

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (GENERAL CHILDCARE REGISTER)
(AMENDMENT) REGULATIONS 2009

2009 No. 1545

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

2. Purpose of the instrument

2.1 This instrument amends the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008 No. 975) (“the 2008 Regulations”). The amendments bring requirements for those childcare providers registered in the General Childcare Register (“the GCR”) about handling of parental complaints and use of childminding assistants into line with requirements for providers registered in the Early Years Register (“the EYR”) which will increase flexibility for providers. They also remove the requirement for criminal records bureau (“CRB”) checks on the families of children being cared for in their own homes.

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

3.1 None

4. Legislative Context

4.1 The 2008 Regulations make provision concerning the registration of certain childcare providers in the GCR which is operated by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector) under Part 3 of the Childcare Act 2006 (“the Act”). The GCR is divided into two parts; Part A is for registration for providers caring for children from the 1st September following their fifth birthday until their eighth birthday, and Part B is for the voluntary registration of providers not required to register in Part A, or in the EYR (for example, those caring for children aged 8 or over, or home child-carers and others who are exempt from registration).

4.2 This instrument makes amendments to requirements in the GCR to align aspects of the GCR complaints procedures with those for the Early Years Register (EYR); to provide some flexibility for the use of childminder assistants for both parts of the GCR to bring this into line with practice for those registered in the EYR; and to remove a requirement for CRB checks on household members where a child is being cared for in its own home by a home child-carer registered in Part B of the GCR.

5. Territorial Extent and Application

5.1 This instrument applies 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 2008 Regulations make provisions relating to registration in Part A (the compulsory part of the register) and Part B (the voluntary part) of the GCR. They ensure that providers and others are suitable to provide childcare.

7.2 The 2008 Regulations also prescribe requirements for how the provision is organised and operated once an applicant is registered in the GCR. The requirements cover matters such as the safety of the childcare premises and activities, the suitability of staff and other people on the premises and the manner in which children are cared for.

7.3 A post-implementation review of the 2008 Regulations identified a small number of issues arising from differences between requirements in these Regulations and those for the EYR, which have proved in practice to be confusing and burdensome for providers because many of them are registered in both the EYR and the GCR.

7.4 This instrument aligns aspects of the complaints handling procedures for the GCR with those for the EYR. It increases the period of time for a provider to deal with a parental complaint from 21 days to 28 days, and also increases the length of time from 2 years to 3 years which a record of a complaint must be retained by the provider. It also enables the Chief Inspector to request a list of all complaints recorded during the previous 3 years (rather than 2 years as at present.) Childcare providers are typically sole providers or small businesses and are required to meet strict ratio requirements setting out the number of adults who should be present for the number of children for whom the care is being provided. This means that complaints are generally dealt with outside of the working day when the childcare is not being provided. A period of 28 days is a more practicable period of time to enable a provider to investigate a complaint and provide a full response, and should not materially inconvenience parents. The other changes will remove differences in the requirements for the EYR and the GCR which have proved burdensome to providers who have to comply with both sets of requirements.

7.5 Childminders registered on the GCR are required to be on the premises at all times when the childcare is being provided. This requirement has restricted the way in which childminders of older children can operate without discernable benefit to parents or children and causes particular difficulties for those childminders who employ assistants. Childminders sometimes wish - with the permission of parents - to leave children with an assistant for short periods of time (for example, to collect another child from school, or accompany a child to a medical appointment). This flexibility is already allowed for childminders registered in the EYR, where Ofsted monitors the use of childminders' assistants. This instrument provides an exemption from the requirement to be on the premises at all times where Ofsted has given prior written approval to arrangements for the childminder's absence. These arrangements would set out, for example, which assistant could care for the children in the childminder's absence, and the circumstances in which this was permitted. All assistants are CRB checked so there is no impact on safeguarding. The exception does not apply to home child-carers since, in the rare case of a nanny needing an assistant, we would expect the child's parent to employ that assistant and we do not seek to regulate the conditions on which parents employ people in their own home.

