

Registering school-based provision

An early years and childcare factsheet

This factsheet sets out when a maintained or independent school must register its early years or childcare provision with us, where this provision is made directly by the school and managed by the governing body.

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Introduction

The Childcare Act 2006 says childcare is 'any form of care for a child including education or any other supervised activity'.¹

Most childcare providers caring for children under eight-years-old must register with Ofsted unless the law says that they do not need to.

We register childcare providers on the:

- Early Years Register
- Childcare Register.

A summary of the legislative framework

From September 2015, schools that take two-year-olds as part of their early years provision will no longer need to register that provision with Ofsted.

The Childcare Act 2006 sets out when and how early years providers should register. Section 34(2) allows institutions to be exempt from registering separately with Ofsted, in relation to early years provision for a child or children over 2, if:

- a. the provision is made at the school as part of the school's activities;
- b. the provision is made by the proprietor or a person employed to work at the school, and
- c. there must be at least one registered pupil of the school present in the early years provision.

A pupil is someone who is on the school's register, which schools must have under the Education (Pupil Registration) (England) Regulations 2006.² They have been accepted on roll in line with admission arrangements, agreed with the relevant admissions authority.

Schools do not need to register provision on the Early Years Register that has at least one registered pupil aged two or over.³ The requirement for 'at least one pupil' can be satisfied by Reception Year pupils, and there is no requirement for the pupils to be in the same room.

¹ Childcare Act 2006; www.legislation.gov.uk/ukpga/2006/21/contents

² The Education (Pupil Registration) (England) Regulations 2006; www.legislation.gov.uk/uksi/2006/1751/contents/made.

³ The Childcare (Exemptions from Registration) Order 2008; www.legislation.gov.uk/uksi/2008/979/contents/made.

When you don't need to register with us

At least one child attending the early years or childcare provision is a pupil of the school (including Reception)

When you must register with us

Early Years Register

You **must** register your early years provision if it is:

- for children aged from birth to under two years and at least one child attends for more than two hours a day
- only for children who are not pupils at the school, such as a separate pre-school, a nursery for children of staff members or a nursery in a children's centre run by the school (it does not have to be on the school premises to be run directly by the school).

You **must** register with us if you are a school that admits children to their register who are not yet two.

In all cases, whether or not you are required to register, you must deliver the Early Years Foundation Stage for children in the early years age group⁴, including all care provision outside of the school day (wrap-around care).

Childcare Register

The Childcare Register has voluntary and compulsory parts

You can **not** register provision on either part of the Childcare Register if you are a school directly providing childcare for children older than the early years age group, and this includes at least one registered pupil of the school. However, if you are a school providing childcare that is not eligible for registration on the Childcare Register, you **must** still meet the register's requirements.

There are a few instances where a school must register on the compulsory part of the Childcare Register to directly provide care for children older than the early years age group. The school must register on the compulsory part of the Childcare Register if it provides childcare for more than two hours a day for children who are aged between five and eight and none of the children are pupils at the school. For example, an out-of-school club provided by a secondary school for children aged under eight and none of the children are pupils of the secondary school, must register.

⁴ The early years age group is children aged from birth until the 31 August following their fifth birthday who go to an early years settings that delivers the Early Years Foundation Stage.

The school may also choose to register on the voluntary part of the Childcare Register if it provides care for children aged eight and upwards but none of the children are pupils at the school. One such circumstance would be if, in the example above, the out-of-school club also cared for children aged eight and over who did not attend the secondary school.

In the example above, the school is exempt from registering on the compulsory or voluntary part of the Childcare Register if any of the school's pupils went to the out-of-school club.

Early years or childcare provision on a school site not made directly by the school

A school may have early years or childcare provision on its site where the provider is not the school. Examples include the school commissioning another organisation to care for pupils before or after the school day in an out-of-school club, or a provider renting an empty classroom to run a nursery for a few mornings during the week.

In these cases, depending on the age of the children attending, the **provider** and not the school will need to register on the Early Years Register, the Childcare Register, or both if the provision meets the requirements for registration and is not exempt from compulsory registration. Please see the 'Early years and childcare registration handbook'⁵ for more information.

Early years and childcare provision made alongside that for school pupils

Some schools have arrangements with a registered provider to share the same premises, such as a classroom. For example, in some rural schools where numbers of children in the Reception class are low, they may combine with the local pre-school to share costs and facilities. This type of arrangement is sometimes referred to as a 'foundation stage unit'.

Under these arrangements, both parties will need to be aware of their own responsibilities for meeting the requirements of the Early Years Foundation Stage. Both parties may share policies and procedures, but each must make sure that they are right for them and allow them to meet their legal requirements.

The law says that 'the premises must be for the sole use of the provision during the hours of operation'. We interpret 'provision' as delivering the Early Years Foundation Stage so that it allows you to operate alongside each other.

⁵ Early years and childcare registration handbook, 150150, Ofsted, December 2015; <https://www.gov.uk/government/publications/become-a-registered-early-years-or-childcare-provider-in-england>

Schools converting to academies

In terms of registration with Ofsted, the principles set out above apply equally to academies as they do to other types of school. For example, an academy that directly provides early years or childcare provision at the academy, only for children aged two and over, and where at least one child is a pupil of the school, does **not** need to register with Ofsted.

