



Section 3 – The welfare requirements

Overview of the welfare requirements

- 3.1** This section sets out the welfare requirements that all early years providers must meet, regardless of type, size or funding of the setting. The *Practice Guidance for the Early Years Foundation Stage* and supporting resources provide information and advice designed to help practitioners meet these legal requirements in a way that reflects the needs of the individual children in their care and is appropriate to their setting.
- 3.2** Children learn best when they are healthy, safe and secure, when their individual needs are met and when they have positive relationships with the adults caring for them. The welfare requirements are designed to support providers in creating settings which are welcoming, safe and stimulating, and where children are able to enjoy learning through play, to grow in confidence and to fulfil their potential.
- 3.3** The general legal requirements are listed here and are then expanded with more detailed specific legal requirements in the grids on pages 22-40. Both the general and specific legal requirements have the force of regulations and therefore must be complied with by all early years providers. The grids also contain statutory guidance which providers must have regard to and take into account when seeking to fulfil the general and specific requirements. Where Ofsted considers that a provider has failed to comply with any of the welfare requirements, they may give notice to the provider setting out (i) in what respect the provider has failed to comply with the requirements (ii) what action the provider should take to comply, and (iii) the period within which the provider should take that action. It is an offence for a provider to fail to comply with such a notice.
- 3.4** It is an offence to fail to comply with certain of the welfare requirements. It is an offence for a registered provider to fail to notify Ofsted of certain events, which are set out in the relevant welfare requirements, and also in the Schedule to the welfare regulations. It is also an offence for a provider to give corporal punishment to a child, as set out under behaviour management on page 28 of this document.

The general welfare requirements

Safeguarding and promoting children's welfare

The provider must take necessary steps to safeguard and promote the welfare of children.

The provider must promote the good health of the children, take necessary steps to prevent the spread of infection, and take appropriate action when they are ill.

Children's behaviour must be managed effectively and in a manner appropriate for their stage of development and particular individual needs.

Suitable people

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Adults looking after children must have appropriate qualifications, training, skills and knowledge.

Staffing arrangements must be organised to ensure safety and to meet the needs of the children.

Suitable premises, environment and equipment

Outdoor and indoor spaces, furniture, equipment and toys must be safe and suitable for their purpose.

Organisation

Providers must plan and organise their systems to ensure that every child receives an enjoyable and challenging learning and development experience that is tailored to meet their individual needs.

Documentation

Providers must maintain records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children.

Meeting the welfare requirements

3.5 The requirements are set out in three sections:

- overarching general legal requirements;
- specific legal requirements;
- statutory guidance.

3.6 Providers must comply with all the legal requirements set out and should have regard to the statutory guidance. Ofsted will base its regulatory and inspection judgements on whether a provider has met the general and specific legal requirements, and has had regard to the statutory guidance. This guidance gives examples of action providers are likely to have to take in order to meet the general and specific legal requirements; however, providers may be able to comply by using other methods, in which case they can depart from the statutory guidance provided that they are able to demonstrate that their alternative approach achieves the same ends.

3.7 Where it is specified that a registered person must notify Ofsted of the occurrence of events or changes, written notification must be made:

- where it is reasonably practicable to do so, in advance of the event occurring;
- in all other cases as soon as reasonably practicable, but not later than 14 days after the event has occurred.

3.8 Group providers will be expected to have written copies of any policies and procedures which are required, for example, to safeguard children or promote equality of opportunity. Providers should ensure that all members of staff have been given copies of these policies and procedures as part of their induction, and that they are explained to, and accessible to, all parents.

3.9 Schools will not be required to have separate policies for the EYFS provided that the requirements are met through their policies which cover children of statutory school age. Childminders will be expected to ensure that any assistants are aware of all policies and procedures, and that they are able to clearly define them for parents and others as and when requested. However, it will not be necessary for childminders to have written copies of these policies and procedures.

3.10 It is essential that children are provided with safe and secure environments in which to interact and explore rich and diverse learning and development opportunities. Providers need to ensure that, as well as conducting a formal risk assessment, they constantly reappraise both the environments and activities to which children are being exposed and make necessary adjustments to secure their safety at all times.



The provider must take necessary steps to safeguard and promote the welfare of children.

Specific legal requirements

Safeguarding

An effective safeguarding children policy and procedure must be implemented. This must include the procedure to be followed in the event of an allegation being made against a member of staff. The provider must ensure that all members of staff understand the safeguarding policy and procedure. Providers must refer to paragraphs 3.8 – 3.9 of this document for details of how to record and make available all of their policies and procedures.

All providers must notify any child protection agency (usually local children's services or the police) previously identified by the Local Safeguarding Children Board (LSCB), without delay, of allegations of abuse as above.

Registered providers must inform Ofsted of any allegations of serious harm or abuse by any person living, working, or looking after children at the premises (whether that allegation relates to harm or abuse committed on the premises or elsewhere), or any other abuse which is alleged to have taken place on the premises, and of the action taken in respect of these allegations. Registered providers must inform Ofsted of these allegations as soon as is reasonably practicable, but at the latest within 14 days of the allegations being made. A registered provider who, without reasonable excuse, fails to comply with this requirement, commits an offence.

