

EXPLANATORY MEMORANDUM TO

THE CHILDCARE (CHILDMINDER AGENCIES) (REGISTRATION, INSPECTION AND SUPPLY AND DISCLOSURE OF INFORMATION) AND HER MAJESTY'S CHIEF INSPECTOR OF EDUCATION, CHILDREN'S SERVICES AND SKILLS (FEES AND FREQUENCY OF INSPECTIONS) (CHILDREN'S HOMES ETC.) (CORONAVIRUS) (AMENDMENT) REGULATIONS 2021

2021 No. 1019

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

Childminder agency quality assurance visits

- 2.1 This instrument reduces, from two to one, the “minimum” number of quality assurance visits that each early years childminder agency (CMA) is required to carry out in the first year of their early years providers’ registration.
- 2.2 This will reduce the bureaucratic burden and associated administrative cost on early years CMAs of carrying out multiple visits (on top of the pre-registration visit undertaken shortly before registration) in the first year of their registered providers’ registration.

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- 2.3 This instrument also changes the frequency of the Chief Inspector of Education, Children’s Services and Skills (Ofsted’s) inspections for children’s homes, so that the minimum frequency of inspections is determined by the judgement in that inspection year, rather than the judgement made in the previous inspection year.
- 2.4 It also allows for Ofsted to comply with the minimum inspection requirements for all children’s social care providers, so far as reasonably practicable, for the period 1 October 2021 to 31 March 2022. Ofsted should comply with minimum inspection requirements as set out in the regulations; however, this flexibility is needed due to the uncertainty brought about by the coronavirus (COVID-19) pandemic, which may affect Ofsted’s ability to meet its minimum inspection requirements. If Ofsted are unable to meet the minimum inspection as required, Ofsted will provide their reasons to the department for being unable to do so.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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 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

Childminder agency quality assurance visits

- 6.1 The legal requirements for CMAs are set out in [The Childcare \(Childminder Agencies\) \(Registration, Inspection and Supply and Disclosure of Information\) Regulations 2014](#) (S.I. 2014/1920) (the “2014 Regulations”). This includes: requirements relating to people employed by the CMA (e.g. obtaining an enhanced criminal record certificate); the CMA’s arrangements for assessing the suitability of childminders applying to register with the agency (e.g. carrying out checks with the childminder’s GP and local authority, and undertaking a pre-registration visit to the childminder’s premises); the CMA’s arrangements in relation to providing training to its registered providers (e.g. providing a specific number of hours of training and continuous professional development); and the CMA’s arrangements for ensuring its registered provision is of a sufficient standard (e.g. by carrying out a minimum number of quality assurance visits and providing a written report of the visit to the childminder).
- 6.2 As part of an early years CMA’s arrangements for assessing the standard of care and early education being delivered by their registered providers, paragraph 16 of Part 1 of Schedule 1 to the 2014 Regulations, requires CMAs to undertake ‘quality assurance’ visits.
- 6.3 CMAs may determine the shape and content of their quality assurance visit arrangements. For early years childminders, this must also include an assessment against delivery of the Early Years Foundation Stage (EYFS) statutory framework¹. In terms of their early years providers, paragraph 16(3)(a) provides that early years CMAs must carry out a minimum of two quality assurance visits (including one unannounced² visit) in the first year of a new provider’s registration, and paragraph 16(3)(b) provides for a minimum of one quality assurance visit (unannounced) per year thereafter. This instrument amends this requirement at regulation 16(3)(a) by reducing, from two to one, the “minimum” number of quality assurance visits that each early years CMA is required to carry out in the first year of their early years providers’ registration.

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- 6.4 Regulation 27 of [Her Majesty’s Chief Inspector of Education, Services and Skills \(Fees and Frequency of Inspections\) \(Children’s Homes etc.\) Regulations 2015](#) (the “2015 Regulations”) sets out the frequency within which Ofsted must inspect premises used for the purposes of a children’s home, residential family centre, voluntary adoption agency, adoption support agency, fostering agency, and holiday scheme for disabled children.
- 6.5 Due to the coronavirus (COVID-19) pandemic and the impact that it has had on Ofsted’s ability to meet its minimum inspection requirements, regulation 12 of the

¹ <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

² As set out in footnote 23 of the [Guidance for Childminder Agencies](#) “unannounced” means with as little notice as possible, for example a phone call to the childminder 1-2 days before.

Adoption and Children (Coronavirus) (Amendment) Regulations 2020 (SI 2020/445) omitted regulation 27 of the 2015 Regulations, and provided that the amendment made by regulation 12 would cease to have effect on 31 March 2021 (regulation 14). Regulation 14 was then amended by regulation 3 of the Adoption and Children (Coronavirus) (Amendment) Regulations 2021 (SI 2021/261) to provide that the amendment made by regulation 12 ceases to have effect at the end of 30 September 2021.