7.6 Finally, the instrument amends a requirement relating to providers registered in Part B of the GCR which requires that every person living or working on the premises where the childcare takes place is suitable to be in regular contact with children, and that they must be CRB checked. This should not have applied in the case of a home child-carer (where the care is provided in the child's own home) as this would require the child's own parents and older siblings over 16, and (for example) a cleaner appointed by the child's parents, to receive an enhanced Criminal Records Bureau check which is not appropriate for arrangements which are made at the parent's request. This amendment removes this requirement.

8. Consultation outcome

8.1 Under sections 59 and 67 of the Act the Secretary of State is required to consult the Chief Inspector and such other persons as he considers appropriate on proposed amendments to this instrument. A consultation took place with the Chief Inspector and also with stakeholders representing provider organisations. The organisations were: the National Childminding Association (NCMA) representing childminders); the Pre-School Learning Alliance (PSLA) which represents providers caring for 3-5 year olds; 4 Children which represents interests of children aged 0-19; the National Day Nurseries Association (NDNA); and the Day Care Trust which is a national charity that provides information for parents, childcare providers, employers, trade unions, and local authorities. The Chief Inspector and stakeholders were unanimous in being content with the proposed amendments.

9. Guidance

9.1 The Chief Inspector will communicate the changes to the requirements to providers who will be affected by them. DCSF will update local authority Family Information Services (which provide information to parents about childcare.)

10. Impact

10.1 An impact assessment is required for this instrument and is attached to this memorandum.

11. Regulating small business

11.1 The legislation applies to small business. The proposals will mean a small reduction in burdens by increasing flexibility for childminders in the way that they use assistants (subject to permission from parents and with the prior approval from Ofsted); and bringing the complaints handling process for the GCR into line with that of the EYR.

12. Monitoring and Review

12.1 The Department for Children, Schools and Families will continue to monitor and review the effect of the legislation applying to those registered in the GCR.

13. Contact

Mr Ian Polin at the Department for Children, Schools and Families Tel: 020 7783 8148 or email: ian.polin@dcsf.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Children, Schools and Families	Title: Impact Assessment on the Childcare (General Childcare Register) (Amendment) Regulations 2009	
Stage:	Version:	Date: XX June 2009
Related Publications:		

Available to view or download at:

<http://www.>

Contact for enquiries:

Telephone:

What is the problem under consideration? Why is government intervention necessary?

A post implementation review of arrangements introduced in 2008 has identified the need for amendments to the General Childcare Regulations (GCR, which is for provision for 5-7 year olds). These regulations set out how provision is organised. The existing regulations have been found in practice to impose costs on providers, restricting flexibility in the way provision is delivered, without any clear benefit. The amendments address three areas: the arrangements for the handling of complaints; the use of childminding assistants; and removing the requirement for Criminal Record Bureau Checks on household members where children are cared for in their own homes.

What are the policy objectives and the intended effects?

The objectives provide more flexibility for providers caring for older children whilst continuing to provide necessary arrangements to safeguard children. The changes will bring the complaints procedure for the GCR into line with that for the Early Years Register (EYR for provision which caters for 0-5 year olds); allow childminder assistants to be in sole charge of children for short periods of time with the consent of parents and where it is approved by Ofsted (bringing this into line with the EYR); and remove the requirement for CRB checks on household members where care is provided in the child's own home (e.g. care provided by nannies) on the voluntary part of the register.

What policy options have been considered? Please justify any preferred option.

These options were considered after feedback from providers after the arrangements were implemented in September 2008 and follow a consultation on our proposals which received unanimous support. The alternative would be to do nothing and leave in place arrangements we know to be unsatisfactory.

