

Regulating play-based provision

A childcare factsheet

The Childcare Act 2006 says childcare is 'any form of care for a child including education or any other supervised activity'.

Most childcare providers caring for children under eight years old must register with Ofsted unless the law says they do not need to.

We register childcare providers on the following two registers:

- The Early Years Register
- The Childcare Register.

Introductory reading is in *Registering childcare providers from September 2008*, which is on our website (www.ofsted.gov.uk/publications/080043).

Introduction

This factsheet explains our role in regulating play-based provision. Regulation means that we:

- register childcare providers on one or both of our registers if they meet the requirements for registration
- inspect childcare providers
- investigate any information that suggests registered people do not meet the requirements for registration, and
- take enforcement action where registered people do not or cannot meet requirements for registration.

Registration

If you provide play where children have a free choice of what they do for those aged from birth to the 31 August following their fifth birthday, it is likely that you will have to register with us on the Early Years Register. We call children of this age the early years age group. Everyone on the Early Years Register must deliver the Early Years

Foundation Stage (EYFS) and meet the legal requirements set out in the *Statutory Framework for the Early Years Foundation Stage*.¹

If you provide play for children from 1 September following their fifth birthday to their eighth birthday, it is likely you will have to register with us on the compulsory part of the Childcare Register. You will also have to meet our requirements for registration. These are set out in the *Guide to Registration on the Childcare Register*.²

Some providers do not have to register with us. This is usually because they:

- are a school providing play for children in the early years age group before or after school, or in the school holidays, or
- do not care for individual children for more than two hours in each day. (The two hours do not have to be consecutive.)

Unless you are a school, if you do not have to register with us, you may choose to join the voluntary part of the Childcare Register if you meet the requirements for registration, set out in the guide mentioned above. This includes play-based provision for children aged eight and over and open-access provision.

Open-access provision is where children can leave on their own without an adult. You can only offer open-access provision if you provide play for children older than the early years age group. If children in the early years age group also use your facilities, you must register on the Early Years Register for those children and deliver the Early Years Foundation Stage.

You can find out more about whether you need to register in the information at the end of this factsheet.

The requirements of the Early Years Foundation Stage

If you are a school offering play for children in the early years age group, or are registered with us on the Early Years Register, you must deliver the Early Years Foundation Stage. This applies even if you only care for children at the beginning or end of the school day or in the school holidays. This includes meeting legal requirements relating to young children's welfare and learning and development, and taking account of the statutory guidance within it. There is also good-practice guidance that helps you understand how best to deliver the Early Years Foundation Stage. The Government set out our responsibilities for registering and inspecting childcare provision and we have no scope for changing what they want us to do.

The Early Years Foundation Stage is not a school curriculum. It is a framework for delivering high-quality care and education for children in the early years age group. The Government's view is that the Early Years Foundation Stage is flexible enough

¹ www.nationalstrategies.standards.dcsf.gov.uk/node/151379.

² www.ofsted.gov.uk/publications/080032.

for providers to deliver different types of service. Its focus is not on formal learning, but on learning through play. There is no reason why play-based provision cannot deliver the Early Years Foundation Stage successfully. The Playwork Principles (see the reference at the end of this document) is a framework for play and can work alongside the requirements of the Early Years Foundation Stage.

The welfare requirements in the Early Years Foundation Stage relate to children's safety and well-being. You cannot claim any exemption from delivering the welfare requirements. There are three legal requirements relating to children's learning and development in the Early Years Foundation Stage. These are:

- the early learning goals
- the educational programme
- the assessment arrangements.

There is more information on each of these in the Statutory Framework. In some circumstances, you can apply for an exemption from delivering some or all of the learning and development requirements. There is more information on how to do this at the end of this leaflet.

The requirements of the Childcare Register

The requirements of the Childcare Register are not contained in any framework. They are set out in regulations and we have included these in an easier to read format in our guide to registration.³ There is also a separate factsheet for childcare providers on non-domestic premises.⁴ All providers on the compulsory and voluntary parts of the Childcare Register must meet these requirements at all times. They relate to people, premises and the childcare provided and are designed to safeguard children.

Inspection

We inspect all childcare provided on the Early Years Register within seven months of registration and then at least once every three to four years. We will inspect you, without giving you notice, if you operate regularly throughout the year. However, we will normally check that temporary play provision, such as holiday playschemes, are actually running before we go to inspect them. We do not fix a date or time for the inspection even if we check when you are operating.