Except in childminding settings, a practitioner must be designated to take lead responsibility for safeguarding children within the setting and liaising with local statutory children's services agencies as appropriate. They must also attend a child protection training course.

Statutory guidance to which providers should have regard

All providers should follow the guidance set out in the publication 'What to do if you are worried a child is being abused – Summary' published by DCSF. A link is available on the EYFS CD-ROM. This includes guidance on information sharing and confidentiality.

All practitioners should have an up-to-date understanding of safeguarding children issues and be able to implement the safeguarding children policy and procedure appropriately. Policies should be in line with LSCB local guidance and procedures.

Staff should be able to respond appropriately to any:

- significant changes in children's behaviour;
- deterioration in their general well-being;
- unexplained bruising, marks or signs of possible abuse;
- signs of neglect;
- comments children make which give cause for concern.

The provider must take necessary steps to safeguard and promote the welfare of children.

Specific legal requirements

Information and complaints

Providers must engage with, and provide the following information for, parents:

- the type of activities provided for the children;
- the daily routines of the provision;
- the staffing of the provision;
- food and drinks provided for the children;
- the provider's policies and procedures, for example, admissions policies, equality of opportunity policy, safeguarding children policy;
- the complaints procedure (copies to be available on request);
- details for contacting Ofsted and an explanation that parents can make a complaint to Ofsted should they wish;
- the procedure to be followed in the event of a parent failing to collect a child at the appointed time;
- the procedure to be followed in the event of a child going missing.

Providers must obtain necessary information from parents in advance of a child being admitted to the provision, including:

- emergency contact numbers;
- the child's special dietary requirements, preferences or food allergies the child may have;
- the child's special health requirements;
- information about who has legal contact with the child; and who has parental responsibility for the child.

Written parental permission must be requested, at the time of the child's admission to the provision, to the seeking of any necessary emergency medical advice or treatment in the future.

Registered providers must put in place a written procedure for dealing with concerns and complaints from parents and keep a written record of complaints and their outcome¹.

Registered providers must investigate all written complaints relating to the requirements and notify complainants of the outcome of the investigation within 28 days of having received the complaint.

Registered providers must provide Ofsted, on request, with a written record of all complaints made during any specified period, and the action which was taken as a result of each complaint.

Independent schools must ensure that the complaints procedure they are required to have in place for the rest of the school also applies to their early years provision.

Parents must be given free access to developmental records about their child (for example, the EYFS Profile). However, a written request must be made for personal files on the children and providers must take into account data protection rules when disclosing records that refer to third parties.

Statutory guidance to which providers should have regard

Providers should maintain a regular two-way flow of information with parents and between providers (for example, where the childminder regularly collects the child from nursery).

Providers should ensure that all staff are aware of the need to maintain privacy and confidentiality.

Parents should be allowed access to all written records about their children (except in exceptional cases where data protection laws stipulate it is against the best interests of the child to do so) and, where requested, comments from parents are incorporated into children's records.

The record of complaints should be kept for at least three years.

¹ Childminders are not required to have written policies and procedures. See paragraphs 3.8 and 3.9.

The provider must take necessary steps to safeguard and promote the welfare of children.

Specific legal requirements

Premises and security

The premises, both indoors and outdoors, must be safe and secure.

Providers must only release children into the care of individuals named by the parent.

Providers must ensure that children do not leave the premises unsupervised.

Providers must take steps to prevent intruders entering the premises.

Statutory guidance to which providers should have regard

Providers should consider where relevant:

- general indoors and outdoors security, such as which doors are locked or unlocked, door alarms, the use of security systems, intercoms and name badges;
- staff awareness of the whereabouts of other people in the building and of other users on the premises;
- information about the need for security and the systems in place, for example, posters and reminders displayed for parents and visitors;
- what additional security measures may be necessary where children stay overnight;
- the use of a system to verify the identity of any visitors, record their names, the purpose of the visit, and details of arrival and departure times;
- arrival and departure procedures for staff, children, parents and visitors;
- except where there is reasonable excuse, obtaining written permission from parents where children are to be picked up by another adult.

Specific legal requirements

Outings

Children must be kept safe whilst on outings.

For each type of outing, providers must carry out a full risk assessment, which includes an assessment of required adult:child ratios. This assessment must take account of the nature of the outing, and consider whether it is appropriate to exceed the normal ratio requirements (as set out in this document), in accordance with providers' procedures for supervision of children on outings. The assessment must be reviewed before embarking on each specific outing.

Statutory guidance to which providers should have regard

Providers should obtain written parental permission for children to take part in outings.

Providers should take essential records and equipment on outings, for example, contact telephone numbers for the parents of children on the outing, first aid kit, a mobile phone.

Records should be kept about vehicles in which children are transported, including insurance details and a list of named drivers. Drivers using their own transport should have adequate insurance cover.

The provider must take necessary steps to safeguard and promote the welfare of children.

