



Childcare Act 2006

2006 CHAPTER 21

PART 3

REGULATION OF PROVISION OF CHILDCARE IN ENGLAND

CHAPTER 2

REGULATION OF EARLY YEARS PROVISION

Requirements to register

33 Requirement to register: early years childminders

- (1) A person may not provide early years childminding in England unless he is registered in the early years register as an early years childminder.
- (2) The Secretary of State may by order provide that, in circumstances specified in the order, subsection (1) does not apply in relation to early years childminding.
- (3) The circumstances specified in an order under subsection (2) may relate to one or more of the following matters (among others)—
 - (a) the person providing the early years childminding;
 - (b) the child or children for whom it is provided;
 - (c) the nature of the early years childminding;
 - (d) the premises on which it is provided;
 - (e) the times during which it is provided;
 - (f) the arrangements under which it is provided.
- (4) If it appears to the Chief Inspector that a person has provided early years childminding in contravention of subsection (1), he may serve a notice (“an enforcement notice”) on the person.
- (5) An enforcement notice may be served on a person—

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- (a) by delivering it to him, or
 - (b) by sending it by post.
- (6) An enforcement notice has effect until it is revoked by the Chief Inspector.
- (7) A person commits an offence if, at any time when an enforcement notice has effect in relation to him and without reasonable excuse, he provides early years childminding in contravention of subsection (1).
- (8) A person guilty of an offence under subsection (7) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

34 Requirement to register: other early years providers

- (1) A person may not provide—
- (a) early years provision on premises in England which are not domestic premises, or
 - (b) early years provision on domestic premises in England which would be early years childminding but for section 96(5),
- unless he is registered in the early years register in respect of the premises.
- (2) Subsection (1) does not apply in relation to early years provision for a child or children who has (or have) attained the age of three if—
- (a) the provision is made at any of the following schools as part of the school's activities—
 - (i) a maintained school,
 - (ii) a school approved by the Secretary of State under section 342 of the Education Act 1996 (c. 56) (approval of non-maintained special schools), or
 - (iii) an independent school,
 - (b) the provision is made by the proprietor of the school or a person employed to work at the school, and
 - (c) the child is a registered pupil at the school or, if the provision is made for more than one child, at least one of the children is a registered pupil at the school.
- (3) The Secretary of State may by order provide that, in circumstances specified in the order, subsection (1) does not apply in relation to early years provision.
- (4) The circumstances specified in an order under subsection (3) may relate to one or more of the following matters (among others)—
- (a) the person providing the early years provision;
 - (b) the child or children for whom it is provided;
 - (c) the nature of the early years provision;
 - (d) the premises on which it is provided;
 - (e) the times during which it is provided;
 - (f) the arrangements under which it is provided.
- (5) A person commits an offence if, without reasonable excuse, he provides early years provision in contravention of subsection (1).
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Process of registration

35 Applications for registration: early years childminders

- (1) A person who proposes to provide early years childminding in respect of which he is required by section 33(1) to be registered may make an application to the Chief Inspector for registration as an early years childminder.
- (2) An application under subsection (1) must—
 - (a) give any prescribed information about prescribed matters,
 - (b) give any other information which the Chief Inspector reasonably requires the applicant to give, and
 - (c) be accompanied by any prescribed fee.
- (3) The Chief Inspector must grant an application under subsection (1) if—
 - (a) the applicant is not disqualified from registration by regulations under section 75, and
 - (b) it appears to the Chief Inspector that any requirements prescribed for the purposes of this subsection (“the prescribed requirements for registration”) are satisfied and are likely to continue to be satisfied.
- (4) The Chief Inspector must refuse any application under subsection (1) which subsection (3) does not require him to grant.
- (5) The prescribed requirements for registration may include requirements relating to—
 - (a) the applicant;
 - (b) the premises on which the early years childminding is to be provided;
 - (c) the arrangements for early years childminding on those premises;
 - (d) any person who may be caring for children on those premises;
 - (e) any other person who may be on those premises.

36 Applications for registration: other early years providers

- (1) A person who proposes to provide on any premises early years provision in respect of which he is required by section 34(1) to be registered may make an application to the Chief Inspector for registration as an early years provider in respect of the premises.
- (2) An application under subsection (1) must—
 - (a) give any prescribed information about prescribed matters,
 - (b) give any other information which the Chief Inspector reasonably requires the applicant to give, and
 - (c) be accompanied by any prescribed fee.
- (3) The Chief Inspector must grant an application under subsection (1) if—
 - (a) the applicant is not disqualified from registration by regulations under section 75, and
 - (b) it appears to the Chief Inspector that any requirements prescribed for the purposes of this subsection (“the prescribed requirements for registration”) are satisfied and are likely to continue to be satisfied.
- (4) The Chief Inspector must refuse any application under subsection (1) which subsection (3) does not require him to grant.

