

EXPLANATORY MEMORANDUM TO
THE DAY CARE AND CHILD MINDING (INSPECTION) (ENGLAND)
REGULATIONS 2005

2005 No. 2300

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The regulations complete the new inspection regime for day care and child minding set out in the Children Act 1989 (“the 1989 Act”) as amended by the Education Act 2005 (“the 2005 Act”). They prescribe the interval between inspections; that certain parents must be notified of inspections and provided with a copy of the report and the circumstances in which a fee may be charged for providing a copy of the report.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 The regulations are the first use of the powers in section 79Q(5A), 79R(3)(c) and (3A) of the 1989 Act as inserted by the Education Act 2005. These regulations revoke and re-enact with modifications the Day Care and Child Minding (Inspections) (Prescribed Matters) (England) Regulations 2001 as amended. The intervals for inspection under section 79Q(2) and (3) of the 1989 Act were amended with effect from 1st April 2005 by the Day Care and Child Minding (Inspections) (Prescribed Matters) (England) (Amendment) Regulations 2005 (SI 2005/482) and this remains the same.

4.2 These regulations relate to the Nursery Education (Inspection)(England) Regulations 2005 (which are being laid along with these regulations) and the Education (School Inspection) (England) Regulations 2005 (SI 2005/2038). They make similar changes in relation to the inspection of nursery education and school inspection respectively. They align the interval between inspections for day care, child minding, nursery education and schools to within 3 years of the last inspection.

5. Extent

5.1 This instrument applies to England.

6. European Convention on Human Rights

No statement is required.

7. Policy background

7.1 These changes form part of a wider policy objective to align the inspection frameworks covering the Chief Inspector's inspection of early years provision (child minding, day care and funded nursery education) and schools. A common inspection frequency of within three years is a key feature of this alignment, in order to facilitate better integration of early years inspections, and to allow the inspection of education and childcare to be carried out as a single inspection event. The inspection frequency of within three years allows the Chief Inspector to inspect child minding and day care more regularly where he considers it appropriate.

7.2 The requirement on providers to notify and send parents a copy of the inspection report is consistent with arrangements applicable to school inspections. The policy intent is to ensure that parents of children attending early years settings, in schools or elsewhere, have the same rights to information regarding inspections.

7.3 These regulations formed part of the draft regulations published alongside the Education Act 2005 related Bill for scrutiny during its passage through parliament. We have also consulted over a 12 week period¹ with organisations and individuals that have an interest in the day care and childminding. 84% of respondents were supportive of these proposals. There were some concerns raised about the reduced inspection frequency from 2 to 3 years. The Government however is satisfied that the flexibility provided by these regulations, including Ofsted's inspection framework and complaint investigation activity, will ensure that these proposals will reduce the risk of harm to children.

8. Impact

8.1 A Regulatory Impact Assessment is attached to this memorandum. It also covers the Nursery Education (Inspection) (England) Regulations 2005.

9. Contact

Bolaji Bakrin at the Department for Education and Skills Tel: 020 7273 5670 or e-mail: bolaji.bakrin@dfes.gsi.gov.uk can answer any queries regarding the instrument.

¹ Early years regulations - <http://www.dfes.gov.uk/consultations/conResults.cfm?consultationId=1305>. Consultation closed on 24 June 200

FULL REGULATORY IMPACT ASSESSMENT (RIA) ON DETAILED EARLY YEARS INSPECTION REQUIREMENTS TO BE SPECIFIED IN REGULATIONS

Purpose and Intended effect

Objectives

The proposed new regulations:

- specify the interval between early years inspections. Previously day care and child minding provision (childcare) was inspected every two years. From April 2005 another set of regulations changes the period to up to three years. Funded nursery education is currently inspected every four years. The proposal is to define the three year period in terms of school years, bringing the arrangements into line with the school inspection regime. Such alignment will enable Ofsted to inspect in a co-ordinated way (i.e. through single inspection events leading to single inspection reports) establishments or settings where childcare and education are integrated. Although it has always been Ofsted's intention to combine inspection activity whenever possible, the different periods between inspections have in practice acted as a real barrier to achieving this;
- include new requirements on childcare and funded nursery education providers –
 - to notify parents if they get advance warning of when an inspection will be carried out, and
 - to make copies of inspection reports available to parents, on receipt of such a report from Ofsted.

