

<p>Title: Early Years Foundation Stage (Safeguarding and Welfare Requirements)</p> <p>PIR No: PIR-DfE-004</p> <p>Original IA/RPC No: RPC15-DfE-2356(2)</p> <p>Lead department or agency: DfE</p> <p>Other departments or agencies: Click here to enter text.</p> <p>Contact for enquiries: anna.jones@education.gov.uk</p>	Post Implementation Review
	Date: 01/12/2020
	Type of regulation: Domestic
	Type of review: Statutory
	Date measure came into force: 03/04/2017
	Recommendation: Keep
RPC Opinion: Choose an item.	

1. What were the policy objectives of the measure?

Regulatory changes made in 2012 were designed to simplify the Early Years Foundation Stage and reduce associated burdens and paperwork for providers and improve clarity and flexibility for professionals. Further changes made in 2017 embedded paediatric first aid (PFA) training in the qualification requirements for new entrants to the early years workforce, increasing numbers of trained staff trained and provided a safer environment for children, raise medical awareness, better accident prevention and improved PFA skills.

2. What evidence has informed the PIR?

To inform this PIR, we have conducted proportionate stakeholder engagement with sector representatives identified as having a direct interest in the policies under review and experience of the impact of the 2012 and 2017 changes on childcare settings. We have reviewed the original monetised costs and benefits set out in the 2012 and 2017 impact assessments to consider whether these are currently as anticipated.

3. To what extent have the policy objectives been achieved?

Discussions with stakeholders indicated that the amendments to the regulations are generally viewed as having met their policy objectives. The amendments were broadly regarded as positive, to give greater flexibility and clarity and to have increased safety. There is limited conclusive evidence that the new PFA requirements have reduced the number of serious incidents in settings, however, stakeholders commented that they saw the training to have made staff more able, and more staff available, to deal with accidents, and to administer appropriate action where accidents do occur.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.

Signed: ***Vicky Ford MP, Minister for Children and Families*** Date: 10/12/2020

Further information sheet

Please provide additional evidence in subsequent sheets, as required.

4. What were the original assumptions?

Both the 2012 and 2017 EYFS amendment impact assessments estimated the overall cost and benefit to business, largely appraised through additional staffing time required and potential efficiencies to be made. They also detail the additional benefits that were not monetised but expected to materialise as a direct result of the amendments, for example reducing the number of accidents and injuries in early years providers.

5. Were there any unintended consequences?

Our engagement with sector stakeholders did not identify any specific unintended consequences of these amendments, however, some stakeholders held the view that the requirement for staff supervision is not always well understood by the sector and therefore not implemented as originally intended. The Department for Education will consider whether additional communications or non-statutory guidance should be issued to the sector on this requirement.

6. Has the evidence identified any opportunities for reducing the burden on business?

Sector representatives and stakeholders did not view the regulations to be placing unnecessary burdens on businesses and were broadly supportive of the objectives behind these changes. The Department for Education's assessment is that intervention is still required in this area in order to keep children in early years settings healthy and safe, and, with regard to the 2012 amendments, to reduce unnecessary administrative burdens on early years practitioners, and does not recommend removing or amending regulatory requirements at this point.

Post Implementation Review of the 2012 and 2017 amendments to the EYFS

Safeguarding and Welfare regulations

Background

The statutory framework for the Early Years Foundation Stage (EYFS) is mandatory for all early years providers in England and it sets the standards that all settings must meet to ensure that children learn and develop well and are kept healthy and safe. Section 3 of the EYFS framework sets out the safeguarding and welfare requirements and covers the steps that providers must take to keep children safe and promote their welfare.

In 2012, changes were made to the safeguarding and welfare requirements, which included:

- Introducing a requirement for staff to have supervision time to discuss any issues – particularly concerning children’s development or wellbeing, including child protection concerns;
- Removing a requirement to complete written risk assessments for every outing taken with children and adding clarity that whether this is required is for early years practitioners to judge;
- Introducing more clarity on the staff:child ratio requirements to support providers to flexibly deploy staff;
- Removing the requirement for childminders to gain permission from Ofsted to leave children with their assistant up to a maximum of two hours.

In 2017, a further change was made to the safeguarding and welfare requirements, make it a requirement that newly qualified early years staff (with a level 2 or level 3 childcare qualification) must have a paediatric first aid (PFA) or emergency PFA certificate before they can be included in the required adult:child ratios in an early years setting.

The Secretary of State for Education is required by law, from time to time, to carry out a review of this regulatory provision and publish a report setting out the conclusions of this review. This requirement was inserted into the Early Years Foundation Stage (Welfare Requirements) Regulations 2012 by the Childcare (Miscellaneous Amendments) Regulations 2017.

