

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (MISCELLANEOUS AMENDMENTS) (EU EXIT) (ENGLAND)
REGULATIONS 2018

2018 No. 1116

1. Introduction

- 1.1 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

- 2.1 This instrument makes minor amendments to The Childcare (Support and Disclosure of Information) (England) Regulations 2007, The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 and The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014.
- 2.2 The minor drafting changes will ensure that existing information sharing provisions between England and national childcare regulators in the European Economic Area (EEA), are retained after the UK's withdrawal from the European Union (EU) on 29th March 2019.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
- 4.2 The territorial application of this instrument is to England only.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument will amend three sets of regulations, which concern the sharing of information about childcare providers, between Ofsted, childminder agencies and national childcare regulators in member states of the EEA, for the purpose of protecting children from harm or neglect. Ofsted is the Office for Standards in Education, Children's Services and Skills. They inspect and regulate services that care

for children and young people, and services providing education and skills for learners of all ages. A childminder agency is an organisation that is able to register childminders in England and may provide a range of services to its members and parents.

- 6.2 The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 – regulation 5, prescribes information that Ofsted can request from a third party (including a childcare regulator in an EEA member state) relating to an application for registration as a childcare provider in England. If the applicant withholds or withdraws consent for Ofsted to seek any of this information, this gives Ofsted grounds for refusing the registration.
- 6.3 The Childcare (Supply and Disclosure of Information) (England) Regulations 2007 – regulation 9 requires Ofsted to provide information about childcare providers and childminder agencies on its registers to certain authorities when requested. One of the authorities listed is the national authority regulating childcare in another EEA member state.
- 6.4 The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 – regulation 19. This is similar to the provision described in the previous paragraph, but places the onus on a childminder agency (rather than Ofsted) to supply information on any childminder registered with them to an EEA member state national childcare regulator, when requested.
- 6.5 This instrument makes minor drafting changes to retain these information sharing provisions between England and national childcare regulators in the EEA, after the UK's withdrawal from the EU on 29th March 2019, for the purpose of protecting children from harm or neglect.

7. Policy background

What is being done and why

- 7.1 The Childcare (Early Years Register) Regulations 2008 make provisions relating to registration on the Early Years Register (EYR), including the requirements for registering, and the information that must be included in an application for registration with Ofsted. The Childcare (General Childcare Register) Regulations 2008 make similar provision for registration on the General Childcare Register (GCR). This is to ensure the suitability of persons registering on the EYR and GCR, which supports safeguarding and child protection.
- 7.2 The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 – regulation 5, prescribes information that Ofsted can request from a third party relating to an application for registration as a childcare provider in England. The third parties include:
 - i. The Welsh Ministers in pursuance of their functions as registration authority under Part 2 of the Children and Families (Wales) Measure 2010
 - ii. Social Care and Social Work Improvement Scotland, pursuant to Part 5 of the Public Services Reform (Scotland) Act 2010
 - iii. A Health and Social Services Board, pursuant to Part 11 of the Children (Northern Ireland) Order 1995
 - iv. A body acting on behalf of the Crown in the Channel Islands or the Isle of Man

- v. The national authority of any other member state of the European Economic Area having functions comprising the regulation of childcare.
- 7.3 The information that Ofsted can request from a named third party in relation to a person applying to register as a childcare provider in England includes: the identity of the applicant; their qualifications; information contained in a criminal record certificate; information held by a medical practitioner; information concerning their character, employment record and experience (held by an educational institution they currently or formerly attended, an employer or former employer, or a medical practitioner); and information held about the applicant by a childminder agency in connection with the exercise of its functions. If the applicant withdraws or withholds consent for Ofsted to seek this information from the relevant third party, this gives Ofsted grounds for refusing registration onto the Early Years and General Childcare Registers.
- 7.4 The Childcare (Supply and Disclosure of Information) (England) Regulations 2007 – regulation 9 and The Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 – regulation 19, require Ofsted and childminder agencies to provide information of a prescribed description, on childcare providers registered with them, to certain authorities on request, for the purpose of protecting children from harm or neglect. The authorities that can request this information are:
- i. a fostering agency within the meaning of section 4(4) of the Care Standards Act 2000(1);
 - ii. a voluntary adoption agency within the meaning of section 4(7) of that Act;
 - iii. the National Assembly for Wales;
 - iv. the Scottish Commission for the Regulation of Care;
 - v. a Health and Social Services Board in Northern Ireland(2);
 - vi. a body acting on behalf of the Crown in the Channel Islands or the Isle of Man; and
 - vii. the national authority of any other member State of the European Economic Area having functions comprising the regulation of childcare.
- 7.5 The prescribed information that the named authorities can request from Ofsted or a childminder agency includes core information such as the registered providers' name, business name, address and their date of registration. They can also request information about the type of provision being delivered, the status of their registration, the time and duration that the provision operates for, and the number and age of children for whom care is being provided.
- 7.6 Collectively these regulations support safeguarding and child protection as they enable information sharing which can inform a national regulator's decision on the suitability for a person to be registered as a childcare provider.
- 7.7 The UK will leave the EU on 29th March 2019. This instrument ensures that the existing information sharing provisions between the childcare regulator in England (Ofsted) and childcare regulators in EEA member states are retained after the UK's withdrawal from the EU.

7.8 The three regulations described above do not allow for information sharing with national childcare regulators outside of the EEA. However, it should be noted the Early Years Foundation Stage Statutory Framework¹ places a legal requirement on early years and childcare providers to ensure that all people looking after children are suitable to fulfil the requirements of this role. This includes obtaining enhanced criminal records checks and an additional criminal records check (or checks if more than one country) for anyone who has lived or worked abroad.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act but made under sections 84(1) and (3), 84A(1) and (3), 90(2) and 104(2) of the Childcare Act 2006 as these powers allow for these changes to be made. This instrument makes minor drafting changes to reflect the status of the UK after leaving the EU on 29th March 2019.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 No formal public consultation has been undertaken because no substantial changes are being made to existing regulations. To the best of Department's knowledge the existing regulations have seldom be used. Ofsted were consulted and confirmed that they were content for the existing provisions to be retained.

11. Guidance

11.1 No guidance is required.

12. Impact

12.1 There is no, or no significant impact, on business, charities or voluntary bodies.

12.2 There is no, or not significant impact, on the public sector.

12.3 An impact assessment has not been prepared because it falls below the threshold for requiring one.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 There are no plans to monitor or review this legislation. This is because the instrument retains existing provisions and makes only minor amendments to reflect the position after the UK leaves the EU on 29th March 2019.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf

15. Contact

- 15.1 Charlotte Clarke at the Department for Education, Telephone: 020 7227 5364 or email: Charlotte.Clarke@education.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Susie Owen, Deputy Director for Early Years Quality, Outcomes and Providers at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Zahawi at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.