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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This is the sixth Commencement Order (“the Order”) made under the Childcare Act 2006 (“the 2006 Act”), and the fifth Commencement Order to bring provisions of the 2006 Act into force in relation to England.

Article 2 brings provisions in Parts 1 (general functions of local authority: England) and 3 (regulation of provision of childcare in England) of, and Schedules 1 (amendments relating to the curriculum), 2 (minor and consequential amendments) and 3 (repeals) to, the 2006 Act into force on 1st September 2008.

In Part 1 of the 2006 Act, section 7 is brought fully into force. This section puts an English local authority under a duty to secure that early years provision of a prescribed description is available free of charge for prescribed periods, for children who are under compulsory school age but have attained a prescribed age. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 (S.I. 2008/1724) prescribe these matters, and come into force on 1st September 2008.

In Chapter 1 of Part 3 of the 2006 Act, section 32 is brought fully into force. This section puts Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (“the Chief Inspector”) under a duty to maintain two registers. The first of these is “the early years register” (“EYR”), a register for the compulsory registration of certain childcare provided for children from birth up to 1st September following their fifth birthday. The second of these is “the general childcare register” (“GCR”), which is in two parts; Part A is for the compulsory registration of providers of certain childcare for children from the 1st September following their fifth birthday up to the age of 8, and Part B is for the voluntary registration of providers who are not required to be registered in the EYR or in Part A of the register.

Chapters 2 (regulation of early years provision), 3 (regulation of later years provision for children under 8), 4 (voluntary registration) and 5 (common provisions) of Part 3 of the 2006 Act are brought fully into force on 1st September 2008. Accordingly, both registers are brought fully into force on 1st September 2008 (Part B of the GCR came into force on 6th April 2007, subject to transitional provisions).

The Childcare (Early Years Register) Regulations 2008 (S.I. 2008/974), the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975) and the Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008 (S.I. 2008/976) make provision about the two registers, and come into force on 1st September 2008.

The Childcare (Exemptions from Registration) Order 2008 (S.I. 2008/979) specifies circumstances in which the provision of childcare does not attract the requirement for registration in the EYR or Part A of the GCR. The Childcare (Fees) Regulations 2008 (S.I. 2008/1804) make provision about fees payable by providers of childcare who are registered in either the EYR, Part A of the GCR or Part B of the GCR. The Childcare (Inspections) Regulations 2008 (S.I. 2008/1729) make provision about inspections of early years provision and later years provision provided by people registered on the EYR or Part A of the GCR. All of these instruments come into force on 1st September 2008.

In particular, persons who are registered on the EYR are required, from 1st September 2008, to implement the Early Years Foundation Stage (“EYFS”). The EYFS is made up of welfare requirements and learning and development requirements, which are contained in the “Statutory Framework for the Early Years Foundation Stage” document published by the Secretary of State in May 2008. This document was given legal effect by the Early Years Foundation Stage (Welfare

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Requirements) Regulations 2007 (S.I. 2007/1771), as amended by the Early Years Foundation Stage (Welfare Requirements) (Amendment) Regulations 2008 (S.I. 2008/1953); and by the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (S.I. 2007/1772), as amended by the Early Years Foundation Stage (Learning and Development Requirements) (Amendment) Order 2008 (S.I. 2008/1952).

Article 3 of, and Schedule 1 to, the Order make general savings. In particular, provision is made to ensure that legal proceedings in respect of the amended legislation (including any proceedings under or in relation to Part 10A of the Children Act 1989 (“the 1989 Act”)) are unaffected.

Article 4 of, and Schedule 2 to, the Order make saving and transitional provisions as a consequence of the coming into force of provisions in Part 3 of the 2006 Act, and associated amendments to the 1989 Act made by Schedules 2 and 3.

Part 1 of Schedule 2 makes provision in respect of persons who are registered as child minders under Part 10A of the 1989 Act. Paragraph 1 of Schedule 2 requires the Chief Inspector to register them as childminders under the 2006 Act. The particular register they are placed on will depend on the ages of children for whom persons are authorised to provide child minding. In practice, conditions imposed by the Chief Inspector on a person’s registration will authorise a person to provide child minding for children of specified ages. Paragraphs 2 and 3 make exceptions. In particular, the Chief Inspector is not required to register persons who have not provided child minding in the three years immediately preceding 1st September 2008, or persons who have asked not to be registered under the EYR or GCR. The Chief Inspector is not required to register persons who are exempt from registration under the 2006 Act.

