

Title: Childcare (Inspections) (Amendment) Regulations 2012 IA No: DFE0020 Lead department or agency: Department for Education Other departments or agencies: (Ofsted)	Impact Assessment (IA)			
	Date: 27/06/2012			
	Stage: Final			
	Source of intervention: Domestic			
	Type of measure: Secondary legislation			
Contact for enquiries: Richard.Green@education.gsi.gov.uk Deborah Nickerson / Louise Skelton 0247 666 0076 & 020 7340 8236 / 8508				
Summary: Intervention and Options			RPC Opinion: GREEN	

Cost of Preferred (or more likely) Option			
Total Net Present Value	Business Net Present Value	Net cost to business per year (EANCB on 2009 prices)	In scope of One-In, Measure qualifies as One-Out?
£12m	£1.7m	£-0.2m	Yes OUT

What is the problem under consideration? Why is government intervention necessary?

(1) Ofsted currently has flexibility to schedule inspections of Early Years Foundation Stage providers up to August 2012 so that it can, for example, inspect providers with a good record later in the cycle. However, the way in which the regulations are written leaves Ofsted little flexibility in its scheduling from August 2012 and this means that it will be unable to target inspection on settings most in need of improvement. (2) Having requirements for early years providers outside the main statutory framework for early years makes it unnecessarily complicated for early years providers to ensure they are meeting those requirements.

What are the policy objectives and the intended effects?

(1) To enable Ofsted to inspect in proportion to risk, by allowing them the flexibility to schedule inspection based on the track record of the provider and other risk factors. The intended effect will be to make faster improvements to the quality of poorly performing settings, which will improve the experience and outcomes for children in the settings (2) To make it easier for early years providers to find the legal requirements that they need to meet.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

OPTION 1 Revoke the regulations relating to inspection frequency and the requirements on early years providers to notify parents of an inspection and provide them with a copy of the Ofsted report and replace them with (a) letters from the Secretary of State, (using his power in the Childcare Act) setting out the timescale for Ofsted to inspect early years providers; and (b) put requirements for early years providers (to tell parents about inspection and provide them with reports) into the Early Years Foundation Stage statutory framework which already sets out the other requirements for providers of early years childcare. OPTION 2 Do nothing - Ofsted will be obliged to inspect some high performing settings ahead of weak settings and this will delay improvements to some poorly performing settings. Early years providers would need to look in two different places to find their legal requirements.

Will the policy be reviewed? It will be reviewed. If applicable, set review date: 12/2015					
Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	Micro Yes	< 20 Yes	Small Yes	Medium Yes	Large Yes
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)			Traded: nil	Non-traded: nil	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible Minister: Sarah Teather Date: 28th June 2012

Summary: Analysis & Evidence

Policy Option 1

Description:

FULL ECONOMIC ASSESSMENT

Price Base Year 2011	PV Base Year 2011	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: £12m

COSTS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0m	£0m	£0m

Description and scale of key monetised costs by 'main affected groups'

There are no monetisable costs of this proposal. The proposed option does not increase costs to providers.

Other key non-monetised costs by 'main affected groups'

Some higher performing providers will have a longer gap between inspections than they anticipated. This may mean that parents feel less well informed about their performance. If the performance of a previously high performing setting deteriorated significantly, without any outward warning signs, children would receive a poorer quality experience there, but this is only likely to be the case in a very small number of settings and will be mitigated by Ofsted inspecting in response to complaints.

BENEFITS (£m)	Total Transition (Constant Price) Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	Optional	Optional	Optional
High	Optional	Optional	Optional
Best Estimate	£0m	£1.4m	£12m

Description and scale of key monetised benefits by 'main affected groups'

The proposed changes will help Ofsted to make savings by merging its investigation process with inspections. There will be a small reduction in administrative costs and time of managers from the requirements being put in the same place.

Other key non-monetised benefits by 'main affected groups'

Faster quality improvement of poorer performing settings will mean a better experience and outcomes for children in those settings. This will particularly benefit children in disadvantaged areas where poorly performing settings are more concentrated.

