

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2015

2015 No. 1562

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 amends the registration requirements for various childcare providers. The changes: allow childminders to operate out of approved non-domestic premises for up to half their time while still registered as a childminder; and enable registered childcare providers who operate out of more than one premises to register those settings via a single registration application (instead of completing multiple registration applications) and/or to add additional premises to an existing registration.
 - 2.2 The aim of these measures is to: expand the range of premises from which childminders can operate; simplify and create a more streamlined registration system; and promote a prosperous and growing childcare market that meets the needs of working families.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 In its 5th report for the 2012/13 session, the Joint Committee on Statutory Instruments (“the JCSI”) reported the Department for defective drafting in relation to the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (S.I. 2012/938):
<http://www.publications.parliament.uk/pa/jt201213/jtselect/jtstatin/29/29.pdf>. In its 3rd report for the 2014/15 session, the JCSI reported the Childcare (Welfare and Registration Requirements) (Amendment) Regulations 2014 for requiring elucidation:
<http://www.publications.parliament.uk/pa/jt201415/jtselect/jtstatin/13/13.pdf>.
 - 3.2 The Department intends to amend the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 and the Statutory Framework for the Early Years Foundation Stage (“EYFS”) by early 2016. The Department will address the criticisms of the JCSI in the above reports at that stage.

4. Legislative Context

- 4.1 This instrument makes changes to secondary legislation following changes made to the Childcare Act 2006 by the Small Business, Enterprise and Employment Act 2015 (“the SBEEA 2015”). The SBEEA 2015 received Royal Assent on 26 March 2015. Before these changes made by the SBEEA 2015, childminders could only provide childminding on domestic premises and other providers had to complete a separate registration for each of the premises they proposed to use for providing childcare. The relevant changes to the Childcare Act 2006, which will come into force on 1 January 2016, allow childminders to provide up to half of their provision on non-domestic premises and allow other types of providers to register once in respect of multiple premises.
- 4.2 This instrument makes amendments to the following Regulations:
- the Childcare (Supply and Disclosure of Information) (England) Regulations 2007;
 - the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007;
 - the Childcare (Early Years Register) Regulations 2008;
 - the Childcare (General Childcare Register) Regulations 2008;
 - the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008;
 - the Childcare (Fees) Regulations 2008;
 - the Early Years Foundation Stage (Welfare Requirements) Regulations 2012; and
 - the Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014.
- 4.3 In particular, the instrument amends the prescribed requirements for registration so that the premises used by early years and later years providers for providing childcare must have been approved as suitable by the Chief Inspector or a childminder agency before childcare is provided there. Failure to comply with this requirement will be an offence under section 85A of the Childcare Act 2006.
- 4.4 The amendments also specify the information that a provider who is already registered must supply when seeking approval of additional premises for the provision of childcare. Voluntary providers can choose whether or not to seek approval of additional premises. The amendments also create a right of appeal to the Tribunal if the Chief Inspector or a childminder agency refuse to approve additional premises as suitable.
- 4.5 This instrument includes one amendment that was not as a result of the changes made by the SBEEA 2015. Regulation 7(7)(d) amends the Childcare (Fees) Regulations 2008. The effect of this amendment is to retain the transitional

arrangement in respect of providers who transferred from the previous register maintained under the Children Act 1989 to the early years register (under the Childcare Act 2006) and who provide childcare provision for more than 3 hours per day but fewer than 4 hours per day (often known as sessional daycare providers). This allows these providers to pay the same annual fee rate for a further two years (until 31 August 2017).

5. Territorial Extent and Application

5.1 This instrument applies 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

7.1 The SBEEA 2015 was designed to reduce the barriers that can hamper the ability of small businesses to innovate, grow and compete. This instrument will help to: give childminders greater flexibility to grow their businesses; reduce red tape and the administrative burden on businesses by removing unnecessary duplication in the bureaucratic form-filling process; and encourage the expansion of high quality registered childcare provision.

7.2 The Department does not intend to consolidate the relevant childcare secondary legislation at this time.

8. Consultation outcome

8.1 On 16 July 2013, the government launched a public consultation on 'The Regulation of Childcare' which ran until 30 September 2013. The consultation sought views on proposals including: allowing providers to register multiple premises in a single registration process; and enabling childminders to operate on non-domestic premises for part of the working week. There were 386 responses, mainly from early years and childcare representative organisations, providers, local authorities and parents.

8.2 There were 372 responses to the question of allowing providers to register multiple premises in a single registration process. 48% were in favour of the proposal and felt that this would reduce bureaucracy, cost and enable more premises to be opened. 22% were unsure and 30% were against the proposal. There were some concerns about how the government would ensure safety and/or quality. However, providers will still be required to notify Ofsted about each premises and Ofsted should satisfy itself that each of the premises is suitable for the provision of childcare.

