



Department
for Education

Launch date 28 March 2014
Respond by 22 May 2014
Ref: Department for Education

Childminder agencies and changes to the local authority role

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This consultation seeks views on changes to the provision of early education and childcare as a result of measures in the Children and Families Bill currently awaiting Royal Assent. Part A is about the introduction of childminder agencies and specifically new draft regulations, including key requirements for those organisations who wish to set up agencies. Part B seeks views on draft regulations which make changes to the way local authorities discharge their duty under section 7 of the Childcare Act 2006 ('the 2006 Act')

To Local authorities, nurseries, schools, children centres, parents, prospective CMAs (whether public or private sector) and childminders

Issued 28 March 2014

Enquiries To If your enquiry is related to the policy content of the consultation you can contact the department on 0370 000 2288

e-mail: CMA-LA-REGS.CONSULTATION@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the Ministerial and Public Communications Division by e-mail: consultation.unit@education.gsi.gov.uk or by telephone: 0370 000 2288 or via the department's '[Contact Us](#)' page.

1 Introduction

1.1 This consultation seeks views on changes to the provision of early education and childcare as a result of measures in the Children and Families Act 2014. The measures in the Act were set out in the report 'More Great Childcare' published

by the Department for Education on 29 January 2013 and 'More Affordable Childcare' published on 16 July 2013. The reports are available here:

<https://www.gov.uk/government/publications/more-great-childcare-raising-quality-and-giving-parents-more-choice>; and
<https://www.gov.uk/government/publications/more-affordable-childcare>.

- 1.2 Part A is about childminder agencies and specifically new draft regulations (Annex A), including key requirements for those organisations that wish to set up agencies. Childminder agencies will be able to register childminders and provide them with training, business support, advice, and help to find parents seeking childcare.
- 1.3 Part B seeks views on draft regulations (Annex B) which make changes to the way local authorities discharge their duty under section 7 of the Childcare Act 2006 ('the 2006 Act') to secure early years provision, free of charge, for eligible children in their area. It also seeks views on draft statutory guidance (Annex C) for local authorities under the 2006 Act related to early education and childcare.

2 Vision and aims

- 2.1 The Government wants to make more great childcare available for children, and to provide more choice and flexibility for parents. If we want all of our children to succeed at school, go on to university or into an apprenticeship and thrive in later life, then we must get it right in the early years.
- 2.2 This consultation covers two ways we are making this happen. The introduction of childminder agencies and the reforms to the local authority role in funding early education places will make it easier for new providers to enter the market and for good existing providers to expand, with consequent benefits to affordability and quality.
- 2.3 We are enabling the setting up of childminder agencies to encourage more people to take up childminding, to offer greater support for childminders, and to improve quality. Childminder agencies are designed to give parents more choice and help with securing childcare that meets their needs. Childminder agencies are not intended to replace existing independently registered childminders – rather we want them to build on and complement existing childcare provision.

- 2.4** We are determined that parents should have a real choice about where they take up their child's funded early education place and that all places are of the highest quality possible. To help this, we are reforming the role of the local authority to make the rules around who can offer the entitlement clearer and simpler for parents and providers. We want to free up local authorities so they can target their resources on ensuring that all eligible children, regardless of their family background, are able to benefit from a funded early education place.
- 2.5** Our reforms will ensure that if providers are high quality then they are guaranteed Government funding to deliver early education places without having to meet additional local authority quality requirements. We have made it easier for childminders to be able to deliver funded early education places by removing the expectation in statutory guidance that a childminder must be part of a childminder network in order to qualify for early education funding.
- 2.6** In addition to these changes, we published the Government response to the consultation on the 'Regulation of Childcare' on 13 February 2014. These introduced some changes that will promote a prosperous and growing market that gives parents more choice and enables providers to improve affordability and quality, for example, making it easier for schools to offer care and nursery provision from 8-6pm.

