

EXPLANATORY MEMORANDUM TO
CHILDREN AND YOUNG PERSONS, ENGLAND
THE EARLY YEARS FOUNDATION STAGE (LEARNING AND DEVELOPMENT
REQUIREMENTS) ORDER 2007

2007 No. 1772

THE EARLY YEARS FOUNDATION STAGE (WELFARE REQUIREMENTS)
REGULATIONS 2007

2007 No. 1771

1. This explanatory memorandum has been prepared by The Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 The Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (“the Order”), and the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 (“the Regulations”) are made under the Childcare Act 2006 (“the Act”) and come into force on 1st September 2008. They give legal effect to the learning and development requirements and welfare requirements that together form the Early Years Foundation Stage (“EYFS”). The requirements are set out in the Statutory Framework for the Early Years Foundation Stage (“the Document”) which has statutory force.

2.2 The Order specifies the learning and development requirements (which consist of early learning goals, educational programmes and assessment arrangements). Early years providers are required to have regard to the guidance contained in the Document in securing that their provision meets the requirements. Local authorities are required to make provision to ensure the consistency of assessments made by early years providers in their area.

2.3 The Regulations specify the welfare requirements. Early years providers are required to have regard to the guidance contained in the Document in complying with the requirements; the Regulations also make it an offence for early years providers to use corporal punishment on a child in their care; to fail to comply with a notice issued by the Chief Inspector for failure to comply with the requirements; and to fail to notify the Chief Inspector of the events set out in the Schedule.

2.4 In the case of both the Order and the Regulations, the Chief Inspector is required to have regard to the requirements and guidance in the Document in exercising her functions under Part 3 of the Act. Allegations that an early years provider has failed to

meet the learning and development requirements or welfare requirements, or guidance contained in the document, may be taken into account in any proceedings under Part 3 of the Act, and by the Chief Inspector in the exercise of her functions under Part 3 of the Act.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 These instruments are being made to fulfil the Secretary of State's duty under section 39 of the Act to promote the well-being of young children by specifying learning and development requirements (by order) and welfare requirements (by regulations) which together are to be known as the EYFS.

4.2 Section 40 places a duty on early years providers to implement the EYFS. The early years providers who must implement the EYFS are those early years providers registered on the early years register provided for by Chapter 2 of the Act, as well as independent schools, maintained schools, and non-maintained special schools who, by virtue of section 34(2), are not required to be registered.

4.3 Section 41 makes further provision about learning and development requirements, which may specify early learning goals (which children are expected to achieve before 1 September after their fifth birthday), educational programmes, and assessment arrangements in relation to six areas of learning and development.

4.4 Section 42 contains further provisions about assessment arrangements, and the functions and duties that may be imposed or conferred in respect of them. In particular, section 42(4) requires the Secretary of State to make provision for determining the extent to which the assessment arrangements (and their implementation by early years providers) achieve their purpose. This is provided for in Article 4 of the Order

4.5 Section 43 sets out the matters that may be dealt with in the Regulations; in particular, section 43(3) provides that the Regulations may provide that a person who fails to comply with any of the welfare requirements is guilty of any offence, liable on summary conviction to a fine not exceeding level 5 on the standard scale.

4.4 Section 44(1) enables the Secretary of State to publish the requirements in a document, and to direct that they are to have effect (as specified in the order or regulations). Section 44(2) and (3) make provision to enable the Secretary of State to confer powers or duties on the Chief Inspector in exercising her functions.

4.5 Section 45 provides the procedure to be followed where the Secretary of State makes an order under section 39(1)(a) specifying early learning goals or educational programmes.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The (EYFS) is the new regulatory and quality framework for the provision of care and education for children between birth and the academic year in which they turn five (0-5). The EYFS will be a statutory requirement for all registered early years providers, as well as those independent schools, maintained schools, and non-maintained special schools who, by virtue of section 34(2) of the Act, are not required to join the early years register. All early years providers will be required to comply with the welfare requirements, and ensure that their provision meets the learning and development requirements.

The EYFS welfare requirements replace the current National Standards for Day Care. The new EYFS requirements will:

- safeguard and promote children's welfare;
- ensure the suitability of adults that look after children or who have unsupervised access to them;
- ensure the premises, environment and equipment are safe and suitable for their purpose;
- ensure providers plan and organise their systems so that every child receives an enjoyable and challenging learning and development experience; and
- set out what records, policies and procedures are required to be maintained for the safe and efficient management of settings and which meets the needs of the children.

7.2 From September 2008 the Foundation Stage will cease to be part of the National Curriculum and will be replaced by the EYFS as the new statutory framework governing all provision for children from birth to the end of the academic year in which they have their fifth birthday. It brings together and simplifies the current learning and development and welfare requirements, in addition to ending the distinction between care and learning and between birth-to-three and three-to-five provision. It aims to give every child the best start in life so that they realise their potential by setting clear expectations of the learning, development and care they should experience outside the family home regardless of the type of setting they attend. It will also ensure that local authorities plan for and meet the individual needs of all children, including those most at risk of disadvantage, and in doing so, embed principles of equality of opportunity for all children.

7.3 The learning and development requirements set out the standards that providers need to meet to support the development of babies and young children without prescribing a uniform approach to early learning and development. The Statutory Framework for the Early Years Foundation Stage will be fully inclusive of all children's needs, reflecting their ethnicity, culture,

religion or belief, home language, family background, SEN, disability, gender or ability. Its primary focus is to meet the individual needs of children and there is significant flexibility to provide the 6 areas of learning and development in a way that reflects the needs and circumstances of every child. Practitioners are required to observe and assess children's development and to keep records against all six areas of learning and development. Testing is not appropriate for very young children and the Profile summary is derived from teachers' observations of children's learning through play. All the areas of learning should be assessed e.g. physical, social and language are equally important in enabling children to access the curriculum beyond the EYFS.

7.4 We are making these SIs well in advance of them coming into force to ensure the sector is given enough time to prepare for the changes.

Consultation

7.5 Section 45 of the Act sets out the procedure which the Secretary of State must follow before making a learning and development order which specifies early learning goals or educational programmes. Section 45(2)(a) and (b) requires the Secretary of State to give notice of his proposals to bodies representing the interests of early years providers which he considers appropriate, and to any other persons with whom consultation appears to be desirable. These requirements were fulfilled by an extensive consultation on the EYFS from May to July 2006.

7.6 During the consultation period the Department for Education and Skills (DfES) received around 1,800 written responses from a wide range of stakeholders. In parallel, the Primary National Strategy and QCA both held events to canvass the views of local authorities and practitioners. These events involved over 7000 participants across the country and included early years lecturers in further and higher education; head teachers; early years lead officers; childminders (including network co-ordinators); owners of early years settings; representatives from the private, voluntary and independent sector (including Montessori); and Foundation Stage consultants (including Area Special Educational Needs Co-ordinators). A short pilot of the EYFS framework was also carried out during this time, actively engaging with Children's Centres (leaders and practitioners) in ten local authorities; private voluntary independent sector providers and parents in six local authorities; and a number of relevant providers in a local authority involved in the DfES pilot on funded places for two year olds.

