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The *Childcare Bill*

Bill 80 of 2005–06

Following on from the Government's December 2004 policy paper *Choice for parents, the best start for children: a ten year strategy for childcare*, the *Childcare Bill* sets out new duties on local authorities in respect of the provision of childcare and related matters, and a new regulatory regime for childcare providers.

This Paper considers the current childcare market, recent childcare research, Government childcare policy as well as the Bill.

This Bill applies to England and Wales.

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Summary of main points

In 1998, the Government launched its National Childcare Strategy, and followed it up with a number of policies and initiatives aimed at the childcare sector.

In December 2004, the Government published its policy paper *Choice for parents, the best start for children: a ten year strategy for childcare* in which it noted that it had “invested heavily in the National Childcare Strategy and Sure Start to improve services for children and families” but noted that “important challenges” remain, including that “many families still have difficulty finding childcare services that fit their circumstances and that adapt as their children grow”, and “the quality of childcare services can vary”.

The strategy document set out how Government childcare policy was to be taken forward in the areas of choice, affordability, availability and quality. Following the publication of the ten-year strategy, the Government published a consultation on childcare, and a subsequent report on the responses.

The *Childcare Bill* has three main parts:

- Part 1 sets out new duties on local authorities in England in respect of the provision of childcare. Local authorities will have to secure, so far as is reasonably practical, that the provision of childcare is sufficient to meet the needs of parents in their area who require it. In this respect, there is an emphasis on parents in work or training, as well as the parents of disabled children. Other powers in Part 1 will help local authorities to assess local childcare provision and also provide childcare themselves;
- Part 2 sets out new duties on local authorities in Wales in respect of the provision of childcare; these are similar, but not as wide-ranging, as those found in Part 1 for their English counterparts; and
- Part 3 reforms the regulation of childcare providers in England, and introduces a new register for such providers as well as a reformed registration and inspection framework to be administered by Ofsted. Providers of childcare to children aged under five will also have to implement the Early Years Foundation Stage. Following the consultation, providers of childcare of children aged six and seven will also be required to register with Ofsted, although their regulatory regime will be somewhat more relaxed compared to those providing childcare to younger children. Other childcare providers may voluntarily register with Ofsted.

The statistical information in section II was provided by Paul Bolton of the Library’s Social and General Statistics Section, commentary on the VAT regime in section V.B.1.b was written by Antony Seely of the Business and Transport Section, and analysis of the Early Years Foundation Stage (Learning and Development Requirements) in section V.E was provided by Christine Gillie of the Social Policy Section.

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I Childcare provision

The National Audit Office (NAO), in its report *Early Years: Progress in developing high quality childcare and early education accessible to all*, highlighted the range of provision for childcare currently available:

Table 1: Types of early years providers

Service	Overview of services	Age range catered for	Type of provider
Day nursery	<ul style="list-style-type: none"> • Provide full or part-time day care, education and play for children below compulsory school age (5 years). • Nurseries can be profit-making or non-profit-making. • Generally open 8am to 7pm. 	0 to 5 years	Public, private or voluntary
Nursery school	<ul style="list-style-type: none"> • Educate pre-school aged children. • Staffed with a high ratio of qualified teachers. • Work in partnership with other trained professionals. • Many staff have special qualifications for the age group. 	3 to 4 years	Public or private
Nursery class	<ul style="list-style-type: none"> • Can be attended either full time or part time one year before a child starts compulsory education. Full time refers to school term time, not holiday. 	3 to 4 years	Public
Pre-school playgroup	<ul style="list-style-type: none"> • Playgroups are usually part-time or 'sessional', and operate for two to three hours per session. 	2½ to 5 years	Private or voluntary
Childminder	<ul style="list-style-type: none"> • A self-employed person who provides day care for more than two hours per day. • Usually in the childminder's own home. • Hours tend to be flexible. 	Usually up to 8 years	Private
Reception class in a primary or infant	<ul style="list-style-type: none"> • Children in a reception class are usually completing the final year of the Foundation Stage. They then move on to Year One of the primary or infant school on reaching statutory school age. 	4 to 5 years	Public or private
After school, out of school care, breakfast clubs and holiday schemes	<ul style="list-style-type: none"> • Cater for children of school age and to help meet the needs of working parents. • A range of activities are offered including sports, drama, arts and crafts, and music. 	Compulsory school age	Public, private or voluntary
Crèches	<ul style="list-style-type: none"> • Offer short term childcare for young children, while parents are unable to look after them, for example, if they go on a residential course, training or leisure activities. • Crèches may operate all week on a sessional basis, but will usually cater for different children at each session. 	0 to 5 years	Private or voluntary

Source: National Audit Office, *Early Years: Progress in developing high quality childcare and early education accessible to all*, February 2004, p5, figure 3

One notable absence from the list is the category "relatives": according to the 1998 General Household Survey, in households where the mother worked full or part-time, a

relative provided childcare for children aged 0 to 5 years in 31 per cent (full-time) and 34 per cent (part-time) of cases, and in both cases were the most popular type of childcare.¹

According to market analysts Laing and Buisson, the key drivers of demand for childcare in the UK over the past ten years have been:

- an increase in the female workforce and in female workforce participation;
- an increase in the average age of females on starting a family;
- changes in parent preferences for childcare; and
- public sector subsidies and provision of childcare.²

Laing and Buisson observed that a “key factor” in the growth of childcare demand has been that “many more women are having children later in life, at an age when the propensity to use childcare services is greatest”. They argued that:

employed women in their 30s are more likely to be established in a career and have a higher level of income. Thus, they have a greater incentive to return to work and more resources to pay for childcare, than working women in their 20s.³

The actual number of children aged under five had not, according to Laing and Buisson, been a “significant driver ... in the past and is not expected to be so in the future.” They expected the “slight downward trend” in the under-5’s population to continue until 2010, followed by a “gradual upward trend to 2025 following by another downward cycle”.⁴

¹ Laing and Buisson, *Children’s Nurseries: UK Market Report 2005*, p11, table 1.1

² Laing and Buisson, *Children’s Nurseries: UK Market Report 2005*, p4

³ Laing and Buisson, *Children’s Nurseries: UK Market Report 2005*, p6

⁴ Laing and Buisson, *Children’s Nurseries: UK Market Report 2005*, p4

II Statistics on childcare places and take-up⁵

A. Places

The Office for Standards in Education (Ofsted) took over the production and publication of statistics on the number of providers and places in England after it became responsible for the registration and inspection of childcare providers in 2001. It collects data on a different basis from earlier information using a different classification of providers. This complicates any analysis of trends.

The table below compares the latest Ofsted data to the first set of figures they published. Between March 2003 and September 2005 the number of registered places increased by nearly 230,000 or 17.8%. There were particularly large increases in full day care and crèche day care provision while the number of sessional day care providers and places fell.

Table 2: Registered childcare providers and places by type, England

	31 March 2003		30 September 2005		Change	
	Providers	Places ^(a)	Providers	Places ^(a)	Providers	Places ^(a)
Childminders	68,200	300,900	71,100	319,700	+4.3%	+6.2%
Full Day Care	9,600	381,600	12,600	542,900	+31.3%	+42.3%
Sessional Day Care	11,600	280,800	10,000	244,200	-13.8%	-13.0%
Out Of School Day Care	8,000	285,400	10,200	358,100	+27.5%	+25.5%
Creche Day Care	1,900	32,700	2,600	44,800	+36.8%	+37.0%
All	99,300	1,281,300	106,500	1,509,600	+7.3%	+17.8%

(a) The number of children who may attend at any one time

Source: Quarterly Childcare Statistics as at: 30 September 2005, and earlier editions, Ofsted

To put these figures in context, in 2004 there were an estimated 2.9 million children aged under five in England and a further 2.4 million five to eight year olds.⁶ A single childcare place can benefit more than one child because not all children will take up a place on a full-time basis.

Earlier data on day care for children shows that between 1990 and 2001 there were overall increases in the number of places in day nurseries and with childminders, but falls in provision by pre-schools and playgroups. The total number of places at day nurseries increased from 87,500 to 285,100. The number of places with childminders fell by 70,000 between 1996 and 2001, but at 304,600 in 2001 it was still above the 205,600 places in 1990. Places at pre-schools and playgroups stood at 330,200 in 2001 compared to 416,400 in 1990. Funding from the New Opportunities Fund saw very large increases in the number of places in out of school clubs (79,000 in 1997 to 153,000 in 2001) and holiday schemes (209,000 in 2001 to almost 600,000 in 2001).⁷

⁵ This section of the Research Paper was written by Paul Bolton, Social and General Statistics Section

⁶ Office for National Statistics, *Mid 2004 population estimates*

There is substantial overlap between early education and childcare. In its 2003/04 annual report, Ofsted stated that more than half of day-care providers offered government funded part-time nursery education for under fives.⁸ In January 2005 there were 364,200 free nursery education places for three and four year olds in the private, voluntary and independent sectors and 663,800 in maintained primary and nursery schools.^{9 10} The early education places in the non-maintained sector are, for the most part, not additional to the day care places included in the tables above. Providers of early education need to be registered as a childcare provider in order to receive funding from their local authority.

In January 2005, some 98 per cent (1.1 million) of three and four year olds took up free early education places. Some 397,000 of these places were provided by the private and voluntary sectors.¹¹ A survey carried out for the Department for Education and Skills (DfES) in 2001/02 looked at the combined use of early education and childcare. Overall, 18 per cent of three and four year olds had received both in the previous week. It was more common for younger children as nursery education for four year olds is more likely to be full-time in maintained schools. Very few children received childcare but no early education and these were nearly all younger three year olds.¹²

B. Take-up

There are no routinely collected data on the number of children placed in the different forms of childcare. A series of surveys have been carried out on behalf of the DfES and SureStart, the most recent of which was conducted in 2002/03. Its main focus was children aged under eight, but also included older children enrolled in childcare. The results were grossed up to produce national estimates which are included in the table below.

Table 3: Estimated number of children enrolled in childcare, England 2003

	Number	% of total
Full daycare	649,400	38.7%
Playgroups	469,900	28.0%
Out of school clubs	271,900	16.2%
Childminders	287,100	17.1%
Total	1,678,300	-

Source: 2002/03 childcare and early years workforce survey, SureStart. Table 3.6

⁷ Department for Education and Skills, *Children's day care facilities at 31 March 2001 England* (and earlier editions), tables 2 and 4

⁸ Ofsted, *The annual report of Her Majesty's Chief Inspector of Schools 2003/04*, para 12, see: <http://www.ofsted.gov.uk/publications/annualreport0304/>

⁹ Department for Education and Skills, *Provision for Children Under Five Years of Age in England: January 2005 (Final)*, table 4

¹⁰ These are the total number of part-time places and count a morning and afternoon session as two places. The childcare data are the number of places available at any one time and hence, for sessional care, count separate morning and afternoon sessions as a single place.

¹¹ Department for Education and Skills, *Provision for Children Under Five Years of Age in England: January 2005 (Final)*, table 4

¹² National Centre for Social Research, *Sixth survey of parents of three and four year olds children and their use of early years services*, 2004, pp53-54, see: <http://www.dfes.gov.uk/research/data/uploadfiles/RR525.pdf>

Overall there was a 2 per cent fall in the total number of children enrolled compared to the results of the 2001 survey, although provision generally shifted towards full-time settings. The number of children in full daycare and with childminders increased by 20 per cent and 9 per cent respectively, while the number enrolled in part-time settings such as playgroups and out of school clubs fell by 20 per cent and 16 per cent respectively.¹³

The National Centre for Social Research's *Repeat study of parents' demand for childcare* was carried out in 2001 and looked in detail at aspects of childcare for children of all ages. Some of its key findings were:

- 86 per cent of families had used some form of formal or informal childcare at some time in the past year and 56 per cent had done so in the previous week;
- the most common forms of childcare were informal—friends or relatives—and more than half of families had used grandparents for childcare in the previous year;
- overall, 32 per cent of families had used some type of formal childcare in the previous year. The most common forms of formal childcare were crèche/nursery, out-of-school clubs, schools and playgroups. Childminders were most commonly used by working couples and working lone parents;
- the average number of hours of childcare per week was 21.4 among households that used childcare—this figure increased for working couples and lone parents in full-time work;
- one quarter of families had been unable to get childcare some time in the past year when they wanted it, 3 per cent reported that this happened at least once a month;
- among families who were unable to get childcare on one or more occasions, 9 per cent said it was because of insufficient childcare places;
- 28 per cent of families that paid for childcare said they had difficulties meeting these costs, and an additional 7 per cent said it was very difficult—lone parents and families on low incomes had the most difficulties.¹⁴

¹³ SureStart, *2002/03 childcare and early years workforce survey*, table 3.6

¹⁴ National Centre for Social Research, *Repeat study of parents' demand for childcare*, 2002, see: http://www.surestart.gov.uk/_doc/P0000561.pdf

III Childcare research

The issue of whether it is best for a child to remain at home or to spend time in a day care setting can be emotive, and research on childcare can be viewed by some as controversial.

While there have been many research projects undertaken on childcare, perhaps one of the most significant in relation to the *Childcare Bill* is the Effective Provision of Pre-School Education (EPPE) Project. The study, which followed a sample of 3,000 children between 1997 and 2004 was funded by the DfES. It investigated the effects of pre-school education and care on the development of children aged 3–7 years old.