Specific legal requirements

Equality of opportunities

All providers must have and implement an effective policy about ensuring equality of opportunities and for supporting children with learning difficulties and disabilities.

All providers in receipt of Government funding must have regard to the SEN Code of Practice.

Statutory guidance to which providers should have regard

The policy on equality of opportunities should include:

- information about how the individual needs of all children will be met;
- information about how all children, including those who are disabled or have special educational needs, will be included, valued and supported, and how reasonable adjustments will be made for them;
- a commitment to working with parents and other agencies;
- information about how the SEN Code of Practice is put into practice in the provision (where appropriate);
- the name of the Special Educational Needs Co-ordinator (in group provision);
- arrangements for reviewing, monitoring and evaluating the effectiveness of inclusive practices;
- information about how the provision will promote and value diversity and differences;
- information about how inappropriate attitudes and practices will be challenged;
- information about how the provision will encourage children to value and respect others.

The provider must promote the good health of the children, take necessary steps to prevent the spread of infection, and take appropriate action when they are ill.

Specific legal requirements

Medicines

Providers must implement an effective policy on administering medicines. The policy must include effective management systems to support individual children with medical needs.

Providers must keep written records of all medicines administered to children, and inform parents.

Providers must obtain prior written permission for each and every medicine from parents before any medication is given.

Statutory guidance to which providers should have regard

Providers should ensure that they have sufficient information about the medical condition of any child with long-term medical needs.

Providers should ask parents about the medicines that their child needs to take and provide details of any changes to the prescription or the support required. If the administration of prescription medicines requires technical/medical knowledge then individual training should be provided for staff from a qualified health professional. Training should be specific to the individual child concerned.

Medicines should not usually be administered unless they have been prescribed for that child by a doctor, dentist, nurse or pharmacist. Non-prescription medication e.g. pain and fever relief or teething gel may be administered, but only with the prior written consent of the parent and only when there is a health reason to do so. A child under 16 should never be given medicines containing aspirin unless it has been prescribed for that child by a doctor. It is for the provider to arrange who should administer medicines, either on a voluntary basis or as part of a contract of employment.

Medicines should be stored strictly in accordance with product instructions and in the original container in which dispensed. They should include prescriber's instructions for administration.

Specific legal requirements

Illnesses and injuries

Registered providers must notify Ofsted of any of the above events and of any serious accident, illness or injury to, or death of, any child whilst in their care, and of the action taken in respect of it. Notification must be made as soon as is reasonably practicable, but in any event within 14 days of the incident occurring. A registered provider who, without reasonable excuse, fails to comply with this requirement, commits an offence.

Providers must notify local child protection agencies of any serious accident or injury to, or the death of, any child whilst in their care and act on any advice given.

At least one person who has a current paediatric first aid certificate must be on the premises at all times when children are present. There must be at least one person on outings who has a current paediatric first aid certificate. First aid training must be approved by the local authority and consistent with guidance set out in the *Practice Guidance for the Early Years Foundation Stage*.

Providers must have a first aid box with appropriate content to meet the needs of children.

Providers must keep a record of accidents and first aid treatment. Providers must inform parents of any accidents or injuries sustained by the child whilst in the care of the providers and of any first aid treatment that was given.

Providers must discuss with parents the procedure for children who are ill or infectious.

Statutory guidance to which providers should have regard

The procedure should cover arrangements for the exclusion of children who are ill or infectious; and the protocol for contacting parents or another adult designated by the parent if a child becomes ill or receives minor injuries whilst in the provider's care.

Providers must ensure that any animals on the premises are safe to be in the proximity of children and do not pose a health risk.

If providers have reason to believe that any child is suffering from a notifiable disease identified as such in the Public Health (Infection Diseases) Regulations 1988, they should inform Ofsted. Providers should act on any advice given by the Health Protection Agency and inform Ofsted of any action taken. A link to the Health Protection Agency's list of notifiable diseases is provided on the EYFS CD-ROM.

The provider must promote the good health of the children, take necessary steps to prevent the spread of infection, and take appropriate action when they are ill.

Specific legal requirements

Food and drink

Where children are provided with meals, snacks and drinks, these must be healthy, balanced and nutritious. Those responsible for the preparation and handling of food must be competent to do so.

Fresh drinking water must be available at all times.

Registered providers must notify Ofsted of any food poisoning affecting two or more children looked after on the premises. Notification must be made as soon as is reasonably practicable, but in any event within 14 days of the incident occurring. A registered provider who, without reasonable excuse, fails to comply with this requirement, commits an offence.

Statutory guidance to which providers should have regard

Children should be provided with healthy meals and other healthy snacks and drinks as appropriate.

Providers should obtain, record and act on information from parents about a child's dietary needs.

Providers should be aware of their responsibilities under food hygiene legislation including registration with the relevant Local Authority Environmental Health Department.

In group provision, food hygiene matters should be included in induction and on-the-job training, which is available to all staff involved in the preparation and handling of food.

If parents provide packed lunches, providers should inform them about what can be stored safely and about appropriate food content.