The objective of these requirements is to achieve, as far as possible, consistent arrangements with the school inspection arrangements, in order to ensure that parents of children attending early years settings, in schools or elsewhere, have the same rights to information regarding inspections. We are seeking to facilitate a more proactive and positive engagement for all parents with the early years setting that their children attend.

Background

There are different inspection regimes for childcare (day care and child minding provision registered by Ofsted under Part 10A of the Children Act 1989) and for nursery education (Government funded nursery education, largely applicable to the private and voluntary sector, inspected under Section 122 of School Standards and Framework Act 1998). This means that if, for example, funded nursery education is provided in a childcare setting, the provider is subject to an Ofsted childcare inspection every two years (from April 2005, up to three years) and to an inspection of the early education provision every four years.

The law places a requirement on school governing bodies to notify parents of a forthcoming inspection and to send a copy of the report summary to parents.² There is no equivalent requirement in the case of childcare and nursery education inspection. Inspection is a key lever in improving quality. Independent and objective reporting on quality issues helps parents make informed choices.

Risk Assessment

Childcare providers were previously inspected every two years and it could be argued that the proposed reduced inspection frequency for childcare providers might lead to very young children being at greater risk. However, these changes are not being proposed in isolation. Ofsted is commencing its new early years inspection framework from April 2005, to coincide with the end of its current two year inspection cycle in March 2005. Although the normal interval between inspections will be three years, the new arrangements will be flexible to enable Ofsted to inspect proportionately on the basis of risks. Poorer performing providers, and those where other circumstances indicate there could be higher risks (eg where there is a new manager who is unknown to Ofsted), will be inspected more frequently, with longer intervals between inspections for better and low risk providers. The introduction of a new quality grading scale (in line with the school inspection arrangements) will ensure that inadequate providers can be identified and given notice to improve. An early inspection, for example, within 6 months, to check on the action required, could lead to closure of the facility in the most serious non-compliance cases. Furthermore, Ofsted's inspection arrangements will be complemented by its activity on complaints investigation and the enforcement of the national standards.

In addition, the three year inspection cycle for childcare and nursery education providers is part of a strategic alignment with other inspections that Ofsted carries out. Common elements to inspections across all phases of care and education, from early childhood to 19, will enable institutional level information to be available in a consistent format to feed into joint area reviews of all children's services within a local authority area. Many early years settings – day nurseries, playgroups and some childminders – integrate childcare with nursery education. This will also be increasingly common as more extended schools and children's centres are developed. Where these services are provided together, Ofsted intends to inspect them at the same time resulting in the production of a single report. These reports will merge the inspector's assessment of childcare and nursery education to give a more coherent account of quality, also reducing the paperwork resulting from inspections.

We believe that it is important to clarify how parents should be involved in the early years inspection process. The Government's aim is to raise standards across early years settings, and one of the ways that it does this is using parents' influence over the services they rely on. Improved information for parents supports their choices and influencing role. Although in future day care inspections will generally not be notified by Ofsted in advance³, there will be circumstances in which inspections are notified in advance, for example, where day care is provided by a school and the day care

²School inspection reports will be shorter and sharper (around 6 pages) than at present and focused on key outcomes, so governing bodies will in future be required to send parents the full report as opposed to just a summary.

³ Ofsted plans to carry out no notice inspections on group day care providers from April 2005.

inspection is being carried out at the same time as the school inspection. Childminders will receive a few days notice of an inspection, and will therefore be expected to notify parents in advance.

Options

Option i)

Do nothing. Childcare and funded nursery education provision will continue to be inspected and reported on to different timescales. Ofsted's proposed new early years inspection framework could not be satisfactorily implemented. Early years childcare and nursery education providers would have no clear legal duty to keep parents informed about inspections.

Option ii)

A common approach to Ofsted's early years and school inspection frameworks. Where care and education are integrated, the changes to regulations would allow for a single inspection event on the basis of a common three year cycle. This option will have the effect of making the best use of Ofsted resources and will ease the burden of inspection on early years providers. Early years providers' duties with regard to notification of inspections and distribution of reports would mirror the school inspection arrangements.

Costs and Benefits

Sectors affected

The main impact of the proposals in the public sector will be on Ofsted, local authority provided registered day care and maintained nursery schools. Private and voluntary sector early years providers would also be affected. The majority of providers in the private and voluntary sector would be self employed childminders (around 71,000 are currently registered) and small businesses operating day care services (there are about 34,000 day care providers)⁴. Independent schools that deliver Government funded nursery education would also be affected.

