

**THE OFSTED FRAMEWORK FOR
THE REGULATION OF DAY CARE AND CHILDMINDING**

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1 INTRODUCTION

In September 2001 the responsibility for the regulation of day care and childminding in England, transferred from Local Councils to Her Majesty's Chief Inspector of Schools (HMCI) at the Office for Standards in Education (OFSTED). This means that there will be one single regulatory body instead of 150 across England.

The regulatory functions include the registration and inspection of all types of eligible providers of day care and childminding, as well as the investigation of concerns and complaints and any necessary enforcement action which could result.

From September 2001 OFSTED is responsible for the regulation of day care for children under eight. From April 2002 the National Care Standards Commission will be responsible for the regulation of care services for adults and children's homes.

The Government intends to make sure that children are safe and well cared for in whatever type of registered provision they attend. Children should be looked after by adults who are suited to this work and who will make sure that their provision meets the National Standards published in May 2001.

This document has three purposes. First, to describe the main elements of the regulation system following Part XA of the Children Act 1989 (as inserted by the Care Standards Act 2000). Second, to set out the principles on which registration, inspection, investigation and enforcement rests. Third, to set the context for other documents, such as the guidance for child care inspectors, and individual information leaflets for providers, parents and the public.

This document is likely to have a wide readership. But in particular it is to inform providers (and their representative groups) of how OFSTED carries out regulation work. However, it should be useful for those who have the task of securing provision of information, advice and training for providers in meeting requirements, and all members of Early Years Development and Childcare Partnerships (EYDCP) and Children's Information Services (CIS). It may also be useful to other people and organisations who are affected by the way OFSTED conducts its regulatory responsibilities. This document should be read in conjunction with the National Standards for Under Eights Day Care and Childminding¹ and the Guidance to the National Standards²

¹ The National Standards for Under Eights Day Care and Childminding have been drawn up by the Department for Education and Skills (DfES) and were published in May 2001. They are referred to as 'the National Standards' in this document.

² The Guidance to the National Standards has been drawn up by OFSTED and was published in July 2001

2 GLOSSARY OF TERMS

Applicant	a person who applies to become a registered provider of day care or childminding.
Provider	a person who provides a day care or childminding service.
Registered person	a person, or corporate body, who has overall responsibility for the provision and is registered as suitable to care for children.
Qualified	the person meets requirements regarding the suitability of persons and premises and adheres to the National Standards and other regulations.
Regulation	covers registration, inspection, investigation and enforcement.
Registration	the process of checking that an applicant is suitable to care for children in safe and suitable premises.
Inspection	a system to provide a regular check to ensure that providers meet the National Standards.
Investigation	the action taken following a complaint, an allegation, or, when a breach of requirements is suspected.
Enforcement	the action taken when requirements are not met.

For definitions of the five types of day care provision, see paragraphs 31 to 38.

3 LINKED PUBLICATIONS

THE PUBLIC	Date of publication
- General information leaflet	March 2001
- The regulation of provision for children over 7	January 2002
- Complaints procedures	September 2001
PARENTS	
- What to expect from the Regulation of Childcare Services	March 2001
- Using an Ofsted Registered Childcare Provider	September 2001
PROVIDERS	
- What to expect from the Regulation of Childcare Services	March 2001
- The National Standards for Under Eights Day Care and Childminding	May 2001
- Guidance to the National Standards	July 2001
- Childminding – Is it for you?	July 2001
- Day Care – Is it for you?	July 2001
- A Guide to Registration Requirements for Childminders	July 2001
- A Guide to Registration Requirements for Day Care Providers	July 2001
- A Guide to Inspection Requirements for Providers	September 2001

4 THE REGULATION SYSTEM

Why the Government needs to regulate childminding and day care

1. Through registering childminders and day care providers, OFSTED aims to:
 - protect children;
 - ensure that childminders and day care providers meet the National Standards;
 - ensure that children are safe, well cared for and take part in activities that contribute to their development and learning;
 - ensure that services are consistently provided to the National Standards;
 - promote high quality in the provision of care and learning; and
 - provide reassurance for parents.

What is the legal basis for the regulation of childminding and day care provision?

2. Part XA of the Children Act 1989³ (the Act) establishes Her Majesty's Chief Inspector of Schools in England (HMCI) as the authority for the regulation of childminders and day care providers in England. The Act gives HMCI responsibility for the registration and inspection of such provision and the responsibility for investigation and enforcement where it appears that requirements are not being met.
3. The Secretary of State has powers to make regulations governing the activities of registered providers. These powers include checking the suitability of those who look after children. The regulations include National Standards, underpinned by criteria for the fulfilment of the Standards and relevant to the type of provision. OFSTED expects providers to show that they comply with the standards, having regard to the particular criteria that apply to them. Providers also need to demonstrate to OFSTED that they are suitable to care for children.
4. Setting up and operating day care provision entails compliance with other statutory requirements. These requirements include regulations relating to planning and building control, health and safety, employment law, food and hygiene and anti-discriminatory legislation.

³ Since 1991, the regulation of childminding and day care provision for children under eight has been governed by Part X of the Children Act 1989. Part VI of the Care Standards Act 2000 inserts a new Part XA into the Children Act 1989 replacing the previous Part X. This will be referred to as 'the Act' in this document.

How does OFSTED regulate childminding and day care?