Specific legal requirements

Smoking

Providers must ensure that children are in a smoke-free environment.

Statutory guidance to which providers should have regard

Providers should have a no smoking policy which ensures that no one smokes in a room, or outside play area, when children are present or about to be present. If, exceptionally, children are expected to use any space that has been used for smoking, providers should ensure that there is adequate ventilation to clear the atmosphere.

Children’s behaviour must be managed effectively and in a manner appropriate for their stage of development and particular individual needs.

Specific legal requirements

Behaviour management

Providers must not give corporal punishment to a child for whom they provide early years provision and, so far as it is reasonably practicable, shall ensure that corporal punishment is not given to any such child by:

- a) any person who cares for, or who is in regular contact with, children;
- b) any person living or working on the premises.

An early years provider who, without reasonable excuse, fails to comply with this requirement, commits an offence.

A person shall not be taken to have given corporal punishment in breach of the above if the action was taken for reasons that include averting an immediate danger of personal injury to, or an immediate danger of death of, any person (including the child).

Providers must not threaten corporal punishment, nor use or threaten any form of punishment which could have an adverse impact on the child’s well-being.

Providers must have an effective behaviour management policy which is adhered to by all members of staff.

Statutory guidance to which providers should have regard

Physical intervention should only be used to manage a child’s behaviour if it is necessary to prevent personal injury to the child, other children or an adult, to prevent serious damage to property, or in what would reasonably be regarded as exceptional circumstances. Any occasion where physical intervention is used to manage a child’s behaviour should be recorded and parents should be informed about it on the same day.

Except in childminding settings, a named practitioner should be responsible for behaviour management issues. They should be supported in acquiring the skills to provide guidance to other staff and to access expert advice if ordinary methods are not effective with a particular child.



Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Specific legal requirements

Safe recruitment

Providers other than childminders must have effective systems in place to ensure that practitioners and other people aged 16 or over likely to have regular contact with children (including those living or working on the premises) are suitable to do so. (In the case of childminders, Ofsted is responsible for checking the suitability of all those aged 16 or over living or working on the premises.)

Providers other than childminders must obtain an enhanced Criminal Records Bureau (CRB) Disclosure in respect of every person aged 16 or over:

- who works directly with children;
- who lives on the premises on which the childcare is provided;
- who works on the premises on which the childcare is provided (unless they do not work on the part of the premises where the childcare takes place, or do not work there at times when children are present).

This requirement will be deemed to have been met in respect of all people whose suitability was checked by Ofsted or their local authority prior to October 2005.

Providers must not allow people whose suitability has not been checked to have unsupervised contact with children who are being cared for.

Providers other than childminders must keep records of the information they have used to assess suitability to demonstrate to Ofsted that checks have been done. Such records must include the unique reference numbers of CRB Disclosures obtained and the date on which they were obtained.

Providers must also meet any requirements of the new Independent Safeguarding Authority (ISA) scheme once it has been implemented. For more information about the ISA go to www.everychildmatters.gov.uk/independentsafeguardingauthority and www.isa-gov.org/index.htm

Statutory guidance to which providers should have regard

Disclosures should be handled in accordance with the CRB's *Code of Practice and Explanatory Guide*.

Providers should make decisions of suitability using evidence from:

- CRB Disclosure;
- references;
- full employment history;
- qualifications;
- interviews;
- identity checks;
- any other checks undertaken, for example medical suitability.

Providers should notify all people connected with their provision who work directly with children that they expect them to declare to them all convictions, cautions, court orders, reprimands and warnings which may affect their suitability to work with children.

Further information about responsibilities for carrying out CRB checks and about disqualification is provided in the *Practice Guidance for the Early Years Foundation Stage*.

Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so.

Specific legal requirements

Registered providers must notify Ofsted of the following:

In the case of all registered early years providers:

- any change in the address of the premises on which childcare is provided;
- particulars of any proposal to change the hours during which childcare is provided which will entail the provision of overnight care;
- particulars of any significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises to look after children.

In the case of early years childminders:

- any change in their name or address;
- any change of the persons aged 16 years or older living or working on the childminding premises (a person is not considered to be working on the premises if none of their work is done in the part of the premises in which children are cared for, or if they do not work on the premises at times when children are there).

In the case of early years providers other than childminders:

- any change to the person who is managing the early years provision;
- where the early years provision is provided by a company, any change in the name or registered number of the company;
- where the early years provision is provided by a charity, any change in the name or registration number of the charity;
- where the childcare is provided by a partnership, body corporate or unincorporated association, any change to the 'nominated individual';
- where the childcare is provided by a partnership, body corporate or unincorporated association whose sole or main purpose is the provision of childcare, any change to the individuals who are partners or members of its governing body.

Where the specific legal requirements above require notification about a change of person, the information that must be provided to Ofsted is the new person's date of birth, name, any former names or aliases and home address.

Where it is reasonably practicable to do so, notification must be made in advance of the event occurring. In all other cases, notification must be made as soon as is reasonably practicable, but in any event within 14 days of the event occurring.