Option i

We have looked carefully at the advantages and disadvantages of maintaining the status quo.

Maintaining the current timing of inspections would mean that early years inspections would continue in line with current costs because of the difficulty in scheduling integrated inspections, diminishing the potential for efficiency savings to be made by Ofsted, and reducing the scope for achieving benefits for providers.

⁴ Providers of crèches and open access schemes who are not normally required to keep a record of names and addresses of every parent whose child attends the provision will be exempt from these proposals.

If there was no explicit legal duty on providers to notify parents of a forthcoming inspection and make available to them a copy of the inspection report, the benefits and costs would remain broadly neutral. The national standards under which the vast majority of childcare and nursery education providers operate already include a requirement on working in partnership and sharing information with parents. Furthermore, parents could view inspection reports on Ofsted's website, although those parents without Internet access would be at a disadvantage.

Option ii

Ofsted

The only direct costs to Ofsted in implementing the proposed changes to the frequency of inspections are the costs of changes to computer systems which is currently estimated at £0.5m. A move to an aligned 3 year cycle will result in a reduction of approximately 11,500 inspections per year during the cycle [see table 1. below]. Overall, these changes are expected to deliver savings of £4.7m in the total cost of inspections.

Table 1 compares the impact of current (option i) and proposed (option ii) arrangements on different types of early years providers. It also gives an indication of the total number of inspections Ofsted would need to undertake annually under current and proposed arrangements.

Type of provision	Number of providers (figures rounded)	Inspection frequency – current	Inspection frequency – from 2005	Number of inspections experienced by provider in a 3 year period – current	Number of inspections experienced by provider in a 3 year period – from 2005	Total number of inspections undertaken by Ofsted annually – current	Total number of inspections undertaken by Ofsted annually – from 2005
Childminding (private and voluntary sectors)	72,000	Childcare inspection every 2 years	Childcare inspection every 3 years	1.5	1.0	36,000	24,000
Day care (private and voluntary sectors)	32,000	Childcare inspection every 2 years	Childcare inspection every 3 years	1.5	1.0	16,000	10,500
Maintained nursery schools (public sector)	470	School inspection every 6 years	School inspection every 3 years	0.5	1.0	78	157
Funded nursery education (private and voluntary sectors)	17,000*	Nursery education inspection every 4 years, childcare every 2 years	Single inspection event every 3 years	2.25	1.0	4,250*	5,700*

Type of provision	Number of providers (figures rounded)	Inspection frequency – current	Inspection frequency – from 2005	Number of inspections experienced by provider in a 3 year period – current	Number of inspections experienced by provider in a 3 year period – from 2005	Total number of inspections undertaken by Ofsted annually – current	Total number of inspections undertaken by Ofsted annually – from 2005
Funded nursery education in independent schools (private and voluntary sectors)	1,000*	Nursery education inspection every 4 years, school inspection every 6 years	Nursery education inspection every 3 years, aligned with school inspection every 6 years	2.75	1.0	250*	333*
Maintained school providing childcare (extended school or children’s centre)	Minimal numbers ¹	Childcare inspection every 2 years, school inspection every 6 years	Education/childcare – single inspection event every 3 years	2.0	1.0		

Notes:

1. Small numbers presently but expected to rise in line with Government policy on extended schools and children’s centres.

Private and voluntary sector impact

The new inspection arrangements will have an impact on early years education and childcare providers, a significant proportion of which are in the private and voluntary sector. They will benefit from a common frequency of inspection in respect of their education and childcare. One of the concerns from the sector is that they are not treated on a consistent basis with maintained schools – for example, nursery education in maintained schools is currently subject to inspection every 6 years, and elsewhere every 4 years.

Early years providers will also benefit from having a single inspection event and single inspection report where both education and childcare are offered as an integrated package. The changes will facilitate the introduction of Ofsted's new integrated early years inspection framework which is designed to achieve this more streamlined approach to inspection.

The new requirements on early years providers will ensure that parents have proper access to information about the quality of early years provision, in order that they can exercise some influence in securing improvements where necessary and make informed choices. Providers will benefit from constructive feedback from parents, in addition to that of the inspector. More consistent arrangements between schools and other providers of early years services will create a more level playing field.

