1.2 The legal basis of our work and our options for ensuring compliance: childminding, childcare and children’s social care

Compliance, investigation and enforcement handbook: powers, principles and making decisions

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# Introduction

1. The legal basis of our investigatory and enforcement work for childminding and childcare providers is the Childcare Act 2006 and its associated regulations ([www.opsi.gov.uk/acts/acts2006/ukpga\_20060021\_en\_1](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060021_en_1)).
2. The legal basis for our investigatory and enforcement work for children’s social care is the Care Standards Act 2000 and its associated regulations ([www.opsi.gov.uk/acts/acts2000/ukpga\_20000014\_en\_1](http://www.opsi.gov.uk/acts/acts2000/ukpga_20000014_en_1)).[[1]](#footnote-1)
3. This legislation defines Ofsted, in the person of Her Majesty’s Chief Inspector (HMCI), as the regulatory authority for childminding and childcare providers and children’s social care services. The Acts set out our powers and duties relating to the inspection and regulation of registered childminders, childcare providers and children’s social care providers, and the powers we have to enforce compliance with the law. There are additional powers for Her Majesty’s Chief Inspector in the Education and Inspections Act 2006 ([www.legislation.gov.uk/ukpga/2006/40/contents](http://www.legislation.gov.uk/ukpga/2006/40/contents)).
4. We have a duty to ensure that we register only those people who are suitable or fit for registration, including:
* childminders and childcare providers caring for children aged from birth to the 31 August following their fifth birthday – these providers must meet the *Statutory Framework for the Early Years Foundation Stage* ([www.foundationyears.org.uk/early-years-foundation-stage-2012](http://www.foundationyears.org.uk/early-years-foundation-stage-2012)) and register on the Early Years Register, unless exempt from compulsory registration[[2]](#footnote-2)
* childcare providers who care for children aged from the 1 September following their fifth birthday until they reach the age of eight, and those who choose to register with us on the voluntary part of the Childcare Register – these providers must meet The Childcare (General Childcare Register) Regulations 2008 ([www.opsi.gov.uk/si/si2008/uksi\_20080975\_en\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080975_en_1)), The Childcare (General Childcare Register) (Amendment) Regulations 2009 ([www.legislation.gov.uk/uksi/2009/1545/contents/made](http://www.legislation.gov.uk/uksi/2009/1545/contents/made)) and the Childcare (General Childcare Register) ( Amendment) Regulations 2012 ([www.legislation.gov.uk/uksi/2012/1699/contents/made](http://www.legislation.gov.uk/uksi/2012/1699/contents/made))
* providers of children’s social care – these providers must meet the relevant regulations and have regard to the national minimum standards for the type of service they provide[[3]](#footnote-3)

managers of children’s social care – these managers must meet the relevant regulations and be registered with Ofsted for the type of service that they manage.[[4]](#footnote-4)

1. All registered people must comply with the conditions of registration set out on their certificate of registration. For childcare and early years providers, we only add conditions of registration to the certificate when it is necessary to do so.
2. We are not a complaints adjudicator. We have no legislative duty or power to investigate complaints against providers to determine whether complaints are upheld, partially upheld or substantiated. Our role is to establish whether a registered person is meeting the *Statutory Framework for the Early Years Foundation Stage*, the requirements for registration on the Childcare Register or the relevant social care regulations, and make a decision on whether a person remains suitable or fit for registration or whether someone is providing care for which registration is required.
3. The First Tier Tribunal (Health, Education and Social Care Chamber) (‘the Tribunal’)[[5]](#footnote-5) considers appeals in relation to decisions we make in respect of:
* the decision to refuse an application to register
* the decision to suspend a childminder or childcare provider’s registration
* the decision to restrict accommodation at a children’s home or residential family centre
* the variation, imposition or removal of conditions of registration
* a refusal to waive disqualification from registration as a childminder or childcare provider, or refusal to grant consent to work with children for social care providers

a decision to cancel a registration.

1. In addition, a provider can appeal to the Tribunal against an emergency order imposed by a magistrate – see ‘[*Taking emergency action*](http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook)*’.*
2. The Tribunal publishes its decisions on its website ([www.carestandardstribunal.gov.uk/Public/search.aspx](http://www.carestandardstribunal.gov.uk/Public/search.aspx)).