5. There are four aspects to the regulation of childminding and day care for children under eight: registration, inspection, investigation and enforcement.
6. OFSTED will register providers once it is of the opinion that they are qualified (see paragraphs 22 and 23) to care for children, and that the premises on which care takes place are suitable.
7. OFSTED will judge providers as being qualified for registration if they meet requirements regarding the suitability of persons and premises, the National Standards and other regulations, and any other conditions of registration. These conditions involve detailed checks and evaluation so that OFSTED can come to an opinion as to whether providers are qualified. Where OFSTED decides that persons are qualified, OFSTED will register those persons. Otherwise OFSTED will refuse registration.
8. OFSTED will carry out inspections of providers to ensure a regular check of their work.
9. Inspections provide a check upon how well child care is being provided and whether the provider is continuing to meet the National Standards, other regulations and any conditions of registration imposed. OFSTED will arrange for the inspection of all registered day care providers and childminders at least once between September 2001 and March 2003 and annually thereafter. Inspectors report on the quality and standard of child care. OFSTED will send a copy of the report to the provider and may publish it.
10. OFSTED will carry out an investigation when information is received which needs further examination, or a complaint is lodged, or where unregistered child care or a breach of requirements is known or suspected.
11. OFSTED's child care inspectors and others authorised by HMCI have a right of entry to premises where they have reason to believe that children are being looked after in contravention of the Act. This reason might arise from information that a person who should not do so, is providing child care, or a registered provider is acting in contravention of the National Standards, other regulations or conditions of registration. Alternatively, such information may emerge from complaints about providers. These investigations will be handled in accordance with OFSTED's published complaints procedure.
12. OFSTED will carry out enforcement action when requirements are not met.
13. HMCI may cancel or suspend the provider's registration where there is evidence that a registered provider has not met the National Standards or fails to comply with other conditions of registration. HMCI may alternatively impose new conditions or vary existing ones (or may apply to a Justice of

the Peace for an emergency cancellation of registration, where there appears to be significant danger of harm to a child). In such cases the provider has a right of appeal to a statutory tribunal. It is an offence for providers to contravene a condition of registration. Where there is sufficient evidence that unregistered childminding is being provided, HMCI may issue an enforcement notice upon the offending person.

Inspection of funded nursery education

14. The new arrangements for regulation will incorporate the inspection of funded nursery education provision for children aged three and four as required by section 122 of the 1998 School Standards and Framework Act. Details of how the quality and standards of nursery education will be inspected will be provided at a later date.

What the law requires of a person acting as a childminder or day care provider

15. The Act defines the childminder and the day care providers who must be registered.
16. A **childminder** is defined as a person who looks after one or more children under the age of eight for a total of more than two hours a day on domestic premises for reward. The following persons are not classified as childminders for registration purposes, when looking after a child under eight. A person who:
 - is the parent or a relative of the child;
 - has parental responsibility for the child;
 - is a local authority foster parent in relation to the child;
 - is a foster parent with whom the child has been placed by a voluntary organisation; or
 - fosters the child privately;
 - only looks after the child between the hours of 6pm and 2am;
 - looks after the child wholly or mainly in the child's own home;
 - only looks after children for two sets of parents wholly or mainly in the home of either or both sets of parents.
17. **Day care** is care provided at any time (day or night) for children under the age of eight on premises other than domestic premises⁴, where the period

⁴ 'Domestic premises' means any premises which are wholly or mainly used as a private dwelling.

(or total of periods in any day) during which children are looked after at the premises exceeds two hours.

18. A person responsible for providing day care in any of the following establishments does not need to register, except in prescribed circumstances, if the care they provide is an integral part of the establishment's activities⁵:
- a maintained school;
 - a school assisted by a local education authority;
 - an independent school;
 - a school in respect of which payments are made by the Secretary of State under section 485 of the Education Act 1996 (City Technology Colleges, City Academies);
 - an appropriate children's home;
 - a care home;
 - a hospital (where children are looked after as a patient);
 - a residential family centre.⁵

Persons allowed by any of these establishments to look after children on their premises have to register.

19. If day care is provided on particular premises for two hours or less a day, or for less than six days in any year, that provision will not fall within the scope of the Act, provided the person has notified the registration authority in writing before the first occasion on which the premises concerned are used.
20. No person shall act as a childminder or provide day care on any premises unless registered by OFSTED. A person who acts as a childminder but is not registered may be subject to an enforcement notice and liable to prosecution. A person who ignores an enforcement notice without a reasonable excuse will be liable to prosecution. Similarly, providers of day care who operate without being registered may also be subject to prosecution. (See Chapter 11)

⁵ These are outlined in Schedule 9A to the Act.

The exemption from registration may *not* apply, for instance, where:

- a person including a voluntary or community group or private company, who is not employed by the organisation managing the institution, is allowed to use part of the building to provide day care;
- the person responsible for the institution or establishment, or someone employed by him, provides a day care service but the service is *not* an integral part of the institution or establishment nor included in the job description of the employee.

Application for registration

21. A person who wishes to be registered as a childminder or day care provider must apply to OFSTED, giving all of the information sought by OFSTED. In the case of providers offering day care on more than one site, a separate application is required for each of the premises where the day care is provided. An applicant may withdraw their application except in certain circumstances. It is an offence to knowingly make a false or misleading statement in an application.

Registration requirements

22. A person is qualified for registration as a childminder if:
- he or she and every other person looking after children on any premises on which he or she is or is likely to be childminding is suitable (as defined by the National Standards) to look after children under the age of eight;
 - every person living or employed on the premises in question is suitable to be in regular contact with children under the age of eight;
 - the premises⁶ are suitable to be used for looking after children under the age of eight, having regard to their condition and the appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises ; and
 - he or she complies with the National Standards, regulations and any other conditions imposed by OFSTED as the registration authority.
23. A person is qualified for registration for providing day care on particular premises if:
- every person looking after children on the premises is suitable to look after children under the age of eight;
 - every person living or working on the premises in question is suitable to be in regular contact with children under the age of eight;
 - the premises in question are suitable to be used for looking after children under the age of eight, having regard to their condition and the appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises; and

⁶ National registration means that childminders no longer need to re-register when they move from one local authority to another. But the details of any move or change to the premises must be notified to OFSTED, in advance, who will review the registration in the light of the move or change.

