



Department
for Education

Consultation Response Form

Consultation closing date: 30 September 2013

Your comments must reach us by that date

The Regulation of Childcare

If you would prefer to respond online to this consultation please use the following link: <https://www.education.gov.uk/consultations>

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes, primarily the Freedom of Information Act 2000 and the Data Protection Act 1998.

If you want all, or any part, of your response to be treated as confidential, please explain why you consider it to be confidential.

If a request for disclosure of the information you have provided is received, your explanation about why you consider it to be confidential will be taken into account, but no assurance can be given that confidentiality can be maintained. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data (name and address and any other identifying material) in accordance with the Data Protection Act 1998, and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Please tick if you want us to keep your response confidential.	<input type="checkbox"/>
Reason for confidentiality:	

Name: Adam Butler	
Please tick if you are responding on behalf of your organisation.	<input checked="" type="checkbox"/>
Name of Organisation (if applicable): Family and Childcare Trust	
Address: The Bridge 81 Southwark Bridge Road London SE1 0NQ	

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

Please mark ONE category that best describes you as a respondent

<input type="checkbox"/> Nursery	<input type="checkbox"/> Childminder	<input type="checkbox"/> Playgroup
<input type="checkbox"/> Breakfast/After-school club	<input type="checkbox"/> Holiday activity provider	<input type="checkbox"/> Local authority
<input type="checkbox"/> Parent/Carer	<input checked="" type="checkbox"/> Childcare or early years organisation	<input type="checkbox"/> Maintained school
<input type="checkbox"/> Independent school	<input type="checkbox"/> Other	

Please Specify: National charity.

1 Do you agree that the childcare registration system should be simplified, while strengthening the requirements to protect children from harm?

<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments: n/a Addressed in comments on consultation.

2 Do you agree that, for children attending school reception classes, providers of wraparound and holiday care should not have to meet the learning and development requirements?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

There is already discretion in the EYFS for providers not to deliver the learning and development requirements for children who are attending as a secondary setting such as wraparound care.

We do not agree that providers of holiday care should be exempted from the EYFS learning and development requirements unless children are attending for short periods as a secondary setting. The requirements are an important part of high quality care .

The best available evidence suggests that government should avoid promoting a split between early education and care (see, for example, the OECD's 2006 and 2012 *Starting Strong* reports). This approach leads to confused objectives and standards, and lowers quality by promoting a view of childcare as little more than safe care, in turn sending the wrong message to childcarers and undermining the quality of staff engagement with children.

We also believe this is the wrong direction for policy on wraparound and holiday childcare. There are already some variations in the quality of this sector. Reducing quality in out of school care risks undermining attempts to reduce educational inequalities. Children with access to learning opportunities out of school tend to make greater progress than their peers. Out of school childcare is an opportunity to provide meaningful social and cultural learning and development opportunities for all children and can help to offset that disadvantage.

We would also question the practical usefulness of removing EYFS learning and development requirements for reception class children. Out of school childcare providers rarely provide care only for reception class children and, due to the discretion noted above, there is little evidence that the EYFS learning and development requirements are a significant obstacle to the provision of out of school care. This step is likely to send a negative signal about quality without significantly affecting the extent of out of school provision.

3 Do you agree that we should support parents by increasing the amount of time that a child can be looked after informally from two to three hours?

Yes

No

Not Sure

Comments:

We would like the Department to clarify the intent of this proposal and intended meaning of 'informal care'.

Public bill committee evidence from the Care Standards Act 2000 shows that the two hour rule was designed to establish a threshold to guide when providers need to register with Ofsted rather than influence parental behaviour. We are not aware of an example in which the threshold has been used to sanction a parent for their childcare arrangements. Nor does it appear that there is any significant public awareness of the threshold. We are therefore surprised that the Department for Education has presented extending the threshold as a step designed to provide parents with more flexibility in their childcare arrangements.

The proposal as written could be interpreted as an attempt to reduce the number of out of school (and potentially other) care providers that are required to register with Ofsted. We do not agree that this is a desirable outcome as it would create an aberration in the registration system. We expect that most school providers will register with Ofsted through their school's registration under new arrangements, but for childminders this step could lead to the development of a larger unregulated childcare market. (Research on informal childcare undertaken by Daycare Trust already shows that unregistered childminding is a problem in some parts of the UK. While we recognise that this relaxation may be aimed at parents, we would recommend that the Department clarify that only parents should benefit from this extra flexibility.