We inspect how well the childcare you provide meets the needs of the children in the Early Years Foundation Stage and grade you on a four-point scale:

- outstanding

³ www.ofsted.gov.uk/publications/080032.

⁴ *Requirements for the Childcare Register: childcare providers on non-domestic premises*, Ofsted, 2009; www.ofsted.gov.uk/publications/080143.

- good
- satisfactory, or
- inadequate in a number of areas.

We then write a report which we publish on our website.

We check some, but not all, of the legal requirements set out in the statutory framework. We will always check how well you keep children safe and this includes checking staff records to make sure that all staff have an enhanced check from the Criminal Records Bureau. To allow you to operate with enough staff, if you provide short-term care, in rare circumstances we allow staff to work with children under supervision without a Criminal Records Bureau check being in place. However, in all cases, you must have applied for a check.

If you are also on the Childcare Register, we check that you meet the requirements for registration during the inspection of the Early Years Foundation Stage. We then report on this in the EYFS inspection report. We do not give inspection grades for those on the Childcare Register.

If you are **only** on the Childcare Register, we do not carry out routine inspections. We inspect a 10% sample each year of those who are only on the Childcare Register, including when we receive a complaint about whether you are keeping to your requirements for registration. We do not give a grade or write a report. However, we do write a letter stating whether or not you meet the requirements for registration which we then publish on our website.

There is more information on inspection in our booklet for providers *Are you ready for your inspection?* and in our documents for inspectors which are all available on our website.⁵ You may want to read our guidance for inspectors on *Evaluating early years provision in settings providing for children in the Early Years Foundation Stage before or after school or during school holidays*.⁶

Interpreting some of the requirements for play-based provision

Most play-based provision is registered on both registers and both parts of the Childcare Register. This is because you will offer play opportunities to children who are of school age. This means that what you provide must always meet the requirements of both registers. The welfare requirements for both are largely the

⁵ *Are you ready for your inspection? A guide to inspections of provision on Ofsted's Childcare and Early Years Registers*, Ofsted, 2009; www.ofsted.gov.uk/publications/090130.

⁶ *Evaluating early years provision in settings providing for children in the Early Years Foundation Stage before or after school or during school holidays*, Ofsted, 2008, [www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Evaluating-early-years-provision-in-settings-providing-for-children-in-the-Early-Years-Foundation-Stage-before-or-after-school-or-during-school-holidays/\(language\)/eng-GB](http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Evaluating-early-years-provision-in-settings-providing-for-children-in-the-Early-Years-Foundation-Stage-before-or-after-school-or-during-school-holidays/(language)/eng-GB).

same, so if you meet the requirements of the Early Years Foundation Stage, you will normally meet the requirements of the Childcare Register.

There are two main areas where the requirements are difficult for play-based provision. The following paragraphs set out our approach to these issues.

Qualifications and ratios

The qualifications for your playworkers and managers depend on the ages of children who use the facilities and the activities on offer. Unlike the previous national standards (where we had an agreement with the Department for Children, Schools and Families to accept the playwork induction standard to meet the requirements for temporary staff who worked for childcare providers who provide play), we have no similar scope with the requirements for the Childcare Register or the Early Years Foundation Stage. This is because the qualifications are set out in legal requirements rather than in criteria which we could be more flexible with when interpreting them.

If you are on the Early Years Register, you must have:

- a manager with a full and relevant level 3 qualification
- someone with a full and relevant level 3 qualification to work directly with the children (this may be the same person as the manager), and
- at least half your other staff with relevant level 2 qualifications.

All children in the early years age group must also have a key worker assigned to them. These requirements are set out on page 31 and Appendix 2 of the statutory framework.

A full and relevant qualification means it is agreed by the Children's Workforce Development Council as meeting requirements for the early years age group. The Children's Workforce Development Council website has a list of qualifications for those delivering the Early Years Foundation Stage. You should read this to identify if the qualifications held by your staff are full and relevant, or if you need them to carry out extra training to upgrade qualifications that are not full and relevant. This includes some playwork qualifications. You have until 2012 for your staff to upgrade qualifications that were previously on the qualifications list, but are not full and relevant.

You may want to use the Children's Workforce Development Council's audit tool to help you assess the qualification of your staff. You can access the audit tool at, www.cwdcouncil.org.uk/early-years/audit-tool.

For the compulsory part of the Childcare Register, you must make sure that staff qualifications are relevant to the activities on offer. Your manager must hold a level 3 qualification but there does not need to be another person with a level 3 qualification who works directly with the children. At least half your staff working directly with the children must hold a relevant level 2 qualification.