- he or she complies with the National Standards, regulations and any other conditions imposed by the registration authority.
24. If, following receipt of an application for registration for childminding or day care, HMCI is of the opinion that the applicant is, and will continue to be, qualified for registration and the applicant pays the prescribed fee⁷, HMCI shall grant the application; otherwise he shall refuse it. The applicant may appeal against a decision to refuse registration.
25. OFSTED will keep a public register of all registered providers.

⁷ As of July 2001 the registration fees are £121 for full day care and £14 for the other types of day care and childminders. For definitions of the five types of provision see paragraphs 31 to 38.

5. NATIONAL STANDARDS AND REGULATIONS

26. The National Standards apply to all types of day care provision. The standards are mandatory and are set out in regulations under the Act.
27. OFSTED registers and inspects providers against these National Standards, ensuring that the care they provide meets requirements wherever the providers are located in England.
28. The National Standards are written as outcomes. This onus is therefore on providers to demonstrate how they meet the Standards.

The National Standards for Under Eights Day Care and Childminding

STANDARD 1 SUITABLE PERSON

Adults providing day care, looking after children, or having unsupervised access to them, are suitable to do so.

STANDARD 2 ORGANISATION

The registered person meets required adult:child ratios, ensures that training and qualifications requirements are met and organises space and resources to meet the children's needs effectively.

STANDARD 3 CARE, LEARNING AND PLAY

The registered person meets children's individual needs and promotes their welfare. They plan and provide activities and play opportunities to develop children's emotional, physical, social and intellectual capabilities.

STANDARD 4 PHYSICAL ENVIRONMENT

The premises are safe, secure and suitable for their purpose. They provide adequate space in an appropriate location, are welcoming to children and offer access to the necessary facilities for a range of activities which promote their development.

STANDARD 5 EQUIPMENT

Furniture, equipment and toys are provided which are appropriate for their purpose and help to create an accessible and stimulating environment. They are of suitable design and condition, well maintained and conform to safety standards.

STANDARD 6 SAFETY

The registered person takes positive steps to promote safety within the setting and on outings and ensures proper precautions are taken to prevent accidents.

STANDARD 7 HEALTH

The registered person promotes the good health of children and takes positive steps to prevent the spread of infection and takes appropriate measures when they are ill.

STANDARD 8 FOOD AND DRINK

Children are provided with regular drinks and food in adequate quantities for their needs. Food and drink is properly prepared, nutritious and complies with dietary and religious requirements.

STANDARD 9 EQUAL OPPORTUNITIES

The registered person and staff actively promote equality of opportunity and anti-discriminatory practice for all children.

STANDARD 10 SPECIAL NEEDS (including special educational needs and disabilities)

The registered person is aware that some children may have special needs and is proactive in ensuring that appropriate action can be taken when such a child is identified or admitted to the provision. Steps are taken to promote the welfare and development of the child within the setting in partnership with the parents and other relevant parties.

STANDARD 11 BEHAVIOUR

Adults caring for children in the provision are able to manage a wide range of children's behaviour in a way which promotes their welfare and development.

STANDARD 12 WORKING IN PARTNERSHIP WITH PARENTS AND CARERS

The registered person and staff work in partnership with parents and carers to meet the needs of the children, both individually and as a group. Information is shared.

STANDARD 13 CHILD PROTECTION

The registered person complies with local child protection procedures approved by the Area Child Protection Committee and

ensures that all adults working and looking after children in the provision are able to put the procedures into practice.

STANDARD 14 DOCUMENTATION

Records, policies and procedures which are required for the efficient and safe management of the provision, and to promote the welfare, care and learning of children are maintained. Records about individual children are shared with the child's parent.

29. Each standard is underpinned by criteria that show how the standard can be achieved. The criteria are distinctive to each type of provider to reflect the different nature of each type of provision. Both OFSTED and providers must **have regard** to these criteria with the providers having to demonstrate to OFSTED how they meet the National Standards in their particular circumstances. OFSTED will not place unreasonable burdens on providers.
30. In addition, regulations under 79C of the Act require that childminders and registered day care providers must:
 - i) let OFSTED know of any changes and relevant events;
 - ii) keep relevant records and policy statements.

Annex 2 contains the details of these requirements

Main types of day care provision

31. For the purposes of registration, all types of provision offering day care for young children are assigned to one of five categories. The categories are as follows:

Childminders

32. A childminder is registered to look after one or more children under the age of eight to whom they are not related on domestic premises for reward and for a total of more than two hours in any day.

Full Day Care

33. Facilities that provide day care for children under eight for a continuous period of four hours or more in any day in premises which are not domestic premises. They include day nurseries and children's centres, and some family centres.

Sessional Day Care

34. Facilities that provide day care for children under eight for a session which is less than a continuous period of four hours in any day in premises which are not domestic premises. Where two sessions are offered in any one day,

individual children must not attend more than five sessions a week. There must be a break between sessions with no children in the care of the provider. This is intended to cover provision which offers children part-time care and the opportunity to engage in activities with their peer group, e.g. playgroups.

