

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (PROVISION OF INFORMATION ABOUT YOUNG CHILDREN)
(ENGLAND) REGULATIONS 2008

2008 No. 1722

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. **Description**

These Regulations prescribe the persons and categories of persons who can collect and exchange information under section 99 of the Childcare Act 2006 (“the 2006 Act”). They consolidate a number of Regulations which are being revoked by these Regulations, as well as making various amendments as a consequence of section 7 of the Childcare Act 2006 coming into force on 1st September 2008. With one exception, they do not contain any substantive changes either to the persons and categories of persons who can provide or receive information, or to the prescribed information which can be provided. The exception is the prescription of a child’s early years provider as a person to whom the Secretary of State may provide that child’s individual child information.

3. **Matters of special interest to the Merits Committee**

3.1 The provision at regulation 15 of the Education (Provision of Information About Young Children) (England) Regulations 1999 (“the 1999 Regulations”), as amended by regulation 2 of the Education (Provision of Information About Young Children) (England) (Amendment) Regulations, ensures that there is no legal bar to the provision of information collected under section 537A of the Education Act 1996 being provided to a database established and operated under section 12 of the Children Act 2004, which is known as “Contact Point”. Regulation 10 of these Regulations preserves that provision, but inserts it into the Education (Individual Pupil Information) (Prescribed Persons) Regulations 1999 as amended.

3.2 This does not affect the number of users who may be given access to ContactPoint, or in any other way affect that database. The reason for transferring this provision to the 1999 Regulations is that the Regulations which these Regulations revoke and replace no longer need to rely on section 537A. It is therefore more appropriate for this prescription of a category of persons under section 537A to be found in the 1999 Regulations (which relate solely to section 537A) than in these Regulations (which will thereby relate solely to section 99 of the 2006 Act).

4. **Legislative Background**

4.1 These Regulations are principally making consequential amendments as a result of section 99 of the 2006 Act no longer being modified by section 100 of that Act.

4.2 Section 7 of the 2006 Act will come into force on 1st September 2008. One of the consequences is that section 99 (provision of information about young children: England) is no longer modified by section 100(3) of the 2006 Act. This latter section currently substitutes for the definition of 'early years provision' in s.99(9) a definition of 'funded nursery education' based on Part 5 of the School Standards and Framework Act 1998.

4.3 The second consequence of section 7 coming into force is that section 99(1)(a) and (b) will no longer be modified by s.100(2), so that s.99(1)(b) will enable the collection of information from maintained schools, and the Regulations need not rely on s.537A of the Education Act 1996. Accordingly, prescriptions under section 537A in the Regulations that are being revoked are therefore not being replicated in these Regulations.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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 policy objective of section 99 of the 2006 Act is to ensure that the Department for Children, Schools and Families is able to collect the data needed to ensure that the free early years provision for 3 and 4 year olds is being funded and delivered appropriately. This Section supports the collection of data from both the maintained and Private, Independent and Voluntary Sectors.

7.2 The changes to section 99 set out here are a consequence of the introduction of the Early Years Foundation Stage, which is a statutory framework for early learning and childcare from birth until the end of the academic year in which a child turns 5. There will be no difference to the individual child information which is collected, the manner or timing of its collection, or the persons to whom the information can be given. The only exception to this is the additional prescription in regulation 6(a) of a child's early years provider as a person to whom the Secretary of State may provide that child's individual child information. Normally such a provider would have the child's individual child information, but circumstances occasionally arise (e.g so that providers have an opportunity to align their databases with data held by the Department after changes made throughout the data cleaning process) when the Secretary of State would wish to disclose the information back to the provider.

7.3 The Early Years Foundation Stage comes into effect on 1st September 2008. These Regulations will need to reflect the replacement of the foundation stage with the Early Years Foundation Stage and makes reference to the new Early Years Foundation Stage Framework entitled 'Statutory Framework for the Early Years Foundation Stage' which is used to describe the Early Years Foundation Stage assessment scales. These scales will be identical to the foundation stage assessment scales. These changes will be consistent with the the Local Authority Targets (Well-Being of Young Children) Regulations 2007 (S.I. 2007/1415).

8. Impact

An Impact Assessment has not been prepared for this instrument as no impact on business, charities or voluntary bodies, or the public sector is foreseen.

9. Contact

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