3 The case for change

- 3.1** We want to improve the availability, affordability and quality of childcare for parents. This consultation covers two of the ways we plan to do this.
- 3.2** Childminder agencies might appeal to parents for a lot of reasons – a one stop shop offering a valuable brokering service (contacting around 2 or 3 childminder agencies might give you a choice of a very wide number of childminders, whereas contacting each childminder individually can be a very time consuming exercise), offering advice and support about the things to consider when choosing your childminder, a trusted brand, the assurance that comes with knowing that there is supervision and wider quality assurance in place, and the ability to both have that very personal relationship with your individual child's carer, but also to have that brokerage and back up support role performed by a third party (with whom you can raise any concerns or clarify issues at any time). The Government, therefore, wants childminder agencies to act as a lever

to:

- increase the number of childminders in the market, through helping potential childminders navigate the various requirements for establishing their business and to get them up and running;
- see childminders who elect to join agencies provided with more support, including training and development, and business and marketing support; and

make it easier for parents to find a childminder to suit their child's needs.

3.3 In relation to early education funding, the department's previous expectation was that local authorities would undertake their own assessment of a provider's quality before funding them to deliver early education places. Given financial constraints, it is not a good use of taxpayers' money for local authorities to duplicate the role of Ofsted and undertake a separate assessment of a provider's quality.

3.4 This duplication was also confusing, particularly for providers who are chains operating across local authority boundaries, and was a barrier to new childcare providers entering the market. Nationally consistent criteria ensure that providers are clear about the quality standard they need to reach in order to be certain of receiving Government funding to deliver early education places. The changes we are proposing will also mean that parents will have a greater choice over how and where they use their child's early education entitlement.

4 Purpose of this consultation

4.1 This consultation seeks views on:

- New draft regulations for childminder agencies which set out the key requirements for registration and outline a range of other matters relating to the operation of a childminder agency (part A).
- Regulations which make changes to the way local authorities discharge their duty under section 7 of the 2006 Act to secure early years provision free of charge for eligible children in their area (part B).[\[1\]](#) The consultation also seeks views on draft statutory guidance for local authorities under the 2006 Act related to early education and childcare.

[1] In this consultation free of charge early years provision is described as funded early education.

4.2 Draft illustrative regulations for childminder agencies were first published in March 2013. We have refined our original proposals, reflecting discussions with our Task and Finish Group (made up of those with expertise in early education, childcare, and in childminding), and informed by the work of the organisations taking part in agency trials. We have also listened to those with interests in childminder networks, early education and childcare professionals including childminders themselves, and other interested parties.

4.3 Parliament has debated and legislated for childminder agencies in the Children and Families Act. We are, therefore, not seeking views on the principle of childminder agencies. Rather, we are seeking views to inform the regulations on:

- the number of continuing professional development (CPD) hours per year that childminder agencies should secure for childminders registered with them;
- the number of hours of support time and visits that childminder agencies should secure for or with childminders registered with them;
- whether agencies should only have to undertake a minimum of one visit per year after the first year based on their assessment of the quality of the childminder; and

the legal requirements for how childminder agencies will register with Ofsted and subsequently operate.

4.4 The final requirements to be contained in regulations and any additional departmental advice will be informed by this consultation and learning from the childminder agency trials.

4.5 In addition, the policy on how local authorities discharge their section 7 duty, which is already described in the department's current statutory guidance, is also out of scope of this consultation. The department consulted on the policy between March and May 2013. The powers to make the regulations were debated in Parliament during the passage of the Children and Families Act 2014.