The study found that pre-schooling had the following impact on children:

- pre-school experience, compared to none, enhanced all-round development in children;
- duration of attendance (in months) was important;
- an earlier start (under age 3 years) was related to better intellectual development;
- full time attendance led to no better gains for children than part-time provision;
- disadvantaged children benefited significantly from good quality pre-school experiences, especially where they were with a mixture of children from different social backgrounds; and
- disadvantaged children tended to attend pre-school for shorter periods of time than those from more advantaged groups (around 4-6 months less).¹⁵

The study considered a wide range of pre-school settings¹⁶ and found “significant differences between individual pre-school settings and their impact on children”, adding “some settings are more effective than others in promoting positive child outcomes”. The report also found that “quality was higher overall in settings integrating care and education and in nursery schools”.¹⁷

The report’s authors noted that:

The traditional nursery schools and integrated (combined) centres usually had the highest scores, often close to ‘excellent’, followed by nursery classes. Unfortunately many young children are attending centres where the provision is ‘minimal’ rather than ‘good’. The playgroups and private day nurseries typically had the lowest scores, with local authority day nurseries somewhere in between. This study shows clearly that well-resourced pre-school centres with a history of ‘education’ (including substantial numbers of trained teachers, LEA [Local Education Authority] in-service training, OfSTED ‘school’ inspections rather than ‘care’ inspections) were providing the highest quality of care and education. The

¹⁵ Institute of Education (University of London), *The Effective Provision of Pre-School Education [EPPE] Project: Final Report*, November 2004, p ii, see: http://www.surestart.gov.uk/_doc/P0001378.pdf

¹⁶ Namely: nursery classes; playgroups; private day nurseries; nursery schools; local authority day care; integrated centres; and home care.

¹⁷ Institute of Education (University of London), *The Effective Provision of Pre-School Education [EPPE] Project: Final Report*, p ii

centres from the 'care' tradition, despite their more favourable staff-child ratios, were offering a different level of care and education. It is relevant here to mention that care oriented provision usually offers the lowest salaries to staff, employs workers with the lowest level of qualifications, and has limited access to training and higher staff turnover. We found that provision above the 'minimal' level was concentrated in well-resourced centres.¹⁸

The study also took account of any childcare before the children entered the study at the age of three. It found that high levels of 'group care', in particular in nursery settings, before the age of three, and particularly before the age of two, were associated with slightly higher levels of anti-social behaviour for a small group of children when assessed at age three. However, the study found that if these children attended a high-quality setting between the ages of three and five years, then their anti-social behaviour decreased. Extremely high levels of childminder care were associated with increased anti-social behaviour, but where there was substantial care from a relative (usually grandmothers) the study found that there was less anti-social behaviour and more co-operative behaviour in children.¹⁹

The researchers claimed that the EPPE survey was the "first large-scale multi-level modelling study to show convincingly that individual pre-school centres have lasting effects on children's development",²⁰ when comparing it to existing findings in the subject area.

A recent Institute of Fiscal Studies (IFS) report, entitled *Early education and children's outcomes: how long do the impacts last?* and published in July 2005, evaluated the effects of undergoing any early schooling (before the compulsory starting age of five) and of pre-school on a cohort of British children born in 1958. The study found that "investments in human capital before the age of 5 appear to have had long-lasting and positive effects on the children from the 1958 cohort". There were improvements in cognitive tests at age seven which remained significant throughout the schooling years up to age 16, although they decline in size. However, there were mixed results in terms of social skills at age seven but the effects on social skills did not tend to last, and were no longer detectable by age eleven.

The study showed that, in terms of size, the gains to age seven were "of a comparable size to those associated with growing up in a family where the father is of high social class, and almost completely counteract the negative effects on test scores of growing up in a difficult family environment". The study found, however, that the effects of early education diminished and were "small relative to the impact of these family background factors by the time the individual enters adulthood" due to the persistence of family background effects.

¹⁸ Institute of Education (University of London), *The Effective Provision of Pre-School Education [EPPE] Project: Final Report*, p21

¹⁹ Institute of Education (University of London), *The Effective Provision of Pre-School Education [EPPE] Project: Final Report*, p v

²⁰ Institute of Education (University of London), *The Effective Provision of Pre-School Education [EPPE] Project: Final Report*, p vii

The researchers also found that “there are gains from early education in adulthood, both on educational attainment and labour market performance, through a higher probability of obtaining qualifications, and in turn marginally higher employment probabilities and wages at age 33”.

The authors said their findings were “broadly in line with ... the more recent EPPE study”, but noted that, assuming there have been recent improvements in childcare quality, “the long-term benefits uncovered for the 1958 cohort are plausibly going to be even larger for current pre-school children”.²¹

As part of its report into childcare and early years provision, the NAO asked Professor Edward Melhuish, of the Institute for the Study of Children, Families and Social Issues at Birkbeck (University of London), to undertake a literature review of the impact of early years provision on young children.²²

In respect of very young children, for the general population, Professor Melhuish found that “There is evidence that high levels of childcare, particularly group care in the first two years, may elevate the risk for developing antisocial behaviour”. In particular, he noted that “There is some evidence that maternal employment and childcare in the first year of life may have negative effects upon cognitive and social development”.

For disadvantaged children, the literature indicated that childcare can be beneficial, but only if it is of a high quality: “The evidence on childcare in the first three years for disadvantaged children indicates that high quality childcare can produce benefits for cognitive, language and social development. Low quality childcare produces either no benefit or negative effects”. Professor Melhuish said that high quality childcare with associated home visits appears to be the most effective package of services.²³

The Government’s policy paper *Choice for parents, the best start for children: a ten year strategy for childcare* paper also considered the evidence and concurred that “a number of studies suggest that full-time maternal employment during the very early stages of a child’s life can have some small negative effects on the development of some children”. The Government added that “these negative effects tend to be concentrated on full-time employment and can be avoided by high quality care from others and by an increased involvement of fathers”.²⁴

For children aged three and over in the general population, Professor Melhuish found that “the evidence is consistent that pre-school provision is beneficial to educational and

²¹ Institute of Fiscal Studies, *Early education and children’s outcomes: how long do the impacts last?*, July 2005, pp23–24, see: http://www.ifs.org.uk/docs/ee_impact.pdf

²² Melhuish E.C., *Literature Review of the Impact of Early Years Provision on Young Children, with Emphasis Given to Children from Disadvantaged Backgrounds*, see: http://www.nao.org.uk/publications/nao_reports/03-04/268_literaturereview.pdf

²³ National Audit Office, *Early Years: Progress in developing high quality childcare and early education accessible to all*, HC 286 2003–04, 27 February 2004 (hereafter *NAO Early Years Study*), p47, see: http://www.nao.org.uk/publications/nao_reports/03-04/0304268.pdf

²⁴ HM Treasury et al, *Choice for parents, the best start for children: a ten year strategy for childcare* (hereafter *Govt 10-year childcare strategy*), December 2004, p7, para 2.15, see: http://www.hm-treasury.gov.uk/media/426/F1/pbr04childcare_480upd050105.pdf

social development”, adding that “The effects are greater for high quality provision”. He also found the following:

- part-time provision produces equivalent effects to full-time provision; and
- the more months of provision from two years of age onwards the stronger the improvement.

Disadvantaged children aged three and over, Professor Melhuish concluded, “benefit particularly from high quality pre-school provision”, and “benefit more in socially mixed groups rather than in homogeneously disadvantaged groups”. He noted that the literature indicated that:

early childhood interventions do boost children’s confidence and social skills, which provides a better foundation for success at school (and subsequently in the workplace). Reviews of the research infer that it is the social skills and improved motivation that lead to lower levels of special education and school failure and higher educational achievement in children exposed to early childhood development programmes. Studies into adulthood indicate that this educational success is followed by increased success in employment, social integration and sometimes, reduced criminality. There is also an indication of improved outcomes for mothers. The improvements appear to occur for those problems that are endemic for the particular disadvantaged group.²⁵

In regard to the cost-benefit analysis of early years settings, Professor Melhuish said that the results of the few such analyses undertaken were “unambiguous in showing substantial benefits” where high quality childcare had been used as a form of intervention for disadvantaged families. However, he cautioned that applying such analysis to the wider population might not result in such strong net benefit results as “so much of the benefit in these studies of disadvantaged populations derives from reductions of negative outcomes e.g. crime, remedial education, unemployment, where the incidence of these negative outcomes is dramatically less in the general population and therefore the scope for savings is similarly dramatically less”.²⁶

The Government has also looked at the role of the traditional family in caring for children and noted the importance of parenting, saying that:

Parents and the home environment will always have the most important impact on a child’s development. Where parents are actively engaged in activities with their children, they demonstrate better intellectual, social and behavioural development. Activities such as reading with children, teaching songs and nursery rhymes, drawing and playing with letters and numbers, all have a positive impact on children’s intellectual and social development. The quality of these interactions between parents and their children is more significant for child outcomes than parental income or social background. However, evidence suggests that parents living in poverty are likely to face risk factors that make their role as parents harder, such as lack of material goods like toys and books,

²⁵ *NAO Early Years Study*, pp47–48

²⁶ *NAO Early Years Study*, p48

lack of space for play and school work, as well as a greater vulnerability to depression and anxiety.²⁷

Recently, a presentation given by Dr Penelope Leach (of the Tavistock Clinic and the Institute for the Study of Children, Families and Social Issues, Birkbeck), a member of the “Families, Children and Child Care” (FCCC) research team, attracted considerable media attention. The research team is currently undertaking a longitudinal study of 1,200 children and their families and the influence of different forms of childcare, including by parents, on children up to four years and three months of age.

The presentation, given on 3 October 2005 to the National Childminders Association about child care up to 18 months of age, prompted media headlines such as “Mother’s care ‘best’ for children” (BBC News online),²⁸ “Stay at home advice to mothers attacked as sexist and wrong” (Daily Telegraph),²⁹ and “Free nursery scheme could be bad for young children, says study” (The Guardian).³⁰

In response to the media reports, the FCCC group released a statement in which they contended that “The contents of Dr Leach’s talk have been widely misinterpreted by the media”. They noted that data from the study had not yet been published, and that “some of the findings are currently under review and further analyses are being undertaken by the team”. The FCCC group added:

No recommendations about child care are made by the research team and we certainly do not advocate that all children in the early years of life must be cared for fulltime by their mothers, nor indeed that one form of child care is always preferable to another. However it is the view of the team that both parental choice of care and the quality of care are most important.³¹

²⁷ *Govt 10-year childcare strategy*, p7, para 2.14

²⁸ *BBC News*, 3 October 2005, see: <http://news.bbc.co.uk/1/hi/uk/4304528.stm>

²⁹ *Daily Telegraph*, 4 October 2005, see:

<http://www.telegraph.co.uk/news/main.jhtml?xml=/news/2005/10/04/nmums04.xml>

³⁰ *The Guardian*, 4 October 2005, see: <http://education.guardian.co.uk/earlyyears/story/0,,1584530,00.html>

³¹ Families, Children and Child Care, *FCCC statement*, 10 October 2005, see:

http://www.familieschildrenchildcare.org/images/3story_pdf.pdf

IV The Government's ten year childcare strategy

A. Recent Government policy

In its 1997 General Election manifesto, the Labour Party promised a “national childcare strategy”, which would “plan provision to match the requirements of the modern labour market and help parents, especially women, to balance family and working life”.³²

In 1998, the Government launched its “National Childcare Strategy” with the publication of a Green Paper, *Meeting the Childcare Challenge*, in which the Government explained its role in providing childcare, and the rationale for its involvement:

Many parents prefer grandparents or other relatives to look after their children, but not all can rely on such informal sources of care. As the direction of social change is away from extended families, an increasing proportion of parents who want childcare will not be able to use informal care. Government action is needed to fill gaps in the formal sector. Our economy will prosper if more skilled and capable people are able to take up job opportunities because they have access to good quality, affordable and accessible childcare.³³

Following on from the publication of the Green Paper, the Government undertook a number of programmes and initiatives in the field of childcare, which are set out in Table 4 below.

More recently, in the 2004 Spending Review, the Government pledged:

additional resources for childcare and services for disadvantaged children of £769 million by 2007-08 compared with 2004-05. This will deliver 2,500 Children's Centres by 2008, going beyond the Government's commitment to a Children's Centre in each of the 20 per cent most disadvantaged wards in England. The Government will also deliver a pilot offering a free part-time early education place for 12,000 two year olds in disadvantaged areas.³⁴

The Spending Review also heralded new Public Service Agreement targets in relation to childcare:

Spending Review 2004 PSA Targets

SR 2004 PSA Target 1

Improve children's communication, social and emotional development so that by 2008 50% of children reach a good level of development at the end of the Foundation Stage and reduce inequalities between the level of development achieved by children in the 20% most disadvantaged areas and the rest of England.

³² Labour Party, *Because Britain deserves better*, see: <http://www.psr.keele.ac.uk/area/uk/man/lab97.htm>

³³ Department for Education and Employment, *Meeting the Childcare Challenge*, Cm 3959, May 1998, para ES5, see: http://www.surestart.gov.uk/_doc/P0000584.doc

³⁴ HM Treasury, *Spending Review 2004*, Cm 6237, July 2004, p86, para 7.5, see: http://www.hm-treasury.gov.uk/media/326/0F/sr2004_ch07.PDF

(Sure Start Unit target, joint with the Department for Work and Pensions)

The baseline will be the July 2005 results, when area level data first becomes available. The level of increase required over the period 2005 to 2008 will be apparent following analysis of the 2005 results.

SR 2004 PSA Target 2

As a contribution to reducing the proportion of children living in households where no one is working, by 2008:

- increase the stock of Ofsted-registered childcare by 10%;
- increase the take-up of formal childcare by low income working families by 50%; and
- introduce by April 2005, a successful light-touch childcare approval scheme.

(Sure Start Unit target, joint with the Department for Work and Pensions).

Increasing stock

The baseline will be the stock of registered childcare places at 31st March 2004 (1,103,000). Therefore, the target will be a stock of 1,213,000 places by 2008. The latest stock figure at March 2005 is over 1.17 million places.

Increasing take-up by lower income families

The baseline will be an average of the 2003-04 data and the 2004-05 data, whilst the final year will be an average of the 2006-07 and the 2007-08 data. The target level will be confirmed when the baseline data becomes available in 2004-05.

