

# CHILDREN AND FAMILIES ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part 4 – Childcare Etc

##### *Schedule 4: Childminder agencies: amendments*

335. [Schedule 4](#) makes the amendments necessary to:
- Enable prospective childminders and certain other providers of childcare on domestic premises to apply to register with a childminder agency as an alternative to making an application to the Chief Inspector;
  - Provide for childminder agencies, which must be registered on the early years register or Part A of the general childcare register;
  - Enable the Chief Inspector to impose conditions on and inspect childminder agencies;
  - Enable the Chief Inspector to take enforcement action in respect of unregistered persons who are falsely representing that they are childminder agencies.
336. [Part 1](#) of [Schedule 4](#) amends section 32 of the CA 2006.
337. [Section 32](#) requires the Chief Inspector to maintain two registers: the early years register and the general childcare register. The early years register currently lists anyone who is registered as the provider of childcare for a young child (that is a child from birth up to the first September after the child turns five) for whom registration is compulsory. The general childcare register is split into two parts. Part A currently lists all those providing childcare for children over the age of 5 but under the age of 8 (later years providers) for whom registration is compulsory. Part B lists all childcare providers who are not required to be registered but have done so voluntarily. [Paragraph 2](#) therefore inserts a new subsection (2)(b) which provides for early years childminder agencies to be registered on the early years register, a new subsection (4)(b) which provides for later years childminder agencies to be registered in Part A of the general childcare register, and amends subsection (5) so that Part B will only list childcare providers registered on the voluntary register by the Chief Inspector.
338. [Part 2](#) of [Schedule 4](#) amends Chapter 2 of the CA 2006 to allow for the registration of childminders and those who offer other early years provision on domestic premises with early years childminder agencies. It also introduces a new Chapter 2A concerning the registration and regulation of early years childminder agencies. Early years childminder agencies will register early years childminders and other early years providers (those offering early years provision on domestic premises) and provide training and support to such providers. Agencies will also be responsible for monitoring providers registered with them and ensuring that the early years provision is of a sufficient standard.
339. Pursuant to section 33(1) of the CA 2006 a person is prohibited from providing early years childminding in England unless registered in the early years register. Early years

childminding is early years provision provided on domestic premises for reward where there are no more than three people providing the care or assisting with its provision (see sections 96(4) and (5)). *Paragraph 4* amends section 33 so that anyone registered with an early years childminder agency can also lawfully provide early years childminding.

340. *Section 34* sets out the registration requirements for early years providers other than childminders. Currently anyone wishing to offer early years provision on domestic premises which would be childminding but for the fact that the number of people assisting with the provision is greater than three must be registered in the early years register in respect of the premises. *Paragraph 5* amends section 34 so that these providers can be registered with an early years childminder agency in respect of the premises and can therefore also lawfully offer early years provision.
341. *Paragraph 6* amends section 35 so as to allow anyone who proposes to offer early years childminding to make an application for registration to an early years childminder agency or to the Chief Inspector. Subsection (2)(c) is amended so that only applications to the Chief Inspector need to be accompanied by a prescribed fee. Childminder agencies may charge such fees to childminders as they wish, and this will not be prescribed in legislation. *Paragraph 6* also introduces new subsection (4A). It allows a childminder agency to grant an application for registration if a childminder is not disqualified from registration by regulations under section 75 of the CA 2006 and it appears to the agency that the childminder has met the prescribed requirements for registration (and is likely to continue to do so) and any other reasonable requirements that the agency has imposed. “Other reasonable requirements” may include requirements about the qualification levels or experience of childminders. Unlike the Chief Inspector, a childminder agency has discretion as to whether to register a childminder who otherwise meets the prescribed requirements for registration.
342. New subsection (5)(aa) provides that the power to prescribe requirements for registration can be used to prohibit childminders from being registered on both the early years register and with a childminder agency at the same time. New subsection (5)(ab) provides that the power to prescribe requirements for registration can be used to prohibit childminders from being registered with an early years childminder agency as an early years childminder, whilst registered with another childminder agency or by the Chief Inspector in the early years register or general childcare register.
343. *Paragraph 7* introduces a new subsection (1A) into section 36 so as to allow anyone who proposes to offer early years provision on domestic premises which would be childminding but for section 96(5) to make an application for registration either to the Chief Inspector or to a childminder agency in respect of the premises. Once amended, section 36 will operate in the same way as section 35, as amended, which concerns applications for registration by early years childminders.
344. *Paragraph 9* introduces new section 37A which places an obligation on early years childminder agencies to place successful applicants in the register maintained by the agency and to issue them with certificates of registration. It also requires registration certificates to set out particular information as prescribed in regulations and makes provision for amended certificates.
345. *Paragraph 11* amends section 44 of the CA 2006 so that a “relevant instrument” (that is a learning and development order or regulation prescribing welfare requirements made under section 39(1)) may also confer powers and impose duties on early years childminder agencies in the exercise of their functions under Part 3. In particular it may require an early years childminder agency, in exercising these functions, to have regard to factors, standards and other matters prescribed by or referred to in the instrument. It also provides for allegations that a person has failed to have regard to factors, standards and other matters to be taken into account by an agency.
346. *Paragraph 12* amends section 49 of the CA 2006 so that provisions relating to inspection apply only to childminders or other early years providers registered on the