5 Part A - Childminder agencies

- 5.1** The Children and Families Act 2014 allows for the establishment of childminder agencies from September 2014. The concept of childminder agencies is a new one.
- 5.2** The Government sees childminder agencies as being 'one-stop shop' organisations that will help childminders with training, business support, advice and finding parents seeking childcare. They will be a new route in addition to independent childminders. By enabling the establishment of childminder agencies, the Government hopes to attract new childminders to the profession. Agencies will also make life easier for childminders by providing a range of services such as marketing, administrative support and training and development opportunities to help them to further raise the quality of their provision.
- 5.3** They will also provide a valuable service for parents who want to find a high quality childminder. Many parents struggle to find the right local childminder and this can take a lot of time with no consistency in the information which is available to parents. Agencies can help by providing a matching service for parents and by providing them with the information they need to make informed choices. Agencies will also be able to provide holiday and sickness cover ensuring parents have reliable childcare.
- 5.4** The Government does not want to prescribe a business model for agencies – we want to give agencies the freedom to develop models that suit parents and childminders locally. But it is vital that childminder agencies provide a guarantee of high quality provision, and it is right that some minimum standards should be set out in legislation. This consultation seeks views on the specific requirements – for example, on hours of CPD– that agencies must provide for their childminders.

5.5 Registration

Childminder agencies will need to register with and be inspected by Ofsted to ensure they meet all the necessary safeguarding and quality standards. This means parents can have confidence in agency staff, and consequently the quality of care and early education offered by childminders registered with the agency. Ofsted recently consulted on its inspection proposals for childminder

agencies and a copy of the Ofsted consultation document is available at:

www.ofsted.gov.uk/resources/inspecting-childminder-agencies-consultation-document.

5.6 Once registered with Ofsted, childminder agencies will – in turn – be able to register and quality assure childminders, help new people take up childminder roles, and enable parents to have a greater choice over the early education and childcare they want for their children.

5.7 It is important that childminder agencies provide parents and childminders with a high quality and safe service. Therefore, many of the requirements we are seeking to put in place on agencies in relation to childminders they register mirror the checks Ofsted currently undertakes to establish a prospective childminder's suitability, e.g. ensuring that they have submitted an application for an enhanced Disclosure and Barring Service (DBS) check and carrying out a pre-registration visit.

5.8 Continuing Professional Development (CPD) for childminders

A key objective for enabling the establishment of childminder agencies is to further improve the quality of childminders and children's outcomes. We estimate that currently fewer than 10% of childminders are part of a formal childminder network and able to access formal CPD and support, with the quality of support that childminders receive being mixed. The Government wants to help a broader range of childminders to access support and training with support available from a variety of sources including childminder agencies, local authorities, as well as other professional bodies and training providers.

5.9 It is the Government's view that agencies and childminders should be free to agree what form the CPD that the agency secures takes, for example, workshops, on-line learning or mentoring. This means that CPD is not just about attending one-off training courses but includes things like conference attendance, gaining peer support from colleagues or keeping up to date by reading factsheets/guidance, practice and policy briefings, preparing for inspection and self-reflective practice.

5.10 Childminder agencies will want to offer a differentiated level of CPD dependent on each childminder's own development needs. It is not for Government to detail the exact type or length of CPD for each childminder registered with a

childminder agency. However, to ensure quality across the piece, we believe it is important to set a CPD requirement that all childminders registered with childminder agencies must receive.

- 5.11** The Government proposes that childminder agencies be required to secure 16 hours CPD per year for early years childminders and 8 hours CPD per year for later years childminders.

5.12 Support time and visits for childminders

We propose that childminder agencies should secure 20 hours support time per year for early years childminders, with 10 hours per year for later years childminders. This support time could be a combination of an agency sending a weekly or monthly update newsletter to childminders, the agency checking with a childminder on their hours for invoice purposes, CPD activity where this is delivered by the agency, quality assurance visits, or telephone or e-mail support. We want agencies to have flexibility here so, for example, when an agency provides a training session or on-line learning programme for all their childminders this could count towards them meeting the requirements. It will be for agencies and childminders to determine the precise form of support in a way that works best for them.

- 5.13** We would expect an agency to be in regular contact with their childminders. We envisage childminders registered with agencies will have much more regular contact and visits than childminders currently have with Ofsted. In relation to early years childminders, Ofsted currently visits a childminder's home pre-registration to:

- check their identity, premises and equipment;
- see their DBS disclosure certificate;
- assess their:
 - suitability as a childminder;
 - ability to deliver all of the requirements of the Early Years Foundation Stage with which they must be familiar;
- assess how they will help children to make good progress with their learning and development while they are in their care;
- assess how they will meet safeguarding and welfare requirements;
- interview the childminder;

check any policies and procedures, and check their risk assessment.

