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Guidance

# Protocol between Ofsted and the MOD and its approved organisations with regard to childcare provision

Updated 17 February 2020

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## Introduction

### Purpose

This protocol sets out the working relationships between the Office for Standards in Education, Children's Services and Skills (Ofsted) and the Ministry of Defence (MOD) and its approved organisations by:

- establishing the legal basis for Ofsted's regulatory and inspection responsibilities
- explaining how Ofsted carries out those responsibilities
- explaining the responsibilities of the partner organisations
- explaining how agreed working arrangements can assist both organisations to meet these responsibilities

## **The role of Ofsted**

Ofsted regulates and inspects to achieve excellence in the care of children and young people, and in education and skills for learners of all ages. It regulates and inspects childcare and children's social care and inspects the Children and Family Court Advisory Support Service (Cafcass), schools, colleges, initial teacher training, work-based learning and skills training, adult and community learning, and education and training in prisons and other secure establishments. It assesses council children's services, and inspects services for looked after children, safeguarding and child protection.

## **The legal framework under which Ofsted regulates**

The legislation, together with any subsequent regulations and standards under which Ofsted regulates childcare providers, includes the following:

- [Childcare Act 2006](#)
- [The 'Statutory framework for the early years foundation stage'](#)
- [The Childcare \(General Childcare Register\) Regulations 2008](#)

The legal basis for information sharing between Ofsted and the MOD is:

- [The Education and Inspections Act 2006: Section 117\(2\)\(a\) and paragraph 8 of schedule 13](#)

## **Requirements for childminders and childcare providers**

Ofsted regulates Ofsted-registered childminders, childcare providers and childminder agencies against the requirements of two separate registers. These are the Early Years Register (for those providing care for children aged from birth to 31 August following their fifth birthday) and the Childcare Register. The Childcare Register is divided into two parts. The first is the compulsory part, for those providing care for children from 1 September following the child's fifth

birthday to aged under eight years. The second is the voluntary part, for those providing care for children up to the age of 18 who choose to register, but for whom registration is not required. Providers on the Early Years Register must meet both the 'safeguarding and welfare' and the 'learning and development' requirements of the 'Statutory framework for the early years foundation stage' and the requirements for registration set out in The Childcare (Early Years Register) Regulations. Providers on the Childcare Register must meet the requirements set out in The Childcare (General Childcare Register) Regulations. These requirements are set by the government.

## **Powers and duties**

Ofsted regulates childcare providers against all relevant legislation and requirements. Ofsted is responsible for ensuring that Ofsted-registered childminders, childcare providers and childminder agencies are suitable to work or be in regular contact with children and young people, and that those providers continue to comply with government standards. In addition, Ofsted is responsible for ensuring that all people aged 16 years or over who live or work on premises where childminding takes place are suitable. If a childminder is registered with a childminder agency, these responsibilities sit with the agency.

Ofsted has a range of powers to carry out these regulatory responsibilities. It can:

- grant, refuse or cancel registration
- impose, vary or remove conditions of registration
- grant or refuse applications for variations to conditions of registration
- prosecute providers for specific offences under relevant legislation
- suspend registration

Ofsted does not investigate individual child protection cases or referrals. Criminal investigations relating to child abuse are the responsibility of the police. Local authorities are responsible for assessing children in need and enquiries relating to children who are suffering, or likely to suffer, significant harm. However, if Ofsted believes that children are at risk of harm in a registered setting, it will use regulatory powers to take action as required. Ofsted's regulatory powers are detailed in the early years compliance handbook.

## **Inspection and reports**

Ofsted has a duty to inspect childcare providers who are registered on the Early Years Register at least once in the prescribed inspection cycle, when this is applicable.

Following inspections of providers on the Early Years Register, Ofsted will report

on the setting's overall effectiveness. Ofsted will take into account the judgements:

- quality of education
- behaviour and attitudes
- personal development
- leadership and management

Ofsted also has a power to inspect providers who are on the Childcare Register. Ofsted will inspect a 10% sample of providers who are only registered on the Childcare Register, which will include any providers that there has been a complaint about, relating to the requirements for registration.

Following inspections of providers on the Childcare Register, Ofsted will produce a letter setting out whether the provider meets the requirements of that register.

Providers may be on one or both registers. If providers are on the Early Years Register and the Childcare Register, Ofsted will report in full against the requirements of the Early Years Register but only report on non-compliance with the requirements of the Childcare Register in the inspection report on the early years foundation stage.