7.7 The responses to the consultation demonstrated overwhelming support for creation of the EYFS. However, many respondents expressed the view that details must be clearer, in both wording and format, in distinguishing between the statutory requirements and the guidance elements of the EYFS framework.

7.8 After considering evidence and representations submitted to him in pursuance of section 45(2), the Secretary of State is required (by section 45(3)(b)) to publish a summary of the views expressed during the consultation submitted to him. The Government's response to the consultation was published on 26 October 2006. We took on board the responses, including the views of HM Chief Inspector of Schools in England ("Ofsted") (now HM Chief Inspector of Education, Children's Services and Skills) and made clearer the distinction between guidance and requirements in both wording and format in the EYFS framework. We also made appropriate changes to the language and presentation within the framework to achieve greater clarity for providers and practitioners.

7.9 In accordance with section 45(3)(a) of the Act, the Secretary of State published a draft of

the proposed order and the draft Statutory Framework for the Early Years Foundation Stage on the DfES website on 20 December 2006. A period of six weeks was allowed for the submission of further evidence and representations. There were 46 responses, 15 of which were from local authorities and 8 from childcare representative organisations. Feedback from providers asked for all the statutory duties with which they had to comply to be accessible in one document. Respondents generally felt that it was useful to have the assessment requirements brought together in the Statutory Framework and did not comment on how local authority assessment is set out in the Order. Those that commented on the draft Order itself, were broadly supportive of its content. The Order is being made more than one month after its publication, in accordance with section 45(4).

7.10 Section 43 (2) requires the Secretary of State to consult the Chief Inspector and any other persons he considers appropriate before making the Regulations. The Chief Inspector was consulted on the content and structure of the Welfare regulations during their development. Concerns were expressed about whether the regulations would ensure that providers would be required to notify Ofsted about any matters that would impact on their ability to meet the welfare requirements laid out in the EYFS including changes in registration details. The regulations take into account these concerns and some drafting changes were made as a result particularly to the schedule which lists the matters which providers must notify to Ofsted. Draft regulations were made available when the learning and development order was published on 20 December 2006.

Publicity / guidance

7.11 Alongside the Statutory Framework for the Early Years Foundation Stage, published on 13 March 2007, the package of materials includes practice guidance, principles into practice cards, a wall poster and a CD-Rom including examples of practice to support providers in delivering the EYFS effectively. The documents are available in hard copies and can be downloaded from www.teachernet/publications. The Primary National Strategy has produced a briefing pack on the EYFS for local authorities, which is available at www.dfes.gov.uk/localauthorities/index.cfm Materials to help familiarise parents with the EYFS will be made available in autumn 2007.

8. Impact

8.1 A partial Regulatory Impact Assessment (RIA) was published with the Childcare Bill as introduced in the House of Lords on 9 March 2006. A full RIA reflecting outcomes of the consultation on the final EYFS is being published with this Order.

9. Contact

Sally Pickles at the Department for Education and Skills Tel: 0207 273 1101 or e-mail sally.pickles@dfes.gsi.gov.uk.

Department for Education and Skills

Regulatory Impact Assessment

for the Early Years Foundation Stage and Registration of Early Years Provision

Full Regulatory Impact Assessment

Introduction

This Regulatory Impact Assessment covers the introduction, regulation and implementation of the Early Years Foundation Stage (EYFS) which is given legal force through an Order and Regulations made under the Childcare Act 2006. It includes the introduction, regulation and implementation of the Early Years Register (The Childcare Early Years Register Regulations 2007) and the Early Years Foundation Stage (Learning and Development Requirements) Order 2007. The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2007 and the Early Years Foundation Stage (Welfare Requirements) Regulations 2007

The Order and Regulations giving effect to the Early Years Foundation Stage are final. The Regulations allowing exemptions to the Learning and Development requirements of the EYFS are still in draft form following consultation. The Regulations giving effect to the registration of early years are also in draft form and subject to ongoing consultation.

In most sections, the RIA is divided into two subsections relating to the registration arrangements for early years providers and the ongoing requirements which are covered by the Early Years Foundation Stage. The sections relating to registration arrangements are provisional since the order and regulations giving effect to those arrangements are not due to be published until the end of 2007 when this RIA will be updated and republished. Except where noted, the sections relating to the Early Years Foundation Stage are final.

Section 1 - Purpose and intended effect

Objective

Registration of Early Years Provision

The objective of the proposed regulations, which are due to be made under the Childcare Act 2006, is to implement a new system of compulsory registration to replace the current registration arrangements for under 8s childcare. The regulations will ensure that Ofsted (the registration authority) has the information and powers needed to operate an effective registration scheme, without putting an unnecessary burden on childcare providers. The new system is designed to be more streamlined and proportionate than the current system. Registration on the EYR will allow providers to demonstrate to parents that essential standards are being met, particularly in relation to the Early Years Foundation Stage.

Regulations for the EYR specify:

what is required of childcare providers in order for them to be registered by Ofsted;

what information applicants will have to provide in the application forms;

Ofsted's power to refuse registration if an applicant refuses to consent to specified checks with other persons and organisations;

the information that will be shown on certificates of registration; and

the arrangements for suspension of registration.

EYFS

The overarching aim of the Early Years Foundation Stage is to help young children from birth to five to achieve the five *Every Child Matters* outcomes of staying safe, being healthy, enjoying and achieving, making a positive contribution, and achieving economic well-being by creating a regime of childcare and early years regulation and inspection that:

contributes to the delivery of the best possible outcomes for children;

ensures that children are safe and well-cared for;

reduces bureaucracy for childcare and early years providers whilst ensuring the standards of services are high quality and continuously improve; and

encourages a level playing field amongst providers with proportionate regulation and inspection.

Rationale for government intervention

Registration of Early Years Provision

Existing arrangements for the regulation of childcare provision ensure that certain care standards are secured across the system so that parents can have confidence that their child is safe when in formal childcare. However, the current arrangements are complex and fragmented and undermine the delivery of good quality outcomes for children.

Settings that provide childcare, including schools, are required to adhere to the National Standards for Day Care and Childminding for under 8s and to be registered by Ofsted, who hold regulatory powers over them.

Maintained schools and settings that are funded to provide free nursery education places for three and four year olds are required to deliver the Foundation Stage curriculum (which is part of the National Curriculum).

Schools currently offering wraparound care for children under the age of 8 are required to be registered by Ofsted. Many schools see this is a disincentive from developing the extended offer.

These combined arrangements can appear confusing to parents – particularly when trying to access Working Tax Credits and other such financial support – and are not the most effective way of administering a system to identify provision that has met basic requirements.

The Childcare Act 2006, introduced a new, reformed regulation and inspection system for childcare, creating two distinct regulatory frameworks:

- one for children up to the age of 5 – the Early Years Register (which is underpinned by the Early Years Foundation Stage) and
- one for children aged 5 and over - the general childcare register (to be known as the Ofsted Childcare Register). Further details of the Regulatory Impact Assessment relating to this register is available alongside our consultation proposals on "Exemption from the Ofsted Childcare Register" and "Childcare Registration Requirements" on the DfES website. However we intend to complete a new Ofsted Childcare Register Impact Assessment in the summer, following the outcome of consultation.