For the voluntary part of the Childcare Register, you must make sure at least one person working with the children has training in the common core skills or holds at least a level 2 qualification in an area of work relevant to childcare. There is no specific course on the common core but most qualifications including playwork qualifications will cover these skills.

If you provide play which is covered by both registers, and both parts of the Childcare Register, you must make sure you meet the staffing and qualification ratios for the children who use your facilities. This will depend on the requirements for the registers. This does not mean that you need to have different playworkers for each part or that each part has to register separately. However, you must be able to explain how you meet the staffing and qualification requirements in relation to the different ages of children and their needs. It is also important that you can show how the way you use staff supports the needs of all the children who use your facilities.

It is possible for individual qualifications to meet the requirements for both registers, and a number of playwork qualifications are suitable for both. You may decide that because the requirements for early years qualifications are more specific, you will recruit staff with these qualifications rather than those in playwork. If this is the case, you must consider whether these qualifications are relevant for supporting all children who use your facilities.

Inspecting qualifications

If you are on the Early Years Register and do not have enough qualified staff for that register, you will be failing to meet a legal requirement and we cannot ignore this. We will always refer to your failure to meet the legal requirements in your inspection report and set action for you to take to get enough qualified staff by a particular date.

When deciding on your inspection judgement, we consider the effect of the lack of qualifications on the quality of the childcare you provide and your leadership and management. If we feel the effect is not significant, although we will always report on your failure to meet the qualifications requirement, we may judge that the quality of what you provide or your leadership and management (or both) are satisfactory or even good. In cases where the lack of qualifications means that there is a significant effect on quality, we will judge that the childcare you provide or leadership and management (or both) are inadequate. We may also consider taking enforcement action, especially where the lack of qualified staff meant you failed to meet other requirements relating to children's safety and well-being.

If you are on the Childcare Register and do not have enough qualified staff, we do not make inspection judgements. However, we would report on your failure to meet the legal requirement and again set action you need to take, or take other enforcement measures if you failed to meet other requirements, or if the effect of not having enough qualified staff placed children at risk.

Planning and observation for children in the early years age group

If you are on the Early Years Register, you cannot refuse to deliver the Early Years Foundation Stage to children in the early years age group even if you only have a few children in this age group or they receive the Early Years Foundation Stage elsewhere, such as in school.

This does not mean you must teach children formally, plan for all six areas of learning or complete lengthy observations and assessments. The Early Years Foundation Stage works alongside play which the child has chosen for themselves and where an adult has not told them what to do (freely chosen self-directed play). So, this should not take playworkers away from older children, other than when supporting younger children's care needs. And, if you provide opportunities for freely chosen self-directed play, it is acceptable for most activities to be initiated by the child rather than led by an adult.

Unless the play opportunities you provide are the only place where children receive the Early Years Foundation Stage, we expect playworkers to arrange the type of play and experience for children that they always have. We look at the length of time children spend in the area you set aside for play when making judgements about children's achievements and whether they enjoy what they do. We also consider how you work with other providers of the Early Years Foundation Stage, or parents, as much as possible to make sure that the children's needs are met.

There is no legal requirement for playworkers to plan and assess children's progress across all six areas of learning. All providers must meet the welfare requirement to plan and assess, to meet children's needs, but we do not expect this to be a heavy task. Planning and observation should match the length of time children are using your facilities, and should work with what the children receive elsewhere rather than cover the full Early Years Foundation Stage.

Playworkers do not necessarily need to write down their observations. However, this can be helpful if there are a number of adults arranging play across a day or a week, or so you can share the information with parents and other providers delivering the Early Years Foundation Stage. Unless children go to wrap-around care⁷ at a particular school each day, we expect most of the partnership work to be with the children's parents rather than with other organisations which provide the Early Years Foundation Stage.

In a play setting, playworkers should be planning for play by providing the best environment possible – they should not be planning the play itself. For most play-based provision the focus of planning and assessment is likely to be on the following.

⁷ Wrap-around care is care offered before and after a school day.

- Children's personal, social and emotional development including how children learn to get along with each other, behave appropriately and are independent (this meets play objectives 2, 3, 5, 6)⁸
- Improving children's skills in talking and listening (this meets play objective 6).
- Aspects of knowledge and understanding of the world, physical and creative development, depending on what you provide and the activities offered (this meets play objective 7).

