

**EXPLANATORY MEMORANDUM TO**  
**THE EARLY YEARS FOUNDATION STAGE (EXEMPTIONS FROM LEARNING AND**  
**DEVELOPMENT REQUIREMENTS) REGULATIONS 2008**

**2008 No. 1743**

**1.** This explanatory memorandum has been prepared by the Department for Children, Schools and Families and is laid before Parliament by Command of Her Majesty.

**2. Description**

2.1 These Regulations, made under section 46 of the Childcare Act 2006 (“the Act”), prescribe the circumstances and extent to which early years providers, or individual children, may be granted exemptions from the learning and development requirements which are set out in Section 2 of the document entitled “Statutory Framework for the Early Years Foundation Stage” (“the EYFS”) (ISBN 978-1-84775-128-7).

2.2 The Regulations enable the Secretary of State to exempt early years providers from some or all of the requirements in prescribed circumstances. They also enable early years providers to exempt an individual child from some or all of the requirements in prescribed circumstances.

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

None

**4. Legislative Background**

4.1 The EYFS replaces the Foundation Stage of the National Curriculum (which is provided for in Part 6 of the Education Act 2002). The Act requires that the provision of childcare for young children (that is, children from birth to the end of the academic year in which they have their fifth birthday) should be compliant with the EYFS, which is a distinct phase separate from the National Curriculum.

4.2 The EYFS comprises learning and development requirements and welfare requirements. Section 46 of the Act enables regulations to provide the Secretary of State and early years providers with the ability to grant exemptions from the learning and development requirements. This is designed to mirror the process for disapplication of the National Curriculum which is applicable to other phases of education.

**5. Territorial Extent and Application**

This instrument applies to England.

**6. European Convention on Human Rights**

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

## 7. Policy background

### *Policy*

7.1 The EYFS is a statutory framework for early learning and childcare from birth through to the end of the academic year in which a child turns five. It brings together the existing frameworks for early learning and care into a single, clear framework which removes the distinction between learning and care for young children.

7.2 The EYFS will apply to all early years providers, whether they are in the maintained sector or in the private, voluntary and independent sectors, and comes into force on 1st September 2008.

### *Exemptions*

7.3 The EYFS is designed to be a flexible and inclusive framework which can accommodate the needs of individual children, including children with learning difficulties and disabilities, and the many different approaches employed by early years providers. It provides the flexibility for practitioners to make professional judgements about the pace at which individual children should progress and does not seek to prescribe or standardise practice across settings. For these reasons, it is anticipated that exemptions will rarely be needed, and should be granted only in exceptional circumstances.

7.4 The Government response to the consultation on the EYFS Learning and Development Exemptions set out Government's initial thinking on the circumstances in which exemptions might be sought. These were:

- a. **on a short-term basis:** in circumstances in which providers are temporarily unable to deliver the full EYFS learning and development requirements, but where they will be able to do so within a short period.
- b. **in respect of an individual child:** to meet the needs of individual children in provision which otherwise provides the full EYFS for all other children.

7.5 The consultation response document made it clear that this policy would continue to be developed and, following further consultation with stakeholders and parents, the Government announced in a written ministerial statement that in addition to the exemptions referred to in paragraph 7.4, regulations would also provide for a third type of exemption:

(c) **where the principles governing the provision conflict with the EYFS:** on the grounds that elements of the EYFS learning and development requirements cannot be reconciled with the established principles about the learning and development of young children governing the early years provision.

7.6 The first form of short-term exemption which can be granted by the Secretary of State to a provider is intended for circumstances in which a provider is temporarily unable to deliver the EYFS or some element of it. It is not anticipated that many providers will require this type of exemption. However there may be exceptional cases whereby local circumstances, for example a delay in the provision of training, have meant that providers are unable to deliver the full EYFS learning and development requirements by 1<sup>st</sup> September 2008. There may also be circumstances in which a provider's premises or staff are affected by an incident, meaning that the full range of learning and development requirements cannot be delivered to the required standard. Providers are required to seek the views of local authorities and parents before applying for this type of exemption, which may be granted for up to one year. This time-limit is the maximum and it is anticipated that in many circumstances (for example a delay to training) the exemption may only be needed for a shorter period.