early years register. New section 51D in *paragraph 13* makes provision for inspections of childminder agencies. Childminders registered with early years childminder agencies will not be subject to inspections under section 49. Instead, it is intended that they will be subject to regular monitoring visits from the agency they are registered with, where the agency will assess and report on the standards of care being delivered (including how well the childminder meets the requirements of the Early Years Foundation Stage). Inspections of early years childminder agencies under new section 51D also allow for the Chief Inspector to inspect early years providers registered with an agency as part of the agency's inspection.

347. *Paragraph 13* of the Schedule inserts a new Chapter 2A into Part 3 of the CA 2006 comprising new sections 51A to 51F relating to the registration and regulation of early years childminder agencies. These sections are similar in effect to the equivalent sections relating to the registration by the Chief Inspector of childcare providers.
348. Section 51A deals with applications for registration by early years childminder agencies. Subsection (3) requires the Chief Inspector to grant an application for registration as an early years childminder agency if the applicant is not disqualified from registration and the requirements for registration, which will be set out in regulations, are satisfied and are likely to continue to be satisfied. Subsection (4) requires the Chief Inspector to refuse an application where the applicant is disqualified and/or where the requirements set out in regulations are not met.
349. Subsection (5) sets out some of the matters which the regulations may deal with and these include (but are not limited to) requirements relating to the applicant, the agency's arrangements for registering early years providers and the provision, to the Chief Inspector, of information about early years providers registered with the applicant. Subsection (5)(f) allows for requirements in relation to the agency's arrangements for training and monitoring early years providers and providing them with information, advice and assistance. Subsection (5)(g) allows for requirements in relation to the agency's arrangements for ensuring that early years provision (of those registered with it) is of a sufficient standard.
350. Section 51B places an obligation on the Chief Inspector to place successful applicants in the early years register and to issue them with certificates of registration. It also requires registration certificates to set out particular information as prescribed in regulations and makes provision for amended certificates.
351. Section 51C deals with conditions on registration for early years childminder agencies. It allows the Chief Inspector to impose any appropriate conditions at any time and to vary or remove any conditions at any time. Under subsection (4) it is an offence if, without reasonable excuse, a person does not comply with registration conditions.
352. Section 51D relates to inspection of early years childminder agencies. It requires the Chief Inspector to inspect early years childminder agencies at the request of the Secretary of State. It also allows the Chief Inspector to inspect early years childminder agencies at any other time when the Chief Inspector considers it appropriate. Subsection (2) allows the Chief Inspector, as part of an agency's inspection, to inspect the early years provision provided by those registered with the agency to ensure that the Chief Inspector is able to assess the quality of support being offered by the agency through visiting providers registered with an agency. Subsection (3) allows the Chief Inspector to charge a fee, as prescribed in regulations, for an inspection of an early years childminder agency, when both the agency has requested an inspection and the Secretary of State requires it. This mirrors section 85, which enables the Chief Inspector to charge a fee if he carries out an inspection of an early years provider at the request of the provider. Subsection (4) provides for regulations to require the early years childminder agency to notify particular people of an inspection. Regulations could, for example, require agencies to notify childminders registered with them of an impending inspection.

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(c.6) which received Royal Assent on 13 March 2014*