What were the policy objectives of the measures?

The EYFS safeguarding and welfare requirements are essential to the maintenance of quality and standards in early years settings as they set out the basic steps that providers must take to secure children’s safety and wellbeing. The regulatory changes that were made in 2012 were designed to simplify the EYFS and reduce associated burdens and paperwork for providers and improve clarity and flexibility for professionals. The stated objectives in the Regulatory Impact Assessment (RIA) were:

- To keep children safe so that they grow in confidence and build secure relationships.

- To introduce simpler processes, allowing more time with children and encouraging professional judgement;
- Greater flexibility, enabling settings to meet requirements without unnecessary uncertainty or rigidity;
- Greater clarity, helping providers and inspectors to understand requirements;

The proposals were informed by the [Tickell Review of the EYFS](#), which considered how the EYFS could be improved, and by consultation with stakeholders. They were strongly welcomed.

In October 2012, nine-month-old Millie Thompson died after a choking incident at her nursery in Cheadle Hulme, Greater Manchester. Although the inquest jury returned a misadventure verdict and did not apportion blame, the Coroner for the case wrote to the Secretary of State for Education recommending that all nursery staff have mandatory paediatric first aid training (PFA). This recommendation was subsequently the subject of a campaign led by the Thompson family, a 103,000 signature petition, parliamentary debate and a national review, which showed that parents require additional reassurance that their children are safe through increased PFA provision. In 2017, the government brought in further regulatory changes to the EYFS safeguarding and welfare requirements to make it a requirement that newly qualified early years staff (with a level 2 or level 3 childcare qualification) must have a PFA or emergency PFA certificate before they can be included in the required adult:child ratios in an early years setting. The stated objectives in the RIA changes were:

- To embed PFA training into the qualification requirements for new early years workers and increase numbers of staff trained in PFA.
- To provide a safer environment for children, raise medical awareness, better accident prevention and improved PFA skills.

The Government's overarching policy objective is to ensure there is sufficient provision of high quality, affordable and safe early education and childcare that ensures good outcomes for children and meets the needs of parents, helping them either to find or remain in work. Reassuring parents about the safety of children whilst in childcare is a key factor in removing disincentives to parents accessing childcare.

What evidence has informed the PIR?

The legal requirement for the Secretary of State for Education to review the 2012 and 2017 regulatory changes to the EYFS safeguarding and welfare requirements was added retrospectively in 2017. Therefore, while we have continued to keep the EYFS requirements under review through ongoing engagement with our sector stakeholders, the Department has not formally reported on data concerning the 2012 changes up until this point. When completing this PIR, we have mainly made use of qualitative feedback and the perceptions of directly impacted stakeholders.

To inform this PIR, we have conducted proportionate stakeholder engagement with a range of sector representatives identified as having a direct interest in the policies

under review and experience of the impact of the 2012 and 2017 changes on childcare settings. This engagement was conducted during a plenary discussion at an Early Years stakeholder forum in November 2020, in which stakeholders were asked to consider the changes made and their stated objectives and invited to share their views on whether the policies were meeting their objectives, whether they had had any unintended consequences and whether they had been implemented as intended. We also tested assumptions made in the original impact assessments, for example the average time dedicated to staff supervision and the average amount of time taken to complete a written risk assessment. The forum was attended by a range of stakeholders, including early years practitioners, organisations that represent the interests of early years practitioners, representatives from large nursery chains and local authority officials. Stakeholders were also invited to share written responses to the questions set out above and the Department for Education subsequently received written feedback from five organisations.

It is difficult to make conclusive links between the number of early years practitioners who are PFA qualified and the prevention of serious medical incidents that take place in childcare settings. In reviewing the 2017 changes to PFA requirements, we have therefore focused on stakeholders' perceptions of whether the changes have achieved their objective of making early years settings safer for children and raised awareness of safety issues among early years practitioners, as well as improving parental confidence.

We have reviewed the original monetised costs and benefits set out in the 2012 and 2017 impact assessments to consider whether these are currently as anticipated. This has involved assessing the demographic and workforce developments in the sector, which has led to changes in the annual net cost to business. Many of the underlying assumptions for the impact of the amendments have remained the same, following engagement with the sector.

To what extent have the policy objectives been achieved?

Discussions with stakeholders as set out above indicated that the amendments to the regulations are generally viewed as having met their policy objectives and that they should all be retained. The amendments were all regarded as positive, to give greater flexibility and clarity and to have increased safety.