7.7 The second form of exemption which can be granted by the Secretary of State to a provider is intended for circumstances where the early years provision is governed by established principles about early years learning and development which cannot be reconciled with aspects of the EYFS learning and development requirements. Where a majority of parents of children at the setting are in agreement, and having sought the views of the local authority, the provider may apply to have particular requirements modified or disapplied. This type of exemption may be granted for a maximum of two years, after which providers would need to reassess their need for an exemption, and reapply for a further exemption.

7.8 The third form of exemption can be granted by an early years provider in respect of a particular child in circumstances where the parent seeks an exemption on the grounds that their religious or philosophical convictions cannot be reconciled with aspects of the EYFS learning and development requirements. Parents will be asked to set out, for each aspect of the learning and development requirements from which exemption or modification is requested, how these requirements are in conflict with their religious or philosophical convictions.

7.9 For all three types of exemption, disapplication from the assessment arrangements and specific early learning goals may be sought. The six educational programmes are extremely broad and to disapply these entirely would take away children's entitlement to one of the six areas of learning and development. For this reason, except where the exemption is for a provider temporarily unable to deliver parts of the learning and development requirements, the educational programmes may only be modified, and not disapplied completely.

#### *Consultation*

7.10 There has been extensive consultation on the EYFS since its inception in *Choice for parents, the best start for children: a ten year strategy for childcare*, which was published in December 2004 and set out the Government's long-term vision to ensure that every child gets the best start in life. This strategy included the proposal to create a new quality framework for the early years which would take an integrated approach to care and education. Publication of this document was followed by a process of consultation between Government and key stakeholders. Written responses were invited and there were a number of other opportunities for stakeholders to register their views, including a series of local forums with parents and a series of consultation events with key stakeholders.

7.11 Consultation on the policy included in the Childcare Bill took place between July and October 2005 and sought views on the legal framework which underpins the EYFS, removes the legal distinction between care and education in the early years and sets out the arrangements for the regulation and inspection of childcare.

7.12 Consultation on the detailed content of the EYFS ran from 5<sup>th</sup> May to 26<sup>th</sup> July 2006 and received a very positive response from practitioners, parents, and other stakeholders. A consultation on the statutory instrument underpinning the learning and development requirements (the Early Years Foundation Stage (Learning and Development Requirements) Order 2007 (S.I. 2007 / 1772)) ran from 20<sup>th</sup> December 2006 to 2<sup>nd</sup> February 2007.

7.13 A consultation on policy proposals for exemptions from the learning and development requirements ran from 1<sup>st</sup> March to 24<sup>th</sup> May 2007. This focused on the grounds for exemption and the associated administrative processes and the Government response to this consultation can be found at <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1448>.

7.14 The consultation focussed on two specific questions. The first was whether the right circumstances were being considered as grounds for exemption. The proposed circumstances were as follows:

- i) Providers who lack the capacity to meet the full requirements, but should be able to do so within a specified time period, given access to the necessary support and/or training.
- ii) Providers who base their provision on alternative approaches which conflict with the statutory requirements with respect to learning and development.
- iii) To meet the needs of individual children in provision which otherwise provides the full EYFS to all other children.

7.15 46% of respondents agreed that these were the right circumstances, 36% disagreed and 18% were unsure. However, it is notable that 17% of respondents disagreed with these circumstances because they felt that the EYFS was sufficiently flexible not to require any exemptions.

7.16 The second question focused on a proposed process by which providers and parents could apply for exemptions and whether this was workable, and this process is now reflected in the Regulations. 52% of respondents believed that this process would work, 28% disagreed and 20% were unsure. Some respondents expressed surprise that any need for exemptions was felt, given the flexibility of the EYFS and the entitlement to early learning, development and care which it allows children.