We do not believe the planning and observation requirements for children in the early years age group should take staff away from older children. Planning and observation are things that all good playworkers should do with all children, to identify and build on their interests and skills and to encourage children's independence and social interactions. Observing and recording makes a valuable contribution to reflective practice.⁹ For example if a child or children show an interest in building a den out of cardboard boxes, on the next day, playworkers may provide a range of different materials such as fabric and sticks and talk to children about what other materials might make a good den. This contribution is about adults leading an activity. However, it would be up to the children whether they built a den, did something else with the materials, or ignored them completely.

Inspecting planning and assessment

The quality of planning and assessment contributes to our inspection judgements on the quality of what is provided, outcomes for children and how well the early years provision meets the needs of children. We take into account the nature and spirit of what you provide when making judgements, rather than expecting all settings to deliver the whole of the learning and development requirements. Our inspectors consider how well planning and assessment help playworkers:

- meet each child's needs – this applies particularly to children's social and emotional needs where they may be with you for a temporary period
- balance children's experiences with those they receive in other settings, especially where children regularly use the same play activities
- work with parents and other providers if appropriate to make sure children are happy, settled and take part in the activities on offer, and
- achieve well and make progress in their chosen play.

We may judge what you provide as inadequate if playworkers cannot show, through planning and assessment, that they:

- know what children like and do not like

⁸ As set out in The Seven Play Objectives, NPFA and others (2000) Best Play: What play provision should do for children. London: National Playing Fields Association; www.playenglang.org.uk.

⁹ Reflective practice is where playworkers think about what they are providing, whether it has the desired effect and whether they need to make any changes to what they do to make it better.

- are aware of what they can and can't do, and
- plan for children's progress in the areas set out above.

We will then set out action to make sure what you provide meets children's needs. This would be the case even if you have applied for exemption from some or all of the learning and development requirements, as this particular legal requirement relates to children's welfare. It is set out on page 37 of the statutory framework.

Good providers will find that the type of play they have always provided is how children learn best, and this is the 'educational programme'. This should help children make progress towards the early learning goals in the Early Years Foundation Stage, but also help all children, no matter what their age, improve their abilities. We do not expect wide-ranging plans, but we do expect you to know each child's abilities, where they need help and how you can help them through providing a supportive physical and emotional environment. We expect you to use this information when planning activities and experiences so that every child has an enjoyable and challenging play experience.

Where to get more information

There is more information about registration on our website (www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Care-and-local-services/Childcare). If you are not sure whether you have to register, please contact us on 08456 404040.

There is more information on the requirements for registration on the Early Years Register in the *Guide to registration on the Early Years Register: childcare providers on non-domestic or domestic premises* (www.ofsted.gov.uk/publications/080017) and on the Childcare Register in the *Guide to registration on the Childcare Register* (www.ofsted.gov.uk/publications/080032).

Some childcare providers do not need to register their services and you can find out about the circumstances where providers do not have to register in our childcare factsheet: *Registration not required* (www.ofsted.gov.uk/publications/080134). This is also part of the *Guide to registration on the Childcare Register* (www.ofsted.gov.uk/publications/080032).

The law that sets out our responsibilities is the Childcare Act 2006 and linked regulations. The specific order setting out exemptions from compulsory registration is the Childcare (Exemptions from Registration) Order 2008 (2008 No. 979) (www.opsi.gov.uk/si/si2008/uksi_20080979_en_1).

The references to regulations and our policy on registration and inspection are included in our *Framework for the regulation of those on the Early Years and Childcare Registers* (www.ofsted.gov.uk/publications/080024).

You can find the factsheet on learning and development exemptions at www.ofsted.gov.uk/publication/080144.

We publish our guidance for inspectors on inspecting play provision on our website at [www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Evaluating-early-years-provision-in-settings-providing-for-children-in-the-Early-Years-Foundation-Stage-before-or-after-school-or-during-school-holidays/\(language\)/eng-GB](http://www.ofsted.gov.uk/Ofsted-home/Forms-and-guidance/Browse-all-by/Other/General/Evaluating-early-years-provision-in-settings-providing-for-children-in-the-Early-Years-Foundation-Stage-before-or-after-school-or-during-school-holidays/(language)/eng-GB).

You can get the Early Years Foundation Stage and its documents (the EYFS pack) from its website (www.standards.dfes.gov.uk/eyfs/site/resource/pdfs.htm) or by calling 0845 60 222 60.

You can find the Playwork Principles, a professional and ethical framework for play at www.skillsactive.com/playwork/principles.

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