6.6 Regulation 27 of the 2015 Regulations will therefore cease to be omitted at the end of 30 September 2021. If it were not amended by this SI, regulation 27 would then provide that:

- The minimum frequency of Ofsted’s inspections of children’s homes in each inspection year (1 April – 31 March) would be determined by the judgements set in the previous inspection year.
- Children’s homes that are judged to be “inadequate” or “requires improvement to be good” in one inspection year, and all secure children’s homes³, would be inspected at least twice in the following year.
- Children’s homes that are judged to be ‘good’ or ‘outstanding’ would be inspected at least once in the following year, provided that no subsequent inspection had resulted in a judgement that is less than good.
- Holiday schemes for disabled children must be inspected at least once per year.
- Residential family centres, voluntary adoption agencies, adoption support agencies and fostering agencies would have to be inspected at least once every three years.
- These are minimum requirements and Ofsted would decide whether further inspections were required based on an [assessment of risk](#).⁴

6.7 This SI amends regulation 27 of the 2015 Regulations so that the minimum frequency of children’s homes inspections is determined by the judgement in that inspection year, rather than the judgement made in the previous inspection year. It also amends the 2015 Regulations to provide Ofsted with flexibility should minimum inspections be impacted due to the affects of the coronavirus pandemic and the ability to prioritise inspections as necessary (for the period 1 October 2021 to 31 March 2022).

7. Policy background

What is being done and why?

Childminder agency quality assurance visits

7.1 In England, early years childcare providers who care for children from birth to age 5 (up to 31 August following the child’s fifth birthday) for more than 2 hours per day in respect of a particular child must⁵ register with Ofsted or with a CMA. It is an offence

³ Secure children’s homes are those that are approved by the Secretary of State under Regulation 3 of the Children (Secure Accommodation) Regulations 1991.

⁴ This is set out in Ofsted’s Social Care Common Inspection Framework for different providers – see, for example, the [social care common inspection framework \(SCCIF\): children’s homes](#) section on ‘Scheduling and the inspection team (frequency of inspections sub-section)’ for how risk assessments are formulated.

⁵ As set out in Part 3 of the [Childcare Act 2006](#)

to provide early years childcare without being registered with Ofsted or a CMA unless you are exempt⁶ from compulsory registration.

- 7.2 Legislation that allows for the creation of CMAs was introduced by the Department for Education in 2014 to provide childminders (and other providers of childcare on domestic premises) with an alternative registration route to registering with Ofsted. Therefore, a childminder can choose to register with either Ofsted or a CMA (but cannot be registered with both at the same time). However, CMAs must themselves be approved and registered by Ofsted, and are inspected by Ofsted.
- 7.3 CMAs provide their registered childminders with training, advice, administrative support and marketing to families. They can also provide a valuable service for parents looking for high-quality flexible childcare.
- 7.4 Currently, prior to registering childminders, early years CMAs are required to carry out a pre-registration visit to each of their childminder applicant's premises as part of the CMA's activities to assess the suitability of the childminder and their premises. Once the childminder is approved and registered by the agency, CMAs are required to carry out a minimum of two quality assurance visits (including one unannounced visit) in the first year of their newly registered providers' registration, and a minimum of one quality assurance visit (unannounced) per year thereafter.
- 7.5 We recognise the requirement for CMAs to undertake multiple visits to each of their registered providers within the first 12 months of the providers' registration (on top of the pre-registration visit carried out shortly before registration) may not be necessary for all their early years providers. For example, where a newly registered provider was previously registered as an early years provider with Ofsted or another CMA, or where a newly registered provider is returning to early years following a career-break or maternity/paternity leave etc.
- 7.6 Therefore, the amendment made by this Instrument to the 2014 Regulations will reduce, from two to one, the "minimum" number of quality assurance visits that each early years CMA is required to carry out in the first year of their early years providers' registration. As such, early years CMAs will no longer be legally required to undertake more than one visit in the first year of a new providers' registration. However, as this is a 'minimum' requirement, CMAs will still be able carry out more than one visit if necessary. For example, if they have concerns about the quality of a provider or wish to check any registered non-domestic premises or where a provider may require additional support because they are new to the childminding profession.
- 7.7 The 'consultation' section below sets out the steps the department has taken to assure itself that this change will not negatively impact CMA-registered providers.

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- 7.8 This instrument amends the 2015 Regulations so that the minimum frequency of inspections of children's homes is determined by the inspection judgement in that inspection year rather than the previous inspection year. Children's homes that are judged to be 'good' or 'outstanding' will receive a minimum of one inspection in that inspection year even if they were judged to be less than good, i.e., 'requires improvement to be good' or 'inadequate' in the previous inspection year.