# Options available for ensuring compliance: childminders and childcare providers

1. The legislation gives us a range of powers that we can use to enforce compliance with the law and/or reduce the risk of harm to children. We consider the particular circumstances of each case before deciding what action we need to take. We take action at the lowest appropriate level to ensure compliance. The chart below sets out the statutory and non-statutory options available to us when considering any enforcement action. The section on thresholds includes information that we refer to and helps inform our enforcement decisions as to which of these actions we should take in any given circumstance. However, our overriding principle is to seek to ensure the welfare of children when applying our enforcement powers.

**Do nothing**

**Make**

**recommendations**

**Notice to improve – actions**

**Serve a welfare requirements notice (Early Years Register only)**

**Impose or vary conditions**

**Prosecute for an offence or issue a simple caution**

**Cancel the registration**

**Non-statutory actions**

**Statutory actions**

**Send a warning letter in lieu of prosecution**

**Take emergency action to impose or vary a condition**

**Childminders and childcare providers**

**Emergency cancellation**

1. Many of our statutory powers have a discretionary element. For example, if we are of the opinion that an early years provider is no longer suitable for registration, we can take the step to cancel registration, but there is no absolute requirement for us to do so. We may decide instead to issue the early years provider with a welfare requirements notice, which will set out the actions they must take, within a set timescale, in order to meet the *Statutory Framework for the Early Years Foundation Stage* and therefore remain suitable for registration. The only exception to this discretionary power is where an early years provider becomes disqualified, where we have a mandatory duty to cancel the registration of a registered provider. In these circumstances, where appropriate, we consider a request from the provider to waive their disqualification. If granted, we do not cancel registration on these grounds – see the chapter on ‘[Disqualification: childminding and childcare](http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook)’.
2. For all other circumstances, apart from an early years provider becoming disqualified, we use the lowest appropriate power that is proportionate to the seriousness of the concern.

# Options available for ensuring compliance: children’s social care settings

1. The law also gives us a range of powers to regulate children’s social care services, which set out the action we can take in order to enforce compliance with the law. We consider the particular circumstances of each case before deciding what action we need to take. We take action at the lowest appropriate level to ensure compliance. The chart below sets out the statutory and non-statutory options available to us. The section on thresholds includes information that we refer to and helps inform our enforcement decisions as to which of these actions we should take in any given circumstance. However, it is important not to lose sight of the overriding principle of ensuring the welfare of children and young people when applying our enforcement powers.

**Social care providers**

**Statutory actions**

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 **Non-statutory actions**

**Emergency cancellation**

**Cancel the registration**

**Take emergency action to impose or vary a condition**

**Prosecute for an offence or issue a simple caution**

**Impose or vary conditions**

**Serve a compliance notice**

**Send a warning letter in lieu of prosecution**

**Notice to improve**

**Make recommendations**

**Do noth**i**ng**

# Deciding what enforcement action to take

1. We consider the protection of children and young people and any risks to their safety when we are deciding on a course of enforcement action. We also ensure that the action we take is proportionate to the risk involved.
2. We consider whether the attitude and knowledge of the provider is appropriate. In particular, we assess whether the provider has understood the issue, has sufficient knowledge about their responsibilities and shows a willingness to put things right.
3. We assess the risk to children and young people from any non-compliance and take stronger enforcement action where children and young people are at risk.
4. We assess the impact of the concerns against the outcomes for children and young people, and consider whether taking enforcement action will bring about the necessary improvement.