Linking eligibility for financial support through Working Tax Credits and employer-supported childcare schemes to registration on the Early Years Register & Ofsted Childcare Register will further simplify the arrangements.

Creating two distinct regulatory frameworks will reduce the burdens on providers and establish a process which is proportionate. Children of compulsory school age do not have the same welfare requirements as younger children and so it is not necessary to prescribe the same level of childcare requirements. As older children will also be attending school they will not have the same learning and development requirements as young children. They will usually be in childcare for shorter periods as well. This means that, within the context of the Gershon Review of public sector efficiency and the Hampton review of regulatory inspections and enforcement, Government and Her Majesty's Chief Inspector will be able to make the best use of available resources, directing them to where they are needed most and can have the greatest effect. This also fits with the Government's plans for a 25% reduction in the costs of regulation over the five years starting in May 2005.

The arrangements will also, in setting clear requirements, help to ensure children are cared for in safe and suitable provision that has reached a minimum threshold. Parents will be better able to navigate the childcare market because they will have a clear choice between providers which are registered (with Ofsted) and those which are unregistered. This should in turn provide them with a degree of reassurance that will enable them to make confident choices about balancing work and family life.

EYFS

The DfES-funded longitudinal research study of 3,000 children, *the Effective Provision of Pre-school Education (EPPE) project* has shown that there is a persistent positive effect of attending higher quality pre-school settings: on children's outcomes in maths and reading at age 10; on socio-behavioural outcomes at age 10; and on children's independence and concentration, which in turn led to children achieving better than expected in reading and maths relative to their background. The study also provided evidence that quality was higher overall in settings which integrated care and education (and in nursery schools). In addition, settings that have staff with higher qualifications have higher quality provision and that in the most effective centres 'play' environments were used to provide the basis of instructive learning.

The existing legal framework makes a distinction between childcare and education, with separate requirements and inspection regimes for each. Many providers offer both childcare and nursery education and are therefore subject to two sets of requirements and two legal frameworks. The Early Years Foundation Stage removes these unnecessary distinctions and allows providers to access all the information that they require from one source.

Section 2 - Consultation

Within Government

The Government consulted across Whitehall right from its early thinking up to and including the legislative process that culminated in the Childcare Act 2006, which contains the legislative framework for the new system of registration and the legal framework for the EYFS, including a Regulatory Impact Assessment for the Bill as a whole. These detailed proposals have been discussed with Ofsted, a non ministerial government department which acts as the registration authority for childcare in England.

Public consultation

In summer 2005 the Government consulted widely on the proposed provisions within the Childcare Bill which became the Childcare Act 2006 and set the broad legislative framework for the new registration arrangements.

In summer 2006 the Government consulted both on the Early Years Foundation Stage which sets out learning, development and welfare requirements for childcare providers looking after 0-5 year olds, and on the requirements that will apply to the Ofsted Childcare Register. There were 1800 formal responses to the Early Years Foundation Stage consultation and a range of consultation events attended by over 7000 stakeholders. Responses to the consultation demonstrated overwhelming support for the creation of the EYFS but asked for the final documentation to be easier to read and to navigate. Some respondents said that there should be higher staff: child ratios, more highly qualified staff and that all providers should be obliged to provide an outdoor play area.

The statutory consultation on the draft proposed Learning and Development Requirement Order was published on 20th December 2006 and closed on 2nd February 2007. We received 46 responses to the consultation; of these 25 made comments which were in some way related to the Order, 16 of which were broadly welcoming. We also held meetings with major stakeholders as part of the consultation. The majority of comments were related to areas outside of the scope of the consultation such as outdoor play, ratios, qualification level of the workforce or drafting comments on the EYFS statutory framework document, which was attached for information with the consultation document. Stakeholders made a point of commenting on the open dialogue throughout the EYFS process. They said that the statutory framework was much clearer and more accessible than earlier documents and were pleased to see so many of their comments and suggestions reflected in the current draft.

Following this consultation the full Early Years Foundation Stage documentation was published on 13 March 2007.

The success of both Birth to Three Matters and the Foundation Stage has been largely due to the early years sector's involvement in their development. The Government continued this approach during the development of EYFS. Groups of practitioners, heads of centres, headteachers and national organisations have all contributed to thinking on the early direction of the EYFS. In addition discussions were held with local authority early years staff and lead early years staff from higher and further education.

The Government has just completed consulting on the scope of childcare regulation (i.e. what forms of childcare should be exempt from the requirement to be registered by Ofsted), and on an approach to exemption from the learning and development requirements of the Early Years Foundation Stage.

The Government is also currently consulting on the proposed regulations, due to be made under the Childcare Act 2006, to implement the new EYR and OCR system of compulsory registration to replace the current registration requirements for childcare for children under the age of eight. The consultation is due to end on 4 July 2006.

All the above mentioned consultations, along with the Government's response, can be found on the Department's consultation website: www.dfes.gov.uk/consultations/

Section 3 – Options:

Registration of Early Years Provision

Option One – Maintain the existing regime

Maintaining the current system would mean continuing with the complex system described in the "rationale" section. This would in turn mean retaining the confusion for parents and an inefficient way of administering the system. Different providers would continue to refer to a separate set of registration requirements leading to an inconsistent quality of experience for child.

All schools are currently required to have their provision registered. This means that any childcare they themselves directly set up to meet the commitment to a year round offer from 8am to 6pm would have to be registered as out-of-school clubs. On the one hand, this could act as a disincentive to them; on the other, it would increase costs to Ofsted and to the provider from the consequentially separate inspection requirements.

The types of provision listed below are all exempt under the current legislation (Part 10A of the Children Act 1989):

- a) provision which operates for less than 2 hours a day or less than 6 days a year;
- b) provision that takes place in the child's own home (nannies and babysitters);
- c) babysitting between 6pm and 2am outside the child's own home;
- d) babysitting in hotels etc. – comprising care provided for children of guests between 6pm to 2am.

Activity based provision is also currently exempted by Ofsted. Under this option, the Government would continue these exemptions under the Childcare Act 2006 and apply them to the Early Years Register. This would mean that crèches and open access schemes looking after 0-5 years, would be required to deliver all the requirements of the EYR, including the Early Years Foundation Stage. This would be disproportionate given that many crèches look after children for short periods while their parents shop, attend a leisure centre or participate in a religious service.

The Childcare Act provides for the establishment of a General Childcare Register, which means that maintaining existing systems is not viable. The Regulatory Impact Assessment for the Childcare Bill examined a range of options from maintaining the current system to using primary legislation to establish full regulation.

Option Two: Government's Recommendation

The Government's preferred option is to introduce a more proportionate approach to registration for childcare for older children, care provided by nannies and short term care that takes account of the risks and directs resources to where they are needed most. This would mean that childcare exempted under Part 10A of the Children Act 1989 would be redefined under the Childcare Act 2006. This would be along the lines of the current exemptions, with the notable exception that more short term and occasional crèche facilities would be excluded from the scope of compulsory registration.

This includes all provision: where individual children are routinely looked after for 2 hours or less; where individual children are looked after for less than 4 hours where parents remain on the premises; that last for less than 2 weeks in any year on non-domestic premises. Open access schemes would also be exempt from the compulsory registration. Therefore those providers who meet these criteria for 0-5 year olds would not be required to register on the EYR and therefore deliver the Early Years Foundation Stage.