Childcare approval scheme

As this is a completely new scheme, no baseline can be quoted. The scheme was launched in December 2004 and began operating in April 2005, incorporating criminal records checks, first aid certification and a minimum training requirement. It will enable thousands of parents, for the first time, to be able to receive financial support to help pay for childcare in their own home, including nannies.³⁵

³⁵ Department for Education and Skills, *Departmental Report 2005*, Cm 6522, June 2005, p35, see: <http://www.dfes.gov.uk/publications/deptreport2005/docs/2005deptrep.pdf>

Table 4: Key policy initiatives in the early years and childcare sector to Jan 2004

Initiatives/ Introduction	Overview	Cost
Early Excellence Centres Dec 1997 (pilots)	<ul style="list-style-type: none"> • 107 Centres nationwide, generally, but not exclusively, in poorer areas. • “One-stop-shops” for integrated care, child and adult education and family support. • Provide a setting for parents to learn about caring for their children. 	£95m 1997– 2003
Out of School Childcare Scheme Apr 1999	<ul style="list-style-type: none"> • Provides care mainly for children of school age outside of normal school hours (including school holidays), usually in non-domestic premises. 	£235.5m 1999– 2003 NOF
Sure Start Local Programmes Apr 1999	<ul style="list-style-type: none"> • Supports families with children up to the age of 4. • Aims to achieve better outcomes for children, parents and communities by promoting the physical, intellectual and social development of babies and young children. This is done through: increasing the childcare available; improving health, education and emotional development for young children; and, by providing a range of support for parents. • The focus is upon helping services to develop in deprived areas. • Programmes work with Early Years Development and Childcare Partnerships. • Each of the 500 programmes is run by a local partnership and has a catchment area of some 400-800 children under four years of age. • As at October 2003, 522 programmes had been approved. 	£760m 1999- 2004
Neighbour- hood Nursery Initiative and Neighbour- hood Childcare Initiative Jan 2001	<ul style="list-style-type: none"> • Found in the 20 per cent most deprived areas, with the target of offering 45,000 places by 2004. • Aim to meet the needs of local children and parents, through a mixed economy of providers from the private, voluntary and maintained sectors. • Most provide nursery education along with the obligatory full day care for children from birth to school age. • Linked to development of Neighbourhood Childcare and Out of School Clubs in deprived areas. 	£203m (DfES 2001-04) and £100m NOF capital
Mini Sure Starts Mar 2002	<ul style="list-style-type: none"> • Small scale Sure Start Local Programmes found in rural areas and small pockets of deprivation. 	£22m over 2 years
Children’s Centres Mar 2003	<ul style="list-style-type: none"> • Building on and re-branding Early Excellence Centres, Sure Start local programmes and Neighbourhood Nurseries. • Found in the 20 per cent most deprived wards in England, with the target of reaching 65 per cent of children in those wards by 2006. • Aimed at addressing local needs by raising standards and integrating care, education, family support and health services. • Designed to develop and disseminate models of excellence in the delivery of centre-based integrated multi-agency services. • All centres will be open at least five days a week, 48 weeks a year and for ten hours a day so that daycare is suitable for parents in work or training. 	£435m 2003- 2006†

† This figures includes funds previously allocated to the Neighbourhood Nurseries Initiative

DfES — Department for Education and Skills

NOF — New Opportunities Fund

Source: National Audit Office, *Early Years: Progress in developing high quality childcare and early education accessible to all*, February 2004, p17, figure 5

B. The strategy's proposals in outline

Following on from the “Inter-Departmental Childcare Review”, entitled *Delivering for children and families*,³⁶ the Government's plans for childcare were set out in the *Child Poverty Review*, published by HM Treasury alongside the 2004 Spending Review White Paper.³⁷ The Review outlined the next steps towards meeting the Government's target to halve child poverty by 2010–11, and the key strands included tackling barriers to employment, notably the availability and affordability of childcare.

The foundations for the *Childcare Bill* were laid down by the Government's policy document, *Choice for parents, the best start for children: a ten year strategy for childcare*. The document was published in December 2004 at the time of the Chancellor's autumn Pre-Budget statement, in which Gordon Brown considered the wider implications of childcare policy:

The successful economies and societies of the next 20 years will also invest in the potential of all children. We want to transform the way parents are enabled to balance work and family life. A long-term strategy for children and child care starts from recognising two facts of modern life: that the life chances of children are critically determined by the care, support and education they can receive in the years before five as well as after five; and that while 50 years ago less than a third of married women were working, today over two thirds of two-parent families have two earners striving to balance the needs of work and family life. The Government's response to this new reality must start from the enduring principles of the Beveridge report: that the family is the bedrock of society; that nothing should be done to remove from parents their responsibilities to their children; and it is in the national interest to help parents meet their responsibilities.

As part of the new 10-year framework that we are announcing today, the Government set out and make the choice to allocate funds for new reforms in the coming Parliament. First, parents should be able to stay at home longer when their child is born and have the means to do so; secondly, parents should enjoy more flexibility in the workplace when their child is young; thirdly, parents should be guaranteed more accessible, affordable and safe child care while they are at work; and, fourthly, at all times their children, no matter what their background, should enjoy the highest-quality education and care—a welfare state that is truly family friendly for the first time in its history.³⁸

[...]

Secondly, having taken the best educational advice about the learning needs of children, and building on the successful introduction of free nursery education this year for three and four-year-olds, the Secretary of State for Education and Skills and the Minister for Children will, from April 2007, extend our free nursery education to 15 hours a week, as we move towards our long-term goal of 20

³⁶ Cabinet Office (Strategy Unit), *Delivering for children and families*, November 2002, see: <http://www.strategy.gov.uk/downloads/su/childcare/downloads/su-children.pdf>

³⁷ See: http://www.hm-treasury.gov.uk/media/985/CC/childpoverty_complete_290704.pdf

³⁸ Many of the issues regarding paternity and maternity pay and leave are covered in the recently published *Work And Families Bill*; for further information see the Library's Research Paper on this Bill.

hours of free nursery care for 38 weeks a year for every three and four-year-old child.

Thirdly, improvements in the availability, affordability and quality of pre-school and after-school child care are indeed required to meet the needs of working parents struggling to balance the demands of employment and of family life, so the Secretary of State for Education and Skills is today setting aside additional resources to enable schools to remain open from 8 am to 6 pm and to improve the quality and career prospects of those who undertake child care.

[...]

Our fourth goal is that every child should have the best start in life. There are now 600 Sure Start children's centres, and anyone who has visited them knows that they provide not just children's services but a great focus for community life. By 2008, instead of 600 centres we plan 2,500; and today I can go further and announce that by 2010 in England alone there will be 3,500—one for every community, and on average five children's centres in every constituency in the country. As a result of these announcements there will be another 1 million new child care places by 2010. That is a commitment to children and child care worth in total £600 million more by 2007–08—money that could not be delivered if public spending plans were cut by £35 billion.³⁹

The *Choice for parents, the best start for children: a ten year strategy for childcare* document said that three “central principles” had driven the formulation of the Government's ten year strategy:

- “the importance of ensuring every child has the best possible start in life;
- the need to respond to changing patterns of employment and ensure that parents, particularly mothers, can work and progress their careers; and
- the legitimate expectations of families that they should be in control of the choices they make in balancing work and family life”.

However, it observed that “Parents are the best judges of their family's needs. The framework of support for families and children must therefore offer parents choices about how to balance work and family life”.⁴⁰

Summarising recent childcare policy, the Government said:

Since 1998 the Government has invested heavily in the National Childcare Strategy and Sure Start to improve services for children and families. Working in partnership with local government and the private and voluntary sectors, the pattern of provision across the country has been transformed. As a result the number of childcare places has increased dramatically by 525,000. Government expenditure on childcare, early education and Sure Start has trebled since 1997. The Government has introduced an entitlement to 12.5 hours a week of free early

³⁹ HC Deb 2 December 2005 cc789–790

⁴⁰ HM Treasury et al, *Choice for parents, the best start for children: a ten year strategy for childcare* (hereafter *Govt 10-year childcare strategy*), December 2004, p2, paras 1.4 and 1.6, see: http://www.hm-treasury.gov.uk/media/426/F1/pbr04childcare_480upd050105.pdf

education for all three to four year-olds and is also pioneering community based Sure Start Local Programmes offering joined up support to families with young children. In addition, parents have been given increased entitlements to maternity and paternity pay and leave, parental leave and the right to request flexible working arrangements when children are young.⁴¹

Despite recent childcare policy measures, the Government said that “important challenges” remain, including that “many families still have difficulty finding childcare services that fit their circumstances and that adapt as their children grow”, and “the quality of childcare services can vary”. The document also noted that the UK lagged well behind some other countries in the support that is offered to parents and in the range of choices that are available to them.⁴²

The strategy provided further information on how the childcare policy was to be taken forward. In addition to the themes of choice and affordability, it considered:

- availability, saying legislation for a new duty on local authorities would be in place by 2008 “so that over time they will secure sufficient supply to meet the needs of families”, and
- quality, proposing to reform the regulation and inspection regime “to improve standards and to give parents better information”.⁴³

C. The strategy and the availability of childcare places

1. Current situation and future issues

a. Childcare places

The Government noted that there were an additional net 525,000 registered childcare places since 1997 in a wide range of settings, benefiting 1.1 million children, while the Neighbourhood Nurseries Initiative has established 1,279 such nurseries in the 20 per cent most disadvantaged communities. However, it commented that “some parents are still not able to find the childcare that they need” and noted the cost and suitability of childcare places, as well as their availability in rural and disadvantaged areas in particular. Further, closure rates were higher in these areas, as well as in those parts of England where local staff recruitment was difficult.⁴⁴

b. Free part-time early education for three and four year olds

While the entitlement to 12½ hours of free weekly part-time early education for three and four year olds had been “extremely popular”, the Government reported that parents found it difficult to co-ordinate this with other childcare provision as local authorities did

⁴¹ Govt 10-year childcare strategy, p3, para 1.7

⁴² Govt 10-year childcare strategy, pp2–3, paras 1.3 and 1.8

⁴³ Govt 10-year childcare strategy, p1

⁴⁴ Govt 10-year childcare strategy, pp22–23, paras 3.12–3.13 and 3.17–3.18

not have an obligation to provide childcare around their duty for the free part-time nursery education to three and four year olds.⁴⁵

c. *Childcare for school-age children*

The Government has drawn attention to out-of-school childcare, organised by schools themselves or in co-operation with others. Lottery funding has been primarily responsible for a large increase in out-of-school childcare since 1997 with the creation of over 348,000 places. Local authority funding through the Sure Start Grant aims to create 95,000 such places by 2006. The Government said that “Many parents face difficulties in organising childcare outside the school day”, noting that some activities do not last a full school term. Additionally, the Government observed, the parents of disabled children or children with Special Educational Needs (SEN) may encounter difficulties in finding a suitable childcare place.⁴⁶

d. *Childminders and home child carers*

The number of childminders had increased only slightly since 1997, rising by some 1,400 to 71,856 registered childminders who cared for 320,291 children in 2004.⁴⁷

2. Proposals

The strategy document said:

The Government's vision is for childcare services to be available to all families who want to use them. Childcare services will not look the same everywhere. They will need to be shaped by parents' needs which will vary according to whether they live in a rural or urban area, whether their child is pre-school or school age and whether parents work full- or part-time. This will require a new approach to planning and delivering services. The role of the local authority will be crucial to ensure that services are developed according to local needs. Services will be locally accountable, within a national framework.⁴⁸

In terms of the detail of their vision for childcare, the Government announced the following in respect of the availability of childcare places:

For all families with children aged up to 14 who need it, an affordable, flexible high quality childcare place that meets their circumstances.

- There will be a Sure Start Children's Centre in every community by 2010, co-ordinating a range of services for pre-school children. Children's Centres will connect to group-based and home-based care providers, linking all providers including those from the private and voluntary sectors, and will provide information and advice to help parents find appropriate childcare places for children under 5.

⁴⁵ *Govt 10-year childcare strategy*, pp22–23, paras 3.14 and 3.20

⁴⁶ *Govt 10-year childcare strategy*, pp22–23, paras 3.15 and 3.21–3.22

⁴⁷ *Govt 10-year childcare strategy*, p22, para 3.16

⁴⁸ *Govt 10-year childcare strategy*, p4, para 1.13

- On the way to delivering the vision for all children under 14, parents of three and four year olds will be offered an extended free entitlement integrated with high quality, affordable childcare from 8am to 6pm all year round:
 - from 2006, for parents of three and four year olds the free entitlement to 12.5 hours a week of early education will be extended to 38 weeks for all places;
 - from 2007, this free entitlement will begin to be extended to 15 hours a week, with all children receiving 15 hours by 2010 on the way to the goal of 20 hours a week for 38 weeks; and
 - parents will have flexibility to use the free entitlement across a minimum of three days.
- For 5-14 year olds, childcare will be available based in schools:
 - by 2010 all parents with children aged 5-11 will be offered affordable school-based childcare on weekdays between the hours of 8am to 6pm, all year round. Half of all parents will be able to enjoy this service well before then; and
 - by 2010 all secondary schools will open on weekdays between the hours of 8am to 6pm, all year round offering a range of activities such as music and sport. By 2008 at least a third of secondary schools will be making this offer, either by themselves or in partnership with the private and voluntary sector.
- To deliver this vision, local authorities will have a new duty to secure sufficient provision to meet local childcare needs, building on their current responsibilities in relation to the provision of nursery education. Subject to Parliamentary approval, the new legislation will be in place by 2008.
- To support investment by local authorities in high quality affordable and sustainable childcare provision, this Pre-Budget Report creates a Transformation Fund of £125m a year from April 2006.⁴⁹

In regard to the proposed new duty on local authorities to secure sufficient provision to meet local childcare needs, the Government argued that their current legal duties are “relatively light” given the “extensive role they are already playing in early years and childcare supported by Early Years Development and Childcare Partnerships, and the even greater role they will play in the future in securing childcare for all children”.

Explaining the rationale for the proposed new duty, which would “complement” the existing responsibilities set out above, the Government said that it would require local authorities to “actively monitor the demands from families and to ensure that provision is responsive to their needs”, as well as to “provide active help to providers to address the difficulties with sustainability that can affect current provision”. The manner in which this would be achieved would be through “active management of the local market for childcare”—local authorities would act as “strategic leaders” in coordinating effective partnerships with the voluntary and private sectors in order to ensure the offer of a childcare place is available to all parents who need it.