Paragraphs 4, 5 and 6 make similar provision in respect of persons who are registered as day care providers under Part 10A of the 1989 Act. The Chief Inspector is not required to register persons who are registered as day care providers under the 1989 Act who are exempt from registration under the 2006 Act, persons who have requested that they are not registered on the EYR or the GCR, or schools that are providing childcare that is not required to be registered under the 2006 Act.

Paragraphs 7 and 8 make special arrangements in respect of persons who are registered as child minders under the 1989 Act but whose provision, by virtue of section 96(5) or (9) of the 2006 Act, would not be early years childminding or later years childminding. Section 96(5) of the 2006 Act provides that early years provision on domestic premises for reward is not early years childminding if at any time the number of persons providing the early years provision on the premises or assisting with the provision exceeds three. Section 96(9) makes the same provision in respect of later years childminding. Paragraphs 7 and 8 provide for a procedure whereby persons affected by section 96(5) or (9) may become registered as an early years provider other than a childminder or as a later years provider other than a childminder.

Paragraphs 9 and 10 make provision in respect of persons who are “responsible individuals” under the 1989 Act. Under the 2006 Act, these persons will be treated as “managers”.

Paragraph 14 makes provision in respect of conditions. With certain specified exceptions, conditions imposed on persons registered under the 1989 Act continue to have effect as if they had been imposed under the 2006 Act.

Paragraph 15 makes provision in respect of applications for registration under the 1989 Act which, on 1st September 2008, the Chief Inspector has not refused or granted. Such applications are to be treated as if they had been made under the 2006 Act.

Part 2 of Schedule 2 makes provision in respect of notices sent and appeals brought under Part 10A of the 1989 Act. Specifically, provision is made to ensure that, after 1st September 2008, a notice sent to a person under the 1989 Act is to be treated as if it were a notice given under the 2006 Act. This provision affects notices given by the Chief Inspector in respect of the steps mentioned in section 79L(1) of the 1989 Act: a refusal of an application for registration, a cancellation of a registration, a removal or variation of a condition of registration, the imposition of a new condition, and a refusal to grant an application for the removal or variation of a condition.

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Ongoing appeals under the 1989 Act are to be treated as if they were appeals brought under the 2006 Act. This affects appeals against the steps mentioned in section 79L(1) of the 1989 Act, and also appeals against an order made by a justice of the peace under section 79K of the 1989 Act, in respect of a child who is at risk of significant harm; and also appeals against a determination by the Chief Inspector as to whether to give consent under the Day Care and Child Minding (Disqualification) (England) Regulations 2005 ([S.I. 2005/2296](#)) to waive a person's disqualification from registration.

Part 3 of Schedule 2 makes other saving and transitional provisions in respect of the 1989 Act (and instruments made under it). In particular, paragraph 23 makes provision to ensure that the Chief Inspector may continue to take into account a person's compliance (or otherwise) with the requirements of the Day Care and Child Minding (National Standards) (England) Regulations 2003 when exercising functions under Part 3 of the 2006 Act. Paragraph 24 makes provision to ensure that persons who are suspended immediately before 1st September 2008 are suspended under the 2006 Act. Paragraph 25 makes provision to ensure that persons whose disqualification from registration under the 1989 Act had been waived continue to have their disqualification from registration waived under the 2006 Act. Paragraph 26 makes provision in respect of any application by the Chief Inspector to a justice of the peace to protect a child in an emergency. Paragraph 27 makes provision to ensure that if the Chief Inspector has inspected a registered person under the 1989 Act before 1st September 2008, but has not yet issued a report, the report may be issued under the 1989 Act.

No impact assessment has been prepared for this Order because no additional impact on business, charities, voluntary bodies or the public sector is foreseen. However, impact assessments have, where appropriate, been carried out in respect of the other instruments made under the 2006 Act referred to in this Order.