The removal of the requirement to produce written risk assessment for every outing and to leave this to the judgement of practitioners was welcomed and seen to have removed bureaucracy, although some stakeholders felt that the extent to which this flexibility was utilised depends on the confidence of the practitioner to use their professional judgement. Some stakeholders felt that less confident practitioners were continuing to produce written risk assessments for the majority of outings to ensure they were following a secure process and could evidence this.

Childminder representative organisations were particularly supportive of the removal of the requirement for childminder to seek permission from Ofsted to leave children

with their assistants, which was viewed to increase flexibility for childminders and for additional time to engage with continuing professional development (CPD).

With regard to the changes in the requirement for staff supervision, while stakeholders were supportive of the objectives of this change and that there should be a focus on staff development and wellbeing, there were mixed views on whether this is always implemented as intended and utilised to its full potential and whether it was always well understood across the sector. When done well, stakeholders viewed the supervision requirement to be beneficial and did not wish to see it removed, but felt that the quality could be variable and that some setting managers were not able to dedicate the necessary time to effective supervision.

The change to the PFA requirements was seen to be an especially important change that has not just increased staff awareness of safety but is also supported by parents, in particular the parents of children with additional needs. There is limited conclusive evidence that the new PFA requirements have reduced the number of serious incidents in settings and it is difficult to identify tangible instances where accidents have been prevented as a direct result. However, stakeholders commented that they saw the training as having made staff more able, and increased the numbers of staff available, to deal with accidents and incidents, and to administer appropriate action where accidents do occur.

Ofsted's Annual Report 2019/20 shows that 96% of early years providers that were inspected were judged good or outstanding at their most recent inspection, demonstrating that the vast majority of these providers are able to meet the requirements of the statutory framework for the early years foundation stage.

What were the original assumptions?

Monetised cost and benefit to business

Both the 2012 and 2017 EYFS amendment impact assessments estimated the overall cost and benefit to business, largely appraised through additional staffing time required and potential efficiencies to be made. They also detail the additional benefits that were not monetised but expected to materialise as a direct result of the amendments. We have reviewed and updated the assumptions to reflect demographic and cost changes since the original impact assessment. Updated estimates have been generated largely from the 2019 Survey of Childcare and Early Years Providers (SCEYP)¹, the most robust survey data on the childcare market in England, sampling over 10,000 providers. We also used evidence from the Education Policy Institute (EPI)² and have updated the assumptions used to reflect the current early years climate. As a result, we have revised estimates for the

¹ 2019 Survey of Childcare and Early Years Providers: <https://www.gov.uk/government/statistics/childcare-and-early-years-providers-survey-2019>

² Education Policy Institute, The early years workforce: https://epi.org.uk/wp-content/uploads/2018/03/EPI_-_Early-Years-Workforce.pdf

calculated cost and benefit. These are compared with the original assumptions, uplifted to 2020-21 prices using GDP deflators³ so they are directly comparable.

Cost	Impact assessment annual cost (2020-21 prices)	2019-20 annual cost (2020-21 prices)	Reasons for disparity
One-off cost of provider and staff familiarisation with EYFS reforms in 2011-12	£3.4m-£4.9m	N/A	<ul style="list-style-type: none"> An updated costing was not required since this was a one-off cost and should not be applicable past the first year of guidance introduction.
Additional supervision requirements	£1.2m-£2.3m	£2m-£4.2m	<ul style="list-style-type: none"> The same assumptions were maintained (i.e. 80-90% of providers would otherwise already be within the guidance rules). The 2019 SCEYP tells us that the number of staff in scope is approximately 7-8% higher than in the 2012 impact assessment. Accounting for wage uplifts, the average staff pay is approximately 22% higher than in the original impact assessment (a rise above inflation). Although higher, in real terms than the central estimates in the original costings, this is still within the uncertainty range of estimates at that time.
PFA-additional staff training	£2.6m	£3.2m	<ul style="list-style-type: none"> The number of Level 2 and Level 3 staff in the sector has increased by approximately 15% since the impact assessment. Best estimates for staff turnover have risen from 11% to 14% according to an EPI study. We assume that a greater proportion of new staff entering the market are now PFA trained in response to new regulations.

³ HMT GDP deflators: <https://www.gov.uk/government/collections/gdp-deflators-at-market-prices-and-money-gdp>

			<p>We have assumed an increase in PFA trained new entry staff from 29% to 40%.</p> <ul style="list-style-type: none"> • Staff wages are approximately 20% higher for L3 staff and 38% higher for L2 staff based on 2019 SCEYP figures.
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The total annual cost to business of both the amendments is estimated as between £5.2m-£7.3m. This is higher than the annual cost calculated in the original impact assessments of £3.8m-£4.9m (in 2020-21 prices). The changes are largely a result of shifts in the demographics of the childcare market (both in providers and workforce) alongside real increases in staff pay.