The Government also proposes to define activity based exemptions more precisely in the statutory instrument, which should help providers understand better whether they are required to be registered or not.

Childcare provided by a school's governing body, on the school site, for children ages three and over, where at least one pupil from the school attends will not be registered by Ofsted but will be inspected as part of the school inspection system. Parents will be able to use tax credit and employer supported childcare vouchers for that childcare.

Those providers who fall outside these exemptions for 0-5 year olds would need to register on the Early Years Register but would only need to refer to the Early Years Foundation Stage requirements, rather than to a separate set of registration requirements. Before deciding whether or not to grant an application, Ofsted will need to be satisfied that the applicant and manager (if not the same person) are suitable to look after children. They will insist on seeing the results of CRB checks on both these and others living in childminders' households, and will confirm that systems are in place to check the suitability of all staff working with children. Providers will have to sign up to additional requirements which govern on-going activity. The requirements will focus on processes and policies for ensuring children are safe and secure and the provision is suitable.

Option Three: compulsory registration for all groups

No childcare providers would be exempted from joining the Early Years Register or compulsory OCR as appropriate. This means that all providers currently exempted would be required to be registered by Ofsted, including all providers of childcare of 0-5 year olds operating for less than 2 hours per day, however short term or temporary the provision. This would be disproportionate and costly for the childcare sector. There would be no financial benefits for the childcare sector under this option.

This would also imply that these providers would have to meet the key requirements of the Early Years Foundation Stage, and staff qualification requirements (level 3) which would be unworkable for short term or temporary provision. This option would be a major extension of the current regulatory regime and would not be proportionate or risk based. It would be contrary to the recommendations in the Hampton report by significantly increasing the regulatory burden on the private and voluntary childcare sector.

This would also be very expensive for the provider to register and for Ofsted to carry out inspections for this type of short-term or temporary care.

Extending state regulation of childcare providers in this way would encroach on the proper responsibilities of parents and involve a significant extension of state regulations into private homes. Furthermore, this would not necessarily prevent children from coming to harm. Children's needs are best served by an approach which balances the role of the state with the role of parents.

Creating the EYFS

Option One - Maintain the existing regime

The Childcare Act 2006 places a duty on the Secretary of State to specify 'learning and development requirements' and 'welfare requirements' which are together to be known as the EYFS. Therefore the option to leave the Birth to Three Framework as a non statutory document, the Foundation Stage as part of the National Curriculum and the elements of the National Standards for under 8s day-care and childminding as separate frameworks is neither viable nor feasible. The existing system puts unnecessary burdens on both providers and Ofsted in delivering and inspecting early years learning and childcare. To continue to distinguish between education and care would also go against the evidence gathered by EPPE, that children benefit greatly when education and care are fully integrated to provide a high quality early years experience.

Option Two- Full EYFS Statutory Framework (Government's Recommendation)

To introduce a new statutory framework for the early years from birth to the end of the academic year in which a child has its fifth birthday. The new framework would bring together the current statutory Foundation Stage, elements of the National Standards for Under 8s Day Care and Childminding and the non-statutory Birth to Three Matters. This would fulfil our commitment in the Ten Year Strategy for Childcare to create a single framework for childcare and learning, focused on providing excellent developmental opportunities. It will reduce bureaucracy for practitioners and also help to create a level playing field between maintained, voluntary and private sectors, ensuring a consistent, high quality experience for all children, regardless of which setting they attend. Exemptions from the Learning and Development requirements are being considered. Crucially, however, there will be no exemptions from the welfare requirements, ensuring that all provision has a legal obligation to ensure that premises and people are suitable and meeting the needs of the children.

Option Three – Full EYFS Statutory Framework which places greater requirements on providers

During consultation on the Early Years Foundation Stage there was a sizeable minority of respondents pressing for more stringent requirements for providers. In particular there were calls for higher staff: child ratios, a requirement for all staff working with children to be qualified to L3 as a minimum and a requirement for all providers to have an outdoor play area on site. The third option would be to include these more stringent requirements in the Welfare Requirements for the Early Years Foundation Stage. This could pose severe problems for many settings, who would not be able to meet the higher cost implied and for settings, such as childminders living in flats or inner city daycare settings, which could not physically manage to obtain an outdoor play

area on site. Additionally, there would not be enough time, before September 2008 (as legislated for by the Childcare Act 2006) for settings to ensure that their staff had attained qualifications at the appropriate levels (for example if the Government required all staff working in childcare settings to have a minimum of a full and relevant Level3). The Government knows that some providers still struggle to meet the qualification requirements set out in the national standards and, therefore, believe it is better to support the workforce to upskill now, and to increase qualification requirements at a later date when we know providers will be in a position to respond. We already know that many providers will need a lot of support in attaining the standards required by Option 2 in time for September 2008 and our assessment is that to place further legal requirements on providers at this time would destabilise the sector.

Section 4 - Costs and benefits

Sectors and groups affected

The term 'early years provider' includes, maintained schools, non-maintained schools, independent schools, and childcare registered by Ofsted on the Early Years Register (to be introduced in September 2008). From September 2008, it will be the legal responsibility of these providers to ensure that their provision meets the learning and development requirements, and complies with the welfare regulations, as required by Section 40 of the Childcare Act 2006.

The Government has consulted on registration for early years childcare providers and an updated version of this RIA will be issued when the regulations that set the scope of regulation are laid.

The primary groups affected are:

Children – who will have the prospect of better outcomes from receiving higher quality early years provision due to an integrated learning and development framework.

Parents – who will have reassurance of consistent standards regardless of the provider they choose.

Providers who will have to adapt from operating in compliance with the National Standards for day care and childminding and delivering the Birth to Three Matters and the Foundation Stage, to delivering the EYFS and integrating the learning and care.

Ofsted – who will have to register and inspect settings against the EYFS requirements.

Schools – who will experience reduced burdens for over 3 year olds as they will be inspected as part of the school inspection arrangements and therefore will not need to register.

The Childcare Act provides for exemptions from the learning and development requirements, either for individual children or whole cohorts. However, the Government anticipates little need for exemptions given the flexibility of the EYFS to accommodate the range of early years philosophies and the needs of all children including children with special education needs (SEN) and/or disabilities. The Government is currently consulting on the conditions for exemptions to the learning and development requirements. An updated version of this RIA will be issued when the regulations for these exemptions are laid.

Benefits

Registration of Early Years Provision

Registration of early years provision will ensure that:

- parents are assured their children are learning and developing in a safe and secure environment. They will also be provided with the information they need to make an informed choice and claim financial support.

providers, in order both to be registered and to remain on the register, are suitable to care for children and met the prescribed requirements – which are largely based on ensuring the processes and policies are in place to safeguard children. However, they would go through a proportionate process to demonstrate this. Registration will enable parents who use the provision to be able to access financial support through the Working Tax Credits and employer-supported childcare schemes. Registration will also enable providers to work with schools to support them in developing their extended services.