5.14 The Government will require childminder agencies to conduct similar pre-registration visits for early years childminders to Ofsted and, in addition, carry out regular quality assurance visits. Agencies will also have to put in place arrangements to visit and quality assure later years childminders.

5.15 In the draft regulations, we therefore set out specific proposals around support time and visits that childminder agencies must secure for or undertake in relation to early years and later years childminders registered with them. The intention is that, after the initial year, the number of visits could be scaled back to a minimum of one per year, depending on the quality of the childminder.

The Government proposes that, in relation to early years childminders:

- agencies be required to secure 20 hours support time per year;
- that the support time may include CPD activity delivered by the CMA; and
- that the support time must include at least two visits for early years childminders in their first year of operation but that agencies be free to scale these down to a minimum of one visit per year once they are satisfied as to the childminder's quality.

The Government further proposes that, in relation to later years childminders:

- agencies be required to secure 10 hours support time per year;
- that the support time may include CPD activity delivered by the CMA; and

that the support time must include at least one visit per year.

5.16 Other legal requirements for childminder agencies

Amongst other requirements, we are providing in the regulations for childminder agencies to have to produce a 'statement of purpose' when registering with Ofsted. This will set out the services the agency will offer, including their procedures for registering providers and monitoring the standards of childcare provision on offer. We are also providing for the type of information an agency should provide to parents, childminders and local authorities – and when this should be provided.

6.1 Background

Local authorities in England have a statutory duty under section 7 of the 2006 Act to secure early years provision free of charge for eligible children in their area. Since September 2010 all three- and four-year-old children have been entitled to 570 hours a year of Government funded early education over no fewer than 38 weeks of the year. In September 2013, this entitlement was extended to looked after two-year-olds and two-year-olds who meet the criteria used to determine eligibility for free school meals. From September 2014, the entitlement will be further extended to around the 40% most disadvantaged two-year-olds. The eligibility criteria are set out in section A1 of the attached draft statutory guidance.

6.2 The department consulted between 25 March and 6 May 2013 on proposals to reform the role of the LA with regard to funded early education. The Government response to the consultation was published alongside 'More Affordable Childcare' on 16 July 2013. As a first step, we published statutory guidance on 16 July which came into effect from 1 September 2013, which sets out the Department's expectations of local authorities:
<https://www.gov.uk/government/publications/early-education-and-childcare>.

6.3 Section A3 of the current guidance says that local authorities should:

- Base their decision whether to fund a provider to deliver early education places based on the provider's Ofsted inspection judgement and not undertake a separate assessment of the quality of the provider;
- Fund places for two-, three- and four-year-old children attending any provider rated 'good' or 'outstanding' by Ofsted;
- Fund places for three- and four-year-old children attending any provider rated 'satisfactory'/'requires improvement';
- Only fund two-year-old children in 'satisfactory'/'requires improvement' providers where there is insufficient accessible 'good' or 'outstanding' provision;
- Fund new providers registered with Ofsted until their first full Ofsted inspection judgement is published;
- Secure alternative provision and withdraw funding, as soon as is practicable, for children who are already receiving their funded entitlement at a provider when it is rated 'inadequate' by Ofsted.

References to Ofsted inspection judgements throughout this consultation also

refer to inspection judgements made by an inspectorate approved by the Secretary of State.

6.4 Section A4.9 of the current guidance also says that local authorities should limit the conditions they place on providers who have been rated 'good' or 'outstanding' to deliver early education places to those related to ensuring that:

- funded places are entirely free of charge to parents;
- places are offered flexibly to meet the needs of parents;
- the proper use of public funds;
- providers meet the needs of disabled children or those with a special educational need; and
- providers are keeping children safe.