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- (5) The prescribed requirements for registration may include requirements relating to—
- (a) the applicant;
 - (b) the premises on which the early years provision is to be provided;
 - (c) the arrangements for early years provision on those premises;
 - (d) any person who may be caring for children on those premises;
 - (e) any other person who may be on those premises.

37 Entry on the register and certificates

- (1) If an application under section 35(1) is granted, the Chief Inspector must—
- (a) register the applicant in the early years register as an early years childminder, and
 - (b) give the applicant a certificate of registration stating that he is so registered.
- (2) If an application under section 36(1) is granted, the Chief Inspector must—
- (a) register the applicant in the early years register as an early years provider other than a childminder, in respect of the premises in question, and
 - (b) give the applicant a certificate of registration stating that he is so registered.
- (3) A certificate of registration given to the applicant in pursuance of subsection (1) or (2) must contain prescribed information about prescribed matters.
- (4) If there is a change of circumstances which requires the amendment of a certificate of registration, the Chief Inspector must give the registered early years provider an amended certificate.
- (5) If the Chief Inspector is satisfied that a certificate of registration has been lost or destroyed, the Chief Inspector must give the registered early years provider a copy, on payment by the provider of any prescribed fee.

38 Conditions on registration

- (1) The Chief Inspector may impose such conditions as he thinks fit on the registration of an early years provider under this Chapter.
- (2) The power conferred by subsection (1) may be exercised at the time when the Chief Inspector registers the person in pursuance of section 37 or at any subsequent time.
- (3) The Chief Inspector may at any time vary or remove any condition imposed under subsection (1).
- (4) The power conferred by subsection (1) includes power to impose conditions for the purpose of giving effect to an order under subsection (1)(a) of section 39 or regulations under subsection (1)(b) of that section.
- (5) An early years provider registered under this Chapter commits an offence if, without reasonable excuse, he fails to comply with any condition imposed under subsection (1).
- (6) A person guilty of an offence under subsection (5) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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Requirements to be met by early years providers

39 The Early Years Foundation Stage

- (1) For the purpose of promoting the well-being of young children for whom early years provision is provided by early years providers to whom section 40 applies, the Secretary of State must—
 - (a) by order specify in accordance with section 41 such requirements as he considers appropriate relating to learning by, and the development of, such children (“learning and development requirements”), and
 - (b) by regulations specify in accordance with section 43 such requirements as he considers appropriate governing the activities of early years providers to whom section 40 applies (“welfare requirements”).
- (2) The learning and development requirements and the welfare requirements are together to be known as “the Early Years Foundation Stage”.

40 Duty to implement Early Years Foundation Stage

- (1) This section applies to—
 - (a) early years providers providing early years provision in respect of which they are registered under this Chapter, and
 - (b) early years providers providing early years provision in respect of which, but for section 34(2) (exemption for provision for children aged 3 or over at certain schools), they would be required to be registered under this Chapter.
- (2) An early years provider to whom this section applies—
 - (a) must secure that the early years provision meets the learning and development requirements, and
 - (b) must comply with the welfare requirements.

41 The learning and development requirements

- (1) The learning and development requirements must cover the areas of learning and development specified in subsection (3).
- (2) The learning and development requirements may specify in relation to each of the areas of learning and development—
 - (a) the knowledge, skills and understanding which young children of different abilities and maturities are expected to have before the 1st September next following the day on which they attain the age of five (“early learning goals”);
 - (b) the matters, skills and processes which are required to be taught to young children of different abilities and maturities (“educational programmes”), and
 - (c) the arrangements which are required for assessing children for the purpose of ascertaining what they have achieved in relation to the early learning goals (“assessment arrangements”).
- (3) The areas of learning and development are as follows—
 - (a) personal, social and emotional development,
 - (b) communication, language and literacy,
 - (c) problem solving, reasoning and numeracy,

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- (d) knowledge and understanding of the world,
 - (e) physical development, and
 - (f) creative development.
- (4) The Secretary of State may by order amend subsection (3).
- (5) A learning and development order may not require—
- (a) the allocation of any particular period or periods of time to the teaching of any educational programme or any matter, skill or process forming part of it, or
 - (b) the making in the timetables of any early years provider of provision of any particular kind for the periods to be allocated to such teaching.
- (6) In this section “a learning and development order” means an order under section 39(1)
- (a).