## **Organisation of Ofsted's registration and inspection functions**

The Chief Operating Officer's Directorate covers Ofsted's registration and inspection activity. It is responsible for the organisation and delivery of high-quality inspection and improvement work and regulation according to agreed frameworks.

Ofsted's Applications, Regulatory and Contact Team (ARC) is the central point of contact for the public and can be contacted on 0300 123 1231. It is responsible for:

- providing contact between service users and members of the public, colleagues and Ofsted
- giving information to providers and guidance on using our website, including technical help for online application and self-evaluation forms
- processing inbound mail for the majority of Ofsted
- generating all relevant suitability checks, such as social services, references and Disclosure and Barring Service (DBS) checks, on all people who Ofsted has responsibility for checking
- the registration and regulatory risk assessment of childcare and social care providers to ensure the safety and well-being of children and young people in settings that Ofsted regulates and inspects
- receiving complaints from members of the public and determining whether

these complaints qualify within Ofsted's powers

## **The role of local authorities**

Local authorities are responsible for, among other things, assisting children in need and working with other agencies to protect children from abuse.

Ofsted has working relationships with local authorities and other agencies to share information to protect children. Ofsted sets out working relationships with local authorities and other agencies through specific protocols.

## **Specific legal context of working with the MOD**

The Childcare Act 2006 defines Ofsted as the registration authority for childminding and childcare provision (on both domestic and non-domestic premises) in England, with the exception of childminders registered with a childminder agency. This excludes overseas bases and those in Scotland, Northern Ireland and Wales. For overseas commands, the MOD ensures that the regulation and inspection of childminders and childcare providers on military premises, including service families' accommodation or hirings, are commensurate with English legislation.

The MOD, on behalf of the Secretary of State for Defence, may approve an organisation for the purpose of regulating and inspecting childminders and childcare providers in MOD establishments overseas. This is in accordance with The Tax Credit (New Category of Child Care Provider) Regulations 2002.

The Directorate, Children and Young People (DCYP) and the Soldiers, Sailors, Airmen and Families Association (SSAFA) are the MOD-approved bodies responsible for regulating and inspecting childminders and childcare providers outside the UK. In overseas locations, Ofsted inspects MOD-owned childcare provision in schools at the request of the MOD and on a full cost recovery basis.

## **Responsibilities of the MOD and its approved services**

The organisations approved by the Secretary of State for Defence regulate childminders and childcare providers in MOD establishments overseas for those providing care for children aged from birth up to the age of 18.

The MOD-approved organisations are responsible for ensuring that registered childminders and childcare providers are suitable to work or to be in regular

contact with children and young people, and that those providers continue to comply with government standards. In addition, MOD-approved organisations are responsible for ensuring that all people aged 16 years or over who live or work on premises where childminding takes place are suitable. The MOD-approved organisations are responsible for ensuring that childminders and childcare providers comply with regulatory requirements and that systems exist to carry out those regulatory responsibilities.

## Working arrangements

### What Ofsted does for the MOD

Ofsted will share information with the MOD to enable registration of childminders who were previously registered either in England or in overseas commands, and who move between the English or overseas locations. This may include moving from a civilian to a forces setting, or vice versa.

Ofsted will ensure that there is a procedure to share information about the registration of its childminders who move to an overseas command and apply to register with the MOD's approved organisations. Ofsted has a procedure to enable childminders registered with the MOD and its approved organisations who move back to England and wish to childmind in England to register with Ofsted without completing the full registration process with Ofsted ([see annex](#)).

Ofsted requires everyone subject to the process to give consent for Ofsted to use information from the approved organisation to make a decision about registration. If enforcement action is necessary, Ofsted cannot guarantee that the information provided by MOD-approved organisations will remain confidential. This also applies to the MOD-approved organisations.

Ofsted investigates all reported concerns about childcare practice in England, in registered childcare or in Ofsted-registered childminder settings. If the information suggests children may be at risk, the working arrangements with Local Safeguarding Children Boards come into effect (see '[Protocol between Ofsted and Local Safeguarding Children Boards](#)'). Ofsted will share any concerns relating to an Ofsted-registered childminder who applies for registration with the MOD-approved organisations.

Ofsted will respond to requests for information about Ofsted-registered childminders who apply to re-register when moving between English or overseas locations within 30 working days. The MOD-approved organisations will also do this.