Crèches

35. Crèches are facilities which provide occasional care for children under eight and are provided on particular premises on more than five days a year. They need to be registered where they run for more than two hours a day, even where individual children attend for shorter periods. Some are in permanent premises and care for children while parents are engaged in particular activities e.g. shopping or sport. Others are established on a temporary basis to care for children while their parents are involved in time-limited activities, e.g. a conference or exhibition.

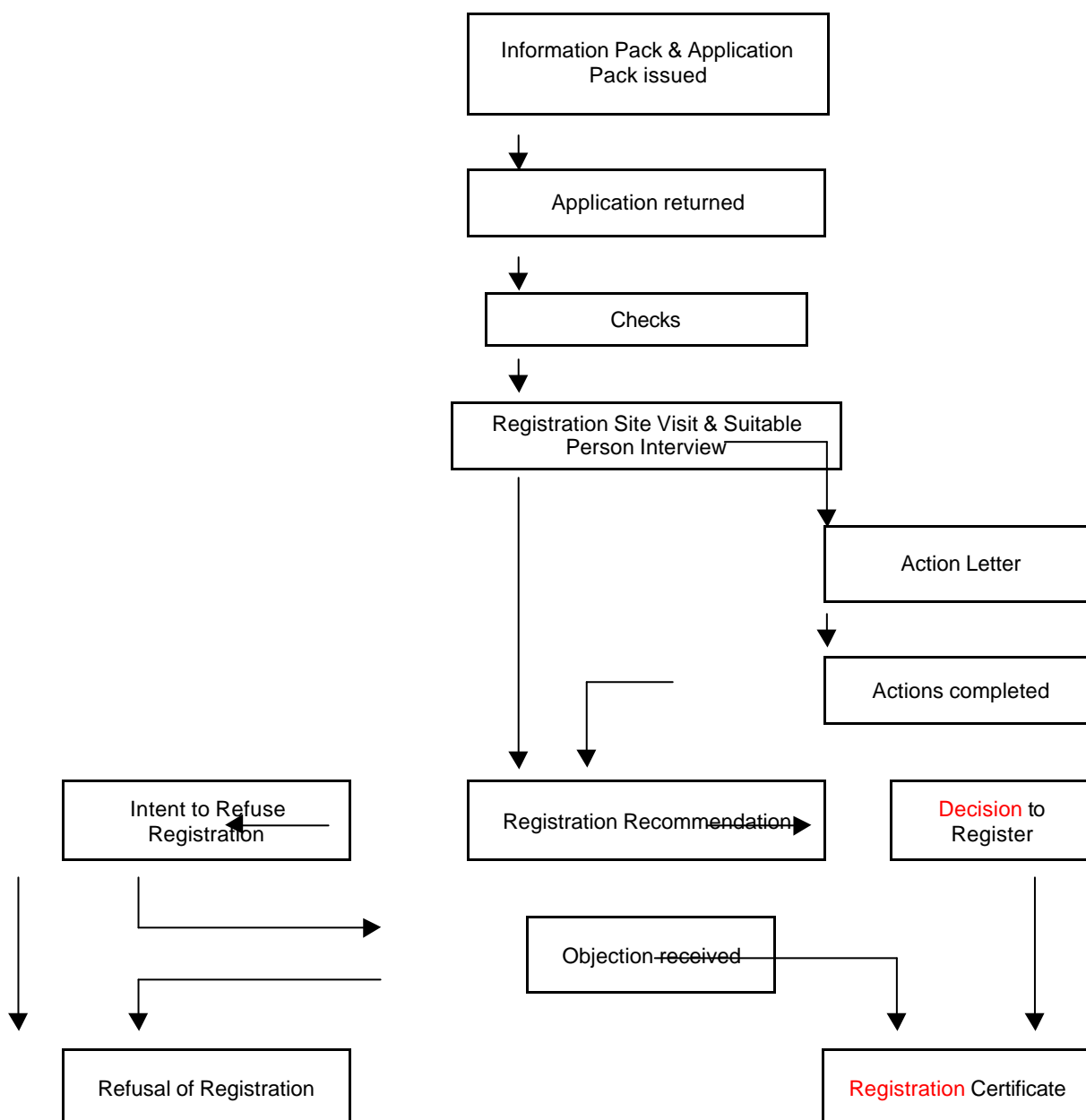
Out of school care

36. These are facilities providing day care for children which operate during one or more of the following periods: before school; after school; during the school holidays. The total care provided is for more than two hours in any day and for more than five days a year.
37. A main purpose of the provision is to look after children in the absence of their parents. This form of care can include children from three years old and children over eight may use it. E.g. summer camps, holiday play schemes, breakfast clubs, out of school clubs.
38. Open access schemes are included. These may be permanent or short-term schemes and generally cater for older children, however, children aged five to seven may attend. The main purpose of the provision is to provide supervised play opportunities for children in a safe environment in the absence of their parents.

6. THE REGISTRATION PROCESS

Registration of existing providers in September 2001

39. From 1 September 2001 all providers registered by local authorities are treated as though registered by OFSTED. OFSTED will write to all registered providers to explain the situation and the changes.
40. The new legislation and National Standards apply to existing providers who should begin working towards them. However, OFSTED is not able to judge whether existing providers comply with the new standards, or should continue to be registered under the new system, until it carries out an inspection.
41. The Local Authority registration certificate and any existing requirements stand as conditions of registration. However, following the inspection, all providers will be issued with a new registration certificate. Any new conditions of registration will be formally notified to the provider who has the right of appeal.
42. The rest of this chapter deals with the registration of new providers.
43. The flow chart shows an example of the steps an applicant needs to follow in order to become registered.



