, would offer improved links to Year 1 in school. The welfare requirements were welcomed. Most were happy with the strengthened requirements for staff to be aware of possible warning signs of inappropriate behaviour by adults, and with the new requirements for supervision. A strong majority agreed with the proposal for childminders to be trained before they register and before they look after children.

8.3 After considering evidence and representations submitted to him in pursuance of section 45(2), the Secretary of State is required (by section 45(3)(b)) to publish a summary of the views expressed during the consultation. A summary was published alongside the Government's response to the consultation in December 2011, at <http://www.education.gov.uk/consultations/index.cfm>

8.4 The Department took account of the responses, including the views of the Chief Inspector. Appropriate changes to the language and presentation of the framework to achieve greater clarity for providers and practitioners were also made.

8.5 In accordance with section 45(3)(a) of the Act, the Secretary of State published a draft of the proposed Learning and Development Order and the draft EYFS Document on the DfE website on 12 December 2011. A period of one calendar month was allowed for the submission of further evidence and representations. There were 664 responses. Those that commented were generally supportive of the areas of learning, the early learning goals and the amendments to the 2007 Order.

8.6 The summer consultation on the revised EYFS covered the amendments to the 2008 Regulations linked to childminder training. Sector intermediary organisations were consulted on the amendments to the process for criminal record checks and suitability checks on managers, and those organisations who have responded are in agreement with the change.

8.7 Section 43(2) requires the Secretary of State to consult the Chief Inspector and any other persons he considers appropriate before making regulations relating to welfare requirements. The Chief Inspector was consulted on the content and structure of the Welfare Regulations during their development.

9. Guidance

9.1 Alongside the EYFS Document, published on 27th March 2012, practice materials covering child development from birth to age five and the progress check at age two is being made available. The documents are available at <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/education/a0068102/early-years-foundation-stage-eyfs>. Further guidance on completing the Early Years Foundation Stage Profile and a summary of the EYFS for parents will be published in due course.

10. Impact

10.1 Impact Assessments will be published alongside this Explanatory Memorandum at www.legislation.gov.uk and are also available at www.ialibrary.bis.gov.uk

11. Regulating small business

11.1 The legislation applies to small businesses.

11.2 The majority of childcare providers are small businesses. Small businesses therefore benefit from the greater simplicity, flexibility and freedom offered by the new EYFS linked to paperwork and planning, including, for example, clarification that providers may judge whether or not risk assessments should be completed in writing.

12. Monitoring & review

12.1 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.

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