6.5 Section A4.10 makes clear that, in addition to the above, local authorities should limit the conditions they place on providers judged as 'satisfactory' or 'requires improvement' to those which address concerns raised by Ofsted at inspection.

6.6 This consultation seeks views on the regulations to be made under new sections 7A and 9A of the 2006 Act. These sections have now been inserted into the 2006 Act through the Children and Families Act 2014. The consultation also seeks views on draft statutory guidance. The next sections of the consultation set out the legislative context, a summary and explanation of the proposed regulations, and key changes to the statutory guidance. The draft regulations are at Annex B and the draft statutory guidance is at Annex C.

6.7 The regulations do not deal with the ability of local authorities to place requirements on the governing bodies of maintained schools, as the funding arrangements between a local authority and a maintained school are not governed by contract but by law, in particular the School Standards and Framework Act 1998 and the finance regulations made under that Act. All maintained schools are required to follow financial reporting procedures laid down by their local authority. Local authorities have a number of powers to intervene in maintained schools where Ofsted have judged the school to require significant improvement or special measures.

6.8 Legislative context

Section 7 of the 2006 Act places a statutory duty on English local authorities to

secure early years provision free of charge for eligible children in their area. Regulations made under section 7 prescribe the amount and type of free provision and the description of the children to benefit from free provision. In discharging their duty, local authorities must have regard to statutory guidance.

- 6.9** The Children and Families Act 2014 inserts a new section 7A, Discharge of duty under section 7, after section 7 of the Act. The new section allows regulations to be made which affect the way local authorities discharge their duty under section 7.
- 6.10** Section 9 of the 2006 Act requires English local authorities, when making arrangements with a person (other than the governing body of a maintained school) to deliver funded early education places, to act in a way that ensures that the provider meets any requirements imposed on them by the local authority. If the requirements are not met, it allows local authorities to require repayment of the funding. Local authorities currently have complete discretion over the requirements they can impose on providers.
- 6.11** The Children and Families Act 2014 inserts a new section 9A in the 2006 Act, Arrangements made by local authorities for the purposes of section 7, after section 9 of the Act. The new section allows regulations to be made which limit the requirements local authorities can place on childcare providers who receive funding from the local authority to deliver early education places.

6.12 Childminder agencies

Childminder agencies will not be childcare providers as they will not directly provide childcare. Agencies will be able to register with and be inspected by Ofsted from September 2014. Once registered with Ofsted agencies will be able to register childminders. Childminders will then have a choice: remain independent and register with Ofsted (as now); or with a childminder agency.

- 6.13** It is intended that childminders who choose to register with an agency will continue to be able receive funding to deliver early education – either through the agency or direct from the local authority. Local authorities will be required to base their decision whether to fund early education places delivered by childminders registered with an agency on the Ofsted inspection judgment of the agency.
- 6.14** Childminders who remain independent and directly registered with Ofsted will

continue to be able to receive funding to deliver early education places direct from a local authority and this will be based on their most recent Ofsted inspection judgment.

7 New regulations and the statutory guidance

7.1 In this section, we explain the proposed new regulations.

The Local Authority (Discharge of Duty to Secure Early Years Provision Free of Charge) Regulations 2014.

Regulation 1 defines the terms used in the regulations.

Regulation 2 imposes a requirement on local authorities, when discharging their duty under section 7, to fund early education places at providers who meet the criteria in regulation 3, provided that a parent wants their child to take up their early education place at that provider, and the provider is prepared to accept the terms of the local authority funding and any requirements of that funding.

Regulation 3 sets out the quality standards that early years providers must meet in order for the local authority to be under the requirement in regulation 2 to fund the provider. The requirement is not relevant to the governing body of a maintained school.

The quality standards are based on the most recent Ofsted inspection judgement of the early years provider. Local authorities must fund places for two-, three- and four-year-olds in provision rated 'good' and 'outstanding'. Local authorities must also fund places for three- and four-year-olds in provision rated 'satisfactory' or 'requires improvement' – for these providers, the local authority may include contractual conditions requiring the provider to address the issues identified by Ofsted, per regulation 5.