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Assumed providers find requirements in same place easier. Small risk of drop in quality of better providers. Ofsted working up comms plan; Better providers keen to be inspected might complain & parents might feel less well informed about performance of settings. Will need to tell them of changes

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of OIOO?	Measure qualifies as
Costs: £0m	Benefits: £0.2m	Net: £0.2m	Yes	OUT

Evidence Base (for summary sheets)

This paper describes the background and the case for Government action, and the costs and benefits of the recommendations. We will revise this impact assessment as necessary.

Problem under consideration

Background

The Childcare (Inspections) Regulations 2008 set out the legal requirements relating to the frequency of inspections of early years providers, the arrangements for inspection of independent schools by an approved body, the notification of inspection to parents and the provision of copies of reports. They also enable providers to charge a fee for providing copies of reports.

Since 2008 the Early Years Foundation Stage (EYFS) has been implemented across a diverse early years sector including full-time nurseries, childminders, maintained and independent school provision, sessional care, playwork, after-school and holiday clubs. Ofsted inspects against the requirements set out in the EYFS and takes action to make sure that providers meet the requirements. The Ofsted survey of providers and parents in February 2010 found that 90% of childcare providers agreed that inspection improved outcomes for children. The Ofsted parents' panel mini-poll in September 2010 found that the majority of parents (85%) agreed that Ofsted inspections have a positive impact.

The current regulations came into force in September 2008 and set a completion date of 31st July 2012 for the inspection for all providers who were on the early years register on 1 September 2008 ; they also set the interval between subsequent inspections at 3-4 years (within each period of 3 years beginning with the 1st August following the date of the previous early years inspection) and they set out the arrangements for inspecting providers registered after September 2008. The regulations were amended by SI 2009 / 1508 to clarify the date by which the 'first' inspections were to be completed. The completion date of 31 July 2012 allowed Ofsted to schedule inspections of providers according to risk, targeting earlier in the cycle providers with a poor previous record, or those where they had received information about poor practice. If settings are found to be 'inadequate' they set actions and re-inspect within 6 – 12 months. Ofsted currently has a range of enforcement actions it takes in relation to particular instances of non-compliance for a particular registration including carrying out a visit to a provider to investigate a serious complaint.

The allocation of a fixed interval between subsequent inspections from August 2012 will mean that Ofsted will be obliged to inspect providers in approximately the same order in which they inspected them previously, regardless of the quality of the providers.

The Early Years Foundations Stage was introduced to improve quality in early years provision and is mandatory for all providers. It reduces fragmentation and confusion by bringing together the existing standards and guidance yet the requirement to notify parents of inspection and to provide copies of reports are duplicated in the Inspection regulations as well as in the EYFS.

Rationale for intervention

Ofsted's budget for early years inspection is severely restricted and is based on a specific number of inspections each year. They do not have sufficient resources to carry out additional inspections in any given year and so, in order to be able to carry out an earlier inspection than prescribed by the three year interval, they need to be able to extend the inspection interval for the better performing providers. They therefore need the flexibility to be able to schedule inspections according to their expert assessment of the quality of the provider.

This flexibility would also allow Ofsted to merge the investigation of serious complaints with inspections so that they do not have to make separate visits. As the current early years inspection cycle finishes on 31 July 2012 the change needs to be in place by 1 August 2012.

Having requirements for early years providers outside the main statutory framework for early years makes it unnecessarily complicated for them to ensure they are meeting those requirements.

The proposed reforms are designed to achieve the following policy objectives:

Improving quality in early years provision so the children get better outcomes;

The Effective Pre-school, Primary and Secondary Education Project (EPPSE - formerly EPPE) demonstrated that only high-quality early years provision has a lasting impact on children's intellectual and social and behavioural development. 27% of providers inspected since September 2008 were found to be only 'satisfactory' and 1% 'inadequate', with higher levels of 'satisfactory' and 'inadequate' provision being found in disadvantaged areas. With the expansion of the free entitlement to 15 hours per week childcare to more 2 year olds in deprived areas, it will be important to ensure that there are sufficient high quality places for 2 year olds.

Inspection in proportion to risk, so that Ofsted's inspection is targeted more precisely at weaker settings.

Simplification of the regulations, making it easier to find requirements - the less time providers have to spend understanding what is required of them, the more time they are able to spend with children.

Intended effects

The intended effect is to improve outcomes for children by improving the quality of provision and making it simpler for providers to find the requirements on them.