44. OFSTED will process an application as quickly as circumstances allow. It should be noted that the completion of a number of these stages depends on information from other agencies and action to be taken by the applicant. OFSTED will normally be able to tell applicants the decision about registration within six months of receiving a full day care application and within three months of receiving an application to provide any of the other types of day care and childminding. OFSTED will inform applicants if there is any delay in processing their application.

Information and Application Pack issued

45. OFSTED will refer all prospective applicants to their local authority for information and advice about: pre-registration briefing sessions; training and any other aspect of advice and support that the local authority and its Early Years Development Child Care Partnership (EYDCP) makes available. The Partnership will make available the National Standards documents and guidance which the potential applicant should read carefully before deciding whether or not to make an application.

Potential Childminder

46. Potential **Childminders** are expected to attend a pre-registration briefing session arranged by the local authority. At these sessions, the application forms and the registration process is explained and questions are answered. The potential applicant is given an application pack if they decide to make an application. Partnerships will provide information and advice about becoming a childminder and about the training opportunities available in their area.

Potential day care provider

47. Not all local authorities provide pre-registration briefing sessions for **day care providers**. Where these are not provided, application packs will still be available to potential applicants from their local authority. Partnerships provide information and advice about becoming a day care provider and about the training opportunities available in their area.

Application made

48. An application is formally made when OFSTED is satisfied that all forms are fully completed and signed. If OFSTED is not satisfied that an application has been completed satisfactorily it will be returned to the potential applicant to be completed. Receipt of accepted applications will be confirmed with the applicant and any other individuals involved in the application.
49. OFSTED requires information on the applicant and members of their household/staff to check their suitability.

Checks on individuals in connection with the registration of childminders and day care providers

50. OFSTED has to come to a decision about the suitability of the applicant and all relevant individuals involved in an application for registration.

Applicants and in the case of day care any person in charge

51. As part of the application, OFSTED will seek from the applicant a completed Application Form CM1 (for childminders) or DC1 (for day care).

In the case of a company or other organisation it should be signed by the chairperson or somebody in a comparable position.

In the case of day care applications completed "Notification" forms (DC2) will be required from the applicant and the person in charge and any partners, committee members, directors or members of the governing body where the applicant is a body corporate or a body incorporate.

52. Application form CM1 and Notification form DC2 ask for a declaration about criminal record and other matters of suitability and for consent to pursue checks with:
- a) Directors of social services (social service records, child protection register);
 - b) A General Practitioner or other medical professional (including a second medical opinion by a medical practitioner appointed on behalf of OFSTED, if necessary);
 - c) Chief Police Officers / Criminal Records Bureau, including details of spent convictions exempt from the Rehabilitation of Offenders Act 1974;
 - d) Protection of Children Act list and Department for Education and Skills List 99;
 - e) Referees;
 - f) Previous employers;
 - g) Health Visitor (only undertaken for childminders whose own children are under 5); and,
 - h) The Registered Homes List.

Consent to pursue further checks may also be requested, these could include checks with, for example, the probation service or the NSPCC.

53. OFSTED will seek an application for a criminal records disclosure (a copy of a recent disclosure may be sufficient) from any of the persons listed above who is in a position where their normal duties include or will include:
- a) working on day care premises; or
 - b) caring for, training, supervising or being in sole charge of children; or
 - c) having supervisory or management responsibility for an individual looking after children or having regular contact with children on day care premises.

54. Individuals subject to the criminal records check will be asked to provide:
- original documents (not photocopies) to verify identity, date of birth and any name change. This would include a passport or birth certificate to confirm identity, and marriage certificates or deed poll papers, as appropriate, to confirm any change of name;

and may be asked to provide:

- a health declaration (only the person in charge of providing actual day care, childminding applicants and childminder assistants will normally be asked for this. OFSTED will seek information from the GP of these individuals.); and,
- verification of any relevant qualifications claimed.

Other people looking after children (including childminder's assistants)

55. Applicants are required to notify OFSTED of any staff that they propose to employ (including in the case of a childminder, any assistant). At the point of a conditional offer of employment and not before, the employer should send OFSTED the following documents. These documents, to be completed by the person they propose to employ, are:

- the "Notification" form (CM2 or DC2);
- an application for a criminal records disclosure (a copy of a recently obtained disclosure may be sufficient where available but OFSTED may ask for a further check). This should include a signed declaration by the employer that they have verified the identity details of the individual concerned; and,
- in the case of childminder's assistants - a health declaration form. OFSTED will seek further information from the assistant's GP where OFSTED has any concerns about information given on the declaration).

56. The applicant for registration has to demonstrate that their employees are suitable in accordance with the National Standards. As well as the criminal records check OFSTED will process checks with:

- the Protection of Children Act List and DfES List 99 (there is a legal requirement for every employer in a child care organisation that these checks are carried out under the Protection of Children Act 1999) and,
- Directors of Social Services.

57. The applicant for registration will be informed if OFSTED has concerns about the suitability of an individual as a result of any of these checks. The decision about employment is entirely the responsibility of the employer. OFSTED will take employment decisions into account in coming to an opinion about the qualification of the person to be registered as a day care provider or childminder.