1. **When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?** A post-implementation review will take place in 2011. We will continue to work with Ofsted, providers and parents to monitor the implementation of these new arrangements and evidence collected during this period will be used to inform the review.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

Dawn PrimaroloDate: 22nd June 2009

Summary: Analysis & Evidence

Policy Option: 1	Description:
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Familiarisation for GCR only registered providers, costs to childminders of applying to use assistants and Ofsted in processing them, costs to providers in storing complaints information for an additional year and providing to Ofsted if requested.		
	One-off (Transition) Yrs			
	£2,053			
	Average Annual Cost (excluding one-off)			
	£97,582		Total Cost (PV)	£911,176
Other key non-monetised costs by 'main affected groups' Cost to parents of longer response time for complaints.				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Providers will have greater flexibility in the use of childminder assistants. Monetary estimate of the benefit of this flexibility is a conservative lower bound estimate, as explained in the evidence base. Household members will no longer have to be CRB checked when child care is provided in the home, and DCSF will no longer have to pay for the processing of their CRB forms.		
	One-off Yrs			
	£			
	Average Annual Benefit (excluding one-off)			
	£142,265	30	Total Benefit (PV)	£1,325,412
Other key non-monetised benefits by 'main affected group'. Providers will not have to make different arrangements in how they deal with complaints and have longer to respond to complaints concerning older children, reducing the intensity of their workload and enabling them to provide a better quality response to parents.				

Key Assumptions/Sensitivities/Risks

Assumptions have had to be made in monetising the costs of amending the regulations e.g. about the length of time required by administrative processes; they may be over or under estimates. There is a risk a small number of providers may find the changes confusing; this is unlikely.

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 414,236
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	1 September 2009			
Which organisation(s) will enforce the policy?	Ofsted			
What is the total annual cost of enforcement for these organisations?	£ 0			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	N/A			
What is the value of the proposed offsetting measure per year?	£ N/A			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?			N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Decrease)
Increase of £ 0	Decrease of £ 0	Net Impact £ 0

Key: Annual costs and benefits: Constant Prices (Net) Present Value

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Purpose and intended effect

Objective

To increase the flexibility for providers on the GCR while maintaining current levels of safeguarding for the children being cared for:

- Increase the length of time within which providers must respond to complaints from 21 days to 28 days and increase the length of time which records of complaints must be stored from 2 years to 3 years (which brings the arrangements into line with those for the EYR). This will be less burdensome for providers who care for children across both registers and ensure that complaints are dealt with consistently
- Provide flexibility in the use of childminding assistants for both parts of the GCR so that childminders may leave childminding assistants in sole charge of children for short periods of time where this has the consent of parents and approved in advance by Ofsted; this will bring the GCR into line with the EYR.
- Remove the current requirement for Criminal Records Bureau (CRB) checks on household members for children being cared for in their own homes by nannies registered of the voluntary part of the GCR. The current requirements mean that where care is provided in the child's own home that CRB checks should be carried out on household members (this means that CRB checks are required to be carried out on parents of the child being cared for).

2. Background

3. Prior to the 2008 Regulations being made, childminders and other providers of childcare for children under the age of 8 were regulated by part 10A of the Children Act 1989.

4. Part 3 of the Childcare Act 2006 replaced that situation. Chapters 2, 3 and 4 of Part 3 require the Chief Inspector to maintain two childcare registers: the EYR and the GCR. These were introduced in September 2008. The voluntary part of the GCR was introduced in April 2007.

5. The 2008 Regulations make provision relating to the GCR and registration in Part A (the compulsory part) and Part B (the voluntary part). They ensure that providers and others are suitable to provide childcare.

6. The Regulations set out requirements for the childcare which is provided once an applicant is registered. These cover issues such as the safety of the premises and activities; the suitability of staff and other people on the premises; and the manner in which children are cared for.

7. Rationale for government intervention

Existing arrangements for the regulation of childcare provision ensure that certain care standards are secured across the system so that parents can have confidence that their child is safe when in formal childcare. However, the areas identified above as part of our post implementation review and feedback from providers, including a consultation exercise, show that Government intervention will increase flexibility for providers caring for older children without increasing the risk to children.

8. Consultation

9. Within government

10. In order to enact the Childcare Act 2006, the Government consulted across Whitehall as part of the legislative process. At the time, the detailed proposals were discussed with Ofsted, which is a non-Ministerial Government department which acts as the registration authority for childcare in England Ofsted supported the proposals.