Where childcare on an academy site is provided by an independent provider (not the academy) who is leasing premises from the academy, it is likely that the independent provider will need to register with Ofsted, unless the academy is still in control of the childcare provision.

A school that has passed a resolution in favour of academy conversion and also directly provides registered early years or childcare provision for children under the age of two years and is managed by the governing body, must apply to Ofsted to register this provision again. This is because, in law, conversion to an academy changes the legal status of the school as the registered provider, which means a new registration is required.

The governing body of the school should apply to Ofsted to register their early years or childcare provision for children under the age of two years once the Secretary of State approves the school proposal and issues the Academy Order. Applying at this stage will allow Ofsted to undertake the necessary administrative processes and will maximise the possibility of the early years or childcare registration being complete at the same time as the school officially opens as an academy.

A school can apply for registration of early years or children provision for children under the age of two years at any time after receiving the Academy order but, if there is a delay applying, the school may not be able to operate any early years or childcare provision until registration is granted. It is an offence to operate such provision without registration without reasonable excuse.

The Department for Education has provided a range of models for academies wishing to run childcare. The requirements in terms of registration with Ofsted are set out below.

- **The academy directly runs early years or childcare provision on its own site:** as set out above, the academy will need to register this provision with Ofsted, unless it is covered by the exemptions from registration outlined above relating to the age of the children, whether the provision is run for pupils of the school, and so on.
- **The academy directly runs early years or childcare provision on a site other than the academy** (for example, at another academy): the provision will be covered by the exemption from registration as long as the academy has overall control of the childcare, in terms of management, staffing and so on.

- **The academy arranges for an independent provider to run early years or childcare provision from the academy site:** the independent provider will need to register with Ofsted as the exemptions from registration only apply where the school is directly running the provision.
- **The academy sets up a subsidiary company to run the early years or childcare provision:** the registration requirements depend on the nature of the relationship between the subsidiary company and the academy. If the subsidiary company is completely owned and controlled by the academy, the academy is effectively managing the childcare and will be exempt from registration if the exemption rules set out above apply. However, if the subsidiary company is independent from the academy or at arm's length and the academy does not exercise a high level of control over it, it is likely that the subsidiary company will need to register the childcare separately. In considering whether or not the exemption from registration applies, we use the following questions to decide on the extent of control the academy has over the subsidiary.
 - Who will make up the organisation that is to provide the childcare?
 - Who will have the main/lead responsibility in relation to the childcare?
 - Who will recruit and pay the staff who will work in the childcare provision?
 - Who will make the decisions about how the childcare is run, for example in terms of its opening hours, the age group it covers, and how much parents pay?
 - Who will determine the educational programme that the childcare will offer, and who will make the decisions about how the childcare will meet the welfare and learning and development requirements of the Early Years Foundation Stage?
 - Who will the manager of the childcare setting report to?
 - Who will account for the income and expenditure that is associated with the childcare provision?

Examples of provision on school sites

Not all provision on a school site fits neatly or easily into the requirements for registration as defined by law.

We deal with each application to register or make a change to a registration on a case-by-case basis. The examples in the section below show how complicated provision on school sites and/or managed by the governing body can be and how we deal with this using our policy for registering provision. Annex A also gives some common types of registration.

Scenarios where provision is run by the school's governing body

YR = Reception class (4–5); YN = Nursery class (3–4); 2s = two-year-olds

Scenario	Registration required with reasons	How will Ofsted inspect?
<p>1 Maintained primary school with nursery class and Reception class. School now takes children once they turn two-years-old. They have their own classroom. All EYFS children on same site in same building but different classrooms Provision takes place in additional buildings on a different site(s) from the school.</p>	<p>Exempt from registration, as there are no children under the age of two. The same applies.</p>	<p>One school inspection under the school inspection handbook and will cover provision for 2–11. A judgement about the early years provision (2's, YN and YR) is included in the report.</p>
<p>2 New all through academy 2–18 (also applies to free schools) Three buildings all on the same site: 2–5/5–11/11–18 If provision takes place in additional buildings on a different site(s) from the school.</p>	<p>Exempt from registration, as there are no children under the age of two. The same applies</p>	<p>One school inspection under the school inspection handbook and will cover provision for 2–18 A judgement about the early years provision (2s, YN and YR) is included in the report.</p>
<p>3 Maintained primary school 4–11: includes a Reception class. School also runs 0–4 provision within the school building. If the 0–4 provision is in a different building on the school site</p>	<p>Registration required because the provision includes children under the age of two. Same applies</p>	<p>The school is inspected under the school inspection handbook and will cover provision for 4–11. A judgement about the early years provision for four- and five- year-olds (YR) is included in the report. The 0–4 provision will be inspected separately under the early years inspection handbook.</p>
<p>4 Maintained primary school 3–11: includes a nursery and Reception class. School also runs 0–4 provision within the school building. Children who attend the nursery class also attend this provision for wrap-around care. If the 0–4 provision is in a different</p>	<p>Registration required because the provision includes children under the age of two. Same applies</p>	<p>The school is inspected under the school inspection handbook and will cover provision for 3–11. A judgement about the early years provision (YN and YR) is included in the</p>