In addition, local authorities would also seek to improve quality by working with local childcare providers, for example through “working with Children’s Centres, developing

⁴⁹ Govt 10-year childcare strategy, p33

more robust childminder networks, and ensuring the level of parenting support meets the needs of communities”.⁵⁰

The Government explained that the proposed new duty would “ensure that early years and childcare becomes a mainstream part of the wider framework for the delivery of children’s services which is being put in place as a result of the Children Act 2004 and the wider *Every Child Matters* agenda”.⁵¹

While legislation was required for the new duty, the Government said that this would be supplemented by further guidance through regulations and a revised Code of Practice setting out expectations of local authorities in relation to the provision of both early years education and childcare services.⁵²

D. The strategy and quality of childcare

1. Current situation and future issues

The Government noted that, currently, the early years regulatory landscape is “complex” and involves a number of different agencies, namely:

- Ofsted, which registers childcare providers;
- the DfES, which sets the standards and detailed regulations for childcare registration and jointly with the Qualifications and Curriculum Authority (QCA) is responsible for producing guidance on the Foundation Stage of the National Curriculum; in addition to
- a separate registration scheme for independent schools, many of which offer early years services.⁵³

While noting that Ofsted assumed responsibility (from local authorities) for the regulation and inspection of childcare in 2001, the Government said that “Good quality is about much more than staff to child ratios and health and safety requirements. It is also about the nature of the interactions between adults and children in the setting, and between the children themselves”. Noting that “The high quality approach to learning and care set out in the Birth to Three Matters framework and the Foundation Stage curriculum guidance need to be reflected in practice”, it added that “The challenge for Government is to create a regulatory and inspection system and supporting quality framework that are simple for providers and parents to understand, but which also reflects all aspects of what good quality is about”.⁵⁴

2. Proposals

In regard to its vision in respect of the quality of childcare places, the Government said:

⁵⁰ *Govt 10-year childcare strategy*, p35, paras 5.6–5.7

⁵¹ See: <http://www.everychildmatters.gov.uk>

⁵² *Govt 10-year childcare strategy*, p60, para 8.15

⁵³ *Govt 10-year childcare strategy*, p48, para 6.18

⁵⁴ *Govt 10-year childcare strategy*, pp22 and 24, paras 3.27 and 3.36

Ensuring that pre-school childcare is of high quality will improve outcomes for children, particularly the youngest children, as well as creating wider benefits for families and society. Working with pre-school children should have as much status as a profession as teaching children in schools. Inspection is one lever for driving up quality. A first class workforce is also fundamental. This will mean reviewing the qualifications and career structure and investing in training and support in order to further develop a workforce fit to deliver the kinds of services children and parents expect in the 21st century.⁵⁵

In order to carry forward this vision, the Government announced the following policies in the strategy document:

- a commitment to radical reform of the early years and childcare workforce through a new qualification and career structure. Proposals will be published for consultation in early 2005 as part of the children's pay and workforce strategy. The Children's Workforce Development Council will play the lead role in taking forward the long-term programme of reform;
- an allocation of £125 million for a Transformation Fund to come on stream from April 2006 to support implementation of the recommendations of a joint Department for Education and Skills and HM Treasury Taskforce on how to raise the quality and sustainability of affordable childcare provision while ensuring value for money and without compromising affordability for parents;
- childminders and other home-based childcarers will be able to access professional support and continuous professional development through Sure Start Children's Centres and other childcare providers. A new childcare partners model will be introduced, building on both childminder networks and associate models, enabling childminders and approved childcarers to become partners with local centre based providers, providing places on their behalf;
- a reformed regulatory framework and inspection regime, creating a single system for all early years and childcare services to be in place by 2008; and
- local authorities and Sure Start Children's Centres to work in partnership with childcare providers to support continued improvement.⁵⁶

The Government stated that it proposed to introduce:

a new legal framework for the regulation and inspection of early education and childcare services. The new legal framework, together with an integrated quality framework, will bring together the requirements for education and childcare in a coherent way. It will reduce unnecessary burdens on early years settings and schools.⁵⁷

⁵⁵ *Govt 10-year childcare strategy*, p4, para 1.14

⁵⁶ *Govt 10-year childcare strategy*, p43

⁵⁷ *Govt 10-year childcare strategy*, p48, para 6.20

This would accompany a review of the scope of regulation of childcare, in order to ensure that regulation is “proportionate” while also guaranteeing that children are “safe and well looked after”.⁵⁸

It also proposed to create a “single quality framework for services for children from birth to five. The new framework will take an integrated approach to care and education, reflecting the reality of the way childcare services operate”. The framework would be “underpinned by a play-based approach to promoting children’s development and learning, building on children’s experiences to help them extend their skills and develop their understanding and confidence”.⁵⁹

E. Commentary on the strategy

The ten-year strategy received a generally favourable reception. The Daycare Trust⁶⁰ said at the time that it “warmly welcomes” the strategy, describing it as a “big and bold vision”.⁶¹

Commenting on the proposals to increase the availability of childcare, the Daycare Trust set out its own position, saying that it believed that “in order to achieve universal, good quality, accessible and affordable early education and care, a significant shift should take place from a demand-side approach to a supply-side approach in funding”. The Trust said it was therefore pleased by measures announced by the Government, welcoming in particular “the clarification of responsibilities through local authorities’ new statutory duty to secure childcare and early years provision”, but cautioned that it is “important that sufficient funds are provided in order to ensure sustainable provision of good quality early education and care”.⁶²

Market analysts Laing and Buisson, in their report *Children’s Nurseries: UK Market Report 2005*, said that the strategy would ensure that the Government’s “progressive” funding of the childcare sector would continue. It added that the Government’s new strategy “effectively extends its previous strategy with increased focus on quality and choice for parents”.

On the particular point of the proposed new duty on local authorities to secure sufficient provision to meet local childcare needs, Laing and Buisson commented:

A key development underpinning its strategy is the devolution of policy and responsibility to local government. The strategy recognises that local authorities are best places [sic] to ensure that childcare provision is adequate and sustainable in their regions. The strategy does not, however, provide a model for local authorities to know what is adequate, and what is sustainable. At a time when average occupancy is falling and the average vacancy rate is rising,

⁵⁸ Govt 10-year childcare strategy, p48, para 6.21

⁵⁹ Govt 10-year childcare strategy, p49, para 6.23

⁶⁰ The Daycare Trust is a national childcare charity that promotes high quality affordable childcare for all.

⁶¹ Daycare Trust press release, *Government’s Ten Year Childcare Strategy Is ‘A Long-Term Investment In All Our Futures’*, 2 December 2004, see: <http://www.daycaretrust.org.uk/article.php?sid=241>

⁶² Daycare Trust press release, *Daycare Trust Signals Key Steps For Progress In Ten Year Childcare Strategy*, 3 December 2004, see: <http://www.daycaretrust.org.uk/article.php?sid=242>

sustainability is likely to be increasingly crucial to the success of the government's childcare policies.⁶³

Further comment and reaction to the *Childcare Bill* can be found in the commentary on the relevant clauses.

⁶³ Laing and Buisson, *Children's Nurseries: UK Market Report 2005*, pp viii–ix

V The Bill

Prior to the publication of the *Childcare Bill*, in July 2005 the Government launched a consultation on its “legislative proposals for the future of childcare and early years provision in England”. This document was following by a report on the responses it had received to its consultation, which was published on 1 November 2005, a week before the Bill received its First Reading in the Commons.

The Education Network (TEN)⁶⁴ observed that in the Bill:

There are nearly 30 references to powers enabling the Secretary of State (and in some cases, the National Assembly for Wales) to make regulations or issue orders on a wide variety of matters, eg. assessing the sufficiency of childcare; information to parents and prospective parents; charges for early years provision; registration requirements; and inspection of provision (as well as on the EYFS [Early Years Foundation Stage]).⁶⁵

However, the Government has said that it will publish “Framework guidance and regulations available for consideration in Parliament during passage of the Bill” between December 2005 to March 2006.⁶⁶

A. Territorial application

Parts 1 and 3 of the Bill applies to England only, Part 2 to Wales only and Part 4 to England and Wales.

B. Local authority childcare duties

1. England

Part 1 of the Bill introduces new responsibilities for local authorities in respect of the provision of childcare.

a. *Duties to improve well-being*

Clause 1(1) states that local authorities must improve the “well-being” of young children in their area, and also reduce inequalities in the “well-being” between “young children” in their area.

The Bill defines “well-being” for this purpose as relating to:

- (a) physical and mental health and emotional well-being;

⁶⁴ The Education Network, which is an independent policy, research and information organisation set up to develop, promote and disseminate the role and good practice of local authorities.

⁶⁵ The Education Network, *Policy Briefing: Childcare Bill*, 17 November 2005, p13

⁶⁶ Department for Education and Skills, *Regulatory Impact Assessment for the Childcare Bill*, November 2005 (hereafter *Childcare Bill RIA*), p19–20, para 89, see: http://www.surestart.gov.uk/_doc/P0001831.PDF

- (b) protection from harm and neglect;
- (c) education, training and recreation;
- (d) the contribution made by them to society;
- (e) social and economic well-being.⁶⁷

These five definitions replicate those found in the *Children Act 2004* (in respect of the aspects of well-being that the Children's Commissioner for England was to be concerned with),⁶⁸ but which originate from the Government's *Every Child Matters* Green Paper and, as such, are consistent with Government policy with respect to children.⁶⁹

The Bill would also enable the Secretary of State to prescribe targets for the improvement of well-being and the reduction of inequality in well-being for an English local authority. If such targets are set, the local authority must "act in the manner that is best calculated" to secure attainment of those targets, while also having regard to any guidance issued by the Secretary of State.

In addition to the general duty imposed under clause 1(1), clauses 3(2) and 3(3) introduce further duties on local authorities in respect of childcare, which, respectively, are:

- to deliver early childhood services in an "integrated way" that facilitates access to services and "maximises the benefits to children, parents and prospective parents"; and
- to take steps to identify parents who are unlikely to take advantage of early childhood services that may benefit them, and to encourage them to take advantage of those services. The Government noted that "In many cases, this will be inextricably tied to the duty to narrow the gaps between those achieving the poorest outcomes and their peers".⁷⁰

In addition to these duties, clause 3(4) states that a local authority must also "encourage and facilitate" the involvement of particular groups in the making and implementation of integrated services and deciding how they should be delivered. These groups are defined as: parents and prospective parents; early years providers in their area, and; others involved in improving the well-being of children. The local authority should also have regard to guidance issued by the Secretary of State.

The Daycare Trust noted that this will "place a specific requirement on local authorities to be pro-active in seeking the views of parents, children, providers and the wider local communities", and observed that "This is crucial if childcare delivery is to be based on the needs of children and their families". The Trust voiced its concern that "authorities need support and the resources necessary to build their capacity to conduct appropriate consultation with stakeholders".⁷¹

⁶⁷ *Childcare Bill*, clause 1(2)

⁶⁸ *Children Act 2004*, section 2(3)

⁶⁹ Department for Education and Skills, *Every Child Matters*, Cm 5860, September 2003, p14, para 1.3, see: http://www.everychildmatters.gov.uk/_files/EBE7EEAC90382663E0D5BBF24C99A7AC.pdf

⁷⁰ *Childcare Bill*, Explanatory Notes, p5, para 26

⁷¹ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, 16 November 2005, p4, see:

b. Duties for the provision of childcare

Clause 6 places a duty on local authorities to ensure that there is “sufficient” childcare (for children up to 1 September following their fourteenth birthday, or their sixteenth birthday for disabled children) in their area to meet the needs of parents who require it in order for them to take up or remain in work, or to undertake work-related education or training, again having regard to any guidance issued by the Secretary of State.

This duty will apply to local authorities “so far as is reasonably practicable”—the Government explained that:

This recognises that it may not be practicable for a local authority to secure childcare to meet the requirements of every parent in their area. In determining what is reasonably practicable, local authorities will need to take into account a number of factors, including the resources available to them.⁷²

The Local Government Association (LGA) welcomed the use of the phrase “so far as is reasonable practicable” in clause 6, saying:

Although we welcome the opportunity for local authorities to become strategic leaders for childcare, the targets for developing new childcare and early years services are ambitious and the resources available in the current spending review settlement are tight. We want to see childcare services that are high quality and sustainable but in key areas – sustainability, workforce, training and quality – we are still at a relatively early stage of development.

We therefore support the ‘reasonably practicable’ clause as a realistic basis for councils to meet local childcare needs. We want to work with government to develop clear guidance on what ‘sufficient’ childcare means in practice, how local authorities should interpret this duty in their areas, and what parents and children can expect.⁷³

The Daycare Trust added that, in order to meet their duty of securing sufficient childcare so far as is reasonably practicable, “Local authorities must be provided the appropriate resources so that they can meet this duty effectively”.⁷⁴

In determining the sufficiency of childcare, under clause 6(2) local authorities must have regard to the needs of parents in their area for childcare eligible for the childcare element of the Working Tax Credit, and for childcare that is suitable for disabled children. Local authorities may also have regard to childcare outside their area when determining sufficiency. The Secretary of State may, by order, change these criteria.

The LGA cautioned that “Although we welcome the ‘reasonably practicable’ clause we are concerned that this may bite on those very groups to whom councils need to have

http://www.daycaretrust.org.uk/mod/fileman/files/Daycare_Trust_Policy_Briefing_on_Childcare_Bill_Nov_2005.pdf

⁷² *Childcare Bill*, Explanatory Notes, pp6–7, para 34, see:

<http://pubs1.tso.parliament.uk/pa/cm200506/cmbills/080/en/06080x--.htm>

⁷³ Local Government Association, *Childcare bill - on the day briefing*, 8 November 2005, p2, see:

<http://www.lga.gov.uk/Documents/Briefing/Lobbying/childcare%20bill%20On%20the%20day%20briefing.pdf>

⁷⁴ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p4

regard — i.e. those in low income families and those with disabled children. We are concerned that there will be a tension in implementing this new set of duties”.⁷⁵

While the Daycare Trust “welcome the Government’s intention for the duty to secure sufficient childcare for working families on low incomes”, they noted that “there is no explicit mention of low income in the Bill itself”. The Trust argued that:

linking low income to eligibility for working tax credit would also be problematic. Take up of the tax credit is relatively low. Only around 300,000 families currently access the childcare element of the working tax credit. Most children in low-income families fall outside this category.