11. Public Stakeholder consultation

12. A formal consultation with stakeholders on the proposals was carried out between 30 April and 29 May. The respondents supported the proposals though one said that more changes should be made to the GCR to bring it into line with

the EYR. However, our view is that some of the arrangements for the registers properly reflect the age of the children that are being cared for and should not be changed.

13. Options

14. There are two options to consider:

15. Option 1: To amend the regulations in order to increase provider's flexibility in the use of childminding assistants while maintaining the existing level of safeguarding and bring the complaints procedure for the GCR into line with that for the EYR; and removing the requirement for CRB checks on household members where the care is provided in the child's own home (which in effect means that checks are required on parents).

16. Option 2: The second option is to make no changes to the GCR. We know that the arrangements are not preventing providers from delivering childcare though they have proved to reduce the flexibility of providers caring for older children. It would also mean that parents who elect to employ nannies to care for children in their own home will continue to be required to undergo CRB checks together with other family members.

Costs and benefits

Sectors and groups affected

The amendment proposals directly relate to provision in the private, voluntary and community sectors.

Benefits

Complaints Procedures

- The EYR allows 28 days for the investigation and reporting back on complaints and requires that the records are retained for 3 years. The GCR allow 20 days for an investigation and reporting back and requires records to be retained for 2 years. The GCR arrangements were put in place because there are risk based inspections on the GCR with 10% of providers being inspected whereas all providers on the EYR are inspected. The aim was that complaints should be concluded more promptly than for the EYR. In practice this has proved burdensome for providers. Providers (who are largely small providers) have in practice had to deal with complaints outside the working day because of the need to meet ratio requirements on the number of adults caring for children. Because many care for children across the age range of the registers they have had to implement different arrangements for each group of children without discernable benefit. Bringing them into line with the EYR will mean that providers who care for children aged 0-7 will not be required to maintain different arrangements in how provision is organised for children aged 0-5 and older children aged 5-7. This will make the arrangements easier to administer for providers and reduce the intensity of their weekly workload whilst ensuring that parents receive a better quality of response to complaints. Parents can complain to Ofsted at any time if they are not happy with a provider.

Flexibility in the use of Childminder Assistants

- GCR Regulations currently require a childminder to be on premises at all times when children are being cared for, which unlike EYR which allows childminding assistants to have sole charge on the premises for short periods with the agreement of Ofsted and parents. In practice this has proved burdensome as it means that childminders cannot use their judgement about the appropriateness of using the assistant for short periods of time to look after children. For example, when a childminder is collecting another child(ren) from school or taking them for a medical appointment, they would need to take all the GCR children with them in these scenarios which can be unsettling for children and restricts the choice of parents of older children.
- Amending the requirements so that childminders on both the compulsory and voluntary registers may leave children in the charge of an assistant for short periods of time with the prior written consent of parents, and approval by Ofsted. This will give providers greater flexibility in organising provision and mean that providers who care for children aged 0-7 will not be required to maintain different arrangements in how provision is organised for children aged 0-5 and older children aged 5-7.
- Ofsted will assess the circumstances of its use, and whether the use of an assistant is in the best interests of children and will refuse the use of an assistant if they do not think that proposals to leave children with an assistant is in the best interests of those children. Since Ofsted also checks all assistants this will not reduce the arrangements concerning safeguarding.
- We assume that providers will only apply to use the flexibility provided when the benefit to them of doing so is at least equal to the cost to them of applying. This cost is estimated in the costs section below at £34,415. The benefit of this policy will at least equal this and so we have used this figure to make a conservative lower bound estimate of

the monetised benefit of this proposal.

Removing CRB Checks for household members where care is provided in the child's own home

- The voluntary part of the GCR currently requires people who live or work on the premises of a registered carer to be CRB checked. Whilst this may be appropriate for childminders who provide the care usually in their own or other people's homes, this arrangement also applies to a home child carer (e.g. nanny) providing the care in the child's own home. In effect, the requirement means that CRB checks are required to be carried out on the parents of the children being cared for which is an infringement of people's domestic circumstances. It imposes costs in terms of parental time spent filling out CRB forms and to DCSF in paying for the processing of these forms; removing the requirement will eliminate these costs.
- We have estimated these cost savings based on the number of nannies registered in the two years the GCR has been operating, the standard fee paid for processing CRB forms, and the opportunity cost of filling out CRB forms for two parents in each household earning the median wage. We estimate the total savings at £107,850 p.a.