Ofsted would continue to make an assessment of a provider's suitability to look after children, including obtaining CRB checks. They would continue to make a judgement about the suitability of the premises, taking into account the providers own assessment of risks and proposals for managing those risks. Applicants would only need to refer to one set of documentation to understand the requirements that they would need to meet in order to become and remain registered. These requirements will allow Ofsted to have the flexibility to refuse registration when it appeared to them that key elements of the Early Years Foundation Stage would not be met and quality compromised.

school burdens are reduced. Childcare on the school site which is over the age of 3 would not need to be registered. Instead the provision would be inspected as part of school inspection framework.

These proposals are proportionate to the needs of the children taking into account the purpose of the provision, the ages of the children and the responsibilities of their parents. The proposals would also clarify in regulations the position regarding care provided by schools on school premises and would remove the dependency on Ofsted's interpretation of legislation in excluding activity clubs from the requirement to register with Ofsted. In short, the proposed arrangements will produce a clearer, more consistent set of rules for Ofsted and providers. This reduction in administrative and policy costs imposed by regulations will also benefit those private and voluntary sector crèche providers that are removed from the scope of compulsory registration by offering them a real reduction in the regulatory cost burden, and supports the Government's recommendation of this option.

Creating the EYFS

The content of the EYFS statutory framework document will ensure that:

Young children will have access to a rich, coherent experience whether, for example, they receive early years provision through a free part-time place in the nursery class at their local community primary school, or whether they access provision from 8am to 6pm every week day. They will be safeguarded as they learn and develop socially, physically and mentally through play-based activities, regardless of the age at which they access early years provision – from birth right up to the end of the year in which they have their fifth birthday.

Parents of young children will be reassured that if they are at work their children are safe and protected, as well as developing and learning as appropriate to their needs.

For all those working with children in this age group, whether they are teachers, childminders or playgroup staff, there will be a common quality framework that will continue to drive up quality across all settings and strengthen the identity of the early years sector, whilst ensuring flexibility for the many different providers in the sector.

By applying the same system to all providers the Government will ensure a level of consistency and quality across all settings yet remain flexible enough to allow practitioners to follow their own philosophy or methods. It will not introduce a prescriptive curriculum or require formal education for children below compulsory school age.

Costs

Registration of Early Years Provision

The Government does not anticipate any increase in costs to childcare providers. Ofsted is seeking to improve the administration of the registration arrangements, for example, by developing more on line processes, and this should reduce costs by making the supply of information easier.

However, the Government recognises that there is an administration cost to providers whenever regulations impose requirements to supply information. As part of the ongoing consultation the Government is seeking views on any changes to the registration arrangements which might reduce such administration costs.

The fees for registration on the EYR are currently being consulted on. However, the Regulatory Impact Assessment of the Childcare Bill estimated that the cost of administering the Ofsted Childcare Register would be in the region of £180 per provider each year. These costs take account of the administration of the register, including the risk-based inspection and assessment of complaints. The overall cost will depend on the approach taken by schools in developing their extended services offer and to what extent they link with private and voluntary providers and the number of providers that apply to join.

It should be noted that provision that also cares for under and over 5 year olds would have to be registered on both the EYR and OCR, but would only have to pay one fee.

Creating the Early Years Foundation Stage

EYFS Learning and Development Requirements

All funded settings must already comply with the terms of the Curriculum Guidance for the Foundation Stage and many settings are already delivering high quality, integrated early education and care in line with the existing frameworks. In order to meet the EYFS learning and development requirements (part of which are the same as exist now as the Foundation Stage) all practitioners should carefully consider the needs, interests, and stage of development of children in their care and use this information to plan a challenging and enjoyable experience. Many practitioners will already be undertaking this process to meet the individual needs of the child and the new requirements will represent no change.

Welfare Requirements

The Childcare Act allows for the welfare requirements (currently contained in the National Standards) to be specified in regulations and set out in full in the EYFS Statutory Framework Document. For each of these areas, the EYFS sets out the outcome which providers are required to meet, the requirements with which they must comply to meet those outcomes, and additional guidance and good practice. The Government envisages that the replacement of the National Standards by the EYFS welfare requirements will not result in a net increase in costs to most settings. Changes that have been made to the national standards are in the form of clarifications to ensure the welfare requirements are streamlined, and do not duplicate the learning and development requirements or carry additional financial costs for providers.

At full occupancy approximately 65% of a setting's expenditure is spent on staff. Therefore changes to ratios and qualifications requirements, in financial terms, would vastly outweigh other changes. The Government has not made changes that would affect the other large areas of expenditure, such as rent and rates.

Ratios and Qualifications

Through the welfare requirements in the EYFS, staff requirements will be more flexible. The EYFS applies to provision in all sectors, a single set of requirements for adult: child ratios will be applied to all early years settings except in reception classes. This approach will allow providers to apply more flexible ratios for 3 and 4 year olds if they have appropriately qualified staff.

For 3 and 4 year olds, all registered early years providers will be able to apply a ratio of 1:13 between 8am and 4pm when a person with Qualified Teacher Status, Early Years Professional Status or another suitable level 6 qualification is working directly with children. At other times they will have to continue to meet the existing 1:8 ratio requirement. This represents a reduction in minimum staffing levels for the PVI sector if they choose to take advantage of this flexibility. Our modelling suggests that savings to schools and the PVI sector as a result of changes to the ratio requirements could be in the region of £65m p.a. However, if settings need to increase salaries to draw more graduates into the market, this saving would fall.

As the Government is applying one framework across all settings, the qualification requirements for sessional care will be brought into line with those for full day care. The current requirement for full day care is that a supervisor has to be qualified to level 3, and half of all other staff to level 2. In a sessional care setting, only the manager needs to be qualified to level 3, and all other staff to level 2.

In 2005 there were 28,800 supervisory staff employed in sessional care settings. 74% (21,300) of them had at least a level 3 qualification. 90% (25,900) had a Level 2 (so 10% are currently below the necessary requirement). The survey also shows that 97% of providers (full day care, sessional care and out of school) have at least one member of staff with a level 3 qualification or higher. Based on these 2005 figures, the regulation change would require 26% of staff (7,500) to improve their qualification to Level 3. At up to £1,200 per training course to convert Level 2 to Level 3 staff, the total cost will be in the region of £9m. Government funding through the General Sure Start Grant and the Transformation Fund is aimed at helping private sector providers to achieve Level 3. Research consistently shows the impact that qualifications have on child outcomes, and the Government feels that this is an appropriate and affordable change to secure improved outcomes. It will also contribute to the Government's agenda to increase the general skill level of the population as well as its aim to have a better qualified childcare

workforce.

Meeting the Additional Costs

Government invests some £3bn each year in the delivery of the free entitlement to nursery education for 3 and 4 year-olds. Funding is provided to local authorities through the Dedicated Schools Grant (DSG) and is intended to cover provision delivered in accordance with the core Foundation Stage Curriculum and the National Daycare Standards by providers in the maintained, private, voluntary and independent sectors.

Substantial additional funding was also provided for Sure Start in the Spending Review. A sizeable element of this is the **General Sure Start Grant**, totalling nearly £3 billion for 2006-08 period, includes all funds made available to Local Authorities to ensure all early years education and childcare workers receive appropriate training, development and support from 2007 onwards that will enable them to successfully deliver the EYFS from 2008.