7.17 Based on this consultation and other work with parents, the Government's view as set out in its formal consultation response was that the EYFS should be delivered wherever possible, as this was in the best interests of children, and outlined two grounds for exemption: to allow them only on a short-term basis for providers who lack the ability to meet the full requirements, or to meet the needs of individual children. It was made clear that this policy would be kept under review.

7.18 Subsequent to the consultation response document, the Government has continued to engage with stakeholders over EYFS implementation, including exemptions. While the majority continue to consider that the EYFS is sufficiently flexible that exemptions should rarely be needed, there are a very small minority of providers and parents who have expressed their concerns around the compatibility of specific elements of the EYFS with their principles about the learning and development of children. In recognition of those views, a written ministerial statement on 30<sup>th</sup> June 2008 announced that regulations would also make it possible for childcare providers to apply for exemptions, where a majority of parents support them doing so, from elements of the EYFS learning and development requirements on the grounds that they are in conflict with the principles about young children's learning and development which govern their early years provision.

7.19 Exemptions policy will be reviewed as part of a full EYFS implementation review which is scheduled to take place in 2010.

### *Guidance*

7.20 Guidance for parents, providers and local authorities will be published before the end of the summer to support the regulations, detailing the application process and the criteria for assessing applications for exemptions.

## **8. Impact**

An Impact Assessment is attached to this memorandum, and includes an assessment of the impact on the public sector. Local authorities have already been allocated funding to help with supporting the delivery of the EYFS, which includes the advisory role envisaged in respect of exemptions.

## **9. Contact**

Joanna West at the Department for Children, Schools and Families ([joanna.west@dcsf.gsi.gov.uk](mailto:joanna.west@dcsf.gsi.gov.uk)) can answer any queries regarding this instrument.

## Summary: Intervention & Options

<b>Department /Agency:</b> Department for Children, Schols and Families	<b>Title:</b> Impact Assessment of the Early Years Foundation Stage (EYFS)	
<b>Stage:</b> Final	<b>Version:</b> 4	<b>Date:</b> 10 June 2008
<b>Related Publications:</b> The Early Years Foundation Stage - Setting the Standards for Learning, Development and Care for children from birth to five		

**Available to view or download at:**

<http://www.standards.dcsf.gov.uk/eyfs/>

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

Research shows that there is a persistent positive effect of attending higher quality pre-school settings and can lead to better educational and social outcomes for all children.

**What are the policy objectives and the intended effects?**

The overarching aim of the EYFS is to help young children from birth to five to achieve the five Every Child Matters outcomes by creating a framework for early years provision 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.

**What policy options have been considered? Please justify any preferred option.**

The preferred option is to introduce a new statutory framework for children from birth to five, bringing together current statutory frameworks and the non-statutory Birth to Three Matters. A single framework will reduce bureaucracy for practitioners and create a level playing field between maintained, voluntary and private sectors, ensuring consistency for children regardless of settings they attended. The alternative options would be to

- maintain the status quo by continuing to have separate standards for children aged birth to three and three to five but this is neither feasible nor viable
- include in the EYFS more stringent requirements such as higher staff:child ratios, higher staff qualifications, and mandatory outdoor play areas but this would place unacceptable demands on the early years sector leading to its destabilisation

**When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?**

A post implementation review will take place as part of the longer term EYFS review from 2010, allowing enough time for the EYFS to be fully embedded and based in part on Ofsted inspections.

**Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

*I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.*

Signed by the responsible Minister:

*Beverly Hughes* .....Date: 30th June 2008

## Summary: Analysis & Evidence

<b>Policy Option:</b>	<b>Description:</b> Introduce a new statutory framework for the early years (EYFS) from birth to five.
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' <u>Sessional care providers</u> - £9m to convert level 2 staff to level 3 for supervisory staff (para 26&27); DCSF - £7m to support EYFS implementation and training for practitioners and schools (para 29); Ofsted - £1.5m additional annual costs of early years inspections
	<b>One-off</b> (Transition)	<b>Yrs</b>	
	<b>£16m</b>	1	
	<b>Average Annual Cost</b> (excluding one-off)		
	<b>£ 1.5m</b>	10	<b>Total Cost (PV)</b> <b>£ 29m</b>
Other <b>key non-monetised costs</b> by 'main affected groups'			

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' All registered providers will be able to apply a ratio of 1:13 for 3&4 year olds where a person holding an appropriate level 6 qualification is employed representing a reduction in staff levels for the PVI sector. We estimate savings to be in the region of £65m pa. to PVI settings (details paragraph 25)
	<b>One-off</b>	<b>Yrs</b>	
	<b>£ 0</b>		
	<b>Average Annual Benefit</b> (excluding one-off)		
	<b>£ 65m</b>	10	<b>Total Benefit (PV)</b> <b>£ 560m</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Positive effects on children's maths and reading outcomes, socio-behavioural outcomes and independence and concentration			

**Key Assumptions/Sensitivities/Risks** A single early years framework will reduce bureaucracy for providers and help create a level playing field between maintained, voluntary and private sectors. Changes to qualification requirements may result in additional costs to some providers - substantial Government funding provided to meet such costs.

Price Base Year	Time Period Years	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> <b>£ 531m</b>
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What is the geographic coverage of the policy/option?		England	
On what date will the policy be implemented?		1 September 2008	
Which organisation(s) will enforce the policy?		Ofsted	
What is the total annual cost of enforcement for these organisations?		1.5m	
Does enforcement comply with Hampton principles?		Yes	
Will implementation go beyond minimum EU requirements?		Yes/No	
What is the value of the proposed offsetting measure per year?		£	
What is the value of changes in greenhouse gas emissions?		£ 0	
Will the proposal have a significant impact on competition?		No	
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium Large
Are any of these organisations exempt?	No	No	N/A N/A

<b>Impact on Admin Burdens Baseline</b> (2005 Prices)		(Increase - Decrease)	
Increase of £	Decrease of £	<b>Net Impact</b>	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]



## **Introduction**

1. This Impact Assessment covers the introduction 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 Early Years Foundation Stage (Learning and Development Requirements) Order 2007; the Early Years Foundation Stage (Welfare Requirements) Regulations 2007 and the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008.
2. The Order and Regulations giving effect to the Early Years Foundation Stage, and regulations allowing exemptions to the Learning and Development requirements of the EYFS have been made.

## **Purpose and intended effect**

### **Objective**

3. 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.

### **Rationale for government intervention**

4. 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.
5. 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.

## **Consultation**

### **Within Government**

6. 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**

7. 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.

8. In summer 2006 the Government consulted on the Early Years Foundation Stage which sets out learning, development and welfare requirements for childcare providers looking after 0-5 year olds. 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.

9. The statutory consultation on the draft proposed Learning and Development Requirement Order was published on 20<sup>th</sup> December 2006 and closed on 2<sup>nd</sup> 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.

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

11. 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.

12. The statutory consultation on exemptions to the EYFS learning and development requirements ran from 1<sup>st</sup> March to 24 May 2007. The consultation provided the opportunity for respondents to give their views on the circumstances accepted as possible grounds for exemptions and the process by which exemptions could be obtained. The Government response to the Early Years Foundation Stage Learning and Development Exemptions consultation set out Government's initial thinking on the circumstances in which exemptions may be sought. These were:

- b. **on a short-term basis:** circumstances in which providers are temporarily unable to deliver the full EYFS learning and development requirements, but are making every effort to do so within a short period.

- b. **in respect of an individual child:** circumstances in which the EYFS learning and development requirements, or some element of them, cannot be delivered for that child or where that child's parent feels strongly that the child should be exempted from some element of the learning and development requirements.

