

2020 No. 444

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Early Years Foundation Stage (Learning and Development
and Welfare Requirements) (Coronavirus) (Amendment)
Regulations 2020**

<i>Made</i>	- - - -	<i>20th April 2020</i>
<i>Laid before Parliament</i>		<i>23rd April 2020</i>
<i>Coming into force</i>	- -	<i>24th April 2020</i>

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(a) (the 2006 Act).

In accordance with section 42(A1) of the 2006 Act(b) 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 and commencement

1. These Regulations may be cited as the Early Years Foundation Stage (Learning and Development and Welfare Requirements) (Coronavirus) (Amendment) Regulations 2020 and come into force on 24th April 2020.

Review

2. The Secretary of State must, before the 25th September 2020, review the effectiveness of the amendments made by these Regulations.

(a) 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. Section 44(2) and (3) was 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".

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

PART 2

Modification of learning and development requirements

Amendment of the Early Years Foundation Stage (Learning and Development Requirements) Order 2007

3. The Early Years Foundation Stage (Learning and Development Requirements) Order 2007(a) is amended as follows.

4. In article 3 (specification of the learning and development requirements)(b), at the beginning insert “Subject to article 3A,”.

5. After article 3 insert—

“Temporary modification of learning and development requirements in the Document

3A.—(1) During the relevant period, the learning and development requirements prescribed in Section 1 of the Document(c) are to be treated as discharged if a provider uses its reasonable endeavours to discharge the requirement during the relevant period.

(2) The relevant period starts when this regulation comes into force and ends on 25th September 2020.

(3) The learning and development requirements prescribed in Section 2 of the Document and specified in the first column of the table in paragraph (4) do not apply to the extent specified in the second column of that table.

(4)

<i>Learning and Development Requirement</i>	<i>Extent specified</i>
Paragraphs 2.3 to 2.5 (progress check at age 2)	in relation to the carrying out of any progress check before 25 th September 2020.
Paragraphs 2.6 to 2.11 (assessment at the end of the EYFS – the EYFSP)(d)	in relation to an assessment which would, but for this provision, have been undertaken in the academic year commencing with 1st August 2019 and ending with 31st July 2020.”.

6. After article 6A (matters to be considered by early years childminder agencies)(e) insert—

“Matters to be considered by early years childminder agencies: effect of temporary closure directions

6B.—(1) In relation to a period during which a temporary closure direction has effect in relation to an early years provider, an early years childminder agency must, in exercising functions under Part 3 of the Act, take account of the direction in dealing with any allegation under article 6A(a) or (b).

(2) In paragraph (1) “temporary closure direction” means a direction issued under section 37(1) and paragraph 3(2)(b) of Schedule 16 to the Coronavirus Act 2020(f).”.

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

(b) Article 3(1) was inserted by S.I. 2017/361. Article 3(2) was substituted by S.I. 2017/361.

(c) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf.

(d) The Early Years Foundation Stage Profile (EYFSP) is referred to in paragraphs 2.6 to 2.11 of the Statutory Framework for the Early Years Foundation Stage (EYFS).

(e) Article 6A was inserted by S.I. 2014/913 and substituted by S.I. 2017/361.

(f) Coronavirus Act 2020 (c.7).

PART 3

Modification of welfare requirements

Amendment of the Early Years Foundation Stage (Welfare Requirements) Regulations 2012

7. The Early Years Foundation Stage (Welfare Requirements) Regulations 2012(a) are amended as follows.

8. After regulation 3 (specification of the welfare requirements)(b) insert—

“Temporary modification of the welfare requirements in the Document

3A.—(1) The welfare requirements prescribed in Section 3 of the Document have effect during the relevant period subject to the modifications set out in this regulation.

(2) The requirements in Section 3 of the Document specified in paragraph (3) are to be treated as discharged if the provider has used its reasonable endeavours to discharge the requirement.

(3) The following requirements are specified for the purposes of paragraph (2)—

- (a) in paragraph 3.23, the requirement for at least half of all other staff (excluding the manager) to hold at least a full and relevant level 2 qualification;
- (b) in paragraphs 3.31, 3.32, 3.34 and 3.36 the requirement for at least half of all other staff (excluding the member of staff who holds a full and relevant level 3 qualification) to hold a full and relevant level 2 qualification;
- (c) in paragraph 3.33, the requirement for at least one other member of staff (excluding the member of staff who holds a suitable level 6 qualification) to hold a full and relevant level 3 qualification;
- (d) in paragraph 3.35, the requirement for at least one other member of staff (excluding the member of staff who holds a suitable level 6 qualification, an instructor, or another suitably qualified overseas trained teacher) to hold a full and relevant level 3 qualification; and
- (e) in paragraph 3.37—
 - (i) the requirement for at least one member of staff to be a school teacher, as defined by section 122 of the Education Act 2002(c) but only if the requirements in paragraph 3.34 (as modified by sub-paragraph (b)) are satisfied; and
 - (ii) the requirement for at least one other member of staff (excluding the member of staff who is a school teacher, as defined by section 122 of the Education Act 2002) to hold a full and relevant level 3 qualification.

(4) In paragraph 3.25—

- (a) the words from “All newly qualified entrants” to “in an early years setting.” are disapplied; and
- (b) the requirement for at least one person who has a current paediatric first aid (“PFA”) certificate to be on the premises and available at all times when children are present and to accompany children on outings is to be treated as discharged if the provider has used its best endeavours to discharge the requirement and the conditions in paragraph (5) are satisfied.

(5) The conditions are that—

- (a) all children being cared for on the premises are two years old or more;

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

(b) Regulation 3 was amended by S.I. 2015/1562 and amended by S.I. 2017/361.

(c) Section 122 of the Education Act 2002 was amended by S.I. 2010/1158.

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 being made in order to assist the early years’ sector during the coronavirus outbreak. 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 modifies and disapplies provisions in the 2007 Order relating to the learning and development requirements in Sections 1 and 2 of the Statutory Framework for the Early Years Foundation Stage (“the Framework Document”) published by the Secretary of State for Education on 3rd March 2017 on the gov.uk website^(a).

Section 1 of the Framework Document is modified until 25th September 2020 so that the learning and development requirements are to be treated as discharged if a provider uses its reasonable endeavours to discharge the requirement.

In Section 2 of the Framework Document the legal requirement to undertake progress checks at age 2 are removed until 25th September 2020 and the requirement to complete assessments at the end of the Early Years Foundation Stage (the Early Years Foundation Stage Profile) for the academic year 2019-20 is disapplied.

Regulation 6 makes similar provision for childminder agencies (in respect of the learning and development requirements) in respect of the exercise of their functions in relation to a childcare provider subject to a temporary closure order under the Coronavirus Act 2020, as is made in that Act in relation to the Chief Inspector.

Part 3 modifies and disapplies provisions in the 2012 Regulations. Section 3 of the Framework Document is modified in relation to certain welfare requirements, in particular staff qualifications, training, support and skills. The modifications apply until 25th September 2020 subject to savings for providers who are relying on the modifications at the end of that period and who meet certain requirements who have until 25th November 2020 to comply with the unamended regulations.

Regulation 9 makes similar provision as that in regulation 6 but in respect of the welfare 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.

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(a) https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/596629/EYFS_STATUTORY_FRAMEWORK_2017.pdf.