17. Costs

We do not envisage that additional assistants would be employed, but simply that providers would have greater flexibility in their deployment. Although the increased flexibility in the use of childminding assistants means that childminders will have to apply to Ofsted, these arrangements are already in place for the EYR and providers will be familiar with the process, which is not time intensive, and will only apply if they wish to use the flexibility for older children. We have assumed that one quarter of registered childminders applies for use of an assistant, and that this process takes 20 minutes of a childcare supervisor's time, and estimated the costs for all providers as £34,415. It is reasonable to assume that providers will only make this application if the flexibility benefits to them of doing so outweigh the costs of applying. There will also be costs to Ofsted of processing requests from providers. We have assumed that this takes a clerical worker at Ofsted 20 minutes to process, and estimated the costs at £50,760.

There will be additional costs to providers for storing records of complaints for an additional year and providing them to Ofsted if requested but this is also not likely to be time consuming. We have estimated that 5% of childminders receive formal complaints and spend an additional 30 minutes a year carrying out these processes, and estimated the costs at £10,354.

There will be small familiarisation costs for those providers registered on the GCR only – other childminders will already be familiar with the arrangements. We have estimated it will take 30 minutes for these providers to familiarise themselves with the new arrangements and estimated the cost at £2,053.

18. Costs and Benefits Assumptions Table

Costs	Estimated time taken & cost)	Number of providers	Cost £
Applying to use assistants (Provider)	20 minutes (£2.26); assume quarter of registered childminders apply (based on hourly pay for supervisor in the private sector as set out in 2007 providers survey = £6.80)	60,915 (25% = 15,228)	£34,415 * see below cost savings
Ofsted dealing with requests from providers	20 minutes; volume as above. Admin £10 per hour	15,228	£50,760
Storing information & providing to Ofsted if requested (extra year)	Assuming 5% of childminders receive formal complaints (30 minutes recording, auditing, based on cost above = £3.40)	6091	£10,354
One off familiarisation costs	30 minutes (those registered on GCR only as others will know)	604	£2,053
Total			£97,582
Benefits			Benefit £
For providers given approval to use assistants flexibly	Assume benefits at least equal cost of application calculated above.	15,228	£34,415
CRB check savings	CRB check fee £31 for each parent. CRB form completion = 30 mins for each parent. Median hourly wage (Annual Survey of Hours and Earnings, 2008) = 11.87 (5.94)	1460 nannies registered p.a.	£107,850
Total			£142,265

19. It will be apparent that the estimated monetised costs exceed the estimated monetised benefits for two of the three proposals-those relating to flexibility in the use of childminding assistants and bringing the complaints procedure for the GCR into line with the EYR. However, as outlined above, the estimate of the monetised benefit of flexibility in the use of childminding assistants is a conservative lower bound estimate. There are also significant benefits of bringing the complaints procedure for the GCR into line with the EYR that we have not been able to monetise, such as reducing the intensity of the weekly workload for childcare staff.

20. Small Firms Impact Test

21. We believe that the changes will be welcomed by small providers as these introduce more flexible arrangements in how childcare is provided.

22. Competition Assessment

23. The proposals will not have impact on competition.

24. Race, disability, gender equality

25. The amendments to the 2008 Regulations will not negatively affect race, disability or gender equality.

26. Enforcement, sanctions and monitoring

27. The amended regulations will be implemented by Ofsted. Where information and other requirements are placed on childcare providers through these regulations, Ofsted is the registration authority that will enforce those requirements. Applications for registration will not be granted unless Ofsted has the information needed to determine that the applicant is suitable to provide childcare, on suitable premises, and that they will be able to meet the ongoing requirements.

28. Post-implementation review

29. A post-implementation review will take place in 2011. We will continue to work with Ofsted, providers and parents to monitor the implementation of these new arrangements and evidence collected during this period will be used to inform the review.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	Yes	No

Annexes