The Government is working closely with the Primary National Strategy, the Children's Workforce Development Council (CWDC) and Awarding Bodies to develop training units for members of the workforce who work face to face with children under 5 in regulated settings in England. Ultimately the units are likely to form part of a larger Certificate or Diploma which in themselves may be deemed full Level 3 qualifications and with credits that can be transferable towards larger qualifications.

The Government has made £250m available through the **Transformation Fund** for workforce development over the period April 2006 to August 2008. The majority of this funding will be passed to private, voluntary and independent settings through local authorities to support training and development.

The remainder of the Fund has been allocated to CWDC to support early years practitioners in achieving Early Years Professional status. It also covers reimbursement of costs for staff undertaking training to work with disabled children and those with special educational needs.

Under the Learning and Skills Act 2000, the **Learning and Skills Council (LSC)** has funding and planning responsibilities for all post-16 education and training other than higher education. Over time we would expect EYFS requirements to be embedded within accredited qualifications for those joining the sector or wishing to become better qualified and the LSC will play its part in delivering such qualifications.

Government appreciates the impact that childcare costs can have on the family budget, which is why substantial additional help (£3m a day) is provided through the tax credit system. At April 2007, the childcare element of Working Tax Credit (WTC) was benefiting around 414,000 lower and middle income families.

Administration costs

The Government is also looking at the administration costs imposed by the EYFS requirements, particularly those costs incurred because of requirements to keep records or supply information to Ofsted as the registration authority. In 2005 the administration costs associated with the national standards regulations were estimated to be £24m per annum for the record keeping requirements on providers and £4m for the requirements on notifying Ofsted of changes and

providing them with copies of documents, etc. on request (taking into account business as usual costs). A survey which we carried out with a number of providers, showed that the administrative costs associated with the EYFS welfare requirements are broadly similar to the 2005 estimates.

Schools will not be required to have separate policies for the EYFS provided that the requirements are met through their policies which cover children of statutory school age. Childminders will be expected to ensure that any assistants are aware of all policies and procedures, and that they are able to clearly define them for parents and others as and when requested. All providers need to ensure that, as well as conducting a formal risk assessment, they constantly reappraise both the environments and activities to which children are being exposed and make necessary adjustments to secure their safety at all times.

The Government proposes to follow the same procedure for applying for exemptions from the EYFS learning and development requirements as is currently used for exemptions from the Foundation Stage. It does not, therefore, anticipate that there will be any additional costs with the introduction of Regulations to enable exemptions. **[This section will be updated when the Learning and Development Exemptions Regulations are published]**

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No clear benefits- as complexities would remain and serve to undermine the expansion of extended schools and children’s centres	Annual costs currently at £88 million but likely to increase as market grows ¹
	<p>All providers will follow the same statutory framework, across maintained, voluntary and private sectors, ensuring a consistent, high quality experience for all children, regardless of which setting they attend.</p> <p>It will also reduce bureaucracy for providers who are currently subject to separate sets of requirements for care and education.</p> <p>Our current modelling suggests the wage bill for the whole system is in the region of £5.6bn p.a., covering schools and the PVI sector. If the ratios requirements are changed in the way suggested, savings could be in the</p>	<p>£3b over the period 2006-08 is provided to Local Authorities by the Government to ensure all early years education and childcare workers receive appropriate training, development and support from 2007 onwards that will enable them to successfully deliver the EYFS from 2008.</p> <p>In addition, funding to support quality and workforce development is also available through the Transformation Fund and from the LSC.</p> <p>We envisage that the removal of the national standards and the creation of the welfare requirements will not result in a net increase in costs to most settings.</p> <p>There may be some costs to sessional providers</p>

¹ From the summary of the cost benefit analysis contained in the Regulatory Impact Assessment for the Childcare Bill which can be found on the DfES website

	region of £100m p.a.	as we are applying one framework as far as possible across all settings. This will result in an increase in costs for some sessional settings.
3	As in option 2 above plus a higher qualified workforce leading to better outcomes for children Marginal increase in opportunities for outdoor play	As above with additional cost of <ul style="list-style-type: none"> • £170m to bring all providers up to L3 (based on an estimated 142000 childcare workers below L3 and an estimate of £1200 to bring them up to L3) • Higher overall pay bill for settings to pay for L3 workers • We estimate the cost of providing outdoor play area and facilities to each PVI provider without them at £50k per setting (excluding the cost of acquiring land). And based on total number of providers of 17473, 15% of whom do not have an outdoor play area, the potential cost of making the provision for 2621 providers would be £131.05m (provided that they were able to acquire the necessary land.) <p>Potential destabilisation of the sector due to increased demand for outdoor play facilities and higher qualified workers that they are not able to meet in the time available.</p>

Section 5 - Small Firms Impact Test

The majority of childcare is provided by small voluntary and private sector providers, with a few large firms having a relatively small share of the market. According to the latest available data from December 2006 there are 108,062 providers, broken down as follows:

Setting	Dec - 06
Full day-care	13,764
Sessional Day Care Playgroups	9,216
Out of school clubs	10,735
Childminders	71,539
Crèches	2,808
Total	108,062

Section 6 - Competition assessment

Consideration has been given to the potential impact of the Early Years regulation requirements and the EYFS on competition. The framework will not adversely affect the number or size of firms, or stifle competition. In fact, changes to the ratio requirements and the simplification of the regulatory and registration regime help to create a more level playing field between PVI and maintained providers. All settings will be able to access training to bring them up to the appropriate standard if they need support in meeting the registration requirements or delivering the EYFS.

Section 7 - Enforcement, Sanctions and Monitoring

Registration of Early Years Provision

Where information and other requirements are placed on childcare providers through these regulations, Ofsted is the registration authority that will enforce those requirements. Applications for registration will not be granted unless Ofsted has the information needed to determine that the applicant is suitable to provide childcare, on suitable premises, and that they will be able to meet the ongoing requirements.

Under the Childcare Act it is an offence to make a false or misleading statement in an application for registration, and if Ofsted prosecutes and a conviction follows the person may be fined. A range of other enforcement measures is available to Ofsted, including the provisions for suspending registration set out in the regulations. Ofsted may also suspend provider's registration while further investigations are carried out if they believe that there is a risk of harm to children. Ofsted will notify providers that they have been suspended and providers should remove their Ofsted registration certificate during the period of suspension. Ongoing compliance will be monitored by inspection.

Ofsted can suspend a registration where there are concerns about the provision. A suspension is for a period of time – initially up to 6 weeks, but this period can be extended – that allows Ofsted or another agency to investigate the concern (e.g. if there are doubts about the suitability of the registered person), or the provider to take action to address the concern (e.g. making a building safe for children).

EYFS

All providers will be subject to inspection by Ofsted. Ofsted will inspect the quality of the delivery of the EYFS and how well providers are meeting the welfare and learning and development requirements. Inspection will be carried out proportionately so that where concerns are raised (for example, through complaints received) an inspection may be undertaken earlier than would otherwise be the case. Where relevant and necessary, Ofsted will be able to remove a registration or to require action to be taken to improve as at present.

