



**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**THE OFFICE FOR STANDARDS IN EDUCATION, CHILDREN'S SERVICES AND**  
**SKILLS**  
**AND**  
**THE FOOD STANDARDS AGENCY**

**MEMORANDUM OF UNDERSTANDING ON SHARING OF CHILDMINDER**  
**REGISTRATION DATA**

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**Parties**

1. The Parties to this Memorandum of Understanding (MoU) are the Office for Standards in Education, Children's Services and Skills (Ofsted) and the Food Standards Agency (FSA).

**Background**

2. All childminders in England are required to register with Ofsted. If a childminder serves food to children in their care with a certain continuity and degree of organisation then they are also required under the European food safety legislation to be registered as a food business operator with their local authority.
3. In order to remove the need for childminders to register twice Ofsted agree to share childminder registration data with the FSA. Consequently, childminders who intend to serve food to children in their care will no longer be required to actively register as a food business operator with their local authority.

**Purpose**

4. This MoU sets out the procedures that will be followed by Ofsted and the FSA and the safeguards that have been put in place to ensure that childminder registration data shared between the two organisations complies with the relevant data sharing legislation and is kept secure. The MoU also outlines the responsibility on both parties to ensure food safety information is provided to childminders.

5. The FSA will only use the data for the purposes of fulfilling official control requirements under food law, including disseminating to the local authority details of childminders in their area.
6. The Parties recognise the benefit of a streamlined arrangement for childminder registration so as to reduce the administrative burden on childminders and public expense.

### **Roles and Responsibilities of parties**

7. Under the Childcare Act 2006 and its associated regulations, Ofsted is responsible for the regulation and inspection of early years and childcare providers in England. Ofsted registers applicants who want to become childminders, carries out inspections of those who become registered, and takes enforcement action, where appropriate, when providers are not meeting legal requirements. Ofsted holds two registers: the Early Years Register, which is for providers who care for children aged from birth to 31 August following their fifth birthday; and the Childcare Register, which has two parts. The compulsory part is for providers who care for children from 1 September following their fifth birthday up to and including age seven. The voluntary part is for providers who care for children aged eight and over and those who are not required by law to register (such as nannies). Childminders may be registered on either or both registers, depending on the service they offer. .
8. The Food Standards Act 1999 created the FSA in April 2000. It is a UK-wide non-ministerial government department charged with protecting public health from risks arising out of the consumption of food, and generally safeguarding consumer interests in relation to food and drink. The FSA oversees local authority enforcement activities for food and feed law. All food business operators are required to be registered with their local authority.
9. Food law is a devolved matter and the FSA has offices in Scotland, Wales and Northern Ireland which manage the relationships the FSA has with the respective devolved administrations and with other stakeholders in these countries. This MoU is restricted to the FSA's responsibilities in England.

### **Use and Scope of information**

10. Ofsted agrees to share childminder registration information with the FSA for the purposes of satisfying official control requirements under food law.

11. The data sharing applies to childminders registered with Ofsted operating in England only. Ofsted agree to make available to the FSA the following information from 1 January 2014.

- ID number
- Name
- Address (including post code)
- Telephone number and/or email address (where available)
- Date of registration
- Date of leaving the childminder register
- Local Authority code

Ofsted will only commence transfer of the data following a formal request from the FSA to do so. This data must be transferred within a mutually agreed timescale and thereafter on a quarterly basis, Where appropriate, Ofsted will co-ordinate the dates of the data transfer with other data-sharing arrangements already in place.

In the event of circumstances whereby the FSA may require access to the Ofsted childminder registration data, outside of the agreement in the above section 10 and this section 11 to transfer data on a quarterly basis, Ofsted will have regard to this request and prioritise it accordingly.

### **Provision of Food Safety Information to Childminders**

12. The FSA will create a dedicated section on its website to provide information for childminders on food safety.

13. Ofsted agrees to direct childminders, at the point of registration, to the specified section on the FSA website.

### **Confidentiality**

14. Both Parties recognise that during the currency of this MoU each Party may supply to the other, data or information which is by its nature confidential ("Confidential Information"). They shall treat all Confidential Information belonging to the other Party as confidential and safeguard it accordingly.

15. Both Parties shall not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party,

except to such persons and to such extent as may be necessary for the performance of the MoU or except where disclosure is otherwise expressly permitted by the provisions of this MoU.