A registered provider who, without reasonable excuse, fails to comply with these requirements, commits an offence.

The Childcare (Disqualification) Regulations 2007 require registered providers to inform Ofsted of any court order, determination or conviction or any other grounds for disqualification from registration applying to themselves or any other person living or working in their household.

Statutory guidance to which providers should have regard

Registered providers should also notify Ofsted of any change in their telephone number.

Specific legal requirements

Alcohol/other substances

When working directly with children, practitioners must not be under the influence of alcohol or any other substance which may affect their ability to care for children.

Statutory guidance to which providers should have regard

Practitioners taking medication which they believe may affect their ability to care for children should seek medical advice and only work directly with children if that advice is that the medication is unlikely to impair their ability to look after children.

Adults looking after children must have appropriate qualifications, training, skills and knowledge.

Specific legal requirements

Childminders must have attended a training course within six months of registration and must hold a current paediatric first aid certificate at the point of registration. First aid training must be approved by the local authority and consistent with the guidance set out in the *Practice Guidance for the Early Years Foundation Stage*.

In registered settings other than childminding settings, all supervisors and managers must hold a full and relevant level 3 qualification (as defined by the Children's Workforce Development Council (CWDC)) and half of all other staff must hold a full and relevant level 2 qualification (as defined by CWDC).

Statutory guidance to which providers should have regard

Wherever possible, childminders should have attended a training course prior to or shortly after registration. The training should be approved by the local authority and provide support for childminders in meeting and putting into practice the requirements of the EYFS. Childminders are accountable for, and supervise the work of, any assistant. The childminder should be satisfied that they are competent in the areas of work undertaken.

The manager should have at least two years' experience of working in an early years setting, or have at least two years' other suitable experience.

All practitioners should have a clear understanding of their roles and responsibilities.

Providers should support their staff in improving their qualification levels. In particular, those staff with no qualifications should be supported in obtaining a relevant qualification at a minimum of a full and relevant level 2 qualification (as defined by CWDC).

Induction training should be provided for new staff to help them understand how the provision operates and their role within it. Induction training should include matters such as evacuation procedures and child protection and health and safety issues.

Regular staff appraisals should be carried out to identify the training needs of staff. A programme of continuing professional development should be applied so that these needs are met.

Providers should use training made available by the local authority and other sources.

Staffing arrangements must be organised to ensure safety and to meet the needs of the children.

Specific legal requirements

Providers must meet the requirements for adult:child ratios set out in Appendix 2.

In registered group settings there must be a named deputy who is able to take charge in the absence of the manager.

For childminders providing overnight care, required ratios continue to apply. The children must be close by and within easy hearing distance (this may be via a monitor).

For other settings providing overnight care, the ratios set out in these requirements continue to apply. At least one member of staff must be awake at all times.

Statutory guidance to which providers should have regard

Children should be supervised at all times, with staffing arrangements organised to meet the individual needs of all children.

Exceptions to the requirement that staff included in the ratios must be working directly with the children may only be made in limited circumstances, such as when the children are sleeping or resting. In these circumstances all the adults need not be present in the room with the children, but should be available nearby on the premises should they be needed.

Providers should put in place contingency arrangements for staff absences and emergencies. When there is staff absence or an emergency occurs suitable arrangements might include drawing on a pool of suitable staff, re-grouping of children, re-organising rooms and activities and re-deploying other suitable staff. When such disruptions occur there should continue to be a consistent experience for the child.

Where children in nursery classes and reception classes attend school for longer than the school day or in the school holidays, in provision run directly by the governing body or the proprietor, we recommend that the ratio of adults to children should be 1:8, that at least one member of staff should hold a full and relevant level 3 qualification (as defined by CWDC) and half all other staff should hold a full and relevant level 2 qualification (as defined by CWDC).

Staff/volunteers/students under the age of 17 cannot count towards the ratio and should be supervised at all times. Individuals aged 17 and over who are on long-term placements may be included in the ratios if the provider is satisfied they are competent and responsible.

Volunteers/committee members should be given full information and guidance on their roles and responsibilities.

Some schools may choose to mix their reception classes with groups of younger children, in which case they should use their discretion in establishing ratios for these mixed groups based on the EYFS welfare requirements (that is, 1:30 for the reception group and 1:13, 1:8 and so on for the younger children). This applies whether the pre-school element is provided directly by the school or in partnership through a PVI provider. However, in exercising this discretion the school, and any partner provider, must comply with the statutory requirements relating to the education of children of compulsory school age children and infant class sizes. At all times it is necessary to meet the needs of individual children and it may be appropriate to exceed these minimum requirements. Where a school operates in partnership with a PVI pre-school provider both parties will assume shared responsibility for meeting the ratios in the amalgamated setting.

Examples of how these mixed-age groups may work in practice are set out in the *Practice Guidance for the Early Years Foundation Stage*.

Suitable premises, environment and equipment

Outdoor and indoor spaces, furniture, equipment and toys, must be safe and suitable for their purpose.