# From non-statutory to statutory actions: a brief overview

1. When we investigate and find non-compliance with the requirements of registration, we use non-statutory actions if appropriate. We do this by issuing a notice to improve that sets out what we want the provider to do and by when and requires the registered person to confirm in writing that they have made the improvements. This gives registered persons the opportunity to put things right without recourse to more formal action. We may visit a provider to ensure that the actions are complete and that any negative impact on children and young people has been minimised. We expect the registered person to demonstrate how the action taken is improving knowledge and understanding, how they are embedding the action in practice and that the impact of the action taken on children and young people is positive. As such, the actions set in a notice to improve will remain open and monitored until the registered person has taken the appropriate steps. If there is no evidence of improvement, we consider whether to take statutory action.
2. Where providers fail to respond to a notice to improve, or fail to take the action set out in that notice, we have a range of statutory powers we can use to ensure they meet the requirements of registration.
3. We may issue a welfare requirements notice (for childminders or childcare providers) or a compliance notice (for social care providers). These notices are important in enforcing the law. Similar to a notice to improve, a welfare requirements or compliance notice sets out the actions that a provider must take by a certain date to meet the welfare requirements in the *Statutory Framework for the Early Years Foundation Stage*, or the relevant social care regulations. However, unlike notices to improve, a provider commits an offence if he or she does not take the action set out in a welfare requirements or compliance notice. We can prosecute providers who do not take the action required in a welfare requirements notice or compliance notice within the set timescale.
4. We can also impose conditions of registration or take action to prosecute a provider or person for an offence. In more serious cases we consider cancellation of registration. In the most serious cases, we can take emergency action to cancel a registration if we believe that:

a child (or children) cared for by a childminder or childcare provider is suffering, or is likely to suffer, significant harm

or

* at a children’s social care setting, there is a serious risk to a person’s life, health or well-being

and

we need to take immediate action in order to ensure children’s welfare is safeguarded. For guidance on the tests for using this and other powers, see the chapter ‘Thresholds: childminding, childcare and children’s social care’ (www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook).

1. We have a further power, which is to suspend the registration of a childminder or childcare provider. We do this where we have reason to believe children are, or may be, at risk of harm. In these cases, the suspension is to allow time for us to investigate the concern, or to give us or the provider time to take steps to eliminate the risk of harm to children – see ‘[Suspension of registration: childminding and childcare](http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook)’ (www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook).
2. For children’s social care services, we have the power to restrict accommodation at a children’s home or residential family centre. We do this where we reasonably believe that there is a risk of harm to a child or young person if we do not restrict the accommodation. The restriction prevents the children’s home or residential family centre from taking any new placements – see ‘[Issuing a notice restricting accommodation in a children’s home or residential family centre’.](http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook)
3. There are different tests that apply to all our powers (see ‘[Thresholds: childminding, childcare and children’s social care](http://www.ofsted.gov.uk/resources/compliance-investigation-and-enforcement-handbook)’). For example, we may decide to issue a notice of intention to a childminder or childcare provider or a notice of proposal to a social care provider (and subsequently a notice of decision) to cancel their registration. This may be an appropriate course of action if, for example, a provider is failing to meet the requirements or regulations and other enforcement action has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale.
1. The regulation of children’s social care was transferred to Ofsted from the Commission for Social Care Inspection by the Education and Inspections Act 2006, section 148: [www.opsi.gov.uk/acts/acts2006/ukpga\_20060040\_en\_13#pt8-ch6-pb1-l1g148](http://www.opsi.gov.uk/acts/acts2006/ukpga_20060040_en_13%23pt8-ch6-pb1-l1g148). [↑](#footnote-ref-1)
2. A school cannot register on the Early Years Register if the early years provision is provided by a school, as part of the school’s activities, for at least one child who is a pupil of the school and who has attained the age of three. Children who start school and attain the age of three during their first term in school may count as three for the purpose of registration. Other exemptions are set out in the Childcare (Exemptions from Registration) Order 2008: [www.opsi.gov.uk/si/si2008/uksi\_20080979\_en\_1](http://www.opsi.gov.uk/si/si2008/uksi_20080979_en_1). [↑](#footnote-ref-2)
3. Please see the *Guide to registration for children’s social care services* (090020), Ofsted, 2012; [www.ofsted.gov.uk/publications/090020](http://www.ofsted.gov.uk/publications/090020). [↑](#footnote-ref-3)
4. Please see the *Guide to registration for children’s social care services*. [↑](#footnote-ref-4)
5. [www.justice.gov.uk/tribunals/care-standards](http://www.justice.gov.uk/tribunals/care-standards). [↑](#footnote-ref-5)