Our information suggests that these proposals will have minimal cost impact on early years providers as they are already required by national standards to work in partnership and share information with parents. In practice, it is envisaged that the duty to notify parents of forthcoming inspections would be given by 'word of mouth' to whoever picks up the child, or by putting a prominent notice up on a notice board. Similarly, with regards ensuring parents a copy of the inspection report, it is anticipated that most providers will use normal 'pupil post' arrangements to meet this obligation, saving on postage costs.

Equity and Fairness

The proposed changes are consistent with reducing the burden of bureaucracy for early years education and childcare providers. Providers subject to separate inspection regimes will benefit from a single inspection event and the proposals will promote equity and fairness in judging the quality of provision for young children across different sectors. Parents will also benefit from a more integrated approach to the inspection of nursery education and childcare.

As indicated above, the objective of these proposals is to improve the availability of information for parents, so that they can influence quality and make informed choices between providers. The proposals will ensure consistency between Ofsted's early years and school inspection arrangements.

Small Firm Impact Test

Most early education and childcare providers in the private and voluntary sectors would be classed as small businesses. In view of the existing requirements in relation to keeping parents informed, we do not consider that the regulations represent new burdens on small businesses. There has been consultation on some aspects of the new early years inspection arrangements (see below). We also keep in touch with, and take into account the views of, the Department of Trade and Industry's Small Business Service and various national groups representing different types of early years providers, such as the National Childminding Association; National Day Nurseries Association; Pre-school Learning Alliance and Independent Schools Council. None of these has so far raised significant objections to the proposals outlined above.

The Small Business Service has been consulted and agrees with the assessment in the Small Firms Impact Test. Therefore, having identified that there is no significant negative impact for small firms, the Small Business Service has identified that there is no need to carry out stage 2 of the test.

Competition Assessment

In accordance with Office of Fair Trading guidelines, consideration has been given to the potential impact of the proposals on competition.

As indicated above, the proposals will impact on early years providers in the private and voluntary sectors (e.g. day nurseries, play groups and independent schools). It is not expected that the changes will have a significant negative impact on competition as all early years providers will be subject to the same inspection regime and requirements. This will be the case for both future new entrants and existing providers. The time spent preparing for and managing the inspection process and the number of inspection reports to be distributed to parents will vary between providers. It is not envisaged that these specific costs are significant enough to result in any providers ceasing to operate or to prevent new entry.

Consultation

Ofsted's consultation document *The Future of Inspection* proposed a co-ordinated approach to their inspection frameworks covering childcare, nursery education, compulsory education and further education (0-19). It outlined proposals for changes in relation to cycle of inspections and that inspection regimes should be consistent throughout the age range in the demands they make on institutions, and in their analysis of risk. The consultation document proposed a move to a 3 year inspection cycle for early years settings in line with the proposed school inspection changes. The majority of responses received from the early years sector supported these proposals.

In addition, Ofsted undertook a brief web based consultation on their new early years inspection framework in September 2004. Providers and those representing them were generally supportive of the changes.

Further consultation on the specific provisions of the inspection regulations, over a 12 week period, with organisations and individuals that have an interest in the early years sectors, will inform preparation of a full regulatory impact assessment.

Monitoring and Review

In preparation for the implementation of their new early years inspection framework, Ofsted has piloted the arrangements in a limited number of settings. Feedback from these pilots is being used to refine the shape of the framework and inspection tools that will be used. The new arrangements will be reviewed by Ofsted as part of their responsibility for the regulation and inspection of childcare and nursery education, and monitored through on-going work by the Sure Start Unit to streamline regulation and inspection, and improve the quality and accessibility of information for parents about early years provision.

Summary and Recommendation

In order to facilitate an integrated inspection system for early years provision, the Department and Ofsted have concluded that the proposed changes under *option ii* above are necessary to achieve a unified approach, particularly to align different types of early years inspection and to keep these consistent with the proposed arrangements for school inspection. The changes also support the Government's objectives for increasing the efficiency of the inspection arrangements, with a significant reduction in the overall costs of early years inspections. *Option ii* also secures improved parental access to information on the early years services they use, in line with similar information on inspections that parents with school age children currently receive. The Government therefore recommend these regulations for the reasons outlined in this RIA.

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed ...Beverley Hughes

Date: 16th August 2005

Beverley Hughes,

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