Specific legal requirements

Risk assessment

The provider must conduct a risk assessment and review it regularly – at least once a year or more frequently where the need arises.

The risk assessment must identify aspects of the environment that need to be checked on a regular basis: providers must maintain a record of these particular aspects and when and by whom they have been checked. Providers must determine the regularity of these checks according to their assessment of the significance of individual risks.

The provider must take all reasonable steps to ensure that hazards to children – both indoors and outdoors – are kept to a minimum.

Statutory guidance to which providers should have regard

The risk assessment should cover anything with which a child may come into contact.

The premises and equipment should be clean, and providers should be aware of the requirements of health and safety legislation (including hygiene requirements). This should include informing and keeping staff up-to-date.

A health and safety policy should be in place which includes procedures for identifying, reporting and dealing with accidents, hazards and faulty equipment.

Outdoor and indoor spaces, furniture, equipment and toys, must be safe and suitable for their purpose.

Specific legal requirements

Premises

Registered providers must inform Ofsted of any change to the premises on which childcare is provided that may affect the space available to children and the quality of childcare available to them. A registered provider who, without reasonable excuse, fails to comply with this requirement, commits an offence. Where it is reasonably practicable to do so, notification must be made in advance of the event occurring. In all other cases, notification must be made as soon as is reasonably practicable, but in any event within 14 days of the event occurring.

Providers must take reasonable steps to ensure the safety of children, staff and others on the premises in the case of fire, and must have a clearly defined procedure for the emergency evacuation of the premises.

Providers must have appropriate fire detection and control equipment (for example, fire alarms, smoke detectors, fire extinguishers and fire blankets) which are in working order.

Statutory guidance to which providers should have regard

Significant changes or events which must be reported to Ofsted include:

- significant changes to the premises, for example structural alterations or an extension;
- something which adversely affects the smooth running of the provision over a sustained period of time;
- changes to the outside of the premises such as adding a pond or taking down fencing.

Where children stay overnight, it may be appropriate for the Fire Safety Officer to inspect the sleeping area.

Staff should understand their roles and responsibilities in the event of a fire.

Fire exits should be clearly identifiable; fire doors should be free from obstructions and easily opened from the inside.

Regular evacuation drills should be carried out and details recorded in a fire log book of any problems encountered and how they were resolved.

Outdoor and indoor spaces, furniture, equipment and toys, must be safe and suitable for their purpose.

Specific legal requirements

The premises and equipment must be organised in a way that meets the needs of children.

In registered provision, providers must meet the following space requirements:

- children under two years: 3.5 m² per child;
- two year olds: 2.5 m² per child;
- children aged three to five years: 2.3 m² per child.

The provider must ensure that, so far as is reasonable, the facilities, equipment and access to the premises are suitable for children with disabilities.

The premises must be for the sole use of the provision during the hours of operation.

The provider must carry public liability insurance for the provision.

Statutory guidance to which providers should have regard

The premises should be clean, adequately ventilated and well lit. Daylight should be the main source of light. Where, in exceptional circumstances this is not possible, the provider should ensure that lighting is of good quality and children have adequate access to daylight.

Calculations of available indoor space should be based on the net or useable areas of the rooms used by the children (that is, not including storage areas, thoroughfares, dedicated staff areas, cloakrooms, utility rooms, kitchens and toilets).

Wherever possible, there should be access to an outdoor play area, and this is the expected norm for providers. In provision where outdoor play space cannot be provided, outings should be planned and taken on a daily basis (unless circumstances make this inappropriate, for example unsafe weather conditions).

There should be adequate space to give scope for free movement and well-spread activities.

In addition to the area per child stated in the requirements, there should be space within the premises to store children's records, toys and personal belongings. There should also be sufficient space to use and store any specialist equipment needed, for example, by disabled children. This equipment should be quickly and easily accessible by staff at the provision so that it can be used by those children whenever it is required. Security should be considered.

Rooms should be maintained at a temperature which ensures the comfort of the children and staff, including non-mobile children.

Except in childminding settings, there should be a separate baby room for children under the age of two, but they should be able to have contact with older children and be transferred to the older age-group after the age of 18 months or as appropriate for their individual stage of development.

Provision should be made (space or partitioned area) for children who wish to relax, play quietly or sleep, equipped with appropriate furniture. This may be converted from normal play space providing children can rest and/or sleep safely without disturbance. Each child should have their own bed linen, flannel, and hairbrush if they are used (these may be provided by parents or providers). Sleeping children should be frequently checked.

Where children are staying overnight, they should each have a suitable bed or cot and clean bedding.

There should be an area which is adequately equipped to provide healthy meals, snacks and drinks for the children as necessary. Ideally, the provision will have a full kitchen. Where this is not possible, appropriate alternative arrangements should be made for the hygienic preparation and storage of food and drinks.

There should be suitable facilities for the hygienic preparation of babies' feeds if necessary. Suitable sterilisation equipment is used for the sterilisation of babies' feeding equipment and dummies.