The response document made it clear that this policy would be kept under review and, following further consultation with stakeholders and parents, Government announced that regulations would also provide for a third type of exemption:

**Where the principles governing the provision conflict with the EYFS:** where a majority of parents agree with the provider's assessment that an exemption is required because the established principle which governs their practice conflicts with elements of the EYFS learning and development requirements.

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

### **Options:**

#### **Option One - Maintain the existing regime**

14. 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)**

15. 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. Regulations will provide for exemptions from elements of the Learning and Development requirements. These will allow providers to apply for exemption where a majority of parents agree with the provider's assessment that an exemption is required because the established principle which governs their practice conflicts with elements of the EYFS learning and development requirements; or where they temporarily lack the capacity to meet the full EYFS learning and development requirements. Finally, parents will be able to apply to providers for exemption in respect of their own child(ren) on the grounds of a conflict with their philosophical or religious convictions. Crucially, 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**

16. 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 can place further legal requirements on providers at this time would destabilise the sector.

## **Costs and benefits**

### **Sectors and groups affected**

17. 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.

18. 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 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.

19. Regulations made under the Childcare Act 2006 provide for exemptions from the learning and development requirements, either for individual children or whole cohorts, as outlined above. The Government anticipates that the number of providers and parents seeking exemptions on these grounds will be minimal given the flexibility the EYFS offers to accommodate the range of early years approaches and the needs of all children including children with special education needs (SEN) and/or disabilities.

## **Benefits**

20. 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**

### *EYFS Learning and Development Requirements*

21. 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*

22. 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.

23. 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*

24. 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.

25. 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, based on the 2005 Parents Survey, 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. Total discounted cost savings over 10 years are estimated to be £560m<sup>1</sup>. However, if settings need to increase salaries to draw more graduates into the market, this saving would fall.

26. 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.

27. 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 Sure Start Extended Schools and Childcare 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**

28. 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.

29. Substantial additional funding was also provided for Sure Start in the 2007 Spending Review. The Sure Start, Early Years and Childcare Grant for 2008-11 totals over £5 billion including capital funding. It includes funds made available to Local Authorities to ensure all early years education and childcare workers receive appropriate training, development and support to enable them to successfully deliver the EYFS from 2008. Specifically, this total includes a £305 million Graduate Leader Fund to increase the number of support graduates leading practice in the private, voluntary and independent (PVI) sector. In addition, in preparation for implementation, the DCSF made available £7m of funding in 2007 to support training on the EYFS for practitioners in the PVI sector and schools.

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<sup>1</sup> See annex 1

30. The Government has worked closely with the National Strategies, 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.

32. 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.

33. 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**

34. Ofsted currently regulates and inspects settings which will provide the early years foundation stage. New arrangements are not finalised. The estimated additional annual cost of inspecting to a common standard across settings is £1.5m. The total discounted ongoing costs over 10 years are £12.91m<sup>2</sup>. Ofsted will also have one-off development costs, to develop the early years register and to train inspectors, estimated at some £3m.

35. 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.

36. 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 not have to produce written policies but they 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.

37. The Government has issued guidance for parents, early years providers and local authorities, setting out the circumstances under which it will be possible to seek exemption from the learning and development requirements of the EYFS, and the process for applications. The EYFS is a flexible and inclusive framework which is designed to accommodate the needs of individual children, including children with learning difficulties and disabilities, and to accommodate the many different philosophies and approaches employed by early years providers. For these reasons, we anticipate that exemptions will rarely be needed. The

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<sup>2</sup> See annex 1

Government therefore anticipates minimal additional costs associated with Regulations enabling exemptions.