⁶ The [Childcare \(Exemptions from Registration\) Order 2008](#) exempts certain childcare provision from compulsory registration with Ofsted or a CMA – e.g. schools with young children from age 2; provision of less than two hours per day; and activity-based provision (such as dance and drama clubs, and sports clubs) etc.

- 7.9 Homes that are judged to be less than good will continue to be inspected at least twice in that inspection year. Where a first inspection occurs after 1 January in an inspection year and a second inspection cannot be carried out within that inspection year, Ofsted must prioritise conducting the next full inspection in the first three months of the following inspection year.
- 7.10 This change will mean that the frequency of inspections will be based on more up to date information about the quality of homes' provision for children and will be more proportionate. It will allow Ofsted to direct their resources better and focus on homes that need more support. Ofsted will use risk assessments to decide whether a home requires further inspections during the inspection year. They can undertake additional inspections if they become aware of any new information of concern related to a home.
- 7.11 This SI makes no changes to the frequency of inspections of secure children's homes.
- 7.12 The following scenarios illustrate how this would work in practice
- Scenario 1: A children's home was inspected in May 2022 and judged 'requires improvement (to be good)'. The home had an interim inspection in October 2022. The home had another full inspection on 10 April 2023, the outcome of which was Good. The home would not have another scheduled inspection until some point in the next inspection year.
 - Scenario 2: A children's home is inspected in February 2023 and judged to be outstanding. The home is next inspected in January 2024 and is judged to be 'requires improvement (to be good)'. Due to the very short time before the end of that inspection year, a second (interim) inspection is unlikely to take place in that inspection year. In these circumstances, the next full inspection would be carried out in early 2024/25. The outcome of that inspection would determine the timing of the home's next inspection.
- 7.13 Minimum inspection frequencies for all children's social care provision, were suspended by the Adoption and Children (Coronavirus) (Amendment) Regulations 2021 ([SI 2020/445](#)) until the end of 30 September 2021, due to the ongoing impact of the coronavirus (COVID-19) pandemic. This SI amends the 2015 Regulations to allow Ofsted to comply with the minimum frequency of inspections for all children's social care provision 'so far as reasonably practicable', for the remainder of the inspection year (1 October 2021–31 March 2022).
- 7.14 Ofsted resumed routine inspections in April 2021. However, routine graded inspections were paused during 2020-21 due to COVID-19 (Ofsted carried out monitoring visits and assurance visits during this period instead) and this has led to a backlog of inspections that were due to be carried out in 2020-21 for those providers that are inspected at least once every three years.
- 7.15 The department considers, in most cases, for it to be practicable for Ofsted to meet minimum inspection requirements during the period 1 October 2021 to 31 March 2022; however, the unpredictability of the coronavirus pandemic may impact on inspections during the 2021-22 inspection year, and there is therefore a need to provide Ofsted with the flexibility to target their resources on children's social care providers that need the most support during 2021-22. If Ofsted are unable to meet minimum inspections as required, the department will require Ofsted to provide their reasons for being unable to do so.

- 7.16 None of these changes affect Ofsted’s ability to conduct additional inspections in the same inspection year for all providers, irrespective of judgement, as they determine necessary.

8. European Union Withdrawal and Future Relationship

- 8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act

9. Consolidation

- 9.1 There are no plans to consolidate the relevant regulations.

10. Consultation outcome

Childminder agency quality assurance visits

- 10.1 There is no statutory obligation to consult prior to amending the 2014 Regulations. However, the department undertook consultation activity with key sector stakeholders (including CMAs, Ofsted, childminders, the Professional Association for Childcare and Early Years (PACEY), the Early Years Alliance (EYA), the National Day Nurseries Association (NDNA), a number of local authorities, and the early years lead in the Children’s Commissioner’s office) to help it consider the potential impact of the proposed amendment and to assure itself that a minimum of one visit in the first year would still allow CMAs to sufficiently monitor and support their new providers. The department also sought feedback on whether the minimum of one visit in the first year should be an announced or unannounced visit.
- 10.2 The feedback received has assured the department that: a reduction in the minimum number of visits will not lead to a reduction in the quality of provision as CMAs will continue to be responsible for driving up the quality of provision registered with them; a minimum of one quality assurance visit will still allow CMAs to sufficiently monitor and support their new providers as the quality assurance visit is primarily intended to ‘assess’ the quality of provision (whilst monitoring activity and practice support usually takes place outside of the quality assurance visit itself); and, as this is a ‘minimum’ requirement, CMAs will be able carry out more than one visit if necessary. For example, if they have concerns about the quality of a provider or wish to check any registered non-domestic premises or where a provider may require additional support because they are new to the childminding profession. There was also very strong support to retain the current requirement for an unannounced visit in the first year of registration.