42 Further provisions about assessment arrangements

- (1) A learning and development order specifying assessment arrangements may confer or impose on any of the persons mentioned in subsection (2) such functions as appear to the Secretary of State to be required.
- (2) Those persons are—
- (a) an early years provider,
 - (b) the governing body or head teacher of a maintained school in England, and
 - (c) an English local authority.
- (3) A learning and development order may specify such assessment arrangements as may for the time being be made by a person specified in the order.
- (4) Provision must be made for determining the extent to which any assessment arrangements, and the implementation of the arrangements, achieve the purpose for which the arrangements were made; and any such provision may be made by or under the learning and development order specifying the arrangements or (where the order specifies the person making the arrangements) in the arrangements themselves.
- (5) The duties that may be imposed by virtue of subsection (1) include, in relation to persons exercising any power in pursuance of provision made by virtue of subsection (4), the duty to permit them—
- (a) to enter premises on which the early years provision is provided,
 - (b) to observe implementation of the arrangements, and
 - (c) to inspect, and take copies of, documents and other articles.
- (6) A learning and development order specifying assessment arrangements may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (1)) as appear to the Secretary of State to be expedient; and any provisions made under such an order, on being published as specified in the order, are to have effect for the purposes of this Chapter as if made by the order.
- (7) In this section “a learning and development order” means an order under section 39(1)
- (a).

43 Welfare requirements

- (1) The matters that may be dealt with by welfare regulations include—
 - (a) the welfare of the children concerned;
 - (b) the arrangements for safeguarding the children concerned;
 - (c) suitability of persons to care for, or be in regular contact with, the children concerned;
 - (d) qualifications and training;
 - (e) the suitability of premises and equipment;
 - (f) the manner in which the early years provision is organised;
 - (g) procedures for dealing with complaints;
 - (h) the keeping of records;
 - (i) the provision of information.
- (2) Before making welfare regulations, the Secretary of State must consult the Chief Inspector and any other persons he considers appropriate.
- (3) Welfare regulations may provide—
 - (a) that a person who without reasonable excuse fails to comply with any requirement of the regulations is guilty of an offence, and
 - (b) that a person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In this section “welfare regulations” means regulations under section 39(1)(b).

44 Instruments specifying learning and development or welfare requirements

- (1) A relevant instrument may, instead of containing the provisions to be made, refer to provisions in a document published as specified in the instrument and direct that those provisions are to have effect or, as the case may be, are to have effect as specified in the instrument.
- (2) The power to make a relevant instrument may be exercised so as to confer powers or impose duties on the Chief Inspector in the exercise of his functions under this Part.
- (3) In particular, that power may be exercised so as to require or authorise the Chief Inspector, in exercising those functions, to have regard to factors, standards and other matters prescribed by or referred to in the instrument.
- (4) If a relevant instrument requires any person (other than the Chief Inspector) to have regard to or meet factors, standards and other matters prescribed by or referred to in the instrument, the instrument may also provide for any allegation that the person has failed to do so to be taken into account—
 - (a) by the Chief Inspector in the exercise of his functions under this Part, or
 - (b) in any proceedings under this Part.
- (5) In this section “a relevant instrument” means an order under subsection (1)(a) of section 39 or regulations under subsection (1)(b) of that section.

45 Procedure for making certain orders

- (1) This section applies where the Secretary of State proposes to make an order under section 39(1)(a) specifying early learning goals or educational programmes.

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- (2) The Secretary of State must give notice of the proposal—
- (a) to such bodies representing the interests of early years providers as the Secretary of State considers appropriate, and
 - (b) to any other persons with whom consultation appears to the Secretary of State to be desirable,
- and must give them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (3) When the Secretary of State has considered any evidence and representations submitted to him in pursuance of subsection (2), he must publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in early years provision—
- (a) a draft of the proposed order and any associated document, and
 - (b) a summary of the views expressed during the consultation.
- (4) The Secretary of State must allow a period of not less than one month beginning with the publication of the draft of the proposed order for the submission of any further evidence and representations as to the issues arising.
- (5) When the period so allowed has expired, the Secretary of State may make the order, with or without modifications.