Where the provider is a childminder registered with a childminder agency, local authorities must fund places on the basis of the Ofsted rating given to the agency. Local authorities must fund places for two-, three- and four-year-olds, in provision registered with an agency rated 'good' or 'outstanding', and places for three- and four-year-olds in provision registered with an agency rated 'satisfactory' or 'requires improvement'.

Local authorities must fund providers registered with Ofsted whose first Ofsted

inspection report has not yet been published, and providers registered with a childminder agency whose first Ofsted inspection report has not yet been published.

Local authorities do not have to fund an early years provider or early years provision delivered by a childminder registered with a childminder agency (even if they meet the criteria set out in regulation 2) if the local authority has reasonable grounds to believe that the person with whom funding arrangements are made will not be able to meet the requirements of the local authority.

Regulation 4 provides that local authorities must ensure that the arrangements they make to fund the early education place can be terminated if the provider or agency ceases to meet the quality standard set out in regulation 3.

Regulation 5 sets out the requirements that local authorities may and may not attach to the funding they provide for the delivery of early education places. Local arrangements will determine how the local authority funds early education places and therefore the person on whom the requirements apply to. In the case of a childminder registered with an agency, it will be for the childminder agency and the childminder to agree whether the funding is passed to the childminder directly or is handled by the childminder agency on the behalf of the childminder.

Local authorities may impose requirements which:

- enable the local authority to comply with the requirement (in regulation 2) to fund an early education place at any provider who meets the quality standard and is willing to provide the place and accept the terms of the local authority;
- enable the local authority to terminate the funding if the quality standard ceases to be met;
- are necessary for the proper administration of the funding;
- ensure that early education is delivered free of charge;
- ensure that early education is delivered flexibly to meet the needs of parents;
- that Government funding is used properly and in accordance with the arrangements;
- that providers meet the needs of disabled children and children with special educational needs; and
- that providers keep children safe.

In addition, if the early years provider is judged less than 'good' by Ofsted, local authorities may impose requirements that the provider takes the measures identified in the Ofsted inspection report to improve the quality of the provision.

Local authorities may not impose requirements which:

- require a provider or childminder agency to participate in a quality assessment process undertaken by the local authority; and/or

require a provider to undertake any training or quality improvement programme other than, for providers judged less than 'good' by Ofsted, any training or quality improvement programme identified in the Ofsted inspection report as necessary to improve the quality of the provision.

7.2 It is proposed that, subject to the will of Parliament, the regulations will come into force from 1 September 2014.

7.3 Statutory guidance

The guidance has been updated to:

- set out the eligibility criteria for the two-year-olds who will benefit from funded early education from September 2014;
- reflect the legislative changes (subject to the will of Parliament) to the way local authorities discharge their duty to secure funded early education, and how local authorities make arrangements to fund childcare providers to deliver funded early education;
- set out the way local authorities should discharge their duty to provide information, advice and training to childcare providers;
- make clear that local authorities should take account of the childcare needs of parents who work irregular hours when meeting their duty to secure sufficient childcare in their area and include reference to this in their annual sufficiency report;
- set a strong expectation that local authorities will actively encourage schools in their area to offer childcare from 8.00am and 6.00pm; and
- clarify some points of detail which have caused confusion.

8 How To Respond

8.1 Consultation responses can be completed online at www.education.gov.uk/consultations

by emailing: CMA-LA-REGS.CONSULTATION@education.gsi.gov.uk

by downloading a response form which should be completed and sent to:

Childminder Agency Project,
Early Years Market Structures Portfolio,
Department for Education,
First Floor, Sanctuary Buildings,
Great Smith Street,
London, SW1P 3BT.

9 Additional Copies

9.1 Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at: www.education.gov.uk/consultations.

10 Plans for making results public

10.1 The results of the consultation and the department's response will be published on the DfE e-consultation website in July 2014.