353. Section 51E sets out requirements for the Chief Inspector to report, in writing, following an inspection of an early years childminder agency and makes provision for the distribution of copies of the report. Subsection (3) allows for regulations to be made requiring the agency to make copies of the report available to prescribed persons. This could include, for example, childminders registered with the agency and parents who place their children in the care of childminders registered with that agency.
354. Section 51F makes it an offence for a person to falsely represent that they are an early years childminder agency. This would mean, for example, that a person purporting to register childminders and other early years providers who was not registered as an agency on the early years register would be committing an offence.
355. **Part 3** of Schedule 4 (later years childminder agencies) amends Chapter 3 of the CA 2006 to allow for the registration of childminders and others who offer later years provision on domestic premises for children under eight with later years childminder agencies. It also introduces a new Chapter 3A concerning the regulation of later years childminder agencies. Later years childminder agencies will register later years childminders and other later years providers (those offering later years provision on domestic premises) who would otherwise be required to register in Part A of the general childcare register and provide training and support to such providers. Agencies will also be responsible for monitoring providers registered with them.
356. Later years provision in relation to a child means the provision of childcare at any time from the first September following his/her 5th birthday up to the age of 18 (see section 96(6)). Later years childminding is later years provision provided on domestic premises for reward where there are no more than three people providing the care or assisting with its provision (see sections 96(8) and (9)). Pursuant to section 52(1), a person cannot provide later years childminding for a child under the age of eight unless registered on Part A of the general childcare register maintained by the Chief Inspector. **Paragraph 15** amends section 52 so that anyone registered with a later years childminder agency can also lawfully provide later years childminding. Similarly, **paragraph 16** amends section 53 so that others offering later years provision on domestic premises for a child under the age of eight can be registered with a later years childminder agency in respect of the premises and can therefore also lawfully offer later years provision.
357. **Paragraphs 17 to 23** make amendments to the provisions of the CA 2006 which deal with the process of registration for later years childminders and other later years providers on domestic premises. The amendments provide for the possibility of registration with later years childminder agencies. The registration process will mirror that which applies to early years childminders and other early years providers who seek to register with an early years childminder agency, as described above by reference to **paragraphs 6 to 10** of Schedule 4.
358. **Paragraph 22** introduces a new section 57A into the CA 2006. It requires a childminder agency which is both an early years and later years agency, on request, to register a person as a later years provider where that person is already registered with the agency as an early years provider.
359. **Paragraph 24** amends section 59 of the CA 2006. This is the later years equivalent to section 44 of the CA 2006. This section allows the Secretary of State to make regulations governing the activities of registered later years providers. These may cover issues such as the welfare of children, suitability of persons and premises, complaints procedures and the provision of information. Subsections (4) and (5) have been amended so as to allow regulations to confer powers or impose duties on later years childminder agencies, in particular the need to have regard to standards and other matters prescribed in the regulations. Subsection (6) has been amended to provide for allegations that a person has failed to have regard to factors, standards and other matters to be taken into account by an agency.

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360. *Paragraph 25* amends section 60 of the CA 2006 so that provisions relating to inspection apply only to childminders or other later years providers registered in Part A of the general childcare register. New section 61E makes provision for inspections of later years childminder agencies. Childminders registered with later years childminder agencies will not be subject to inspections under section 60. Instead, it is intended that they will be subject to regular monitoring visits from the agency they are registered with, where the agency will assess and report on the standards of care being delivered. New section 61E also allows for the Chief Inspector to inspect later years providers registered with an agency as part of the agency's inspection.
361. *Paragraph 26* of the Schedule inserts a new Chapter 3A into Part 3 of the CA 2006, comprising new sections 61A to 61G, relating to the registration and regulation of later years childminder agencies.
362. The process of registration for later years childminder agencies and the Chief Inspector's powers and obligations in respect of the registration and inspection of later years childminder agencies mirror those for early years childminder agencies. A special procedure has, however, been introduced for early years childminder agencies who notify the Chief Inspector that they wish to operate as a later years childminder agency. Section 61C requires the Chief Inspector, on request, to register a person in Part A of the general childcare register if that person is already registered in the early years register as an early years childminder agency. This means that an agency need not go through the registration process twice.
363. *Part 4* of Schedule 4 includes provisions to enable those already registered with a childminder agency in respect of early or later years provision to register provision that is otherwise exempt from registration at the same agency on a voluntary basis. Provision exempt from registration includes, for example, later years childminding for a child who has attained the age of eight, or early years or later years childminding in respect of which the person is not required to be registered under Chapter 2 or 3 of the CA 2006. Part 4 introduces new section 65A into the CA 2006, which provides for a simplified application process for those already registered with a childminder agency who wish to register in respect of provision that is otherwise exempt from registration. Section 67 is also amended to enable the Secretary of State to exercise his or her power to make regulations governing activities of persons who register voluntarily so as to impose duties or confer powers on childminder agencies as well as the Chief Inspector.
364. *Part 5* of Schedule 4 includes provisions which apply to all childminder agencies. It includes provisions relating to cancellation and suspension of registration, disqualification from registration and removal from the registers. It also includes provisions dealing with the Chief Inspector's powers of entry, and powers and duties in relation to provision of information about providers. Provision is made relating to offences and criminal proceedings.
365. *Paragraph 33* amends section 68 (cancellation of registration) so that this section only applies to childcare providers who are registered on the early years or general childcare register. The cancellation of registration for persons registered with childminder agencies will be dealt with in regulations made under new section 69A. New section 69B deals with the cancellation of a childminder agency's registration.
366. *Paragraph 34* amends section 69 (suspension of registration) so that it only applies to childcare providers on the early years or general childcare register. The suspension of registration for those registered with childminder agencies will also be dealt with in regulations made under new section 69A. New section 69C deals with the suspension of a childminder agency's registration.
367. *Paragraph 35* introduces new section 69A which allows for the making of regulations dealing with the cancellation, termination and suspension of a provider's registration with a childminder agency. In particular, regulations may make provision for situations when a provider voluntarily terminates their registration with an agency. It also allows