Allowing Ofsted the same flexibility beyond July 2012 that it has had to date to decide its Early Years inspection schedules will enable it to inspect in proportion to risk. Ofsted will be able to target inspection at the poorer performing settings (i.e. those whose previous inspection report was 'inadequate' or 'satisfactory') earlier in the cycle, stimulating faster improvements to the quality of these poorly performing settings. This approach already exists for inspections of other provision, including schools.

This will give more children in these settings a better experience and, along with the changes making it easier for providers to find requirements, will also improve the outcomes for them.

Policy Options

Option 1 – A proportionate approach – Revoke the regulations (preferred option)

To substantially reduce the scope of the existing regulations by revoking the clauses in the regulations relating to inspection frequency, the arrangements for inspecting independent schools, and those relating to requirements for early years providers to notify parents about inspection and to provide copies of inspection reports.

The inspection frequency clauses and arrangements for inspecting independent schools will be replaced with letters from the Secretary of State by July 2012, using his power in the Childcare Act to set out how he wants Ofsted to inspect early years providers and replicating the current clause in the regulations relating to the inspection of independent schools. The initial letter would give Ofsted four years from 1 August 2012 to complete the inspection of all providers on the early years register at that date and would also set out when providers newly registering between 2012 and 2016 should be inspected. The Secretary of State would write again in 2016 to set out the future inspection period.

The clauses relating to requirements for providers will be simplified and replicated in the revised Early Years Foundation Stage which is due to take effect in September 2012, making it easier for providers to find and meet these requirements. It is not present Government policy to make rulings about specific fees so in doing this another anomaly will also be cleared up by revoking (without replicating them elsewhere) the requirements for providers to provide a paper copy of an inspection report to any person (other than current parents of children at a setting) that requests it and allowing providers to charge a fee for doing this. [For consistency between registers we will also be revoking the corresponding regulations relating to the provision by later years providers of reports to people other than parents of children at a setting].

Inspection is a key part of keeping children safe and promoting good practice in child development. If the clauses in the regulations were to be removed altogether without moving them to anywhere else this would leave the system relying on Ofsted's duty to inspect under primary legislation, the Childcare Act, and would lead to a total lack of transparency as to Ofsted's work, which would not be popular with providers.

This option offers a less prescriptive approach than regulation. Under the proposed changes, the flexibility for Ofsted would continue, with minimal effect on local authorities and providers (other than better provision for childcare). While evidence shows that the quality of early years provision is improving, there is still some distance to travel. Ofsted will be able to continue to arrange its inspection schedule between 2012 and 2016 to inspect registered Early Years providers on a longer interval for the good and outstanding settings in order to concentrate on poorer performing settings within current resource constraints. This means that Ofsted would bring forward inspections for those settings of most concern. Settings which have improved from poor to 'good' would be re-inspected in the next inspection cycle starting in 2016 and, unless fresh issues of concern are raised, are likely to have a slightly longer interval between inspection.

The increased flexibility would also help Ofsted to carry out full inspections (instead of the current briefer investigations) on receipt of a concern / complaint by bringing forward the inspection within the prescribed period.

The impact of the change will be measured by the inspection outcome statistics showing an increase in the proportion of inspections with a priority of 'concern raised' and a reduction in the number of investigation visits. In the longer term, we expect the impact of improvements to poorly performing settings to be reflected in improved Early Years Foundation Stage Profile results. There will also be some admin savings to Ofsted arising from combining investigation with inspection.

Option 1 cost and benefits

Monetised costs: none since providers will all be inspected, albeit on a slightly different timetable than currently set out in the regulations.

Non-monetised costs

Good and Outstanding settings who were inspected earlier in the first cycle are likely to have a longer gap between inspections than they anticipated. There is a very small chance that some settings might lose some business if parents perceive their judgments to be older than others.

Some moderately performing providers who have made progress are keen to be re-inspected as soon as possible in the hope of getting an improved judgement which might attract more business. Any delay to inspections for these providers could make it more difficult for them to attract more business. However, it is likely that Ofsted would only pull forward the settings giving the most concern so there should not be too many moderately performing settings who have a longer gap between inspections.

There will be no impact on current parents as the requirements for early years providers to notify parents about inspections and to provide copies of the Ofsted report on request will remain in the Early Years Foundation Stage statutory framework. The removal of the duplication of these from the Inspections regulations does not make any difference to the requirements themselves.