### **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 <sup>3</sup>
2	<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 region of £100m p.a.</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 Graduate Leader Fund (£305 million between 2008 and 2011), the Outcomes, Quality and Inclusion strand of the Sure Start, Early Years and Childcare Grant (£440 million between 2008 and 2011) 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 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.</p>

<sup>3</sup> 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



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"> <li>• £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)</li> <li>• Higher overall pay bill for settings to pay for L3 workers</li> <li>• 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.)</li> </ul> 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.
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### **Small Firms Impact Test**

38. 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

### **Competition assessment**

39. 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 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 delivering the EYFS.

### **Enforcement, Sanctions and Monitoring**

40. 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.

41. 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.

42. 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.

### **Implementation and Delivery Plan**

43. The Department has funded the National Strategies 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 have been responsible for providing training and support to all providers on the EYFS during the period of transition.

### **Post-implementation review**

44. 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.

45. 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.

46. Ofsted will remain the Department's key delivery partner through their 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.

47. The content of the Early Years Foundation Stage is 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.

### **Summary and Recommendation**

48. 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 National Strategies to develop the final EYFS framework and package of supporting materials, ensuring that it reflects practitioners' views and expertise. Responses to the EYFS consultation, including the consultation on exemptions from the EYFS learning and development requirements, 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.<sup>4</sup>

49. The core cost to secure the delivery and implementation of the EYFS learning and development requirements will be to cover training and development. The Sure Start, Early Years and Childcare Grant for 2008-11 totals over £5 billion including capital funding. It includes funds made available to Local Authorities to ensure all early years education and childcare workers receive appropriate training, development and support to enable them to successfully deliver the EYFS from 2008. Specifically, this total includes a £305 million Graduate Leader Fund to increase the number of support graduates leading practice in the private, voluntary and independent (PVI) sector. In addition, in preparation for implementation, the DCSF made available £7m of funding in 2007 to support training on the EYFS for practitioners in the PVI sector and schools.

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<sup>4</sup> 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.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	No

# Annexes

## ANNEX 1

### Cumulative annual benefits (£s)

Year	annual benefit	discount rate	present value	cumulative
0	65,000,000	1	65000000	65000000
1	65,000,000	0.9662	62803000	127803000
2	65,000,000	0.9335	60677500	188480500
3	65,000,000	0.9019	58623500	247104000
4	65,000,000	0.8714	56641000	303745000
5	65,000,000	0.842	54730000	358475000
6	65,000,000	0.8135	52877500	411352500
7	65,000,000	0.786	51090000	462442500
8	65,000,000	0.7594	49361000	511803500
9	65,000,000	0.7337	47690500	559494000

### Total annual discounted annual costs (£m)

Year	Annual costs	Discounted annual cost
0	£1.50	£1.50
1	£1.50	£1.45
2	£1.50	£1.40
3	£1.50	£1.35
4	£1.50	£1.31
5	£1.50	£1.26
6	£1.50	£1.22
7	£1.50	£1.18
8	£1.50	£1.14
9	£1.50	£1.10
<b>Total</b>	<b>£15.00</b>	<b>£12.91</b>

## **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.

## **Circumstances in which exemptions from the EYFS learning and Development requirements may be sought**

- 8 at provider level:
- a. where a majority of parents agree with the provider's assessment that an exemption is required because the established principle which governs their practice conflicts with elements of the EYFS learning and development requirements
  - b. on a time-limited basis where providers are temporarily unable to deliver the full EYFS learning and development requirements, but are making every effort to do

so within a short period.

- 9 **in respect of an individual child:** circumstances in which the EYFS learning and development requirements, or some element of them, cannot be delivered for that child.

## **Annex 3**

### **Early Years Foundation Stage (EYFS) - Equality Impact Assessment**

#### **Introduction**

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.

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**

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. Guidance on exemptions from the EYFS learning and development exemptions will make clear that this provision is not intended for children with disabilities or learning difficulties, who should be supported within the EYFS to progress according to their individual needs.

#### **Equality in the EYFS in practice**

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

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 Sure Start Extended Schools and Childcare Grant.

### **Potential negative impacts on equality**

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.

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**

£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.

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.

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**

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.

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.

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**

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.