
STATUTORY INSTRUMENTS

2020 No. 939

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Early Years Foundation Stage (Learning
and Development and Welfare Requirements)
(Coronavirus) (Amendment) (No. 2) Regulations 2020**

Made - - - - *2nd September 2020*
Laid before Parliament *4th September 2020*
Coming into force - - *26th September 2020*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 39(1), 42(1) to (3A), 43(1), 44(1) to (4) and 104(2) of the Childcare Act 2006(1) (“the 2006 Act”).

In accordance with section 42(A1) of the 2006 Act(2) the Secretary of State has consulted the Office of Qualifications and Examinations Regulation and other appropriate persons.

In accordance with section 43(2) of the 2006 Act, the Secretary of State has consulted Her Majesty’s Chief Inspector of Education, Children’s Services and Skills and other appropriate persons.

PART 1

Introductory

Citation, commencement and interpretation

1. These Regulations may be cited as the Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) (No. 2) Regulations 2020 and come into force on 26th September 2020.

2. In these Regulations—

(1) 2006 c.21. Section 42 was amended by section 160(2) and (3) of, and paragraph 40 of Schedule 12 and Part 4 of Schedule 16 to, the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22) (“the ASCLA 2009”) and by paragraph 17 of Schedule 8 to the Education Act 2011 (c. 21). Section 44(1) was amended by paragraph 41 of Schedule 12 to the ASCLA 2009. Sections 44(2) and (3) were amended by paragraph 11 of Schedule 4 to the Children and Families Act 2014 (c. 6). See section 106 of the Childcare Act 2006 for the definition of “prescribed” and “regulations”.

(2) Section 42(A1) was inserted by section 160(2) of the ASCLA 2009.

“the 2007 Order” means the Early Years Foundation Stage (Learning and Development Requirements) Order 2007(3);

“the 2012 Regulations” means the Early Years Foundation Stage (Welfare Requirements) Regulations 2012(4).

Review and expiry

3.—(1) The Secretary of State must, before the 31st August 2021, review the effectiveness of the amendments made by these Regulations.

(2) These Regulations expire on 31st August 2021.

PART 2

Modification of learning and development requirements

Amendment of the 2007 Order

4.—(1) The 2007 Order is amended as follows.

(2) In article 3 (specification of the learning and development requirements)(5), after “article 3A” insert “and article 3B”.

(3) After article 3A (temporary modification of learning and development requirements in the document) insert—

“Further temporary modification of learning and development requirements in the Document

3B. At any time when paragraph (2) applies in relation to a provider—

- (a) the learning and development requirements prescribed in Section 1 of the Document are to be treated as discharged if the provider uses its reasonable endeavours to discharge those requirements; and
- (b) the learning and development requirements prescribed in Section 2 of the Document at paragraphs 2.3 to 2.5 (progress check at age 2) do not apply.

(2) This paragraph applies when it is not reasonably practicable for a provider to comply with the learning and development requirements referred to in paragraph (1), as a result of—

- (a) restrictions or requirements imposed by regulations made under the Public Health (Control of Disease) Act 1984(6) for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (b) prohibitions, requirements or restrictions imposed by a direction made under any regulations referred to in sub-paragraph (a); or
- (c) a direction made under schedule 16 or 17 to the Coronavirus Act 2020(7).

(3) S.I. 2007/1772; relevant amending instruments are S.I. 2012/937, S.I. 2014/913, S.I. 2017/361 and S.I. 2020/444.

(4) S.I. 2012/938; relevant amending instruments are S.I. 2014/912, S.I. 2015/1562, S.I. 2017/361 and S.I. 2020/444.

(5) Article 3(1) was inserted by S.I. 2017/361. Article 3(2) was substituted by S.I. 2017/361. Article 3A was inserted by S.I. 2020/444.

(6) 1984 c. 22.

(7) 2020 c. 7.

(3) Paragraph (4) applies during the 14 day period beginning with the first day after the date on which all regulations or directions falling under paragraph (2) cease to apply to a provider.

(4) Where this paragraph applies, the learning and development requirements referred to in paragraph (1) are to be treated as discharged provided that—

- (a) in the period immediately preceding any such 14 day period paragraph (1)(a) applied; and
- (b) the provider continues during the 14 day period to use reasonable endeavours to discharge those requirements.”.

PART 3

Modifications of welfare requirements

Amendment of the 2012 Regulations

5.—(1) The 2012 Regulations are amended as follows.