Estimated Benefit	Impact Assessment annual cost (2020-21 prices)	2019 annual cost (2020-21 prices)	Reasons for disparity
Reduction in risk assessments	£1.9m-£3.1m	£1.3m-£2.2m	<ul style="list-style-type: none"> • The benefits fall most heavily on childminders. Since the impact assessment the number of childminders has fallen by approximately 16%, meaning less business stand to make efficiencies. • The average childminder wage is lower than was calculated the impact assessment. • Both the number of GBPs and staff pay in these provider types is higher, although these account for a smaller proportion of the total benefit.
Removing requirement for childminders to request permission to leave a child with an assistant	£0.15m	£0.02m	<ul style="list-style-type: none"> • As above, both the number of childminders and childminder pay considered has fallen since the impact assessment • The proportion with assistants has dropped from 25% to 15%

The total annual efficiencies made by business as a result of the 2012 EYFS reforms is estimated as between £1.3m-£2.3m. This is lower than the annual efficiencies calculated in the original impact assessment of between £1.9m-£3.1m (in 2020-21 prices), although it does sit within the sensitivity range. The changes are largely a

result of a shift in the demographic make-up of the childcare market (both providers and workforce) alongside disparities in the calculated childminder average pay- resulting in lower childminder pay in this PIR.

Overall, the updated calculation generated net annual cost to business of between £3m-£6.1m. This is a greater loss than is calculated in the original impact assessments of between £0.6m-£3m (in 2020-21 prices).

Unmonetised benefit

The PFA impact assessment outlines the benefits that could potentially be made in reducing the number of accidents and injuries in early years providers. It was estimated that the percentage fall in the number of annual injuries would need to be around 40%⁴. This is based on an average cost per injury of £9,287 though average medical treatment cost. PHE also calculated in that estimated total medical, social and economic lifetime cost of a child suffering a traumatic brain injury at the age of three as approximately £4.89m⁵. This would mean that the new requirements would only need to reduce the frequency of these severe injuries by two children each year in settings to break even.

Data has not been published to assess the number of accidents and injuries occurring in early years settings since the amendment was introduced. Furthermore, any changes to the number of injuries in settings would be difficult to attribute directly to the amendments rather than additional factors which may have influenced the number of injuries. As a result, we have not been able to accurately assess whether the higher prevalence of PFA trained staff has achieved the aim of reducing the number of accidents and injuries in childcare settings.

Were there any unintended consequences?

While our engagement with sector stakeholders did not identify any specific unintended consequences of these amendments, some stakeholders held the view that the requirement for staff supervision is not always well understood by the sector and therefore not implemented as originally intended. One raised a concern that staff could misinterpret the requirement and feel that this was a dedicated forum for discussing safeguarding concerns and wait to report these as a result. While this is not an issue with the regulatory provision itself, the Department for Education will consider how additional guidance could be issued to the sector on this requirement and will continue to work with stakeholders to understand the issues and how these can be addressed through effective communications. The Department will also consider whether additional guidance or communications is required on producing risk assessments, given the concern raised by some stakeholders that less confident practitioners are continuing to produce these in cases where it is not necessary.

⁴ Paediatric first aid in early years provision: <https://www.gov.uk/government/publications/paediatric-first-aid-pfa-in-early-years-provision>

⁵ Reducing unintentional injuries in and around the home among children under five years, PHE: <https://www.gov.uk/government/publications/paediatric-first-aid-pfa-in-early-years-provision>

Has the evidence identified any opportunities for reducing the burden on business?

Sector representatives and stakeholders did not view the 2012 regulations to be placing burdens on businesses and were broadly supportive of the objectives behind these changes. Despite some issues raised with the implementation of the requirement for staff supervision, stakeholder did not want to see this requirement removed. While the PFA requirements introduced in 2017 place monetary costs on the sector, the changes have been widely welcomed and seen to have high non-monetised benefits, such as a perceived increase in safety in early years settings and strong support from staff and from parents.

The evidence has identified an opportunity for improving guidance on the requirement for staff supervision to ensure that this is better understood across the sector and implemented as intended to achieve the original objectives.

The Department for Education's assessment is that intervention is still required in all these areas in order to keep children in early years settings healthy and safe, and to reduce unnecessary administrative burdens on early years practitioners, and does not recommend removing or amending regulatory requirements at this point. As stated in the 2012 RIA, to remove safeguarding and welfare requirements entirely would be unacceptable, because it could leave children at risk of poor quality support and, in some cases, at risk of unsafe or abusive practices.