Additionally, families entitled to this form of financial help are not necessarily the poorest. Families with the lowest incomes tend to be those where no adults are working. The majority of the recipients are in fact families on middle or average incomes.⁷⁶

The Daycare Trust therefore called on clause 6(2) to also include the needs of “vulnerable children of non-working parents”, as well as families from black and minority ethnic background, to be included as families needing special regard in the provision of childcare.

The organisation 4Children⁷⁷ agreed, saying “By focusing on working parents, the Bill is in danger of doing little to support our most disadvantaged children”,⁷⁸ and the LGA observed that “many of our most disadvantaged children live in workless households. This means that many children will still miss out on access to high quality childcare”.⁷⁹ The Pre-School Alliance added:

it is crucial that the government does not establish a childcare sector based solely on encouraging women to work. Early years care and education is about much more than simply enabling parents to work. It is about the social and cognitive development of children in their earliest years and supporting parents in their role as the child’s primary educator.⁸⁰

The Daycare Trust argued that sufficiency of childcare provision is not, by itself, enough to ensure that childcare is accessible, saying that “Even where there is sufficient childcare available in a local area, costs exclude many families on middle and low incomes from accessing childcare provision” and noting that “A typical nursery place for a child under 2 costs £141 a week”.⁸¹

⁷⁵ Local Government Association, *Childcare bill - on the day briefing*, p2

⁷⁶ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p3

⁷⁷ 4 Children is a national children’s charity.

⁷⁸ 4Children press release, *4Children welcomes the first reading of the childcare bill, but has concerns for vulnerable families*, 8 November 2005, see: <http://www.4children.org.uk/information/show/ref/489>

⁷⁹ Local Government Association, *Childcare bill - on the day briefing*, p2

⁸⁰ Pre-School Learning Alliance, *Briefing Paper: The Childcare Bill*, November 2005, p1

⁸¹ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p3

Under clause 7, a local authority will also have a duty to “secure ... early years provision of a prescribed description” which is free of charge “for such periods as may be prescribed” for each young child who “has attained such age as may be prescribed” but is under compulsory school age. The large number of references to the term “as may be prescribed” in this clause means that the precise detail will only be known when it is set out in the secondary legislation which is to follow. The Explanatory Notes do not indicate what the Government has in mind, simply stating “This clause allows the Secretary of State to prescribe in regulations the type and amount of provision and the exact age of children to benefit”.⁸² The undertaking of this duty is also subject to having regard to any guidance issued by the Secretary of State.

Clause 7 replaces the duty on local authorities, under section 118 of the *School Standards and Framework Act 1998*, to ensure there are sufficient nursery places in their areas, with two key differences: the application will be to all early years provision, rather than just nursery places, and that the provision will be free.

Clause 8 allows local authorities to assist those who already, or intend to, provide childcare, and make arrangements with others for the provision of childcare. A local authority is permitted to provide financial assistance although, again, the local authority must have regard to any guidance issued by the Secretary of State.

Clause 9 provides further detail for the provision of financial assistance by a local authority. It requires local authorities to exercise their powers to ensure that any providers with whom they enter into a financial agreement in relation to childcare provision meet requirements imposed on them, and allows local authorities to require repayment of financial assistance if providers fail to meet the contractual conditions.

Clause 8 also allows local authorities to provide childcare if the local authority is satisfied there are no other providers, or, even if there are, the local authority judges, in the circumstances, that it is appropriate for it to provide the childcare. Clause 10 allows local authorities to charge for the provision of childcare, except where it is provided to a child in need (which is already covered by section 29 of the *Children Act 1989*).

However, the National Day Nurseries Association (NDNA) voiced concern that if local authorities did enter the childcare market they would be at an advantage compared to other providers. The *Financial Times* reported that Purnima Taniki, chief executive of the NDNA, had said “the measures did not go far enough to tackle the problem of local authorities monopolizing provision of childcare in some parts of the country ... ‘For example, local authorities can reclaim VAT when they set up daycare centres which private providers are unable to do’”.⁸³

⁸² *Childcare Bill*, Explanatory Notes, p7, para 37

⁸³ “Providers fear unfair competition on childcare”, *Financial Times*, 4 November 2005, p3

In regard to refunding VAT to local authorities in regard to the provision of welfare services, including childcare,⁸⁴ this policy was introduced in the 2005 Budget. The Budget report stated:

VAT and childcare

Local authorities have a key role in delivering the Government's vision for childcare. They will be given a new duty to secure sufficient supply of affordable, high-quality childcare to meet the needs of local children and families. Local authorities will also play a critical role in delivering on the Government's ambitious plans for a Children's Centre in every community.

To ensure that VAT does not obstruct the delivery of the Government's vision for childcare, and in recognition of the role that local authorities play in delivering the strategy, **the Government will refund local authorities all of the VAT that they incur in the provision of welfare services, such as childcare and Children's Centres.** The Government intends to legislate on this, in due course, but in the interim will use existing powers to operate this administratively. The Government will also explore whether there are any further VAT changes that might be made to enable local authorities to play their part in ensuring local delivery of childcare.⁸⁵

HM Revenue and Customs (HMRC) explained that "Local authority provision of certain services, such as childcare and welfare, will be reclassified as non-business rather than exempt activity for VAT purposes", adding "in general, only services of a social nature where local authorities have a special duty to ensure provision will be affected". The change came into force on 1 April 2005.⁸⁶

The implications of this change were raised in a parliamentary question which was answered in April 2005 by the Paymaster General:

Mr. McNamara: To ask the Chancellor of the Exchequer what assessment he has made of the impact on the voluntary sector's ability to deliver welfare services of his decision to refund the VAT which local authorities incur in the provision of child care and children's centres. [224198]

Dawn Primarolo: Where the Government procure welfare services from voluntary and community sector providers, it should be on the basis of full cost recovery, including any associated VAT costs providers incur. This decision will therefore have no adverse impact on the delivery of welfare services by voluntary and community sector organisations.⁸⁷

⁸⁴ The part of the Research Paper concerning the refunding of VAT to local authorities was written by Antony Seely of the Business and Transport Section.

⁸⁵ HM Treasury, *Budget 2005*, HC 372 2004–05, 16 March 2005, pp107–108, paras 5.23–5.24, see: http://www.hm-treasury.gov.uk/media/AA7/40/bud05_chap05_209.pdf

⁸⁶ HM Revenue and Customs, *VAT: Local authorities*, 16 March 2005, see: http://customs.hmrc.gov.uk/channelsPortalWebApp/downloadFile?contentID=HMCE_PROD1_023932

⁸⁷ HC Deb 4 April 2005 c1178W

The ability to charge for childcare will also be extended to maintained schools by clause 17 which will amend section 451 of the *Education Act 1996*. Currently the section prohibits charging for education, but clause 17 will amend it to allow regulations to be made which may prescribe circumstances in which charges made in respect of early years provision will be allowed. The Government noted that “The regulations may not lift the prohibition in respect of children of compulsory school age or in respect of provision that is secured under the duty to secure free provision”.⁸⁸

In order to assess the level of local authority intervention that may be required, clause 11 places a duty on local authorities to assess all childcare provision in their area within one year of the commencement of this clause, and at least once every three years after that, keeping each assessment under review until it is superseded by a new review. The review will also be undertaken with regard to any guidance issued by the Secretary of State.

Whether the review is published, in what form, the matters it is to consider, its format and who should be consulted are all to be determined by secondary legislation. Again, as with clause 6, this section applies to childcare for children up to 1 September following their fourteenth birthday, or their sixteenth birthday for disabled children.

c. Duties to provide information about childcare

Clause 12 will give every local authority a duty to “establish and maintain” a service to inform parents and prospective parents about childcare in the local authority area, as well as other services and facilities and publications which may benefit them or children or young persons (i.e. those over 18 years of age but under 20). The details of the information which must be provided will be dealt with in regulations, and the local authority must exercise its functions under clause 12 with respect to any guidance issued by the Secretary of State.

The service must be run in a manner which facilitates access to those who benefit from it, “in particular, persons who might otherwise have difficulty in taking advantage of the service”.⁸⁹

Commenting on clause 12, the Daycare Trust said:

[our] research shows that lack of information is a great barrier to accessing good quality childcare. Improving communication and marketing strategies to inform parents about childcare provision is paramount to creating a system of services that responds to the needs of families and is informed by such needs.

[...]

Daycare Trust welcomes the extension of the duty on local authorities to provide information to parents on childcare to ensure that parents with children aged 0-19 have access to all the information they might need as parents. We particularly

⁸⁸ *Childcare Bill*, Explanatory Notes, p10, para 52

⁸⁹ *Childcare Bill*, clause 12(5)

welcome the duty to be proactive in reaching those parents who would not normally have access to information.⁹⁰

In addition to parents, under clause 13, local authorities must also provide information, advice, and training to childcare providers, although this too is subject to guidance from the Secretary of State and secondary legislation to be made at a future date. The clause prescribes which childcare providers a local authority has a duty to, it does not prevent them providing such support to others who do not fall into the specified categories. Clause 13 will supersede section 79V of the *Children Act 1989*, which only relates to day care, as well as the linked secondary legislation.⁹¹

d. Inspection and intervention

Clause 14 allows Ofsted to inspect local authorities in respect of their childcare duties, while clause 15 applies sections 496 to 497B of the *Education Act 1996* to those duties. These sections give the Secretary of State powers to secure proper performance by giving him:

- the power to prevent unreasonable exercise of functions;
- general default powers;
- the power to secure proper performance of an local education authority's functions;
- the power to secure proper performance (duty of authority where directions contemplated); and
- the power to secure proper performance through further provisions.

The Bill extends these powers to local authorities' childcare duties by simply removing the differentiation between a local authority and a local education authority for this purpose.

2. Wales

Part 2 concerns the duties with respect to childcare of local authorities in Wales. It simply replicates a number of the clauses found in Part 1 which relate to England, although the new duties for Welsh local authorities are not as broad as those for their English counterparts.

Clause 22 replicates clause 6, although adds an extra provision for Welsh local authorities to take account of the provision of childcare involving the use of the Welsh language.

Clause 23 replicates clause 8, although the circumstances in which local authorities can provide childcare themselves are less restrictive; there is no requirement for a Welsh local authority to be satisfied that either other providers can provide childcare, or that,

⁹⁰ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p5

⁹¹ *Day Care and Child Minding (Functions of Local Authorities: Information, Advice and Training) (England) Regulations 2001*, SI 2001/2746

notwithstanding other providers, the circumstances merit the provision of local authority childcare.

The substance of clause 24 is identical to clause 9, and clause 25 is very similar to clause 10 except that the provision barring charges only applies to local authority provided childcare for a child aged under five who is not attending school and who is also not classed as a “child in need”.

Clause 26 is along similar lines to clause 11, but there is only a power (no duty) on Welsh local authorities to assess childcare provision. The decision to implement this responsibility on local authorities will be taken by the National Assembly for Wales, who will also set out the terms of the required assessment in regulations.

Clauses 27, 28 and 29 replicate clauses 12, 14 and 15 as they apply to England.

Clause 30 defines childcare for Part 2 of the Bill which applies to Wales only. The definition is different to that for England contained in clause 18, and simply states that childcare is care which is required to be registered by the Assembly under Part 10A of the *Children Act 1989* or care approved through a scheme made by the Assembly under section 12(5) of the *Tax Credits Act 2002*.

C. Children’s Centres

In addition to the local authority duties for England listed above in section V.B.1, Part 1 of the Bill also provides for the creation of Children’s Centres. The Children’s Centre concept was promoted in the report of the Inter-departmental Childcare Review published in November 2002.⁹² The first wave of Children’s Centres were announced in July 2003, and the Government has set the following targets for the establishment of Children’s Centres:

- 2,500 by 2008, and
- 3,500, ensuring a Children’s Centre in every community, by 2010.⁹³

The Government explained that it is “advocating a shift to more co-located, multi disciplinary services that provide personalised support to children and their families. Children’s centres will be a key building block towards this goal”, noting:

Sure Start Children’s Centres will provide a range of services depending on local need and parental choice. The aim is for a network of centres across the country, offering information, advice and support to parents/carers, as well as early years provision (i.e. integrated childcare and early learning), health services, family support, parental outreach and employment advice for disadvantaged families. Services offered will not be the same everywhere, because needs and communities vary greatly, but the greatest resource for children’s centres will go to those children most in need. The intention is that children’s centres services

⁹² Sure Start Unit, *Children’s Centres—Developing Integrated Services for Young Children and their Families*, August 2003, p3, see: http://www.surestart.gov.uk/_doc/P0001710.doc

⁹³ HC Deb 2 December 2005 cc789–790

become permanent mainstream community services, which are developed and delivered with the active involvement of parents/carers and the local community.⁹⁴

In regard to the funding of Children's Centres, the Minister for Children, Young People and Families, Beverley Hughes, told the House:

Local authorities will have the responsibility to develop children's centres to meet the needs of their communities building on existing provision such as Sure Start Local Programmes, neighbourhood nurseries and primary schools. Local authorities were given their funding allocations for children's centres in early April. The Department has not estimated how much additional funding will be given to children's centres from sources other than public funds. However centres will provide services that have grown from a range of existing provisions which have a number of funding streams eg health services, Jobcentre-Plus, family support and early education.