(2) In regulation 3A (temporary modification of the welfare requirements in the Document)(8)—

(a) in paragraph (7)—

- (i) for “Except in relation to the requirement in paragraph (4)(b)” substitute “Subject to paragraph (8)”; and
- (ii) for “the level of qualifications held by staff during that period” substitute “compliance with the welfare requirements”; and

(b) after paragraph (7) insert—

“(8) Paragraph (7) does not apply to a provider at any time when regulation 3B applies to that provider.”.

(3) After regulation 3A (temporary modification of the welfare requirements in the Document) insert—

“Further temporary modification of the welfare requirements in the Document

3B.—(1) At any time when paragraph (2) applies in relation to a provider, the welfare requirements prescribed in Section 3 of the Document have effect subject to the modifications set out in regulation 3A(2) to (5).

(2) This paragraph applies when it is not reasonably practicable for a provider to comply with the prescribed requirements referred to in paragraph (1) as a result of—

- (a) restrictions or requirements imposed by regulations made under the Public Health (Control of Disease) Act 1984 for the purpose of preventing, protecting against, controlling or providing a public health response to the incidence or spread of infection or contamination of severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);
- (b) prohibitions, requirements or restrictions imposed by a direction made under any regulations referred to in sub-paragraph (a); or
- (c) a direction made under schedule 16 or 17 to the Coronavirus Act 2020.

(3) Paragraph (4) applies during the 14 day period beginning with the first day after the date on which all regulations or directions falling under paragraph (2) cease to apply to a provider.

(8) Regulation 3A was inserted by [S.I. 2020/444](#).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (4) Where this paragraph applies, the welfare requirements specified in regulation 3A(3) and (4)(b) are to be treated as discharged provided that—
- (a) in the period immediately preceding that 14 day period, the provider was treated as having discharged those requirements by virtue of paragraph (1); and
 - (b) during the 14 day period—
 - (i) in relation to the requirements specified in regulation 3A(3), the provider continues to use reasonable endeavours to discharge those requirements; and
 - (ii) in relation to the requirement specified in regulation 3A(4)(b), the provider continues to use its best endeavours to discharge the requirement and the conditions in regulation 3A(5) are satisfied.”.

Signed by authority of the Secretary of State for Education

2nd September 2020

Vicky Ford
Parliamentary Under Secretary of State
Department for Education

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make amendments to the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (“the 2007 Order”) and the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 (“the 2012 Regulations”) which modify and disapply certain requirements imposed under the 2007 Order and the 2012 Regulations.

The amendments are made to assist early years providers during the period of any prohibitions, restrictions or requirements imposed by regulations or a direction, in order to control the transmission or incidence of coronavirus, which impact upon a provider’s ability to comply with certain requirements under the Statutory Framework for the Early Years Foundation Stage (“the Document”). The Document was published by the Secretary of State for Education on 3rd March 2017 on the gov.uk website⁽⁹⁾. There is a duty on the Secretary of State to keep the operation of the amendments under review.

Part 1 contains general provisions.

Part 2 amends the 2007 Order to allow the current disapplications⁽¹⁰⁾ under the 2007 Order to take effect where prohibitions, restrictions or requirements relating to coronavirus are imposed by regulations or a direction, to control the spread of the virus and it is not reasonably practicable for a provider to comply with the prescribed requirements in regulation 4 of these Regulations.

Instead, the learning and development requirements are to be treated as discharged, if a provider uses its reasonable endeavours to discharge those requirements and the requirement to undertake progress checks at age 2, is disappplied.

Similarly Part 3 modifies and disapplies some provisions in the 2012 Regulations relating to safeguarding and welfare requirements where prohibitions, restrictions or requirements relating to coronavirus are imposed by regulations or a direction, to control the spread of the virus and it is not reasonably practicable for a provider to comply with the prescribed requirements in regulation 5 of these Regulations.

Paragraphs (3) and (4) of new regulation 3B in the 2007 Order and 3B in the 2012 Regulations, enable some of the modifications to be treated as discharged for a further 14 day period following the cessation of the relevant legislation for providers who have and will continue to meet certain requirements.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum is published alongside this instrument on www.legislation.gov.uk.

(9) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf. A hard copy or an electronic copy of the Document can be obtained by contacting eyfsp.reforms@education.gov.uk.

(10) See [The Early Years Foundation Stage \(Learning and Development and Welfare Requirements\) \(Coronavirus\) \(Amendment\) Regulations 2020 \(SI 2020/444\)](#) for the current disapplications and modifications that apply under the Document.