The Family and Childcare Trust (Daycare Trust) has long advocated for registration of nannies (which would both assure basic checks and bring a larger number of these childcare workers within financial support arrangements) but recognises the rationale supporting the separation of nannies and formal care through the current registration arrangements: that parents must be trusted to arrange suitable private domestic care arrangements. That rationale does not hold for group care outside the home, where parents do not have control and oversight of the specifics of care arrangements.

We strongly oppose any step to create an unregulated formal childcare market and place children under eight in an environment with limited guarantees of staff competence and the suitability and safety of activities and facilities.

Do you agree with the proposal:

4 a) to simplify the system by allowing providers to register multiple premises in a single registration process?

Yes

No

Not Sure

Comments:

The consultation provided little information on how these arrangements would work in practice and we would welcome more detail on this from the Department and Ofsted.

We support simplification of the registration process for providers with multiple premises but would disagree with any reduction in inspection activity as a result. The environment and facilities of a registered premises are an integral part of registration and EYFS quality requirements. Under a system in which providers have multiple registered premises it is important that inspection and risk management remain focused on each premises rather than a provider overall.

Given the potential for consolidation in childcare, it is important that registration and inspection continues to be guided by consistent principles. It must not be the case that chain providers with multiple premises receive less scrutiny than multiple small providers. This would have the potential to encourage lax attitudes to standards over multiple premises and mask quality problems.

4 b) for childminders to operate on suitable non-domestic premises for part of the working week?

Yes

No

Not Sure

Comments:

As above, the appropriateness of this step depends on inspection arrangements. Childminders receive the least quality support and face the greatest risk of professional isolation. The use of Ofsted's resources to prioritise inspections must remain risk-based in line with the risks associated with different premises.

5 Safeguarding and welfare requirements

Currently, there are two sets of requirements which providers must meet to promote children's welfare and to protect them from harm: for children under five, the Early Years Foundation Stage safeguarding and welfare requirements, and for older children, the requirements of the General Childcare Register.

Do you agree that there should instead be a single set of essential safeguarding and welfare requirements for all registered providers, covering children from birth to age seven, with some specific additional duties for the care of under- fives?

Yes

No

Not Sure

Comments:

We agree that there is room to simplify the registration system, but are concerned the change the government is proposing is cosmetic and could lull providers into having less regard for regulatory requirements that remain in place for the youngest children. In the absence of the opportunity to revisit the Childcare Act, which would afford the opportunity to learn from experience since 2006, there is limited scope for genuine simplification.

Ofsted has a good track record of communicating effectively and in plain English with providers and parents and it is not clear how extensive the benefits of the proposed change could be. We must also note that the government's recent policy of reducing burdens on local authorities works against ensuring support for prospective and current providers in navigating the registration system, which would remain seemingly complex to the uninitiated after the proposed changes.

6 The government remains committed to maintaining and improving the quality of childminding. When applying for registration, childminders need to demonstrate their suitability, and to meet the specific requirements of registration. As part of the registration process, currently, childminders are required to complete a local authority-approved training course before they register. The government proposes to remove the requirement for this training to be approved by a local authority.

Do you agree with this proposal?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

We agree that local authority scrutiny of childminder training courses can cause unnecessary waits and delays for childminders, but do not agree that the proportionate response to this is to remove any approval of training courses. It is important that there is scrutiny and oversight by a competent body of the content of childminder training courses to ensure standards that protect the safety and wellbeing and children, provide confidence to parents and support professional recognition in the early years workforce.

Ofsted registration itself is not a sufficient safeguard against low quality training, since Ofsted is unable to take an enforcement role. This approach would also mean that childminders risk taking a course that does not meet registration requirements, but will not discover this problem until they begin the process of registration.

A solution to these problems would be to have childminder training courses approved by the National College for Teaching and Leadership. This would provide certainty for course providers, confidence for parents and ensure prospective childminders are confident a course they pay for will meet registration requirements and not lead to registration delays.

7 The government intends to retain the requirement that childminders and any assistants who might be left in sole charge of children (and at least one person in every group setting) must hold a current paediatric first aid certificate. However, the government considers it unnecessary to require that first aid training is approved by local authorities, and instead proposes to specify the key details which the training must cover based on existing good practice guidance.

Do you agree with the proposal?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

As above, we do not agree that it is appropriate to remove scrutiny of paediatric first aid training certificate courses. Whilst there is an established first aid training sector, the range and quality of training varies widely. Paediatric first aid requires specialist training. Moreover, childminders and nursery staff often care for children alone. The very small but tragic number of incidents of serious injury and death in nurseries each year, and the likely far larger number of minor injuries, highlight that it is crucial carers are competent and confident first aiders. We strongly disagree that setting out requirements and having only second hand through Ofsted inspection is an adequate replacement for the stronger local authority role.