There should be at least one toilet and one hand basin for every ten children over the age of two. Except in childminding settings, there should normally be separate toilet facilities for adults. There should be adequate washing and toileting facilities for children who stay overnight.

There should be suitable hygienic changing facilities for changing any children who are in nappies and providers should ensure that an adequate supply of clean bedding, towels, spare clothes and any other necessary items are always available. Children should not be allowed access to any laundry facilities that are provided on site.

Where the early years provision takes place in a communal building such as a community centre or village hall, the part of the premises used by the early years provision should be for the sole use of the provision during the hours of operation. Ideally, the premises should have their own kitchen and toilet facilities but, where this is not possible, the provider should take steps to ensure that other users do not have a negative impact on the quality or safety of provision.

There should be an area where confidential information and necessary records can be kept and where staff may talk to parents confidentially. Staff should have a room or area available for breaks, away from areas being used by children.



Providers must plan and organise their systems to ensure that every child receives an enjoyable and challenging learning and development experience that is tailored to meet their individual needs.

Specific legal requirements

Providers must have effective systems to ensure that the individual needs of all children are met.

Each child must be assigned a key person. In childminding settings, the childminder is the key person.

Providers must promote equality of opportunity and anti-discriminatory practice and must ensure that every child is included and not disadvantaged because of ethnicity, culture or religion, home language, family background, learning difficulties or disabilities, gender or ability.

Providers must ensure that there is a balance of adult-led and freely-chosen or child-initiated activities, delivered through indoor and outdoor play.

Providers must undertake sensitive observational assessment in order to plan to meet young children's individual needs.

Providers must plan and provide experiences which are appropriate to each child's stage of development as they progress towards the early learning goals.

Statutory guidance to which providers must have regard

The key person should help the baby or child to become familiar with the provision and to feel confident and safe within it, developing a genuine bond with the child (and the child's parents) and offering a settled, close relationship.

The key person should meet the needs of each child in their care and respond sensitively to their feelings, ideas and behaviour, talking to parents to make sure that the child is being cared for appropriately for each family.

Practitioners should value linguistic diversity and provide opportunities for children to develop and use their home language in their play and learning. This is part of the respect for each child's cultural background that is central in all early years provision. Alongside support in the home language, practitioners should provide a range of meaningful contexts in which children have opportunities to develop English. As they move into the Key Stage 1 curriculum, English will be crucial as the language they use to access learning.



Providers must maintain records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children.

Specific legal requirements

Data

Providers must record the following information for each child in their care:

- full name;
- date of birth;
- the name and address of every parent and carer who is known to the provider;
- which of these parents or carers the child normally lives with;
- emergency contact details of the parents and carers.

Providers must record and submit the following information to their local authority about individual children receiving the free entitlement to early years provision as part of the Early Years Census:

- full name;
- date of birth;
- address;
- gender;
- ethnicity*;
- special educational needs status;
- the number of funded hours taken up during the census week;
- total number of hours (funded and unfunded) taken up at the setting during the census week.

* This data item can be collected on a voluntary basis. A child's ethnicity should only be recorded where parents have identified the ethnicity of their child themselves.

For maintained and independent schools, these requirements are in addition to the requirements of the Pupil Registration Regulations 2006.

Statutory guidance to which providers should have regard

Ethnicity, where collected, should be recorded according to the following categories:

White

- British
- Irish
- Traveller of Irish Heritage
- Gypsy/Roma
- Any other white background

Mixed

- White and Black Caribbean
- White and Black African
- White and Asian
- Any other mixed background

Asian or Asian British

- Indian
- Pakistani
- Bangladeshi
- Any other Asian background

Black or Black British

- Caribbean
- African
- Any other Black background

Chinese**Any other ethnic background**

A child's learning difficulties and disabilities status should be recorded according to the following categories:

- no special educational need;
- Early Years Action/School Action;
- Early Years Action Plus/School Action Plus;
- statement.

Providers should refer to the *SEN Code of Practice* for an explanation of the terms used above.

Providers must maintain records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children.

Specific legal requirements

Providers' records

Providers must keep the following information and documentation:

- name, home address and telephone number of the provider and any other person living or employed on the premises (this requirement does not apply to childminders);
- name, home address and telephone number of anyone else who will regularly be in unsupervised contact with the children attending the early years provision;
- a daily record of the names of the children looked after on the premises, their hours of attendance and the names of the children's key workers;
- providers must display their certificate of registration and show it to parents on request;
- a record of the risk assessment clearly stating when it was carried out, by whom, date of review and any action taken following a review or incident.

Records must be easily accessible and available for inspection by Ofsted (with prior agreement by Ofsted, these may be kept off the premises).

Where Ofsted notifies providers in advance of the period in which an inspection will take place, this information must be passed on to parents. (Section 6 of the Education Act 2005 places an equivalent requirement on schools.)

Providers must ensure that copies of the inspection report are provided to all parents. (Sections 5 and 15 of the Education Act 2005 place an equivalent duty on schools.)

Statutory guidance to which providers should have regard

Providers should be aware of their responsibilities under the Data Protection Act 1998 and Freedom of Information Act 2000.