Providers must comply with all the legal requirements set out and should have regard to the statutory guidance. Ofsted will base its regulatory and inspection judgements on whether a provider has met the general and specific legal requirements, and has had regard to the statutory guidance. This guidance gives examples of action providers are likely to have to take in order to meet the general and specific legal requirements; however providers may be able to comply by using other methods, in which case they can depart from the statutory guidance provided that they are able to demonstrate that their alternative approach achieves the same ends.

As now under existing requirements, it will remain an offence to fail to comply with certain of the welfare requirements. It is an offence for a provider to fail to notify Ofsted of certain events, which are set out in the relevant welfare requirements, and also in the Schedule to the welfare regulations. It is also an offence for a provider to give corporal punishment to a child.

Section 8 - Implementation and Delivery Plan

We are currently consulting on the registration requirements for EYR and compulsory part of the Ofsted Childcare Register. Subject to the outcome of consultation we intend to undertake a communications campaign at beginning of next year in the lead up to the implementation of the

EYR/OCR in September 08. The campaign will include briefing materials to providers, parents and LAs to make them aware of the changes. Ofsted will also write to all known providers, informing them of the changes and any action they are required to take. This will be support by LA under their legal duty to support providers.

The Department has funded the Primary National Strategy to develop a briefing pack for LAs to help them in planning and providing support on the EYFS to providers in the area. The package includes information on how the EYFS will affect various providers and how they can access support and advice. LAs will be expected to brief all providers on the EYFS and support providers during the period of transition. The Childcare Act 2006 places LAs under a legal duty to ensure that relevant training is provided to providers on the EYFS.

Section 9 - Post-implementation review

A post-implementation review will take place as part of the longer term EYFS review from 2010. This will allow enough time for the EYFS to be fully embedded and be based, in part, on LAs' monitoring returns to the National Strategies and inspections undertaken by Ofsted.

Review and evaluation will be based on the monitoring of inspection (Ofsted annual reports on early years, local authority performance management arrangements etc), progress towards wider Government commitments (such as PSA targets) as well as evidence from research and field-forces and advisors working within the sector.

Ofsted will remain the Department's key delivery partner through their registration and inspection of early year's provision. Liaison and specific consultation will continue with the sector and specific representative organisations to ensure that the implementation of the measures of the Act (and wider related policy) is inclusive and delivering as designed. The Department will work closely with Ofsted and these organisations on any specific new issues or unintended consequences that come to light in the run up to implementation.

The content of the Early Years Foundation Stage and the criteria of the Ofsted Childcare Register will be set out in regulations. This approach should ensure the greatest possible flexibility within legislation and enable the regulatory regime to adapt and evolve as the childcare market matures and continue to deliver the best possible outcomes for children. In particular it will allow for minimum standards such as required qualifications to be raised, supporting improvements in quality.

Section 10 - Summary and Recommendation [To be updated when the Early Years Registration regulations are published]

Following publication of the Government's response document to the EYFS consultation outcomes, the DfES has worked in partnership with representative organisations in the early years sector and the Primary National Strategy to develop the final EYFS framework and package of supporting materials, ensuring that it reflects practitioners' views and expertise. Responses to the EYFS consultation demonstrated overwhelming support for the creation of the EYFS, bringing together the existing separate frameworks for education and care and building on the Birth to Three Matters Framework, the Curriculum Guidance for the Foundation Stage and the national standards for under 8s day care and childminding. For many providers this will mean no change in practical terms of delivering high quality education and care, other than a reduction in bureaucracy brought about by the introduction of a single set of requirements. The reform that will be brought about by the introduction of the EYFS and a system that focuses on child outcomes by reducing bureaucracy and ensuring regulation is proportionate will not

adversely affect the sector and will reduce cost by 10-12% per annum.²

The core cost to secure the delivery and implementation of the EYFS learning and development requirements will be to cover training and development. Early years funding of £3 billion for the period 2006-08 has been allocated to local authorities through the General Sure Start Grant (GSSG) and includes funding for workforce development. GSSG also includes specific provision for LAs from the overall Transformation Fund of £250 million to raise quality of the early years workforce without impacting on affordability.

Declaration and publication

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed*Beverley Hughes*.....

Date: 20 June 2007

Beverley Hughes, Minister of State for Children, Young People and Families

Contact

Bo Emecheta
Early Years Foundation Stage Central Team
DfES Caxton House
Tothill Street
London
SW1H 9NA
020 7273 5235
bo.emecheta@dfes.gsi.gov.uk

² From the summary of the cost benefit analysis contained in the Regulatory Impact Assessment for the Childcare Bill which can be found on the DfES website.

ANNEX 1

Learning and development requirements

- 1 The Childcare Act 2006 provides for the EYFS learning and development requirements to comprise three elements:

the early learning goals – the knowledge, skills and understanding which young children should have acquired by the end of the academic year in which they reach the age of five (young children);

the educational programmes – the matters, skills and processes which are required to be taught to young children; and

the assessment arrangements – the arrangements for assessing young children to ascertain their achievements.

- 2 There are six areas covered by the early learning goals and educational programmes, these are:

Personal, Social and Emotional Development;

Communication, Language and Literacy;

Problem Solving, Reasoning and Numeracy;

Knowledge and Understanding of the World;

Physical Development; and

Creative Development.

Welfare requirements

- 3 The National Standards for Under 8s Day Care and Childminding have previously been encapsulated in 5 sets of standard documents containing the same 14 standards, but with slight variations in the supporting criteria depending on the type of care setting. The 5 sets of standards covered are: childminding; full day care; sessional day care; crèches; and out of school care. The EYFS brings these together under one document and practitioners will recognise the requirements, enabling them to use these more efficiently and avoid duplication.
- 4 Children learn best when they are healthy, safe and secure, when their individual needs are met and when they have positive relationships with the adults caring for them. The welfare requirements are designed to support providers to create settings which are welcoming, safe and stimulating, and where children are able to enjoy learning through play, to grow in confidence and to fulfil their potential.
- 5 The general legal requirements are listed within the EYFS and are expanded with more detailed specific legal requirements in the areas of learning and development. Both the general and specific legal requirements have the force of regulations and therefore must be complied with by all early years providers..

6 The general welfare requirements of the EYFS are:

Safeguarding and promoting children's welfare

The provider must take necessary steps to safeguard and promote the welfare of children in the setting.

The provider must promote the good health of the children, take necessary steps to prevent the spread of infection, and take appropriate action when they are ill.

Children's behaviour must be managed effectively and in a manner appropriate for their stage of development and particular individual needs.

Suitable people

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Adults looking after children must have appropriate qualifications, training, skills and knowledge.

Staffing arrangements must be organised to ensure safety and to meet the needs of the children.

Suitable premises, environment and equipment

Outdoor and indoor spaces, furniture, equipment and toys must be safe and suitable for their purpose.

Organisation

Providers must plan and organise their systems to ensure that every child receives an enjoyable and challenging learning and development experience that is tailored to meet their individual needs.

Documentation

Providers must maintain records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children.

7 As now, where Ofsted considers that a provider has failed to comply with any of the welfare requirements, they may give notice to the provider setting out (i) in what respect the provider has failed to comply with the requirements (ii) what action the provider should take to comply, and (iii) the period within which the provider should take that action.

