

EXPLANATORY MEMORANDUM TO

THE EARLY YEARS FOUNDATION STAGE (EXEMPTION FROM LEARNING AND DEVELOPMENT REQUIREMENTS) AND LOCAL AUTHORITY (DUTY TO SECURE EARLY YEARS PROVISION FREE OF CHARGE) (AMENDMENT) REGULATIONS 2018

2018 No. 383

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 enables the Secretary of State to exempt, for two academic years, a small sample of primary schools from delivering the current learning and development requirements and the Early Years Foundation Stage Profile (EYFSP) assessment arrangements. These current requirements are set out in the Statutory Framework for the Early Years Foundation Stage (EYFS)¹. The primary schools will instead agree to participate in a pilot to test modified requirements.
- 2.2 The instrument also corrects a typographical error in regulations relating to early years provision for disadvantaged two year olds.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 These regulations enable the Secretary of State for Education to exempt in prescribed circumstances, by means of a direction, particular types of early years providers from delivering all or parts of the learning and development requirements and the EYFSP assessment arrangements set out in the EYFS.
- 4.2 This instrument provides a direction making power to exempt maintained and academy primary schools that agree to take part in a pilot that will test the efficacy of revised learning and development requirements and modified EYFSP assessment arrangements for children in the reception year only.
- 4.3 Rather than expect the schools taking part in the pilot to complete both the current version of the EYFSP and the new pilot version, participating schools will be exempt

¹https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf (Reference DFE-00169-2017). A hard copy can be inspected at the Department for Education, Sanctuary Buildings, 20 Great Smith Street, London, SW1P 3BT.

from all the current learning and development requirements, completion of the EYFSP and submission of data to their local authority for the 2018/19 and 2019/20 academic years. ‘Directions’ will be sent out to the schools involved in the pilot to inform them that they are legally exempt from the current EYFS learning and development requirements and EYFSP arrangements. The schools involved will agree with the Department for Education to deliver a revised EYFS and EYFSP for the two academic years.

- 4.4 This instrument allows for the Secretary of State to impose conditions when making a direction.
- 4.5 This instrument also makes an amendment to the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) to correct a typographical error in an amendment to those Regulations made by the Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2018 (S.I. 2018/146) which come into force on 1st April 2018.

5. Extent and Territorial Application

- 5.1 The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) component of the instrument extends to England and Wales.
- 5.2 The Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) component of the instrument extend to England and Wales.
- 5.3 The territorial application of both components of this instrument is to England only.

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

What is being done and why

- 7.1 In March 2017, the Secretary of State launched the Primary Assessment Consultation (PAC), which sought views on how the EYFSP and Early Learning Goal (ELG) content set out in the EYFS could be improved, to better assess child development and school readiness. In September 2017, the Secretary of State published the government’s response to the PAC². This set out proposals to improve the EYFSP.
- 7.2 The proposals included revising the ELGs, to ensure that they are clear, better aligned with the year 1 curriculum, with a focus on strengthening mathematics, literacy and communication and language ELGs; clarifying the assessment scales to ensure greater nuance and accuracy of information on each child; exploring the options to reduce the number of ELGs assessed; reviewing the guidance that supports the EYFSP and the moderation process, to reduce burdens on teachers. We also said that we would expect to nationally roll-out these reforms in the academic year 2020/21.

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/644871/Primary_assessment_consultation_response.pdf

- 7.3 In parallel to this work, the ‘Unlocking Talent, Fulfilling Potential’ social mobility action plan³ launched on 14 December 2017 set out government’s plans to work with experts to identify best practice and develop guidance on reception practice to improve the quality of teaching in reception year, in aiming to narrow the word gap between disadvantaged children and their peers.
- 7.4 We aim to test the operational efficacy of these reforms with a small sample of schools before a national roll-out.
- 7.5 This instrument will enable the establishment of an early adopters pilot and process evaluation to test the EYFSP and reception year reforms in the academic year 2018/19 - two academic years ahead of national roll-out. The pilot and its evaluation will run for the duration of 2018/19. The second year before national roll-out (2019/20) will involve refining the policies in light of the evaluation findings and publicly consulting on the reforms. The pilot should not result in fundamental change to the core principles of the reforms. We will use the evaluation process to finesse the reforms, based upon feedback from the pilot schools.
- 7.6 On February 7, the Government laid the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2018 to introduce an earnings threshold for eligibility for the two-year-old entitlement for parents entitled to Universal Credit. Subsequently, a typographical error was identified in inserted para 1(5)c, where the threshold for the second checking period reads “2556.67” and should read “2566.67” (that is, one twelfth of the £15,400 threshold on which the Government consulted). These regulations correct this error.

Consolidation

- 7.7 This instrument does not consolidate any legislation.

8. Consultation outcome

- 8.1 The PAC asked for views on whether we should change some of the learning and development and EYFSP assessment requirements in the EYFS, which led to the pilot being undertaken. . We will publicly consult after the pilot before any final changes are made for national roll-out.
- 8.2 No consultation is required to make a purely corrective change to the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014. The overall policy was subject to consultation.

9. Guidance

- 9.1 The Schools will be provided with copies of revised learning and development requirements EYFSP and related guidance.
- 9.2 The Department for Education will amend the relevant statutory guidance and any relevant documents to reflect the correction of the typographical error.

10. Impact

- 10.1 There is no impact on business, charities or voluntary bodies.

³ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667690/Social_Mobility_Action_Plan_-_for_printing.pdf

10.2 The impact on the public sector is limited to a sample of schools undertaking the pilot in that they are not required to deliver the current (2017) EYFS learning and development requirements and the EYFSP during the period of the pilot but will be required to deliver revised requirements.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 Due to the time limited nature of these regulations, there is no formal mechanism to review them. Throughout the duration of the pilot, there will be a process in place for monitoring their effectiveness.

13. Contact

13.1 Paul Oates at the Department for Education, Telephone: 0207 783 8146 or email: Paul.OATES@education.gov.uk can answer any queries regarding the instrument.