for offences to be created relating to things done while a person's registration with an agency is suspended. Regulations may also make provision concerning how disputes are to be resolved between agencies and providers registered with them.

368. Section 69B deals with cancellation of the registration of a childminder agency registered on a childcare register. It requires the Chief Inspector to cancel registration if a person becomes disqualified from registration and allows the Chief Inspector to cancel registration where prescribed requirements for registration are not met, conditions of registration are not complied with or fees are not paid. Subsection (4) enables regulations to make provisions about the effect of cancellation of an agency's registration on the providers registered with that agency. Regulations may, for example, enable providers to be provisionally registered with the Chief Inspector in these circumstances so that they are able to continue to provide childcare as registered providers while they seek alternative registration with the Chief Inspector or another childminder agency.
369. Section 69C enables the Secretary of State to make regulations allowing a person's registration as a childminder agency to be suspended for a particular period in certain circumstances. Where a childminder agency has its registration suspended, it must not carry out any functions of a childminder agency or represent that it is able to do so. Otherwise the agency will be committing an offence (see subsection (6)). Subsection (3) allows regulations to make provisions about the effect of an agency's suspension on the providers registered with that agency.
370. *Paragraph 38* introduces new section 70A which allows childminder agencies to give notice to the Chief Inspector when they wish to be removed from either of the registers. The Chief Inspector must remove from the register any agency which has given notice. However, the Chief Inspector may not remove the person if the Chief Inspector has already sent notice of intention to cancel registration and has not yet decided against that step or has already sent notice of a decision to cancel registration and the time for appeal is still running.
371. *Section 72* enables the Chief Inspector to apply to a Justice of the Peace for an order cancelling registration, varying or removing a registration condition or imposing a new condition. *Paragraph 40* amends section 72 so that the Chief Inspector can only make such an application in relation to providers on the early years or general childcare register. Such an application cannot be sought by, or made in relation to, a childminder agency, or a childminder registered with a childminder agency. Regulations under section 69A will set out the requirements for childminder agencies in terms of dealing with providers' registrations in situations where it appears that children in the care of those providers may be suffering or are likely to suffer significant harm. There is no equivalent provision for cancellation of registration or the imposition of conditions on childminder agencies in an emergency as they will not be directly caring for children.
372. *Paragraphs 43* and *44* make amendments to reflect that section 75 (disqualification from registration) applies only to early years and later years providers and not to childminder agencies (who are covered by the disqualification provisions in new section 76A).
373. *Paragraph 45* introduces new subsections (3A) to (3C) into section 76 which provide that an early years or later years childminder agency must not register any person who is disqualified from registration under regulations made pursuant to section 75. Contravention of these prohibitions is an offence under subsection (4) although these are subject to the defence at new subsection (6A).
374. *Paragraph 46* introduces new sections 76A and 76B. New section 76A is largely based on section 75 of the CA 2006. It provides for the Secretary of State to make regulations setting out when a person may be disqualified from registration as a childminder agency. Subsection (3) enables regulations to be made allowing the Chief Inspector to waive disqualification in certain circumstances.

