

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 fact sheet explains our role in regulating play-based provision. Regulation means that we:

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

Registration

If you provide freely chosen, self-directed play for children 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 aged from 1 September following their fifth birthday to eight years of age, it is likely you will have to register with us on the compulsory part of the Childcare Register and meet its 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 you are a school providing play for children in the early years age group before or after school, or in the school holidays; or you do not care for individual children for more than two hours in each day (this does not have to be at one time).

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 its requirements for registration, set out in the guide above. This includes play-based provision for children aged eight and over and open access provision.

Open access provision is where children can leave unattended. Only providers of play for children older than the early years age group can offer open access provision. If children in the early years age group attend, providers 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, 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; learning and development; and having regard to 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 sets out our responsibilities for registering and inspecting childcare provision and we have no leeway to change its requirements.

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 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

¹ <http://nationalstrategies.standards.dcsf.gov.uk/node/151379>

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

deliver the Early Years Foundation Stage successfully. The Playwork Principles (see 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, which are the early learning goals, the educational programme, and the assessment arrangements. There is more information on each of these in the Statutory Framework. You can, in some circumstances, 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 registration³ and in 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 three areas: people, premises and provision and are designed to safeguard children.

Inspection

We inspect all provision on the Early Years Register within seven months of registration and then at least once every three to four years. We will inspect provision that operates regularly throughout the year with no notice, but we normally check that temporary play provision, such as holiday playschemes, are running before we inspect. We do not fix a date or time for the inspection even where we check when it is operating.

We inspect how well the provision meets the needs of the children in the Early Years Foundation Stage and grade all provision on a four-point scale: outstanding; good; satisfactory and inadequate in a number of areas. We 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 children are kept safe and this includes a check of staff records to make sure that all staff have an enhanced check from the Criminal Records Bureau. To allow short-term provision to run with sufficient staff, in

³ See ref 2.

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

rare circumstances staff may work with children under supervision without such a check being in place, but in all cases a check must have been applied for.

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

For providers who are **only** on the Childcare Register we do not carry out routine inspections. We inspect a 10% sample each year of those that are only on the Childcare Register, including when we receive a complaint about a provider's compliance with their requirements for registration. We do not give a grade or write a report, but we do write a letter stating whether or not they meet the requirements for registration which we 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 because they offer play opportunities to children who are of school-age. This means that the provision must meet the requirements of both registers continually. The welfare requirements for both are largely the same and those that meet the Early Years Foundation Stage requirements 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 sets out our approach to these issues.

Qualifications and ratios

The qualifications for playworkers and managers of play provision depend on the ages of children attending and the activities on offer. Unlike the previous national standards, where we had an agreement with the Department for Children, Schools

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).

and Families to accept the playwork induction standard as meeting requirements for temporary staff in play provision, we have no such leeway 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 that allowed some flexibility in interpretation.

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 remaining staff must have a relevant level 2 qualification. 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 which you should read to identify if the qualifications held by your staff are full and relevant, or if you need them to complete additional 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 wish 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 a person with a level 3 qualification working directly with the children. At least half the staff 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 a qualification at a minimum of level 2 in an area of work relevant to the childcare. There is no specific course on the common core but most qualifications including playwork qualifications will cover these skills.

If you have play provision on both registers, and both parts of the Childcare Register, you must make sure you meet the staffing and qualification ratios for the children attending, according to the requirements for the registers. This does not mean that you need to have different playworkers for each bit of the provision or that each part of the provision 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 deployment of staff supports the needs of all the children who attend.

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 that you will recruit staff with these qualifications rather than those in play work. If this is the case, you must consider whether these qualifications are relevant for supporting all children attending the provision appropriately.

Inspecting qualifications

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

When deciding on your inspection judgement, we consider the impact of the lack of qualifications on the quality of your provision and its leadership and management. Where the impact is not significant, although we will always report on failure to meet the qualifications requirement, we may judge that the quality of provision and/or leadership and management is satisfactory or even good. In cases where the lack of qualifications means that there is a significant impact on quality we will judge provision and/or leadership and management as inadequate. We may also consider taking enforcement action to bring about compliance with the requirement, 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 sufficient qualified staff, we do not make inspection judgements. However we would report on your failure to meet the legal requirement and again set an action or take other enforcement measures if you failed to meet other requirements, or the impact 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 the numbers in this age group are a minority or they receive the EYFS 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 is compatible with child-initiated, freely chosen play and should not take playworkers away from older children, other than when supporting younger children's care needs. In addition, if you provide opportunities for freely chosen self directed play, then it is acceptable for the majority of activities to be child-initiated rather than adult-led.

Unless your play provision is 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 play provision when making judgements about children's achievements and

whether they enjoy what they do. We also consider how you work in partnership 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 individual needs, but we do not expect this to be a heavy task. Planning and observation should match the length of time children are in the provision, and should work with provision made 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 where there are a number of adults arranging play across a day or a week; or to share the information with parents and other providers delivering the Early Years Foundation Stage. Unless children attend wrap around care at a particular school on a daily basis we expect most of the partnership work to be with the children's parents rather than with other Early Years Foundation Stage providers.

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:

- 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)⁷
- improving their skills in talking and listening (this meets play objective 6)
- aspects of knowledge and understanding of the world, physical and creative development, depending on the type of provision 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. For example if a child or children show an interest in building a den out of cardboard boxes then playworkers may on the next day 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.

⁷ The Seven Play Objectives, NPFA et al (2000) Best Play: What play provision should do for children. London: National Playing Fields Association, www.playengland.org.uk.

Inspecting planning and assessment

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

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

Where playworkers are not able to demonstrate, through planning and assessment, that they:

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

then we may judge the quality of provision as inadequate and raise actions to ensure the provision meets children's needs. This would be the case even if the play provision has 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, regardless of their age, improve their abilities. We do not expect extensive 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 don't need to register their services and you can find out about the circumstances where providers do not have to register in our childcare fact sheet: *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).

The fact sheet on learning and development exemptions can be found 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.

The Playwork Principles, a professional and ethical framework for play can be found at www.skillsactive.com/playwork/principles.

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