The appropriate MOD-approved regulatory organisation can contact Ofsted

through the ARC team on 0300 123 1231.

Ofsted will facilitate the inclusion of the MOD and its approved organisations' personnel in Ofsted-delivered training, which Ofsted provides for early years inspectors concerning registration, inspection, enforcement and legislative changes.

Ofsted will inspect MOD-owned childcare provision in schools, in overseas locations, on a full cost recovery basis. The arrangements for these inspections are set out in a separate protocol. The MOD will be responsible for the registration and regulation of those childcare providers and will maintain a register of childcare providers. Ofsted will quality assure the following aspects of the MOD and its approved organisations' work with childcare providers:

- registration procedures
- inspection procedures
- enforcement procedures

In relation to the above, Ofsted will provide an advisory function to the MOD and its approved organisations. Once a year, DCYP will produce a report on how the MOD is delivering these functions. Ofsted will review this and produce a report on the effectiveness of the MOD's arrangements.

## **What the MOD and its approved regulatory organisations will do for Ofsted**

The MOD and its approved organisations will share information with Ofsted to enable registration of childminders that were previously registered in overseas commands and who move to England.

The MOD and its approved organisations will ensure that there is a procedure to share information about the suitability of registered childminders who move to England and apply to register with Ofsted. There is a procedure to share information about childminders registered in England who move overseas. [See annex.](#)

The appropriate MOD-approved regulatory organisation will respond to requests for information about childminders who transfer between overseas or English locations within 30 working days.

MOD-approved regulatory organisations are aware that any information provided to Ofsted may be shared with the subject of the check, or the applicant for registration when they are the employer of the subject.

MOD-approved regulatory organisations will ensure that early years inspectors are competent, suitably experienced and complete regular training concerning registration, inspection, enforcement and legislative changes.

## Electronic communication

If possible, Ofsted and the MOD will share information electronically. This will provide a quicker and more effective way for them both to respond to requests for information. Ofsted must comply with its internal electronic information management policies to manage all electronic communication securely and effectively.

## Authorisations

Date: 4 February 2020



Sean Harford

National Director, Education



Mike Cooper

Director, Children and Young  
People

## Contacts

### Ofsted contact

Tel: 0300 123 1231

Email: [regulatoryteam@ofsted.gov.uk](mailto:regulatoryteam@ofsted.gov.uk)

### MOD contacts



All policy enquiries

DCYP Policy Team, Building 183, Trenchard Lines, Upavon, Wilts, SN9 6BE

Tel: 01980 618838

Email: [DCYP-DCYP-Mailbox@mod.gov.uk](mailto:DCYP-DCYP-Mailbox@mod.gov.uk)

All enquiries regarding the registration of childminders in overseas Commands in Western Europe

Assistant Chief Education Officer, MOD Schools, DCYP, Building 309, EJSU, SHAPE, BFPO 26

Tel: 0032 6544 8607

Email: [DCYP-MODSch-Inspector-AsstHd@mod.gov.uk](mailto:DCYP-MODSch-Inspector-AsstHd@mod.gov.uk)

All enquiries regarding the registration of childminders in overseas Commands other than Western Europe

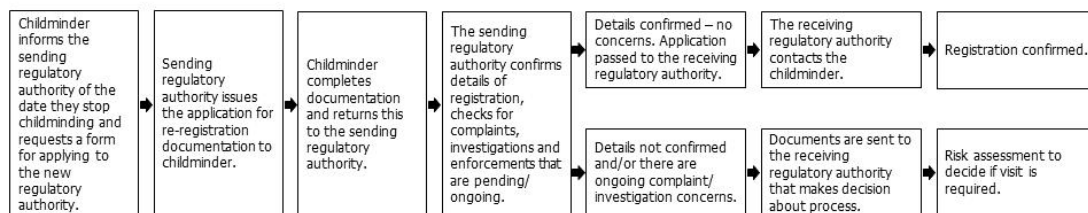
Childcare Coordinator, SSAFA, 4 St Dunstan's Hill, London, EC3R 8AD

Tel: 00357 2474 4443

Email: [jill.stavrou-shaw@ssafa.org.uk](mailto:jill.stavrou-shaw@ssafa.org.uk)

## Annex

Flow diagram to show procedure for sharing information about the suitability of registered childminders between Ofsted and MOD-approved regulatory organisations



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