375. Section 76B sets out the consequences of disqualification for childminder agencies. These are that a disqualified person must not exercise any functions of a childminder agency, purport to exercise such functions, or be a member of the governing body, director, manager or other officer of, or partner in, an agency or otherwise be directly concerned in the management of an agency. A disqualified person is also prevented from working for an agency in a capacity which involves entering premises on which early or later years provision is being provided. Subsection (2) prevents an agency from employing a disqualified person in any capacity which involves direct concern in the management of that agency or entering childcare premises. Contravention of these prohibitions is an offence.
376. *Paragraph 47* amends section 77 (which concerns the Chief Inspector's powers of entry) so that it applies only in relation to early and later years providers. Entry to the premises of childminder agencies is dealt with in new section 78A. Subsection (2) of section 77 is amended so that the Chief Inspector may enter the premises of a provider registered with a childminder agency for the purposes of conducting an inspection of the agency.
377. *Paragraph 49* inserts new section 78A to give a person authorised by the Chief Inspector the power of entry, at any reasonable time, in respect of any premises in England if he has reasonable cause to believe that a person on the premises is falsely representing that it is an early years or later years childminder agency. It also gives a power of entry in respect of the premises of any childminder agency at any reasonable time (subsection (2)) for the purposes described in subsection (3), which are to conduct an inspection under section 51E or 61F, and to determine if conditions on, or requirements for, registration are being met. Under subsection (8) it is an offence intentionally to obstruct a person exercising powers under this section. Subsection (9) specifies the penalty for the offence, a fine not exceeding level 4 on the standard scale.
378. New section 78B deals with circumstances in which a power of entry conferred by section 78A is exercisable on domestic premises. In the case of agencies, this would be where an agency's registered address is also domestic premises. If the premises are the home of someone who is not employed by the childminder agency, or a member, manager, director or other officer of the agency, section 78B requires the consent of an adult occupying the property before a power of entry under the Act may be exercised (see subsection (2)).
379. *Paragraph 51* amends section 82 of the CA 2006 to allow the Chief Inspector to require from a childminder agency information about their activities as an agency. The information is limited to that which the Chief Inspector considers it is necessary to have for the purpose of his or her functions under Part 3. Subsection (2) provides that this power includes a power for the Chief Inspector to require an early years or later years childminder agency to provide him or her with information about an early years or later years provider registered with the agency.
380. *Paragraph 53* introduces new section 83A to require childminder agencies to give the Secretary of State, HMRC and the relevant local authority information (to be prescribed in regulations) when it takes certain steps under Part 3, such as registering a childcare provider. The information which may be prescribed is, in the case of the Secretary of State, information that the Secretary of State may require for the purposes of functions in relation to universal credit under Part 1 of the Welfare Reform Act 2012, in the case of HMRC, information relevant to their functions relating to tax credits and, in the case of local authorities, information which would assist them in the running of the information service which they are required to establish under section 12 of the CA 2006.
381. *Paragraph 55* inserts new section 84A to allow childminder agencies to make prescribed information about registered persons available (to such persons and in such manner as they feel appropriate) for the purposes of assisting parents in choosing a childcare provider and protecting children from harm and neglect. Subsection (3) enables the Secretary of State to make regulations requiring childminder agencies to

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provide prescribed information about registered persons to prescribed people for either of those purposes. This could include, for example, passing information to the police or other child protection agencies for the purpose of protecting children from harm.

382. *Paragraph 58* amends section 89 so that regulations concerning fees payable to the Chief Inspector relating to the exercise of his or her functions under Part 3 apply only to those on the early years or general childcare registers (that is, childminder agencies and childcare providers registered by the Chief Inspector). Fees for providers registering with childminder agencies will not be prescribed and agencies will be able to set their own fees in respect of the services they will provide.
383. For the purpose of making decisions about registration, it may be necessary for the Chief Inspector to obtain information from third parties which relates to an applicant for registration or a registered person (or from other persons who may be caring for the children concerned). Section 90 enables the Secretary of State to make regulations allowing the Chief Inspector to refuse or to cancel registration if consent from the person whom the information concerns to the disclosure of that information by third parties is withheld or consent is withdrawn. *Paragraph 59* extends section 90 so as to encompass the registration of childminder agencies.
384. Section 98 of the CA 2006 is amended by *paragraph 62* to provide a definition of “childminder agency”, “early years childminder agency” and “later years childminder agency.” New subsection (1A) is inserted so as to make clear that a person is registered for the purposes of Part 3 of the Act if they are registered on either of the early years or general childcare registers or they are registered with an early years or later years childminder agency.
385. *Part 6* of the Schedule (other amendments) includes, at *paragraph 63*, an amendment to section 99. Section 99(1) allows regulations to make provision requiring all registered early years providers, and school-based providers who are exempted from registration requirements by section 34(2), to provide “individual child information” (as defined in that section) to the Secretary of State or any prescribed person. *Paragraph 63* extends that provision to ensure that early years childminder agencies can also be required, by regulations, to provide certain individual child information to prescribed persons.
386. *Paragraph 64* makes an amendment to the Employment Agencies Act 1973 so that childminder agencies are exempted from that Act. As childminder agencies will be subject to regulation by the Chief Inspector, and by regulations made under the CA 2006, this exemption also means that they are not subjected to a further regulatory regime.