Records relating to individual children should be retained for a reasonable period of time (for example three years) after the children have left the provision.

There should be a suitable secure area for the storage of confidential information. Records on staff and children should only be accessible to those who have a right or professional need to see them.

All staff should be aware of the need for confidentiality.



Section 4 – Other information

Other legal duties

4.1 The EYFS requirements sit alongside other legal obligations and do not supersede or replace any other legislation which providers must still meet. For example, where provision is taking place in maintained schools there is a range of education legislation in place with which headteachers, teachers and other practitioners must comply. Providers should ensure that they are aware of the requirements of the Safeguarding Vulnerable Groups Act 2006 (which creates offences) and any guidance issued under this Act which lays the foundation for the introduction of a new vetting and barring scheme from autumn 2008. Other duties on providers include:

- employment laws;
- anti-discriminatory legislation;
- health and safety legislation;
- data collection regulations;
- duty of care.

Competency in English

4.2 Parents may choose to have their children educated primarily in their home language and choose a provider specifically for this reason. Linguistic diversity should be valued and we do not want to take away from parents the choice of using a provider who can meet the EYFS requirements through languages other than English. However, it will be necessary for providers to demonstrate to Ofsted that their employees have a sufficient grasp of English to ensure the well-being of children in their care. For example, it must be clear to Ofsted that providers would be able to summon emergency help where necessary, keep certain records and share these with Ofsted, and read and understand instructions such as safety instructions, information on administering medication or on food allergies. As part of the learning and development requirements, providers should also be able to support children to develop their Communication, Language and Literacy skills in English. Further information and advice on this issue is set out in the *Practice Guidance for the Early Years Foundation Stage*.

Exemptions

4.3 The EYFS framework is designed to be fully inclusive of all children's needs, recognising the need to respond to differences of ethnicity, culture, religion or belief, home language, family background, SEN, disability, gender or ability. There is significant flexibility to provide the six areas of Learning and Development in a way that reflects the needs and circumstances of each child. In the majority of cases, therefore, it will be possible to deliver the EYFS in a way that is compatible with providers' and parents' philosophies and beliefs. However, existing provisions for exemptions have been carried forward and re-enacted in Section 46 of the Childcare Act 2006 which enables the Secretary of State to confer exemptions from the learning and development requirements in certain prescribed circumstances. Such exemptions will only be granted in exceptional circumstances and where the provider can demonstrate that every effort has been made to comply with the requirements.

Inspection and regulation

- 4.4** From September 2008, providers will be inspected by Ofsted under Sections 49 and 50 of the Childcare Act 2006. Ofsted will have regard to the *Statutory Framework for the Early Years Foundation Stage* document when they are carrying out their inspections. The EYFS replaces *Birth to Three Matters*, the *Curriculum Guidance for the Foundation Stage*, the *Foundation Stage Profile* handbook, and the *National Standards for under 8s Daycare and Childminding*.
- 4.5** With the exception of schools, all settings are required to be registered by Ofsted in respect of all their provision for children from birth to the end of the EYFS. Maintained, independent and non-maintained special schools are required to be registered only in respect of any provision they offer for children below the age of three. This is to ensure extra safeguards for the youngest and most vulnerable children.
- 4.6** Provision in schools for registered pupils aged three and over are not required to be registered because it is already taken account of by the main school inspection framework. Such schools will, however, be expected to meet the same standards as other providers. All settings will be regularly inspected against the EYFS requirements, and all provision made directly by schools will be inspected as part of a single inspection event with the main school inspection.

Local authorities

- 4.7** Section 13 of the Childcare Act 2006 requires local authorities to secure the provision of information, advice and training, whether delivered by themselves or by others, to meet the needs of local providers and support sufficiency of childcare provision.
- 4.8** Regulations made under Section 13 require that, within the context of the EYFS, this provision includes:
- training and support in meeting the requirements of the EYFS;
 - ensuring that training in EYFS assessment and the completion of the EYFS Profile summaries is offered to all providers who require it;
 - meeting the needs of disabled children and those with special educational needs and the use of effective safeguarding and child protection procedures;
 - support in entering the childcare market and in meeting the registration and regulatory requirements.
- 4.9** In addition, local authorities must secure information, advice and training to all childcare providers who have been deemed inadequate by Ofsted; and to those who have been granted a temporary exemption for a specific period of time to give them an opportunity to develop their provision so that it meets the learning and development requirements of the EYFS.
- 4.10** Local authorities have the responsibility for assuring that EYFS Profile assessment judgements are moderated. They appoint and train moderators with appropriate experience of the EYFS and the early learning goals to secure consistent standards in assessment judgements.
- 4.11** Local authorities ensure that all providers are visited regularly as part of a cycle of moderation visits and notify the provider whether the EYFS Profile assessment is being carried out in accordance with requirements. Where the moderator judges that the assessment is not in line with the exemplified standards, the local authority can require the provider to arrange for the practitioner to participate in further training/moderation activities and to reconsider their assessments as advised by the moderator.