They will also often include private sector funded services such as childcare nurseries or training of staff. Centres would also be able to generate additional revenues by charging parents for some of their services such as childcare.⁹⁵

Clause 4 is an enabling clause to facilitate cross-organisational arrangements to allow Children's Centres to be created. It states that a local Jobcentre Plus and Strategic Health Authority or Primary Care Trust will be "relevant partners" of a local authority, and they can provide staff, goods, services, accommodation or other services and also pool budgets. The Government explained that this will allow the local authority and its partners to "deliver fully integrated front-line services, for example where early years provision, social services support, health services and the employment service may all be found on one site".⁹⁶

The Government noted that clause 4 will put the local authority and "their local partners in the NHS and JobCentre Plus under a particular obligation to work together in improving outcomes for the youngest children in the local area. Guidance will set out how this co-operation can operate through the Government's preferred delivery model of children's centres".⁹⁷

The purpose of clause 4 is similar to that of section 10 of the *Children Act 2004* which provided a number of levers to help the development of Children's Trusts, including a wider power to pool budgets and a duty on agencies to cooperate, rather than creating a specific duty to create Children's Trusts. The Government explained that such a duty "would have necessitated outlining a specific and prescriptive strategic model ... Children's trusts require a degree of flexibility in their development that would not have been possible had they been legislated for directly".⁹⁸

⁹⁴ Sure Start Unit, *A Sure Start Children's Centre for Every Community: Phase 2 Planning Guidance (2006-08)*, July 2005, pp3-4, see: http://www.surestart.gov.uk/_doc/P0000457.doc

⁹⁵ HC Deb 26 May 2005 cc213W-214W

⁹⁶ *Childcare Bill*, Explanatory Notes, p6, para 30

⁹⁷ *Childcare Bill*, Explanatory Notes, p6, para 31

⁹⁸ Department of Education and Skills, *Children's trusts FAQs: Why is there no duty to set up children's trusts in the Children Act 2004?*, website, see: <http://www.everychildmatters.gov.uk/aims/childrenstrusts/faq/>

D. Regulation of childcare providers

Part 3 of the *Childcare Bill* deals with the regulation and inspection scheme for childcare provision for England, as well as the establishment of the Early Years Foundation Stage (see section V.E). The current regulatory regime for childcare in England is set out in Part 10A (i.e. sections 79A to 79X) of the *Children Act 1989*, which was inserted by the *Care Standards Act 2000*. Part 10A will be amended by the Bill in order to remove any reference to England, although it will still apply to Wales.

1. The present regulatory framework

The Government argued that “Early years and childcare provision is currently regulated and inspected under a series of separate and disjointed statutory and non-statutory frameworks”.⁹⁹ It added “The current system for the regulation and inspection of childcare and nursery education has grown over time against this rapidly changing context ... [of] considerable growth in the amount of childcare available [and the commitment] to provide access to extended services including 8am to 6pm childcare through all primary and secondary schools by 2010 ... to produce a complex set of arrangements”.¹⁰⁰

In the cost-benefit analysis of maintaining the existing regulatory regime, the Government argued that “There are no clear benefits of maintaining the status quo as the complexities outlined would remain and therefore become an increasing burden on the sector and a disincentive to the expansion of extended school/children’s centre services”.¹⁰¹

2. Childcare regulation options for children aged 6 and 7, and 8 to 14 years

With regard to the regulation of providers offering childcare to children aged six and seven years, following the consultation the Government changed its mind and decided not to deregulate this sector.

In its consultation document on the *Childcare Bill*, the Government argued that “the requirement to register for providers of group childcare for children aged six and seven does not seem necessary, and so we propose that it is removed”,¹⁰² although childminders caring for such children would continue to be regulated and inspected.¹⁰³

However, following the consultation the Government decided that “As part of the on-going thinking, Ministers have decided that it will be compulsory for private and voluntary sector settings that provide for children from the beginning of Key Stage 1 to the age of 8

⁹⁹ *Childcare Bill RIA*, pp22–24, paras 100 and 104

¹⁰⁰ *Childcare Bill Consultation*, pp15–16, paras 51–52

¹⁰¹ *Childcare Bill RIA*, p27, para 118

¹⁰² *Childcare Bill Consultation*, p20, para 75

¹⁰³ *Childcare Bill Consultation*, p22, para 84

to register on the Ofsted Childcare Register. In practice, that will mean all providers that currently have to register with Ofsted will continue to do so".¹⁰⁴

This was announced by the Minister for Children, Young People and Families, Beverley Hughes,¹⁰⁵ and subsequently reported in *The Guardian*:

Ministers scrap plan to end Ofsted checks on childcare for over-fives

Ministers abandoned their attempt to end the compulsory regulation of childminders, after-school clubs and playschemes caring for children over five yesterday. Beverley Hughes, the children's minister, performed the U-turn after a revolt by parents and childminders, who feared deregulation could open the market to rogue operators and put children at risk.

In a preview of the childcare bill, expected to reach parliament before the end of the year, she said all providers of out-of-school care for children under eight years would be obliged to register with the schools inspectorate, Ofsted, and be subject to routine safety checks.

She told the conference of the national childcare charity Daycare Trust in London: "Ensuring children, particularly young children, are safe is a key concern ... Registration will be compulsory for childcare providers for children up to age eight, whilst remaining voluntary for those providing care for children up to 14."

[...]

Naomi Eisenstadt, the head of the government's SureStart programme, said in September that children aged five to seven did not need the same level of protection as a baby or two-year-old. They could tell their parents whether they liked the childminder or after-school club, and parents could react.

But the results of the consultation, posted yesterday on the SureStart website, showed that parents and childminders did not agree. About 75% of those responding to the proposals said they did not do enough to deliver quality childcare and maintain minimum standards. "Many felt providers for all children should be required to register ... Some thought the proposals would allow anyone to set up unregistered provision and evade inspection," the government said.

Ms Hughes has compromised by extending compulsory regulation to those providing care for children up to eight, not 14.¹⁰⁶

¹⁰⁴ Department for Education and Skills, *Report on Responses to Consultation on Legislative Proposals for the Future of Childcare and Early Years Provision in England*, 1 November 2005 (hereafter *Childcare Bill Consultation responses*), para 3.36, see:
http://www.surestart.gov.uk/_doc/P0001828.pdf

¹⁰⁵ Department for Education and Skills press notice 2005/0130, *Forthcoming Childcare Bill will be Cornerstone of Childcare Vision Hughes*, 01 November 2005, see:
http://www.dfes.gov.uk/pns/DisplayPN.cgi?pn_id=2005_0130

¹⁰⁶ *The Guardian*, 2 November 2005

The Government's announcement was welcomed by a number of childcare organisations. TEN described it as the "most significant result" of the consultation process.¹⁰⁷ The Daycare Trust said it was a "very welcome announcement",¹⁰⁸ and noted that it meant that "Registration with the Ofsted Childcare Register will now be compulsory for providers for this age group ... [although] Registration to the Ofsted Childcare Register will ... be voluntary for provision for children above the age of 8".¹⁰⁹

The Professional Association of Nursery Nurses (PANN) said "We are delighted that the youngest and most vulnerable children will be protected by a compulsory register, although we would like to see the voluntary registration for children up to 14 made compulsory too".¹¹⁰ This view was echoed by the 4Children organisation.

The Government had noted that, following its consultation, "Many [respondents] claimed that providers for all children up the age of 14 should be registered and inspected",¹¹¹ but said: "The Government recognises the concerns but feels they are misplaced. It is confident that the proposed measures include sufficient safeguards and address the issues raised".¹¹²

In its Regulatory Impact Assessment, the Government considered the full regulatory option for children up to the age of fourteen years, or sixteen years for children with disabilities, and noted that it would "provide the greatest possible level of protection and security for children". However, it added that there were several costs to Government: it would run counter to the Gershon and Hampton Reviews,¹¹³ there was no evidence to its benefits, and; there would be costs of approximately £34 million to Government and £315,000 to providers.¹¹⁴

3. Classification of the terms "early years" and "later years"

Clause 19 states that a child is a "young child" from their birth to immediately before the 1 September following the date on which he attains the age of five. Clauses 93(2) and 93(3) state that an early years provider gives childcare to a young child.

Clause 93(6) states that "later years provision" related to the provision of childcare for a child beginning on the 1 September following the date on which he attained the age of five to an age which is to be prescribed in regulations. However, clauses 51 to 60, which relate to the registration and inspection of later years providers, only concern later years provision to children under the age of eight.

¹⁰⁷ The Education Network, *Policy Briefing: Childcare Bill*, 17 November 2005, p12

¹⁰⁸ Daycare Trust press release, *Daycare Trust Welcomes Government Climb Down on Deregulation*, 1 November 2005, see: <http://www.daycaretrust.org.uk/article.php?sid=267>

¹⁰⁹ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p7

¹¹⁰ Professional Association of Nursery Nurses press release, *PANN Statement on Childcare Bill*, 8 November 2005, see: http://www.pat.org.uk/index.cfm?param=News/news_detail.cfm&id=881

¹¹¹ *Childcare Bill Consultation responses*, para 3.26

¹¹² *Childcare Bill Consultation responses*, para 3.27

¹¹³ The Gershon Review considered public sector efficiency, the Hampton Review regulatory inspections and enforcement.

¹¹⁴ *Childcare Bill RIA*, pp31–32, paras 131–135

4. The childcare registers

Clause 32 states that the Chief Inspector must maintain two registers of childcare providers: an early years register, and a general childcare register. The general childcare register will be split into two parts: part A will list those later years childcare providers who are required to register on the general register; part B will list all childcare providers who have registered voluntarily.

Under clause 56, registered early years providers (both childminders and other providers) can apply to also be registered on Part A of the general childcare register; such an application must be accepted by the Chief Inspector. Clause 64 allows early and later year providers to also be registered in Part B of the general childcare register on application.

5. Matters relating to registration

Clauses 67 to 71 concern the powers of the Chief Inspector to alter an entry on the childcare register, namely to:

- cancel;
- suspend;
- remove following a voluntary application;
- remove a person from Part B of the general childcare register after a set period of time (which may be prescribed in regulations), and;
- cancel or change/add conditions in an emergency i.e. without giving notice.

Clauses 72 and 73 set out the procedure in the above circumstances, and allows appeals against such decisions to be taken to the Care Standards Tribunal.

Clause 74 allows regulations to be made for when a person is to be disqualified from registration, and gives an indication of circumstances in which disqualification under the regulations may occur, including if a person lives in the same household as a disqualified person. However, the regulations may make provision for the Chief Inspector to exempt a person who would otherwise be disqualified to register. Clause 75 states that the effects of disqualification would be to prevent a disqualified person from applying to be registered as an early or later years provider, or be employed by such a provider (unless the provider is unaware, and had no reasonable ground for believing, that a person was disqualified).

Clause 83 makes it an offence for a person applying for registration to knowingly make a false or misleading statement in their application; anyone found guilty of such an offence would be subject to a fine not exceeding level 5 on the standard scale (currently £5,000).

Clause 89 allows the Chief Inspector to issue a single certificate of registration in circumstances where he would otherwise issue two or more to a person.

Clause 91 allows the Secretary of State, by order, to amend the legislation so as to allow applications for registration of a childcare setting (other than a childminding setting with three or less people providing the care or assisting with its provision) to be made in respect of more than one set of premises.

6. The role, powers and duties of the Chief Inspector

In respect of the Chief Inspector (who is HM Chief Inspector of Schools in England i.e. the head of Ofsted), clause 31 largely replicates the existing section 79N of the *Children Act 1989* (which was itself amended by the *Education Act 2005*), although there are two noteworthy differences. Under clause 31, the Chief Inspector “must”, rather than “shall”, give advice on childcare to the Secretary of State when asked. Secondly, clause 31 will allow the Secretary of State to broaden the Chief Inspector’s functions beyond those set out in the Bill; under section 79N(5) such an extension of his functions is only possible through regulations.

Clause 87 allows the Chief Inspector to be paid fees by registered childcare providers; regulations will state the amount and timing of such fees, as well as circumstances in which they may be varied or waived.

Clauses 76 and 77 relate to the power of entry of persons on behalf of the Chief Inspector. They allow entry to premises if there is reasonable cause to suspect unregistered childcare provision is being undertaken, or to undertake an inspection of a registered setting. However, where it concerns the provision of registered childminding, the prior consent is required of an adult who occupies the premises if the property is not the childminder’s own residence.

The Chief Inspector is required to include in his statutory (under the *Education Act 2005*) annual report an account of the exercise of his functions relating to early and later years provision.

Under clause 81, the Chief Inspector has to keep HMRC and local authorities informed about, among other things, the addition or removal of providers to any register. The information he will have to provide will be prescribed in regulations. The Government explained that the purpose of this requirement is to “enable them to fulfil certain functions relating, in the case of HMRC, to tax credits and, in the case of local authorities, to the information service which they are required to establish under clause 12 of the Bill”.¹¹⁵ The Chief Inspector himself may allow specified information (to be prescribed in regulations) to be made available to parents or prospective parents to help them choose an early or later years provider, or to protect children from harm or neglect.

Proceedings for offences made in regard to Part 3 or the associated regulations must, under clause 84, cannot be brought more than three years after the alleged offence occurred.

¹¹⁵ *Childcare Bill*, Explanatory Notes, p26, para 144

7. Early years providers

a. Registration

Clauses 33 to 38 set out the requirements to register and the process of registration for early years providers.

Early years childminding is defined by sub-clauses 93(4) and 93(5) as being “early years provision provided on domestic premises for reward where there are no more than three people providing the care or assisting with its provision”.

Clause 33 requires a person providing early years childminding to be registered, unless they comply with certain circumstances which may be exempted by order. The Government has said that such exemptions may apply to nannies and babysitters.¹¹⁶

Anyone undertaking unregistered early years childminding may be served with an enforcement notice by the Chief Inspector. If they continue to undertake childminding having been served with an enforcement notice, they will have committed an offence and be subject to a fine not exceeding level 5 on the standard scale.

Clause 35 sets out the process of registration for childminders, noting that they will be required to provide such details and pay a fee as may be prescribed, as well as providing other information to the Chief Inspector which he may “reasonably require the applicant to give”. If these requirements are satisfied and are likely to continue to be satisfied, and the applicant is not disqualified from applying, then the Chief Inspector must accept the application, else refuse it.

Clause 34 concerns childcare provided off domestic premises, and also on domestic premises where it would normally be classed as childminding but for the fact that there are more than three people providing the care or assisting with its provision. In these cases, it is the premises which have to be registered.

However, clause 34(2) specifically exempts early years provision made at a maintained school, non-maintained special school or independent school where that provision is made by the school, one or more pupils attend it and the children concerned are at least three years of age.

Anyone undertaking unregistered early years provision would commit an offence and could be fined up to level 5 on the standard scale; no enforcement notice has to be issued, unlike for childminders.

Clause 36 makes similar provision for the process of registration for early years providers as for childminders stated in clause 35.