Other people living or working (living or employed in the case of childminders) on the premises and not looking after children

58. The applicant is required to notify OFSTED of every such person (in the case of people living on the premises, of those individuals aged 16 or over). All such people should be suitable to be in regular contact with children. The applicant should send OFSTED, completed by the individual concerned, the following:

- the “Notification” form (CM2 or DC2 as described above); and,
- an application for a criminal records disclosure (a copy of a recently obtained disclosure may be sufficient where available but OFSTED may ask for a further check). This should include either:
 - a) a signed declaration by the employer that they have verified the identity details of the individual concerned (in the case of an employee)
 - or
 - b) verification of identity, date of birth and any name change. This would include a passport or birth certificate to confirm identity, and marriage certificates or deed poll papers, as appropriate, to confirm any change of name;

59. The results of the criminal record disclosure, the check with Directors of Social Services and the other information supplied will be taken into account by OFSTED in assessing the suitability of the person to have regular contact with children. Childcare inspectors may need to ask people to attend an interview following these checks in order to assess suitability.

60. In the case of day care a person is not treated as working on the premises in question if:

- a) none of his or her work is done in the part of the premises in which children are looked after; or
- b) he or she does not work on the premises at times when children are looked after there.

(Part XA of the Children Act 79B (5))

Registration Site Visit

61. The registration visit has three main purposes.
- i. to make sure that the premises are suitable, safe and ready for children to begin attending;
 - ii. to confirm that the prospective applicant is qualified and prepared to begin caring for children in the setting; and
 - iii. to assess the number of children the applicant may be registered to care for.

It may be necessary to make additional visits before or after the registration visit takes place.

Checking the standards

62. The inspector completes a registration visit notebook or an additional visit form for every visit that is made. The notebooks are designed to reflect the needs and circumstances of the types of applicant: group day care and childminders.
63. All fourteen Standards are covered for all types of provision but information may be collected in slightly different ways.

Conducting the registration visit

Before the visit

64. The Guidance to the National Standards should help applicants to prepare for the visit. This gives information about what the inspector will look for. The applicant should make sure that all documents are available for the inspector to see during the visit.
65. Before the visit the inspector contacts the applicant to confirm the date and to make sure that the applicant has all the necessary documents to hand.
66. Normally OFSTED will make sure that all necessary police and other checks have been carried out, that any references sought have been received, before conducting a 'suitable person' interview.

During the visit

67. The inspector uses the information gathered during the visit, to assess whether or not the applicant is suitable and ready to be registered.

Direct observation

68. Inspectors check the premises for safety, security and suitability. They make sure that there is sufficient space for the type of provision proposed and that the facilities are appropriate for the type of day care.
69. Equipment that the applicant intends to use with the children is examined to make sure that it is safe and appropriate for the age and developmental needs of the children.
70. Inspectors check all the rooms and any outdoor space. They also check safety equipment and determine how any animals that are on the premises are housed and controlled. If a vehicle is to be used to transport children, inspectors need to see evidence that it is roadworthy, taxed and insured, and that appropriate child safety restraints are available.
71. Inspectors check the food preparation area to make sure that it meets safety and hygiene requirements, including those required by the Environmental Health Department.

Suitable Person Interview

Discussions with the applicant and person-in-charge (if applicable)

72. Inspectors discuss aspects of **all** the National Standards with the applicant. In the case of a company, society, association or voluntary organisation this discussion will be with a named contact individual. In the case of day care, the person in charge of the actual day to day care of the children is also interviewed. The discussion reflects the type of provision that is being set up. For example, discussions about organisational matters in a large day nursery, employing a number of full and part-time staff, have a different emphasis to those held with a childminder, who is usually working alone in her or his own home.
73. Inspectors discuss with the applicant the kinds of activities they intend to offer the children. They check that the planned activities will provide a breadth of experiences for young children and help them to develop emotionally, intellectually, socially and physically. If the setting is to receive funding to provide an educational programme based on the early learning goals⁸, inspectors also check that the activities the applicant plans to offer will help three and four year old children progress towards the early learning goals.
74. Inspectors check the applicant's knowledge and understanding of the steps that need to be taken to ensure the good health of children and the need for the premises and practices to meet hygiene requirements. They check arrangements for administering first aid and medicines, as well as procedures that will be followed if children become ill.

⁸ (published in May 2000 by the Qualifications and Curriculum Authority [QCA] and the Department for Education and Employment [DfEE]).

75. Inspectors talk with the applicant about how they intend to promote equality of access and opportunity and anti-discriminatory practice. They check how the needs of children, including special educational needs and disabilities will be catered for, and how positive account will be taken of their social and economic background, family structure, culture, ethnicity, gender, ability, religion and beliefs.
76. Inspectors discuss how the applicant will manage children's behaviour. They check how the applicant intends to promote good behaviour and what they will do when children's behaviour is challenging.
77. Inspectors are interested to know how the applicant intends to establish and develop good relationships with parents. They want to know about how information is to be exchanged and how parents' wishes about their child's care and welfare will be met.
78. Inspectors discuss the applicant's understanding of child protection issues. They also ensure that the applicant knows what is expected of him/her in relation to all regulations.
79. Inspectors also discuss any issues that arise from the checks (see Checks for childminders and day care providers).

Scrutiny of Documents

80. As well as discussing the applicant's understanding of child protection issues in the suitable person interview, inspectors check that the applicant has written information about the locally agreed child protection procedures and that it has been read and understood. All other documents appropriate to the type of setting are checked.
81. Throughout the registration visit inspectors judge the all round suitability of the applicant to provide daycare. The onus is on the applicant to show how they intend to meet the National Standards. Applicants also need to demonstrate how they have identified possible risks to health and safety and what they have done to minimise those risks.

Feedback and Outcome of the Visit

82. Before inspectors leave, they give oral feedback so that the applicant is clear whether registration is to be recommended subject to their manager's views and about anything that needs to be done before registration is considered. An agenda for action, with appropriate timescales is discussed and agreed, and any conditions that may be imposed on the registration.