Early Years Foundation Stage (EYFS) - Equality Impact Assessment

Introduction

1. The Department has a duty to assess the likely impact of policies that we are proposing to introduce on minority ethnic groups and those with disabilities. From April 2007, this duty will also cover gender. With this in mind, Departmental policy is to encourage the completion of Equality Impact Assessments that cover the full range of groups at risk of disproportionate or negative impact. This assessment is set out below.
2. Everyone should have an equal opportunity to meet their aspirations, realise their full potential and improve their life chances. Equal opportunity will make for a fairer and more prosperous society. The DfES will work with our partners to ensure our policies and services recognise and respond to the diverse needs of all children, young people and adults, and to ensure that excellent learning experiences are universally available.

Context: the EYFS and equality and diversity

3. The primary focus of the EYFS is to meet the individual needs of children and there is significant flexibility to provide learning and development activities in a way that reflects the needs and circumstances of every child. The EYFS has been developed with the intention of being fully inclusive of all children regardless of their ethnicity, culture, religion or belief, home language, family background, disability or special educational need, gender or ability; and to support equal access to the range of integrated care and learning and development opportunities in early years provision.

Equality in the EYFS in practice

4. Implementing the EYFS in settings will promote equality in the following ways:

The central focus of the EYFS on providing integrated care, learning and development for all children will support the development of strategies for raising the quality of provision for all children. This will put the spotlight on inequalities in outcomes, and areas of practice where approaches need to be targeted or varied to deliver better outcomes for children: for example, focusing on writing skills for boys, who tend to lag behind girls.

Requiring observation-based assessment will allow a closer focus on the needs of individual children and therefore the development of ways of working with those individual children that take account of their needs in helping them to learn and develop to their full potential. It will also support the early identification of special educational needs and disabilities, and the development of effective intervention to support these children.

Placing specific emphasis on the conditions through which children may differ will help to support the flexible delivery of the learning and development requirements. For example, the EYFS will place value on linguistic diversity and support practitioners to provide opportunities for children to develop and use their home language in learning through play, as well as emphasising the need to support children in their development of Communication Language and Literacy skills in English.

The EYFS will support the reducing inequalities element of the PSA1 target, which seeks to close the gap in outcomes at the end of the Foundation Stage between children from more and less disadvantaged areas (and from 2008, between higher and lower performing children). Inequalities in outcomes can be linked to ethnicity (see FSP data 2002-2005), disability or SEN. The EYFS will support practitioners in guiding young children through early learning experiences that evidence (including EPPE) suggests are particularly beneficial to disadvantaged children (those experiencing economic disadvantage or at any disadvantage due to unmet needs).

The EYFS will make it clear that settings need to need certain key regulatory requirements in relation to equality. For example, disabled children and those with SEN will benefit from tailored learning arrangements that will help to minimise regressive conditions and development delays.

The EYFS will facilitate the provision of safe and supportive learning and caring environments, free from harassment, in which the contribution of all children is valued and where ethnic, religious, disability and gender stereotypes are challenged. All children will learn to value difference and diversity and to respect others. It will ensure settings demonstrate awareness and understanding of the requirements of different groups and reflect and respond to the culture, language, ethnicity, gender and ability of children.

Finally, all settings that fall under the EYFS will be required to plan to meet the needs of boys and girls, children with SEN, children who are more able, children with disabilities, children from all social, cultural and religious backgrounds, children from different ethnic groups including travellers, refugees and asylum seekers, and children from different linguistic backgrounds.

Costs to providers

5. The key costs of implementing the EYFS relate to training, and these are covered in detail in the main RIA. However, in addition to the general funding being made available to support the development of the early years workforce inclusion and equality is part of the core business for LAs and settings. They are already bound by clear duties through the amended Race Relations Act, the Disability Discrimination Act, and will be bound by the duties under the Gender Equality Duty which will come into effect from April 2007. Funding to support settings develop inclusive early years practices and environments is available within both the Dedicated Schools Grant and the General Sure Start Grant. In addition, the Transformation Fund can be used to train more staff across the early years workforce as a whole to work with all children regardless of their individual needs or circumstances.

Potential negative impacts on equality

6. There is a risk that the focus of the EYFS on meeting the needs of every child begins to stretch the early years workforce to a point where the deployment of resource and adoption of new strategies for meeting needs creates new inequalities. For example, in a setting with very few girls, the boys begin to drain attention from the girls to help improve their writing skills to the extent that girls' writing begins to suffer. However, this risk exists with every policy focused on mainstreaming principles of inclusion, and the two key ways of avoiding it are through effective planning of the deployment of resource with reference to a system of prioritisation and targeting that nevertheless recognises a minimum level of service, and through frequent and ongoing monitoring

of the progress of every child so that emerging inequalities can be as quickly identified as possible. These two aims are already built into the EYFS, so the risk of new inequalities emerging is minimal.

7. The other main risk is in relation to funding, which can act as a barrier to embedding inclusive practice. But as set out above, this assessment does not consider that funding will be a barrier in this case.

Complementary policies on equality

8. £538M has been made available for capital investment and £487M for revenue investment in children's centres services, focussing on the most deprived areas. The Sure Start Children's Centre Practice Guidance provides valuable information to help improve service design and provision in a number of ways. It outlines the greater emphasis on outreach and home visiting needed to ensure that disadvantaged and excluded families who may be less likely to access services, do take-up and benefit from children's centres. It also gives clear advice on how to reach all groups and how to involve them in service consultations.
9. The latest draft of the Code of Practice highlights that Local Authorities should seek to maximise take up of the free offer by looked after children and children at risk of becoming looked after. LAs also have a responsibility to identify and reach out to particularly disadvantaged and hard to reach groups within their local community with a view to maximising take up of the free entitlement and improving outcomes.
10. Local Authorities receive sufficient funding to enable them to provide free early education for all three and four year olds through Dedicated Schools Grant. This ensures that children are funded at the same basic rate (with top ups for deprivation and other local factors) regardless of whether their parents choose to take up their free entitlement in the maintained or non-maintained sector.

Best practice and ongoing monitoring

11. Consultation on the draft EYFS document included questions around meeting the diverse needs of children. Respondents provided useful and important advice about inclusive practices in settings to meet the needs of all children. The Government has fully reflected these comments and the EYFS documents include practice guidance to support effective practice in this area.
12. As highlighted in the EYFS RIA a post-implementation review will take place as part of the longer term EYFS review from 2010; this will allow enough time for the EYFS to be fully imbedded and will be based, in part, on LAs' monitoring returns to the National Strategies. The successful implementation of the EYFS and aspects of equality set out in the EYFS will form part of this review.
13. The FSP scores and data from Sure Start provider and child level surveys will provide extra information about the extent to which the EYFS is having an effect on reducing inequalities in outcomes, although in these cases it will not be possible to isolate the effect of the EYFS.

Conclusion

14. This Equality Impact Assessment has examined the likely benefits of the EYFS in terms of improving equality of outcomes for children (as that is the main concern of the EYFS), and has also set out some of the ways in which other policies are seeking to improve access to services for all children, in a way which will complement the focus of the EYFS. On balance, the assessment presented here is that the EYFS will have a positive impact on equality in early years settings.