- 8.3 There were 356 responses to the question of enabling childminders to operate on non-domestic premises for part of the working week. 38% were in favour of the proposal and felt this would enable childminders to support and work alongside each other and offer more flexibility during school holidays. 27% were unsure and 35% were against. There were concerns about infringing on parents' choice of home-based care and how to ensure non-domestic premises were suitable. However, the ability to operate from non-domestic premises will be optional and there will be no obligation on childminders to change the way they work currently. Furthermore, childminders will be required to notify Ofsted (or their childminder agency) and receive its approval before they can operate from non-domestic premises.
- 8.4 On 13 February 2014, the government published a summary of the responses as well as the government's own response, which included its plans to go ahead with these proposals (www.gov.uk/government/consultations/childcare-regulation).

9. Guidance

- 9.1 This instrument does not include any complex amendments that will require standalone guidance in order to understand the changes. However, the Department plans to publish a revised version of the EYFS statutory framework to reflect these changes before they come into force in January 2016. The Department operates a 'digital by default' publishing service - rather than issuing printed versions of its guidance - and therefore the EYFS will be published on the gov.uk website (as it is now). The regulatory body, Ofsted, will be responsible for updating its own guidance to reflect these changes.
- 9.2 Information about these changes is already in the public domain, for example, the government's response to 'The Regulation of Childcare' consultation and Hansard transcripts from the SBEE Bill debates and the House of Commons oral evidence session. However, the Department plans to communicate further updates about these changes at key points leading up to these measures coming into force in January 2016.

10. Impact

- 10.1 The impact on business, charities or voluntary bodies is negligible. There are no expected (or only negligible) costs to providers as a result of the SBEEA 2015 changes. However, there are modest savings and a breakdown of the potential monetary costs and savings is set out in the Department's Impact Assessment (see 10.3). Furthermore, Ofsted plans to transfer all existing childcare providers that operate from multiple premises to the single registration system (at no cost to those providers) from 1 January 2016.

- 10.2 The impact on the public sector is minimal. Ofsted will be responsible for the practical implementation of these changes and any set up costs will be agreed between Ofsted and the Department for Education as part of the regular budget planning process. This instrument includes a new offence for childcare providers who operate out of premises that have not been approved by Ofsted. This is a technical legal change that closed a potential loophole by ensuring that individuals who would have been guilty of the current offence (of providing childcare without registration) remain in scope under the new system where they are no longer registered in respect of individual premises. There may be associated costs to criminal justice system agencies. However, as volumes of prosecutions are expected to be very low and the offence is summary only with a maximum sentence of a fine, we do not anticipate any substantial downstream costs. This offence was cleared by the Ministry of Justice in March 2015 and the Department's Impact Assessment (see 10.3) references potential costs associated with this new offence.
- 10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.
- 10.4 Regulation 7(7)(d) amends the Childcare (Fees) Regulations 2008. This allows sessional daycare providers to pay the same annual fee rate until 31 August 2017. A Regulatory Triage Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on www.legislation.gov.uk.

11. Regulating small business

- 11.1 The legislation applies to small business (such as childminders and nurseries) which makes up a large majority of the childcare market.
- 11.2 These measures are deregulatory and designed specifically to support small childcare businesses to grow and prosper. As the majority of childcare providers are small businesses, it would not be appropriate to exclude them and the Department considers that no mitigating actions are required in relation to these deregulatory measures.
- 11.3 In considering the impact on small business, we took account of responses from the public consultation on 'The Regulation of Childcare.' This sought the views of providers, representatives and customers of the childcare sector, which is dominated by small business, about a number of changes intended to promote a prosperous and growing childcare market.

12. Monitoring & review

- 12.1 Sections 28 to 32 of the SBEEA 2015, which came into force on 1 July 2015, place a duty on government departments to include a review provision in secondary legislation that regulates business or voluntary and community bodies.

Therefore, this instrument includes provision to review - within five years - the amendments made by the instrument to the following Regulations:

- the Childcare (Early Years Register) Regulations 2008;
- the Childcare (General Childcare Register) Regulations 2008;
- the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008; and
- the Early Years Foundation Stage (Welfare Requirements) Regulations 2012.

12.2 Provision for a review is not required by the SBEEA 2015 in relation to the following Regulations:

- the Childcare (Supply and Disclosure of Information) (England) Regulations 2007;
- the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007; and
- the Childcare (Fees) Regulations 2008.

12.3 For the purposes of section 31(2)(a) of the SBEEA 2015, the Minister has determined that it would be disproportionate to include a review provision for the minor changes made to the Childcare (Childminder Agencies) (Registration, Inspection and Supply and Disclosure of Information) Regulations 2014 by this instrument.

12.4 This instrument is one of a number of government reforms designed to support the childminding and childcare profession and therefore we have not set specific targets to monitor the success of this instrument.

13. Contact

13.1 John Trakos at the Department for Education (telephone: 020 7340 7050, or email: john.trakos@education.gsi.gov.uk) can answer any queries in regards to this instrument.