If these two proposals are implemented, we would welcome a commitment for Ofsted to report on training courses as part of section 81 of the Childcare Act 2006 and its annual early years report.

8 The government is clear that childcare providers are responsible for taking all reasonable steps to manage and control risks. To clarify this responsibility, the government proposes to simplify the requirement and focus on practicalities rather than bureaucratic process. The proposed requirement will also achieve greater consistency with the equivalent requirements for schools.

Do you agree with the proposal to simplify the requirement on risk assessments?

<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

We do not agree that consistency with regulation of schools is of itself a desirable pursuit. Children 0 to 5 are amongst the most vulnerable in society and have specific safety and welfare requirements. The current regulatory structure is designed and built around the reasonable premise that the early years requires a specific approach. The inconvenience caused for schools that provide wraparound and holiday care should not unbalance regulation of the early years sector.

We consider the key challenge and priority for parents in risk management by early years providers to be effective practice rather than the fact of a written policy. However, whilst the consultation demonstrates evidence of the steps the government would take to simplify the reporting process, it does not provide evidence of steps to support a 'focus on practicalities'. A risk assessment policy is easy to characterise as bureaucratic but actually often simplifies and supports providers in meeting regulatory standards. For example, staff arranging trips go through simple checks about potential problems that ensure the trip is successful and well organised. The absence of a policy may introduce uncertainty and confusion that hampers rather than supports staff.

Ofsted routinely makes safeguarding and welfare actions and recommendations during inspections (in 2011-12, 11% of inspections led to actions and 13% to recommendations in this category), which are separate to documentation problems and suggest there is little room for complacency about risk management. We are particularly concerned that it is good practice to involve parents in risk management but this rarely happens in practice.

9 Providers on the General Childcare Register (GCR) must meet minimum staff qualification requirements. For providers other than childminders, in particular out-of-hours providers, the government considers it is unnecessary to prescribe staff qualifications in relation to children aged five to seven which do not exist in schools, and proposes to remove these requirements. Most providers on the GCR are also on the Early Years Register (EYR), and will continue to be expected to meet the relevant qualifications requirements set out in the Early Years Foundation Stage.

What are your views on this proposal?

Comments:

We are opposed on the basis that the change would have a negative effect on quality and because we believe the government should encourage a better qualified youth/play workforce. It is unhelpful for the government to send a positive message about qualifications and the early years workforce in one context (for example, the *More great childcare* paper) but undermine that position elsewhere. The importance of high quality staff does not simply end when children reach age five or after the school day.

The comparison with schools is of limited value because a school able to meet Ofsted standards could not realistically employ inexperienced or untrained staff in teaching roles. The early years workforce is in large part lower qualified and lower paid than teachers and teaching assistants. The consequence of removing minimum qualification requirements therefore has greater significance for the quality of care delivered.

10 Questions 5-9 above were included in the list of proposed changes to requirements at Annex 1. Do you have any further comments on the proposals listed at Annex 1?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Sure
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Comments:

Subject: Providers must ensure people looking after children are suitable...

Comments: This change is likely to be cosmetic and lead to providers seeking advice on the meaning of 'suitability'. We strongly disagree with the removal of the requirement that staff have 'skills and experience suitable for the work', which is regressive and at odds with the goal of a high quality, valued and professional early years workforce.

Subject: Providers of care for children aged five to seven are currently required to have a minimum of two staff in settings at all times when children are present.

Comments: We would advocate introducing the minimum requirement for early years providers except childminders. It is hard to envisage the circumstance where it would be appropriate to have fewer than two members of staff present in a sustainable formal setting.

Subject: Providers should ensure that regular staff appraisals are carried out... / In childcare up to age five, managers in group settings must hold ... / Must meet specified staff:child ratio and staff qualifications requirements...

Comments: We disagree with these changes, which run counter to the goal of supporting a high quality early years and youth workforce. It is very difficult to understand how these changes could be justified. If a wraparound care provider meets the registration threshold, they are caring for children for long periods and the quality of staff and staff management is important to keep children safe, well and to support good educational outcomes. Appraisals need not be burdensome but are an important prompt to discussions between staff and managers about development requirements.