Scenario	Registration required with reasons	How will Ofsted inspect?
<p>building/on a different site</p> <p>The fact that some children attend both provisions is not relevant. It is the quality of the provision that is inspected and not the children. Where school and registered provision is mixed within the same room, inspectors need to be aware and factor this into their evidence collection and judgements.</p>		<p>report.</p> <p>The 0–4 provision will be inspected separately under the early years inspection handbook.</p>
<p>5 Independent school 2–11: all children in the same building. if separate buildings on the same site/different site(s)</p>	<p>Exempt from registration, as there are no children under the age of two.</p> <p>However, independent schools are expected to contact the DfE to request a material change if they have lowered their age range to include two-year-olds.</p> <p>Same would apply</p>	<p>The school is inspected under the school inspection handbook and will cover provision for 2–11.</p> <p>A judgement about the early years provision (2s, YN and YR) is included in the report.</p>
<p>6 Primary school 4–11</p> <p>Privately run early years provision 2–4 (e.g. pre-school)</p>	<p>The provision for children under the age of four is not managed by the school.</p> <p>That private provider is required to register.</p>	<p>The school is inspected under the school inspection handbook and will cover provision for 4–11.</p> <p>A judgement about the early years provision (YR) is included within the report.</p> <p>The 2–4 provision will be inspected separately under the early years inspection handbook.</p>
<p>7 Small rural primary school 2–11</p> <p>Because of small numbers, all children in the EYFS are in the same classroom and managed by the same staff.</p> <p>Schools can decide how to deploy resources but must have regard for</p>	<p>Exempt from registration, as there are no children under the age of two.</p>	<p>The school is inspected under the school inspection handbook and will cover provision for 2–11.</p> <p>A judgement about the</p>

Scenario	Registration required with reasons	How will Ofsted inspect?
<p>requirement 3.32: children aged two, the staffing ratios are the same for all provider types.</p>		<p>early years provision (2s, YN and YR) is included in the report.</p>

Annex A. Who needs to register?

The table below may help to clarify who should apply to register for different scenarios when childcare is provided in schools.

Situation	Who should register?
The governing body at a school employs an individual to provide childcare.	Registration isn't required providing at least one child attending is a pupil of the school and no children are aged under two. If registration is required, the governing body will need to register.
The school commissions an individual or an organisation to provide childcare on its behalf. The commissioned person employs staff to work in the setting and is responsible for the service, its policies and practice.	The individual or organisation commissioned to provide the service
The school lets a room to a person or organisation for the provision of care.	The person or organisation renting the premises and providing the childcare
The governing body sets up a committee to have full responsibility for the running of the out-of-school care provision. The committee does not report back to the governing body.	The committee responsible for providing the care
The headteacher and some members of the governing body form a committee to provide the care (even if they do not report back to the governing body as a whole).	Registration isn't required providing at least one child attending is a pupil of the school and no children are aged under two. If registration is required, the governing body would need to register.
The governing body sets up a committee to have responsibility for the management and running of the out-of-school care provision. The committee reports to the governing body.	Registration isn't required providing at least one child attending is a pupil of the school and no children are aged under two. If registration is required, the governing body will need to register.
The out-of-school club is run by a parent committee, which has full control of the day-to-day care provided.	The committee
The school uses a childminding network to provide its wrap-around care before and after school.	Each individual childminder
The school rents a local community centre with two more schools.	Registration isn't required, providing at least one child is a pupil at each of the schools and no child attending is aged under two. If registration is required, the governing bodies will need to register if they are jointly responsible.
The headteacher directly manages the childcare but does it on behalf of the school.	Registration isn't required, providing at least one child attending is a pupil of the school

	and no children are aged under two. If registration is required, the governing body will need to register.
The headteacher employs a manager to provide childcare and does this on behalf of the school.	Registration isn't required, providing at least one child attending is a pupil of the school and no children are aged under two. If registration is required, the governing body will need to register.
The local authority runs childcare in one school and provides a bus service for all local schools to participate.	The local authority will need to register if they employ the staff providing the childcare.
The local authority commissions an individual or organisation to provide childcare on its behalf in one school, and the local authority provides a bus service for all local schools to participate.	The individual or organisation commissioned to provide the childcare

More information from Ofsted

There is more information about registration on our website:

<https://www.gov.uk/government/publications/become-a-registered-early-years-or-childcare-provider-in-england>. If you are not sure whether you have to register, please contact us on 0300 123 1231.

The law that sets out our responsibilities is the Childcare Act 2006 and linked regulations. The specific order setting out exemptions from compulsory registration is the Childcare (Exemptions from Registration) Order 2008 (2008 No. 979), available at: www.legislation.gov.uk/uksi/2008/979/contents/made.

Further information

Your local family information service will help you. You can get their contact details from your telephone directory or from their website:

<http://local.direct.gov.uk/LDGRedirect/index.jsp?LGSL=1579>.