Registration Recommendation

83. Inspectors produce a summary of recommendations and this is reviewed by a senior inspector.

Action Letter

84. An action letter may be issued to the applicant detailing work that needs to be done to meet the National Standards. The applicant is given a period of time in which to comply.

Actions completed

85. When the applicant has completed the required actions they must inform the appropriate regional centre in writing within the required timescale. An additional visit may be carried out.

Decision to Register

86. When an application is approved, a letter stating the decision to register and any conditions that apply is issued.

Registration Certificate

87. The registration certificate is issued normally within 14 days once written acceptance of conditions is received from the applicant. If the applicant has raised any issues regarding the decision to register letter, these are taken into consideration and issue of the registration certificate may be delayed.

Intent to Refuse Registration

88. When a registration is refused, a letter stating the intention to refuse is sent. The applicant has the right to object.

Objection

89. If the applicant wishes to object to a condition imposed or to refusal of registration, they must inform the regional centre in writing within 14 days of the issue of the notice of decision. There is information about the objection process in Chapter 10 'Enforcement'.

Refusal of Registration

90. If no objection is received to the notice of decision to refuse registration, within 14 days, the notice of refusal is issued. The applicant has the right to appeal. There is information about the appeal process in Chapter 10 'Enforcement'.

Withdrawal of application

91. Applicants may withdraw their application at any stage up to payment of the fee. The only exception is where OFSTED has issued a notice of intention to refuse registration

7. INSPECTION

92. Between September 2001 and March 2003 (the transition period), OFSTED's main task will be to ensure that all providers are inspected at least once in line with the new National Standards and legislation. This transition inspection is reported using a short simple format.
93. After March 2003, OSTED will inspect and write a report about each registered provision at least once in every successive period of twelve months. These subsequent inspections will report on the quality and standard of the childminding or day care provided. They will identify strengths and weaknesses in provision so that providers can improve the quality of what they offer. Further details about these inspections will be provided at a later date.
94. OFSTED will also periodically inspect funded nursery education provision for children aged three and four in the private, voluntary and independent sectors that are registered with Early Years Development and Childcare Partnerships (EYDCPs), as required by section 122 of the 1998 School Standards and Framework Act. Details of how these inspections will be combined with inspections covering the National Standards will be provided at a later date.

Purposes

95. The purposes of inspection are:
 - to provide information to parents that the provider meets or does not meet the National Standards;
 - to report on the quality and standard of the childminding or day care provided;
 - to check that the registered provider continues to be qualified to provide day care; and
 - to reassure parents that their children are in a safe environment.
96. Inspection findings will contribute to HMCI's Annual Report to Parliament and form the basis of advice to the Secretary of State for Education and Skills.
97. When carrying out inspections, inspectors check that:
 - the staff, premises and equipment are suitable;
 - the children are safe and well cared for;

- the children are provided with activities that contribute to their development and learning;
 - parents are well informed and share information about their child's needs.
98. The inspection gives providers an opportunity to demonstrate how they continue to meet the National Standards.
99. The inspections of day care providers should:
- help to ensure that children are safe;
 - give information on the quality and standard of the provision;
 - be rigorous, but with the minimum of bureaucracy and disruption.

Conduct of the Inspection

Before the inspection

100. The Inspection Support Team at the Regional Centre normally notifies the provider of the period of time in which an inspection is due. The Guidance to the National Standards should help providers to prepare for the visit. This gives information about what the inspector will look for. Providers should make sure that all documents are available for the inspector to see during the visit. In exceptional circumstances, some inspections may take place without notice.
101. The provider completes and returns an information form that gives details of:
- any changes to household members, staffing, accommodation and equipment which have not already been notified;
 - any changes in the number and age of the children being cared for;
 - dates of any known staff leave, holidays or outings and a broad outline of the programme planned for the month during which the inspection will take place.
102. The Inspection Support Team notifies the senior child care inspector for the area who arranges for an inspector to visit, without further notice, within the period identified for the inspection to take place.

103. Inspectors check any previous inspection reports or any conditions that were imposed on registration and any complaints received, in order to follow up any points for action.
104. The views of parents and carers are sought about the quality of the childminding or day care provision. This will usually take place before an inspection and, occasionally, during or after an inspection.

During the inspection

105. Inspectors gather evidence of the continuing suitability of the provider and the care provision. They check that the provider meets the National Standards, taking full account of any previous items for action and other information gathered during the visit.
106. All 14 standards are covered for all types of provision but information is collected in ways that relate to the type of provision.
107. A single inspector typically carries out the annual inspection of a childminder in approximately one to two hours. Inspection of a group provider takes between half a day and a full day. On occasions, the inspection could last longer and be carried out by more than one inspector.
108. As in the registration visit, the inspector gathers evidence and information through discussion, direct observation and looking at relevant documents. The same areas are covered as in the registration visit. Inspectors check much of the provision in a similar way to the registration visit. But they observe, in particular, what the children are doing, the way in which adults relate to them, the quality of care, and the provision made for children to learn. The intention throughout is to determine whether or not the provider meets the National Standards.

At the end of and after the visit

109. At the end of the visit, the inspector gives oral feedback on whether the provider's registration will continue. If there are deficiencies that must be tackled in order to meet the standards, an agenda for action will be agreed with timescales and/or dates when action will have been taken. As at registration, the provider may be issued with an action letter, detailing what must be done. Deficiencies may also result in new conditions of registration being imposed.
110. When the provider has completed the required actions they must inform the regional centre in writing within the required timescale. An additional visit may be carried out.