Under clause 37, registered childminders and early years providers will be entered into the early years register and receive a certificate, which would contain “prescribed

¹¹⁶ *Childcare Bill*, Explanatory Notes, p13, para 73

information about prescribed matters”. Clause 38 would allow the Chief Inspector to impose conditions on a registered early years provider; failure to comply with conditions without reasonable excuse would result in a fine if found guilty of an offence.

The Secretary of State has a duty, under clause 39(1), to specify certain conditions for the purposes of promoting well-being (as defined in clause 1(2)) of young children receiving early years provision. These include the “welfare requirements”, which relate to the welfare of young children and the organisation and staffing of early years settings, as set out in clause 43(1). The regulations may provide that a person who fails to comply with them without reasonable excuse can, on being found guilty of an offence, be fined up to scale 5 on the standard scale.

In addition, early years providers have to adhere to the Early Years Foundation Stage, further information on which is set out in section V.E.

b. Inspection

Clause 48 sets out the inspection regime for early years providers. The Chief Inspector will have a degree of flexibility in deciding when to inspect such a provider; while he must inspect providers at a prescribed interval, inspection can also occur when he is instructed by the Secretary of State so to do, or when he considers it appropriate. However, the provision for regular inspection may not apply in certain prescribed circumstances; this may include when an early years provider has no children on its roll.¹¹⁷ In regard to whether notification of inspection has to be given to prescribed persons, this issue will be determined in regulations.

Regulations may be made providing that the Chief Inspector is not required to carry out an inspection at an independent school where the early years provision would be inspected by a body approved by the Secretary of State.

Clause 49 concerns the report of an inspection, which must include consideration of the contribution of the early years provision to the well-being of the children for whom it is provided, the quality and standards of the early years provision, how far the early years provision meets the needs of the range of children for whom it is provided, and the quality of leadership and management in connection with the early years provision.

Publication of the report, in part or in full, is at the discretion of the Chief Inspector. However, it may be published electronically and is covered by privilege “unless the publication is shown to have been made with malice”, in the same way that inspection reports under the *Education Act 2005* may be published.

¹¹⁷ *Childcare Bill*, Explanatory Notes, p18, para 102

8. Later years providers

a. Registration

For the registration of those making later years provision for children who are aged five to eight years, clauses 51 to 55 and 57 make identical provisions to clauses 33 to 38, albeit with reference to Part A of the general register, rather than the early years register.

Clause 58 applies to registered later years providers, as well as to those who are not required to register under this Bill because they are listed as a specified school in clause 52(2). Like clause 43, clause 58 provides for regulations to be made in respect of the welfare requirements for children being cared for. However, unlike for the early years providers, the Secretary of State is not under a duty to make such regulations. The list of factors that the regulations may take into account that are stated in clause 58 are identical to those in clause 43, and, again, there is a power to fine a person who fails to comply with the regulations without reasonable excuse. Also, the Chief Inspector may take into account any such failure to meet the requirements set by any such regulations.

b. Inspection

Clauses 59 and 60 concern the inspection regime for later years provision, and are similar to clauses 48 and 49. Clause 59 is less demanding than clause 48—there is no opportunity for regulations to set out the intervals at which later years provision is regularly inspected. Clause 60 replicates for later years providers the requirements for inspection reports for early years providers, although again is less demanding—the Chief Inspector may, rather than must, make an inspection report on later years providers, and can select which of the four topics to report on as he sees appropriate.¹¹⁸

c. The regulation of later years providers compared to early years providers

The Daycare Trust noted that while registration will be compulsory for those providing childcare to children aged six and seven years, these providers “will not have to meet the same quality standards required by the early years register”.¹¹⁹

The Government argued that “the proposed framework [for later years providers] will result in a more simplified approach. Childcare providers for under 8s [school-aged children] will be required to be registered with Ofsted but instead of adhering to separate national standards will need to meet the streamlined criteria of the Ofsted Childcare Register. The number of inspections will reduce as they will not be automatic, but risk based and in response to concern”.¹²⁰

¹¹⁸ The four topics are the same as clause 49, namely: consideration of the contribution of the early years provision to the well-being of the children for whom it is provided, the quality and standards of the early years provision, how far the early years provision meets the needs of the range of children for whom it is provided, and the quality of leadership and management in connection with the early years provision.

¹¹⁹ Daycare Trust, *Daycare Trust Policy Briefing: The Childcare Bill*, p7

¹²⁰ *Childcare Bill RIA*, p32, para 137

9. Voluntary registration

Clause 61 allows those who provide or propose to provide childminding to children aged eight or over, or those or are not otherwise required to register, to voluntarily register for inclusion in Part B of the general childcare register. Clause 61 is closely related to clause 53 (which applies to later years providers) in nature, as is clause 62 to clause 54.

Similarly, clause 63 concerning the entry on the register and the issuing of certificates is very similar to clause 55, clause 65 (conditions on registration) to clause 57 including the threat of a fine for non-compliance with any conditions, and clause 66 (regulations governing activities) to clause 58 although clause 66 contains no threat of a fine for a voluntarily registered provider who fails to comply with the regulations. The Government explained that “It is not an offence to breach such regulations, but registration may be cancelled”.¹²¹

However, there is no proposed inspection regime for those childcare providers who are voluntarily registered.

Those providing childcare to children aged over eight may decide to voluntarily register on the general childcare register as “Membership of the Ofsted Childcare Register will be a requirement for eligibility for tax credits and other financial support to parents with costs of care through employer supported childcare schemes”.¹²²

E. Early Years Foundation Stage: Learning and Development Requirements¹²³

1. Introduction

The DfES consultation launched in July 2005 proposed a *Childcare Bill* to take forward the commitments to legislate in the ten-year childcare strategy document. The *Childcare Bill Consultation* document envisaged an integrated approach to education and care that would build on the key aims and principles of the *Birth to Three Matters* framework and the Foundation Stage of the National Curriculum. A new quality framework would “focus on meeting the individual needs of children and highlight the importance of learning through play”.¹²⁴ The consultation document proposed that all settings offering care for more than two hours to children up to the end of the Foundation Stage (i.e. the end of the school year in which the child turns five) would be required to deliver the early learning and development framework. The consultation document proposed that this would include day nurseries, preschools, playgroups, childminders, and maintained and independent schools.¹²⁵

¹²¹ *Childcare Bill*, Explanatory Notes, p22, para 66

¹²² *Childcare Bill RIA*, p32, para 136

¹²³ This section of the Research Paper was written by **Christine Gillie, Social Policy Section**

¹²⁴ *Childcare Bill Consultation*, p17, para 59

¹²⁵ *Childcare Bill Consultation*, p17, para 61

The Bill establishes a single framework for provision for children from birth to five years. This will comprise requirements relating to the learning and development of children, and requirements relating to the welfare of young children and the organisation and staffing of early years settings. Together the 'learning and development requirements' and the 'welfare requirements' are to be known as the Early Years Foundation Stage (EYFS). The following section provides background on the provisions relating to the 'learning and development requirements' (clauses 39 to 42 and clauses 44 to 47 and Schedule 1 of the Bill). The 'welfare requirements' contained in clause 43 are dealt with separately in section V.D.7.

The aim of the proposals is to create a system that ensures that the experience for the child is of the same high quality, irrespective of the setting or sector. The content of the EYFS will be consulted on during 2006, and it is intended that it will bring together elements of the existing National Standards for Childcare, the Foundation Stage of the National Curriculum and the *Birth to Three Matters* guidance.¹²⁶

2. Background

The Government wishes to see schools offer extended services, including childcare. The target is for half of all schools to be providing access to 'wrap-around' childcare from 8am to 6pm, year-round, by 2008, and for all schools to offer this by 2010.¹²⁷

Existing early years arrangements make a distinction between childcare and education, with separate requirements for each. Childcare providers must comply with the National Standards for Day Care and Childminding (for under 8 year olds) that consist of 14 national standards which represent a minimum quality below which no provision may fall.¹²⁸ *Birth to Three Matters* is non-statutory guidance to childcare providers on supporting the development and needs of the youngest children. Maintained schools and funded providers of early years education must follow the Foundation Stage of the National Curriculum, which covers children aged from three years to the reception year at school.

Birth to Three Matters focuses on: child development; effective practice; examples of play activities to promote play/learning; guidance on planning/resourcing and meeting diverse needs. The Framework explains that it takes as its focus the child and steers away from subjects, specific areas of experience and distinct curriculum headings. It identifies four aspects: a strong child; a skilful communicator; a competent learner, and; a healthy child.¹²⁹

¹²⁶ *Childcare Bill*, Explanatory Notes, p31, para 172

¹²⁷ Department for Education and Skills, *Extended Schools: access to opportunities and services for all - prospectus*, June 2005, see:

<http://publications.teachernet.gov.uk/eOrderingDownload/Extended%20schools%20prospectus.pdf>

¹²⁸ <http://www.surestart.gov.uk/>; http://www.surestart.gov.uk/_doc/P0000411.PDF

¹²⁹ <http://www.surestart.gov.uk/resources/childcareworkers/birthtothreematters/abouttheframework/>; and, http://www.standards.dfes.gov.uk/primary/publications/foundation_stage/940463/ss_birth2_3matters_birt h.pdf

Currently all early years providers in receipt of Government funding to deliver early years education for 3 to 5 year-olds are required to:

- plan and provide a curriculum that is based on the six areas of learning in the Foundation Stage curriculum;
- make sure that the curriculum enables children to achieve and, where appropriate, exceed the early learning goals;
- use the publication *Curriculum Guidance for the Foundation Stage* to help plan activities and opportunities for play; and
- report progress and achievements against the early learning goals at the end of the Foundation Stage, using the scales set out in the *Foundation Stage Profile Handbook*.¹³⁰

The Foundation Stage was introduced as a phase of education for children aged 3 to 5 in September 2000. Curriculum guidance for the Foundation Stage was issued in May 2000 to all schools with nursery and reception classes, and to early years settings receiving nursery education grant funding.¹³¹ The guidance sets out six areas of learning which form the basis of the Foundation Stage curriculum:

- personal, social and emotional development;
- communication, language and literacy;
- mathematical development;
- knowledge and understanding of the world;
- physical development; and
- creative development.¹³²

Each area of learning has a set of related early learning goals. The concept of early learning goals was developed in a departmental booklet, *Early Learning Goals*, published in October 1999, and the guidance built on those ideas. The guidance was developed by the Qualification and Curriculum Authority (QCA), working with early years practitioners and experts.

The *Education Act 2002* extended the National Curriculum to include the Foundation Stage. The six areas of learning became statutory, and the Act also specified that there should be early learning goals for each of the areas. A national consultation on the content of the early learning goals as set out in *Curriculum Guidance for the Foundation Stage* was carried out in Autumn 2002. Following this consultation, the early learning goals and the use of the curriculum guidance became statutory.¹³³

The 2002 Act also established a single national assessment system for the Foundation Stage. The Foundation Stage Profile was introduced into schools and settings in

¹³⁰ <http://www.qca.org.uk/163.html>

¹³¹ Qualifications and Curriculum Authority, *Curriculum Guidance for the Foundation Stage*, QCA/00/587: http://www.qca.org.uk/downloads/5585_cg_foundation_stage.pdf

¹³² <http://www.qca.org.uk/223.html#Download%20curriculum%20guidance>

¹³³ *Education (National Curriculum) (Foundation Stage Early Learning Goals) (England) Order 2003*, SI 2003 No.391: <http://www.opsi.gov.uk/si/si2003/20030391.htm>

2003.¹³⁴ The Foundation Stage Profile has summary scales covering the six areas of learning, which need to be completed for each child receiving government-funded education by the end of his or her time in the Foundation Stage.¹³⁵

Replying to a parliamentary question on the assessment of under fives, Margaret Hodge, the then Minister for Children, Young People and Families, said that under fives are not tested, but that a written summary of a child's progress and learning needs, based on teacher observation, is produced at the end of the Foundation Stage, and noted that the aim of the Foundation Stage Profile is to ensure that children are assessed on a consistent basis, and for it to help support the child's development and progress.¹³⁶

Recently, Professor Peter Moss, professor of early childhood provision at the Institute of Education in London, published an overview of the curriculum and assessment arrangements for children below compulsory school age in European countries.¹³⁷

The DfES *Childcare Bill Summary* notes:

We know from the Effective Provision of Early [*sic* Pre-School] Education [EPPE] study that a broad, balanced play-based curriculum leads to gains in literacy and numeracy which last at least to the end of Key Stage 1. It is intended that the EYFS will further strengthen children's development in all areas. The current frameworks for literacy and mathematics predate the Foundation Stage and therefore take reception as their starting point. Mathematical development and communication, language and literacy form part of FS from the age of 3 – under the EYFS the revised literacy and numeracy frameworks will also start from the age of 3, so extending the approach.

Our aim is that the sections of the literacy and numeracy frameworks for 3-5 year olds will mirror the appropriate strands of EYFS. This will mean that the literacy and numeracy frameworks are in widespread use throughout the early years sector, broadening their use.¹³⁸

Further information on the EPPE study can be found in section III.

3. The Bill

This section covers the Bill's main provisions relating to the 'learning and development requirements' of the Early Years Foundation Stage (clauses 39 to 42 and clauses 44 to 47 and Schedule 1 of the Bill). For a fuller account Members are referred to the Explanatory Notes on the Bill.

¹³⁴ *Education (National Curriculum) (Foundation Stage Profile Assessment Arrangements) (England) Order 2003*, SI 2003 No.1327: http://www.aiaa.org.uk/educ_stat.htm

¹³⁵ Qualifications and Curriculum Authority, *Foundation Stage Profile Handbook*, QCA/03/1006, 2003, see: http://www.qca.org.uk/downloads/5798_handbook_print.pdf

¹³⁶ HC Deb 17 May 2004 cc713–714W

¹³⁷ *Children in Europe*, Issue 9, September 2005, pp 4-5; "Toddler curriculum criticised by European education expert", *The Guardian*, 15 November 2005, p13

¹³⁸ http://www.surestart.gov.uk/_doc/P0001829.pdf

The ‘welfare requirements’ contained in clause 43 are dealt with separately in section V.E.