46 Power to enable exemptions to be conferred

- (1) Regulations may enable the Secretary of State, in prescribed circumstances, to direct in respect of a particular early years provider or a particular description of early years providers, that to such extent as may be prescribed the learning and development requirements—
- (a) do not apply, or
 - (b) apply with such modifications as may be specified in the direction.
- (2) Regulations may enable an early years provider, in prescribed circumstances, to determine in respect of a particular young child that to such extent as may be prescribed the learning and development requirements—
- (a) do not apply, or
 - (b) apply with such modifications as may be specified in the determination.

47 Independent schools

- (1) In section 157 of the Education Act 2002 (c. 32) (independent school standards) after subsection (1) insert—
- “(1A) In relation to England, the standards do not apply to early years provision for pupils who have not attained the age of three (separate requirements as to such provision being imposed by or under Part 3 of the Childcare Act 2006).”
- (2) For subsection (2) of that section substitute—
- “(2) In this Chapter “independent school standards” means—
- (a) the standards for the time being prescribed under this section, and
 - (b) in relation to early years provision in England for pupils who have attained the age of three, the Early Years Foundation Stage.”

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- (3) In section 171 of that Act (interpretation of Chapter 1 of Part 10), after the definition of “Chief Inspector” insert—

““early years provision”, in relation to England, has the meaning given by section 96(2) of the Childcare Act 2006;”.

48 Amendments relating to curriculum

Schedule 1 (which contains amendments relating to the preceding provisions of this Chapter, including amendments excluding or modifying the application to early years provision of provisions of Part 6 of the Education Act 2002 (c. 32)) has effect.

Inspection

49 Inspections

- (1) This section applies to early years provision in respect of which the early years provider is registered under this Chapter.
- (2) The Chief Inspector—
- (a) must at such intervals as may be prescribed inspect early years provision to which this section applies,
 - (b) must inspect early years provision to which this section applies at any time when the Secretary of State requires the Chief Inspector to secure its inspection, and
 - (c) may inspect early years provision to which this section applies at any other time when the Chief Inspector considers that it would be appropriate for it to be inspected.
- (3) Regulations may provide that in prescribed circumstances the Chief Inspector is not required to inspect early years provision at an interval prescribed for the purposes of subsection (2)(a).
- (4) Regulations may provide that the Chief Inspector is not required by subsection (2)(a) to inspect early years provision at an independent school if the early years provision is inspected in prescribed circumstances by a body approved by the Secretary of State for the purposes of this subsection.
- (5) A requirement made by the Secretary of State as mentioned in subsection (2)(b) may be imposed in relation to early years provision at particular premises or a class of premises.
- (6) Regulations may make provision requiring the registered person to notify prescribed persons of the fact that early years provision is to be inspected under this section.
- (7) If the Chief Inspector so elects in the case of an inspection falling within paragraph (b) or (c) of subsection (2), that inspection is to be treated as if it were an inspection falling within paragraph (a) of that subsection.

50 Report of inspections

- (1) After conducting an inspection under section 49, the Chief Inspector must make a report in writing on—

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- (a) the contribution of the early years provision to the well-being of the children for whom it is provided,
 - (b) the quality and standards of the early years provision,
 - (c) how far the early years provision meets the needs of the range of children for whom it is provided, and
 - (d) the quality of leadership and management in connection with the early years provision.
- (2) The Chief Inspector—
- (a) may send a copy of the report to the Secretary of State and must do so without delay if the Secretary of State requests a copy,
 - (b) must ensure that a copy of the report is sent without delay to the registered person, ²³
 - (c) must ensure that copies of the report, or such parts of it as he considers appropriate, are sent to such other persons as may be prescribed, and
 - (d) may arrange for the report (or parts of it) to be further published in any manner he considers appropriate.
- (3) Regulations may make provision—
- (a) requiring the registered person to make a copy of any report sent to him under subsection (2)(b) available for inspection by prescribed persons;
 - (b) requiring the registered person, except in prescribed cases, to provide a copy of the report to prescribed persons;
 - (c) authorising the registered person in prescribed cases to charge a fee for providing a copy of the report.
- (4) Subsections (2) to (4) of section 11 of the Education Act 2005 (c. 18) (publication of inspection reports) apply in relation to the publication of a report under subsection (2) of this section as they apply in relation to the publication of a report under any of the provisions mentioned in subsection (2) of section 11.

Interpretation

51 Interpretation of Chapter 2

In this Chapter—

- “assessment arrangements” is to be read in accordance with section 41(2)(c);
- “early learning goals” is to be read in accordance with section 41(2)(a);
- “educational programmes” is to be read in accordance with section 41(2)(b);
- “learning and development requirements” means requirements specified by order under section 39(1)(a);
- “welfare requirements” means requirements specified by regulations under section 39(1)(b).