Higher ratios in schools can be justified by a structured learning environment and highly qualified workforce. In wraparound care, different groups of children are typically undertaking a variety of different activities, supervised by non-teaching staff. Lower ratios are an appropriate and proportionate safeguard. Children may spend up to two and half hours or more on schooldays and a full day during holidays in this type of childcare. If this time is spent with low numbers of unqualified staff, safety will be compromised and the quality of care is likely to be low.

Subject: For children up to five, providers must have a behaviour management policy...

Comments: We disagree with this change: the policy is a straightforward requirement for competent early years providers and in most cases having a policy is likely to be less burdensome than not having a policy, since it is widely understood that behaviour management is a potentially fraught issue. If the government proceeds with this change,

we would advocate for a specific reference to behaviour management in the general welfare and safety provisions.

Subject: Providers must have a policy and procedures for assessing any risks...

Comment: We disagree with the removal of the reference to obtaining parents' consent for outings. Providers usually obtain parents' consent for routine trips when they sign or make an agreement with a nursery or childminder, and activities such as coach trips are agreed on an individual basis (and providers usually charge a fee to parents for such trips). It is clearly important that parents are aware of the activities their children are undertaking, both for peace of mind and to identify any problems such as activities their child dislikes or whose participation in which may pose a safety risk. This is a routine step that if not undertaken may damage relationships between staff and parents, and in a small number of cases compromise safeguarding. The most helpful position for the government is to provide clarity and consistency for parents and providers.

Subject: Must have and implement a policy and procedures to promote equality of opportunity...

We disagree with this change which appears cosmetic: providers will still need to identify how they must meet equal opportunities law. It is counter-productive and sends a negative signal to increase ambiguity about what this means in practice. Moreover, equal opportunities policy is about more than obeying the law and not acting in a discriminatory way. From admissions policies to inclusion of children whose first language is not English, childcare has a vital role in reducing inequalities. Modern early years policy is predicated on the evidence that early education is a powerful lever in reducing inequalities and promoting equality of outcomes. These goals are not served by relegating the importance of awareness and good practice in equal opportunities to basic legal duties.

11 Please use this space for any other comments you wish to make.

Comments:

We support simplification within the regulatory framework but oppose deregulation that undermines quality. We are disappointed that a number of the changes proposed in the *More affordable childcare* paper are designed to create a trade-off between price and quality. Few schools could, or would desire to, make this trade-off without sacrificing trust and credibility with parents. Cheap, low quality care is not an answer to the challenges in childcare.

There are many examples, including those cited by the *More affordable childcare* paper, of successful and innovative work in schools and academies to provide wraparound childcare. The greatest barrier to extending this provision is the cost to schools of childcare rather than regulation. The factors that allow some schools to excel, such as the fewer barriers academies face to innovation or close links to particular communities that support high occupancy levels, cannot be easily replicated across all schools. Increasing access to wraparound childcare requires a co-ordinated programme that establishes clear expectations of local authorities and schools and that is properly funded.

12 Please let us have your views on responding to this consultation (e.g. the number and type of questions, whether it was easy to find, understand, complete etc.).

Comments:

We doubt that the first question of the consultation could yield useful findings. Few respondents are likely to choose 'no' to the self-evidently desirable aim of simplifying the registration system whilst strengthening the requirements to protect children from harm.

A number for each subject of annex A would have assisted respondents in linking comments to each of the proposed changes.

Thank you for taking the time to let us have your views. We do not intend to acknowledge individual responses unless you place an 'X' in the box below.

Please acknowledge this reply.	X
E-mail address for acknowledgement: adam@familyandchildcaretrust.org	

Here at the Department for Education we carry out our research on many different topics and consultations. As your views are valuable to us, please confirm below if you would be willing to be contacted again from time to time either for research or to send through consultation documents?

<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
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All DfE public consultations are required to meet the Cabinet Office [Principles on Consultation](#)

The key consultation principles are:

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before
- departments will need to give more thought to how they engage with and consult with those who are affected
- consultation should be 'digital by default', but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the compact between government and the voluntary and community sector will continue to be respected.

Responses should be completed on-line or emailed to the relevant consultation email box. However, if you have any comments on how DfE consultations are conducted, please contact Carole Edge, DfE Consultation Coordinator, tel: 0370 000 2288 / email: carole.edge@education.gsi.gov.uk

Thank you for taking time to respond to this consultation.

Completed responses should be sent to the address shown below by 30 September 2013.

Send by post to: Early Years Curriculum and Teaching Portfolio, Department for Education, First Floor, Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

Send by e-mail to: childcarerequirements.consultation@education.gsi.gov.uk