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- 10.3 There is no obligation to consult on these changes. However, the department understands that there is keen interest from the sector on any proposed changes to Ofsted inspection frequencies and a consultation was carried out between 8 July 2021 and 20 August 2021.
- 10.4 The DfE consulted on changes to minimum frequency of Ofsted inspection for children’s homes and to the minimum frequency of inspections for children’s social care more generally from 1 October 2021 to 31 March 2022.

- 10.5 There were 84 responses to the consultation with 73 in favour of changes to Ofsted inspection frequencies and 84 in favour of amending the minimum frequency of inspections for children’s social care from 1 October 2021 to 31 March 2022.

DfE’s response to the consultation is available at:

<https://www.gov.uk/government/consultations/ofsted-inspection-frequencies-for-childrens-social-care-providers-2021-to-2022>.

11. Guidance

Childminder agency quality assurance visits

- 11.1 Upon laying this statutory instrument the department will publish an updated version of its Guidance for CMAs (to apply from 1 October 2021) at:
www.gov.uk/government/publications/childminder-agencies-a-guide.
- 11.2 The Parliamentary Under Secretary of State for Children and Families will also write to Her Majesty’s Chief Inspector (HMCI) of Ofsted setting out the change to the CMA quality assurance visit requirements, and the department will contact each CMA to notify them that the instrument has been laid.

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- 11.3 DfE will not provide accompanying guidance, however, Ofsted will notify providers of the changes in inspection frequency. Ofsted will update the Social Care Common Inspection Framework to set out these changes.

12. Impact

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- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the estimated cost/saving to those registered as early year CMAs is below the +/- £5 million threshold required for a regulatory impact assessment.

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- 12.4 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.5 There is no, or no significant, impact on the public sector.
- 12.6 An Impact Assessment has not been prepared for this instrument as there is no, or no significant, impact on businesses, charities, voluntary bodies, or the public sector as children’s social care is subject to a statutory exclusion.

13. Regulating small business

Childminder agency quality assurance visits

- 13.1 The amendment to the 2014 Regulations will apply to some small businesses – namely early years CMAs employing up to 50 people. The deregulatory amendment means early years CMAs will no longer be legally required to undertake more than one visit in the first year of their new providers’ registration, which will save CMAs

time and resources. However, as this is a ‘minimum’ requirement, early years CMAs will be able carry out more than one visit if necessary (as set out above).

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- 13.2 The legislation applies to activities that are undertaken by small businesses that run children’s homes.
- 13.3 While some of these businesses will be affected, the changes only alter the minimum frequency of inspections, allowing Ofsted to undertake more targeted activity. It will not provide a net increase or decrease of Ofsted activity and Ofsted will still be able to carry out inspections above the minimum frequency where they assess this is required.
- 13.4 Small businesses were also able to contribute their views on the amendments to the Regulations.

14. Monitoring & review

- 14.1 In terms of the 2014 Regulations, the department will keep the operation of this instrument under review via its regular meetings with Ofsted and CMAs. The intended effect of this amendment is to reduce the bureaucratic burden (and associated administrative cost) placed on early years CMAs to carry out multiple visits to each of their registered providers in the first year of each provider’s registration. However, CMAs will be able to carry out more than one visit if necessary or if the CMA wants to carry out more than one visit. For example, if a CMA chooses to offer multiple visits to its new providers as part of a business model. Therefore, whilst the department expects the majority of CMAs to adopt this change, it has not set specific targets (or a ‘success criteria’) by which to measure this change.
- 14.2 In terms of the 2015 Regulations, the department will keep the operation of this instrument under review via its regular meetings with Ofsted and children’s social care providers. The intended effect of the amendment to the frequency of children’s homes inspections is to ensure that these are based on up-to-date information about the quality of homes and enable Ofsted to focus more on homes that need greater support to improve. Ofsted also publishes regular data and information on its inspections of children’s homes and other children’s social care providers. The department periodically amends the 2015 Regulations (usually on an annual basis to amend the fees).
- 14.3 The instrument does not include a statutory review clause.

15. Contact

- 15.1 John Trakos at the Department for Education, Telephone 020 7340 7050 or email: John.trakos@education.gov.uk can be contacted with any queries regarding the amendment to the 2014 Regulations in the instrument.
- 15.2 Joanna Mackie and Hannah Carmichael, Deputy Directors for Early Years Sufficiency and Entitlements, at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Paul Stern at the Department for Education, Telephone: 02045515067 or email: paul.stern@education.gov.uk can be contacted with any queries regarding the amendments to the 2015 regulations in this instrument.

- 15.4 Jonathan Bacon, Deputy Director for Looked After Children Division, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.5 The Parliamentary Under Secretary of State for Children and Families, Vicky Ford, at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.