Removing the regulation for providers to provide a paper copy of an inspection report to any person (other than current parents) that requests it and allowing providers to charge a fee for doing this will have no discernible impact on providers or parents. There will be no significant impact on prospective parents as Ofsted put the information online and most people can access the reports that way. There is no negative impact on providers as they know they can charge for copies if they wish to, though they probably are not and will not be charging for this anyway.

Monetised benefits: £1.4m per year

The changes will result in reduced costs to Ofsted through being able to combine the investigation processes with inspection; estimated at £1.2m per year (based on apportionment of £2.89m saving between Sep 2012 and March 2015 - supplied by Ofsted).

We expect a small benefit to the sector from having all the requirements for early years providers being in the same place (The EYFS statutory framework document) This will amount to a small reduction in administrative costs and time of managers estimated at £248,239 per year.

Non-monetised benefits

Faster quality improvement of poorer performing settings will mean children in those settings will receive better quality early years provision and a better experience leading to better long term outcomes. Disadvantaged areas have a higher proportion of poorly performing settings and therefore children in those areas will benefit particularly and there will be more availability of good quality settings for deprived 2 year olds.

Poorer performing settings will have an earlier inspection. If the setting has made improvements it will, potentially, be able to pick up new business.

There is potentially a very slight further increase in non-monetised benefits to providers, as in certain circumstances they may no longer have to provide paper copies of reports, though the likelihood is that in practice providers will not refuse to provide paper copies and as a result of much greater connectivity these days a dwindling number of prospective parents or other people will ask for paper copies anyway.

Assumptions and risks

The savings to Ofsted are based on the fact that up to now investigations into serious complaints have been carried out independently of inspection, leading to inefficiencies and duplication. However, in order to be able to mount a full inspection in response to a serious complaint Ofsted needs flexibility in inspection schedules so that it can delay the inspection of high performing settings and free up resources.

We have assumed that providers find it easier to have all the necessary legal requirements in the same place.

- There are 96,173 providers currently registered on either or both of the EYR and the GCR.
- Estimated about half an hour every 3 years saving in time for every provider looking up requirements.
- Managers are paid £12.84 per hour on average (See Page 102 of <https://www.education.gov.uk/publications/eOrderingDownload/OSR17-2011-Main%20report.pdf>)
- This has been uplifted by 21% to £15.49 to reflect additional costs of employment (eg. overheads, national insurance and pensions contributions), based on evidence from the Labour Cost Survey (2004)
- $96,173 \text{ providers} \times (£15.49 / \text{hr}) \times 0.5 \text{ hrs} / 3 \text{ years} = £248,239 \text{ p.a}$

There is a small risk of decline in the quality of better providers if they are inspected on a longer interval because Ofsted has limited performance data to warn them of potential failure. If the performance of a previously high performing setting deteriorated significantly, without any outward warning signs, children would receive a poorer quality experience there. The evidence shows that this could result in a longer term cost, as the children from those settings would not do so well in terms of achievement later in life as they would have done had the setting remained at its previous quality.. Also there would be the risk of parents making a poorer choice of provider based on looking at out-of-date reports. However, the proposed approach replicates the way in which Ofsted has scheduled inspections since August 2008 and Ofsted gets evidence about potential problems from parents, staff and from local authorities. This is only likely to be the case in a small number of settings. Currently 16% of good and 25% of outstanding settings declined in quality levels on re-inspection between Sept 2008 and April 2011 (Ofsted's Annual Report for 2010/11) and we do not expect these proportions to increase as a result of these changes.

There are small presentational risks:

- better providers might complain as they are keen to be inspected more often, since good inspection reports are used as marketing tools.
- Similarly, this may mean that parents feel less well informed about their performance and may lead to a reduction in the confidence of parents in high quality settings if they think that the interval between inspections for good providers is too long or that the inspection regime is becoming less rigorous.
 - We will therefore notify parents and providers about these changes and reassure them that better providers are less likely to drop in quality.
 - Ofsted will be working up a detailed communication plan to inform providers and parents and we will work with them on that plan. This is likely to include publishing the letter to HMCI on the website and will be done within Ofsted's wider communications plan as part of its general communication of changes therefore there will be no additional cost for this specific change.