16. Each Party shall take all necessary precautions to ensure that all Confidential Information obtained from the other under or in connection with the MoU:

(a) is given only to such staff and professional advisors or consultants engaged to advise it in connection with the MoU as is strictly necessary for the performance of the MoU and only to the extent necessary for the performance of the MoU;

(b) is treated as confidential and not disclosed (without prior approval) or used by any staff or such professional advisors or consultants otherwise than for the purposes of the MoU.

17. The Parties shall not use any Confidential Information it receives from each other otherwise than for the purposes of the MoU.

18. The provisions of paragraphs 12-15 above shall not apply to any Confidential Information received by one Party from the other:

(a) which is or becomes public knowledge (otherwise than by a failure to observe the provisions of this MoU);

(b) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

(c) which is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;

(d) is independently developed without access to the Confidential Information; or

(e) which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Act 2000 ("FOIA") or the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition).

19. Nothing in this clause shall prevent either Party:

(a) disclosing any Confidential Information for the purpose of:

(i) the examination and certification of the Party's accounts; or

(ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Party has used its resources; or

(b) disclosing any Confidential Information obtained from a Party:

(i) to any government department or any other subcontractor (including public authority). All government departments or subcontractors receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other government departments or other subcontractors on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any government department or any subcontractor; or

(ii) to any person engaged in providing any services to the Parties for any purpose relating to or ancillary to the MoU;

provided that in disclosing information under sub-paragraph (b) there is disclosure of only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

20. Nothing in this MoU shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the MoU in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information.

### **Data and Security**

21. The Parties confirm that they will observe their respective obligations in respect of the Data Protection Act 1998 ("DPA"). The Parties acknowledge they will share data and information to support their respective roles and any data and information introduced by a Party shall belong to that Party.

22. All Parties will maintain the appropriate level of security and security marking for any information, communications and documentation relating to this MoU.

### **Information Access**

23. Each Party acknowledges that the other Party is subject to the requirements the requirements of the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition) and the FOIA. Each Party shall assist and co-operate with the other Party (at its own expense) to enable both Parties to comply with these information disclosure obligations.

24. Where a Party receives a request for information in relation to information which it is holding on behalf of another Party, it shall (and shall procure that its subcontractors shall):
- (a) transfer the request for information to the Party that owns the information as soon as practicable after receipt and in any event within 2 working days of receiving the request for information;
  - (b) provide all necessary assistance as reasonably requested by the Party that owns the information to enable the Party that owns the information to respond to the request for information within the time for compliance set out in section 10 of the FOIA.
25. Where a Party receives a request for information which relates to the MoU, it shall inform the other Party of the request for information as soon as practicable after receipt and in any event within two working days of receiving the request for information.
26. If a Party determines that information which relates to the MoU, including Confidential Information must be disclosed pursuant to this paragraph, it shall notify the other Party of that decision at least two working days before disclosure.
27. Each Party shall be responsible for determining at its absolute discretion whether the Confidential Information and/or any other information:
- (a) is exempt from disclosure under the FOIA or the DPA
  - (b) is to be disclosed in response to a request for information.
28. Each Party acknowledges that the other Party may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Public Authorities' functions under Part 1 of FOIA, be obliged under the Code of Practice on Access to Government Information (2<sup>nd</sup> Edition), the FOIA to disclose information:
- (a) without consulting with the other Parties, or
  - (b) following consultation with the other Party and having taken its views into account.

### **Resolving disagreements**

29. The FSA and Ofsted are committed to resolving any disagreements under this MoU bilaterally.

### **Implementation and Review**

30. This MoU commences on the date of signing. The FSA and Ofsted will review the contents of the MoU as required and at the expiry of a 12-month period from the date of the MoU.


31. Amendments to this MoU may be made at any time as required by agreement between the FSA and Ofsted.

### **Termination**

32. The MoU will remain in force until such times as it is revoked by either Party by giving 6 months' notice in writing to the other party.

Signed by:

Date: 11 March 2014

A handwritten signature in black ink, appearing to read "Rod Ainsworth".

Rod Ainsworth  
Director of Regulatory and Legal Strategy  
**Food Standards Agency**

Signed by:

Date: 17 March 2014

A handwritten signature in blue ink, appearing to read "Dee Gasson".

Dee Gasson  
Principal Officer, Development, Early Years  
Office for Standards in Education, Children's Services and Skills