Clause 39 places a duty on the Secretary of State to specify certain requirements for the purpose of promoting the well-being of young children who are receiving early years provision. These comprise requirements relating to the learning and development of children, which the Secretary of State must specify by order, and requirements relating to the welfare of young children and the organisation and staffing of early years settings, which the Secretary of State must prescribe by regulations. Together the ‘learning and development’ requirements’ and the ‘welfare requirements’ are to be known as the Early Years Foundation Stage (EYFS).

Clause 40 sets out which providers are required to implement the EYFS. They include all early years providers who are required to be registered under clauses 33 and 34 of the Bill, as well as early years providers who are exempt from registration under clause 34(2) i.e. maintained schools, non-maintained special schools and independent schools. Clause 33(2) allows the Secretary of State to exempt certain persons from the requirement to register. The Explanatory Notes on the Bill state that this power may be used to exempt, for example, nannies and babysitters. As noted earlier, the *Childcare Bill Consultation* document proposed that all settings offering care for more than two hours to children up to the end of the Foundation Stage (i.e. the end of the school year in which the child turns five) would be required to deliver the early learning and development framework. It stated that this would include day nurseries, preschools, playgroups, childminders, and maintained and independent schools.¹³⁹

Clause 41 sets out what may be covered by a learning and development order made by the Secretary of State. The learning and development requirements must cover six areas, which are listed in subsection (3):

- personal, social and emotional development
- communication, language and literacy
- problem solving, reasoning and numeracy
- knowledge and understanding of the world
- physical development, and
- creative development

The Secretary of State may amend subsection (3) by order.

In relation to each of the six areas, the learning and development requirements may specify:

- early learning goals - the knowledge, skills and understanding which young children of different abilities and maturities are expected to achieve by 1st September following their fifth birthday

¹³⁹ *Childcare Bill*, Explanatory Notes, para 61

- educational programmes, setting out what should be taught to young children attending early years provision. However, the order may not require providers to allocate any particular periods of time to the delivery of such a programme (clause 41 (5)).
- arrangements for assessing the learning and development of young children attending early years provision.

Clause 42 makes provision for a learning and development order to specify assessment arrangements, and inspection arrangements with which early years providers, the governing bodies or headteachers of maintained schools, and local authorities must comply. The detailed assessment arrangements may be published in a separate document and would have the same effect as if they were prescribed in an order (subsection (6)).

Instruments specifying learning and development (or welfare requirements) may, instead of setting out all the provisions to be made, give effect to provisions set out in a separate document (clause 44). A relevant instrument may also confer powers and impose duties on Her Majesty's Chief Inspector of Schools in England. It may require the Chief Inspector, in exercising his functions under Part 3 of the Bill, to have regard to factors, standards and other matters prescribed by or referred to in the instrument (Clause 44(2) and (3)).

Under clause 45 the Secretary of State is empowered to confer exemptions from the learning and development requirements in certain prescribed circumstances. Regulations may provide that the learning and development requirements should not apply, or should apply with specified modifications, to a particular early years provider or to a group of early years providers. Regulations may also enable an early years provider to determine that the learning and development requirements do not apply, or apply with modifications, in respect of a particular child (this is similar to the current provision for 'disapplication' of the National Curriculum).

Independent schools providing early years provision for children under 3 years are required to register under Part 3 of the Bill and to implement the EYFS. Clause 46 seeks to amend section 157 of the *Education Act 2002* so that the independent school standards prescribed by regulations made under that section do not apply in relation to early years provision for pupils of independent schools who have not attained the age of 3 years. Clause 46 (2) amends the 2002 Act so that, for early years provision for pupils of independent schools who have attained the age of 3, the independent school standards include the EYFS.

Clause 47 introduces Schedule 1, which amends:

- Section 23 of the *Education Act 1997*, which sets out the functions of the Qualifications and Curriculum Authority (QCA), in order to remove references to nursery education as a consequence of the provisions of chapter 2 of Part 3 of the Bill. It also inserts a power for the Secretary of State to provide by order that the QCA shall have functions relating to children who are receiving early years provision under clause 40 of the Bill. The Secretary of State is required to consult the QCA before conferring such functions.

- Part 6 of the *Education Act 2002*, to remove provisions relating to the Foundation Stage (which currently covers children aged 3 to the end of the school year in which they turn 5) as the EYFS will cover all such children.

In regard to the implementation of these clauses and schedules, and the dates of associated training, see table 6.

4. Reaction

The integration of care and education has been generally welcomed. However, there has been a mixed reaction to the creation of the EYFS. Concern has focused on the content of the learning and development requirements. The following highlights a selection of reaction to the proposals.

The *Regulatory Impact Assessment for the Childcare Bill* noted that the Early Childhood Forum welcomed a single quality framework for children from birth to five, and that the National Day Nursery Association had noted how parents need reassurance and confidence to make the transition back into work. It is seen as essential for parents to be able to expect the same quality of service wherever they place their child.¹⁴⁰

Some commentators, however, have expressed concern about the dangers of young children starting formal education too early, and are worried that the new framework may be over-prescriptive, leaving too little time for creativity, and that teachers' flexibility may be reduced.¹⁴¹

Deborah Lawson, chairman of the Professional Association of Nursery Nurses (PANN) has pointed to the danger of introducing formal education too early, and noted that children in the UK start school much earlier than their European counterparts. However, she added that a Foundation Stage that is flexible and able to take account of the different development rates of children would be welcome.¹⁴²

Margaret Morrissey, spokeswoman for the National Confederation of Parent Teacher Associations, reportedly dismissed the proposals as 'absolute madness' and 'in danger of taking away children's childhood'.¹⁴³

Anne Longfield, chief executive of 4Children said that she thought the intention was not to have a very detailed framework.¹⁴⁴ Gill Haynes, chief executive of the National Childminding Association supported a new quality framework to integrate care and learning for young children, provided it will be broad enough to reflect the many ways in which young children develop.¹⁴⁵

¹⁴⁰ *Childcare Bill*, Explanatory Notes, para 111

¹⁴¹ "Nursery teachers fear curriculum will kill creativity", *Times*, 10 November 2005, p23

¹⁴² PANN Press Notice, *Statement on the Childcare Bill*, 8 November 2005; "Children aged under-five to face national curriculum", *Independent*, 9 November 2005, p6

¹⁴³ "The new nappy curriculum", *TES*, 11 November 2005, p4

¹⁴⁴ "Labour's plan to educate toddlers", *Guardian*, 9 November 2005, p1

¹⁴⁵ "The new nappy curriculum", *TES*, 11 November 2005, p4

The Pre-School Learning Alliance has welcomed the Bill, and in principle supports the proposal to combine the care and education elements of inspection.¹⁴⁶ However, in its response to the *Childcare Bill Consultation* it noted that translating the early development and learning framework into practice will require a compromise between the different philosophies underpinning the current separate childcare and education frameworks:

The Alliance is fully committed to an integrated and rigorous inspection regime for all early years and childcare settings. Inspection and regulation helps to safeguard children, support the professional development of staff and improve the quality of services offered by settings. In principle, we support the proposal to develop the Early Development and Learning Framework (EDLF) to bring together the care and education elements of the existing regime. In particular, we are encouraged by the commitment to consult with strategic partners to develop the new framework.

However, translating the EDLF into practice will require the compromise and agreement between the proponents of very different philosophies underpinning Birth to Three Matters (child centred and process orientated), the Foundation Stage (goal/outcomes for the child) and the National Standards (provision orientated outcomes). A resulting framework needs to be able to provide for the development and progression of high quality services for young children but, at the same time, provides for a regulatory system that is proportionate only to risk and one that is not developmental or quality driven. It remains to be seen whether these two directions can be incorporated and how.

It is important that the EDLF is applied consistently across early years settings and that standards are not relaxed for school settings. With increasing numbers of young children attending school before statutory school starting age, it is important that those schools offering early years services are inspected using the same criteria as pre-schools, nurseries and childminders. Any perception of a different regime would risk undermining parental confidence and eroding quality.

In implementing the proposed EDLF, it is crucial that the government and Ofsted adopt a phased approach to ensure that providers plan and prepare effectively for the new regime. The early years and childcare sector is subject to change and providers would welcome the opportunity to contribute to the development of the new regime and access sufficient information and support to prepare them for the new framework.¹⁴⁷

The Daycare Trust has welcomed the aim of the Bill to integrate education and care in a single quality framework but has stressed that it is important for the new EYFS framework to look at children's development in the broadest sense, and not 'educationalise services for very young children'.¹⁴⁸

TEN has also stressed that the learning and development requirements need to be age-appropriate.¹⁴⁹ The LGA has welcomed the creation of the new EYFS.¹⁵⁰

¹⁴⁶ Pre-School Learning Alliance, *Briefing paper on the Childcare Bill*, November 2005

¹⁴⁷ Pre-School Learning Alliance, *Response to the Childcare Bill Consultation*, October 2005, pp5-6

¹⁴⁸ Daycare Trust, *Policy briefing on the Childcare Bill*, November 2005

¹⁴⁹ Ten, *Policy briefing on the Childcare Bill*

¹⁵⁰ Local Government Association, *Childcare Bill – on the day briefing*

The Association of Teachers and Lecturers (ATL), while welcoming the proposals to integrate care and education in the early years and to develop the early years learning framework, has expressed major concerns about the role of schools in ‘providing’, ‘managing’ or ‘running’ childcare for school-aged children, or integrated early years provision. It has pointed out that once the new framework has been agreed, time and resources will be needed to ensure adequate training in quality assurance for all practitioners across a range of settings.¹⁵¹

The National Union of Teachers (NUT) has expressed concern that the new EYFS may have a heavy weighting towards care, and that there will be a move away from quality education provision. Other issues that the NUT has raised include: potential equal opportunities implications of exemptions from the EYFS for providers and individual children; how the assessment arrangements will work and the role Ofsted may have in monitoring assessment arrangements; and the staffing of EYFS provision.¹⁵²

F. Implementation

If the Bill receives Parliamentary approval, only the clauses in Part 4 of the Bill (except clause 96, which concerns minor and consequential amendments and repeals) will come into force on the day that the Bill receives Royal Assent.

No date is indicated in the Bill for the main provisions to come into force, although guidance can be found in the Regulatory Impact Assessment (RIA).

In regard to the Part 1 duties on English local authorities, the RIA provides the following provisional timetable for implementation:

Table 5: Key milestones for the implementation of Part 1 of the Bill

Key Milestones	Date
Framework guidance and regulations available for consideration in Parliament during passage of the Bill	December 2005 – March 2006
Royal Assent of Childcare Bill	Summer 2006
Guidance and regulations finalised	January – April 2007
Draft guidance and regulations published for consultation	May 2007
Regulations laid before Parliament	June 2007
Final Guidance and Regulations Published	April 2007
Duties come into force	April 2008

Source: Department for Education and Skills, *Regulatory Impact Assessment for the Childcare Bill*, November 2005, pp19–20, para 89

Similarly, for Part 3, the RIA states the following provisional timetable:

¹⁵¹ ATL, *The Childcare Bill: submission from ATL*, 2005, see: https://www.atl.org.uk/atl_en/union/policy/responses/childcarebill.asp

¹⁵² National Union of Teachers, *Childcare Bill: NUT Concerns*, 18 November 2005

Table 6: Key milestones for the implementation of Part 3 of the Bill

Key Milestones	Date
Framework guidance and regulations available for consideration in Parliament during passage of the Bill	December 2005 – March 2006
Royal Assent of Childcare Bill	Summer 2006
EARLY YEARS PROVISION	
Consultation on the content of the Early Years Foundation Stage	May – July 2006
Draft regulations published	March 2007
Full Early Years Foundation Stage published	March 2007
Ongoing training and support to providers and practitioners on the Early Years Foundation Stage (delivered through the National Strategies and local authorities)	Ongoing from Summer 2007
Regulations laid before Parliament	March 2008
All providers deliver the Early Years Foundation Stage	From September 2008
SCHOOL AGE FRAMEWORK*	
Consultation on the detail of the Ofsted Childcare Register	November 2006 – January 2007
Draft regulations published	March 2007
Transition planning between the Childcare Approval Scheme and the Ofsted Childcare Register	April 2007 – March 2008
Regulations laid before Parliament	March 2008
Ofsted Childcare Register live and providers able to apply to join	From April 2008
FEES REVIEW	
Consultation on proposals to review Ofsted fees	Spring 2006
Regulations laid before Parliament	Summer 2006
Regulations outlining first phase of fee revision in force	Autumn 2006

* dates for implementation of the Ofsted Childcare Register may be brought forward

Source: Department for Education and Skills, *Regulatory Impact Assessment for the Childcare Bill*, November 2005, pp19–20, para 89

G. Compliance with the European Convention on Human Rights

The Secretary of State for Education, Ruth Kelly, made a statement in which she said “In my view, view the provisions of the Childcare Bill are compatible with the Convention rights”.¹⁵³ However, the Explanatory Notes draw attention to a number of potential issues:

Whether Article 2 of the First Protocol to the European Convention on Human Rights was violated by the requirement for all registered early years providers (and schools which are not required to register) to deliver the Early Years Foundation Stage (the EYFS) (clauses 39 to 47). However, the flexibility of the EYFS coupled with the power to exempt providers and children is considered to allow for children to be educated in accordance with their parents’ philosophies and beliefs.

¹⁵³ *Childcare Bill*, front cover

Whether the powers enabling a person authorised by the Chief Inspector to enter premises which he suspects may be being used to provide childcare in contravention of the requirements to register (clause 76(1)) violated article 8. This power pursues a legitimate aim of protecting children and only applies in respect of those who care for children under 8 and may only be used where there are reasonable grounds for believing that care is being provided in contravention of the registration requirements.

Whether powers of the Chief Inspector to cancel registration and the regulation-making power to prescribe when a person may be disqualified from registration engage article 6 and article 1 of the First Protocol. Again, these powers are considered necessary in the aim of protecting of children and the Chief Inspector's decisions, including decisions as to whether disqualification should be waived, will be subject to appeal to the Tribunal established under the Protection of Children Act 1999.¹⁵⁴

¹⁵⁴ *Childcare Bill*, Explanatory Notes, p33, para 181