Wider impacts

Children – children in previously poorer performing settings will receive better quality early years provision and a better experience leading to better long term outcomes

Practitioners – We expect a small benefit to the sector by bringing together all of the Secretary of State's requirements for early years providers into same place (the EYFS).

LA –Increased sufficiency of high quality places to meet the increased 2 year old free entitlement to 15 hours free early education

Option 2 – Maintain current arrangements (do nothing)

Maintaining the current system would mean that beyond August 2012 the current regulations will require Ofsted to inspect better performing settings ahead of some of the poorer performing settings and slow up the potential for improvements in quality.

It will also mean that early years providers would continue to have to look in two different places to find the requirements that apply to them.

We have considered and rejected this option since it would mean poorer experiences and outcomes for more children (particularly in deprived areas) in poorly performing settings. The poorer quality in deprived areas is likely to have a negative impact on the availability of places for 2 year olds which was recently announced.

Option 2 cost and benefits (including administrative burden):

Costs - none

This option represents the current baseline and therefore is a cost-neutral change that would have **no additional costs** for business providers,

Benefits - none

This option represents the current baseline and therefore would have **no additional benefits** to providers, local authorities, parents or children.

Assumptions and risks

As poorly performing settings will not be targeted this leads to the risk that poor settings do not improve and that their children will continue to get a poor experience.

Summary and preferred option with description of implementation plan.

In summary, the Government judges that Option 1 would best ensure value for money

Intervention is necessary to give Ofsted the flexibility to facilitate inspection that is proportionate to risk in order to improve the quality for the children in the settings and to place all of the requirements on providers in the same place.

Equality

The focus of inspection on poorly performing settings will have a positive impact on children in disadvantaged areas since there is a disproportionate number of poorly performing settings in disadvantaged areas.

Small Firm Impact Test

The early education sector is diverse with maintained, private, voluntary and independent providers including pre-schools, day nurseries, childminders, schools and children's centres. . We are applying for the moratorium for micro-businesses to be waived for the purposes of these regulations. These changes are deregulatory and do not impose any costs / burdens on providers. Bringing the legal requirements into one place will reduce the administrative burden on these small firms, of whom a significant proportion are micro-businesses. Also any potential negative impacts of delaying inspections will be more than offset by the positive impacts of bringing forward inspections for poorly performing settings. Moreover, if micro-businesses were exempted from the changes, they would be left with the current regime – while larger businesses enjoyed the benefits of the new simpler framework.

Competition Assessment impact test

The new regulations will not directly limit the number or range of suppliers.

The new regulations will not indirectly limit the number or range of suppliers.

The new regulations will not limit the ability of suppliers to compete nor reduce suppliers' incentives to compete vigorously.

One-In-One-Out (OIOO)

From the Childcare and Early Years Providers Survey 2010 (table 4.7), using a weighted average based on number of places, we infer that 17% of providers are in the public sector and that 83% are in the private and voluntary sector. We therefore attribute monetised benefits to providers proportionately to business at 83% (shown on pg 2 above).

Implementation plan

- Detailed communication plan to inform providers and parents - we will be working with Ofsted on this plan.
- Revised Regulations drawn up by February 2012
- Amended regulations laid – Easter 2012.
- SoS Letter to Ofsted – Easter 2012
- Revocation of the relevant regulations come into force – August 2012.

Post-Implementation Review

Post-implementation, we will continue to hold regular “Keep in Touch” meetings with Ofsted and also other liaison on inspection results, including at Ministerial level, during which we will review any implementation issues arising under this new inspection regime and ensure that implementation is progressing in the way the Minister intended. Specifically we will review, by December 2015 at the latest, whether the use of a letter to HMCI is affecting inspections.

We will review providers’ experiences of finding information together with a broader review in September 2016 of other changes made in response to the Tickell Review.

Whilst there are no resources to commission additional and specific monitoring and this would not be proportional to the cost of the change being made, we will review the impact of this policy as part of our regular “Keep in Touch” meetings. Any consequential revisions to the policy would be raised through Ministerial channels in the normal provision of business.

We believe this to be a proportionate approach, given the size of the policy change under consideration. The policy is deregulatory in nature and the change replicates the current situation, i.e. Ofsted’s flexibility to schedule inspections.