The report

111. After the visit, the provider is sent a copy of the written report to check for factual accuracy. After any changes have been made, the report is sent to the provider who must make it available to parents.
112. The inspection report summarises the findings of the inspection. This includes a formal reference to the registration status of the provider, and, where applicable, what must be done and by when to meet the standards.
113. Inspectors log the inspection with the Inspection Support Team at the regional centre. The Inspection Support Team enters any follow up visit dates into the inspection and registration database.
114. OFSTED will make copies of reports available to the local EYDCPs and CIS.

Notice of Intent

115. Following the transition inspection each provider will receive a notice of intent that sets out the conditions OFSTED intends to impose. At each subsequent inspection where conditions are imposed, varied or removed, providers will receive also notice of intent. The notice of intent sets out the conditions of registration that apply.

Registration Certificate

116. A new registration certificate will be issued at the transition inspection and following any subsequent inspection where conditions are imposed, varied or removed. This will be issued within 14 days or earlier if written acceptance of conditions is received from the provider. The provider has the right to object to new conditions being imposed or existing conditions being varied or removed

Intent to Cancel Registration

117. When a decision is made to cancel a registration following inspection, a letter stating the intention to cancel is sent. The provider has the right to object.

Objection

118. If the provider wishes to object to a condition imposed, varied or removed, or to cancellation of registration, they must inform the regional centre in writing within 14 days of the issue of the notice of intention. There is information about the objection process in Chapter 10 'Enforcement'.

8. REGISTERED CHILD CARE INSPECTORS

119. Registration visits and inspections are usually carried out by OFSTED's child care inspectors (CCIs). Child care inspectors are registered and trained by OFSTED. OFSTED may also need to train and register some non-OFSTED staff to be employed under contract if required. Child care inspectors carry identification which is shown to providers on each visit.
120. Inspectors who carry out inspections for OFSTED are trained in how to conduct inspections, the requirements of the National Standards and the expectations that are appropriate for each of the five types of provision: childminding; full day care; sessional day care; out of school care; and creches.
121. Registered child care inspectors must conduct the inspection according to the requirements and guidance set out by OFSTED.
122. Registration visits and inspections must be carried out in a way which aims to secure the full co-operation of the provider. Inspectors must inspire confidence in their work and their judgements, and create a climate in which the inspection process makes a valuable contribution to improvement. Inspectors will:
- be thoroughly prepared for inspection, and understand the nature of the provision;
 - have thorough knowledge and understanding of the Act, regulations, inspection requirements and guidance, and the standards and criteria relevant to each type of provider;
 - maintain the highest professional standards in line with the code of conduct.

The code of conduct

123. The code of conduct sets out the principles which govern the professional work of inspectors. Inspectors:
- evaluate the provision objectively against the standards;
 - report honestly and fairly, ensuring that judgements accurately and reliably reflect what the provider achieves and does;
 - carry out their work with integrity, treating all those they meet with courtesy and sensitivity;
 - do all they can to minimise stress and bureaucracy;
 - act with the best interests and the well-being of children and adults as priorities;

- maintain purposeful dialogue with adults, and communicate judgements of their provision and work, clearly, frankly and sensitively; and
- respect the confidentiality of information they receive but state that any concerns about child protection matters are reported to the appropriate agency.

The standard and quality of inspections

124. Before the inspection, the child care inspector considers a range of information about the provider and the setting. Sufficient time will be given to the provider to gather the necessary documents together and to complete any forms, which are sent to the regional centre prior to the inspection date.
125. To make sure that the inspection satisfies OFSTED's quality standard, registered child care inspectors must ensure that:
- **judgements** about the provision and what needs to be improved are fair and accurate;
 - **evidence** is secure and substantiates all inspection judgements;
 - **communication** of inspection findings is clear and helpful to the provider;
 - the **conduct of the inspection** is to a high professional standard.
126. **Judgements** about the provision and what needs to be done to improve are fair and accurate when they:
- are clear about the quality and standard of the provision, any improvement evident, and its strengths and weaknesses;
 - give providers a clear basis for action by identifying issues that are central to their improvement; and
 - are fully consistent with the inspection evidence.
127. **Evidence** is secure and substantiates all inspection judgements when it:
- is sufficient in quantity and range to be representative of the provision, and includes first hand observation of adults and children in the setting and discussion with them and others;
 - involves careful analysis and interpretation of all information, including previous registration and/or inspection reports/records and the views of parents; and

- is well documented to provide a record which underpins and secures the inspection and on which legal action could be taken if necessary.

128. **Communication** of inspection findings, both orally and in writing is clear and helpful to the provider when:

- judgements are conveyed in plain language easily understood by the intended audience, particularly parents in the case of the written report; and
- judgements are consistent and unequivocal, with explanations and illustration.

129. The **conduct of the visit or inspection** is to a high professional standard when inspectors:

- are thoroughly prepared and understand the nature of the individual provision, the National Standards and particular criteria for that type of provision and the needs of the children and their parents;
- uphold the code of conduct; and
- contribute to the value of the inspection for the provider through developing the professional relationships with the adults or staff involved.

9. COMPLAINTS AND INVESTIGATIONS

Complaints

130. From time to time, OFSTED can expect to receive complaints⁹ and other information about childminders and day care providers. As the authority responsible for their regulation, OFSTED looks into such matters since they may provide evidence of non-compliance with standards, regulations and conditions of registration by registered persons.
131. Complaints also provide opportunities for improving the quality of the service offered by providers. By highlighting a specific area of the service, the provider can examine whether improvements can be made, irrespective of whether the complaint is valid or not. This approach benefits the service, children and their parents and the complainant who will have the satisfaction of knowing that the complaint resulted in action being taken.
132. Providers must have a written complaints procedure which is made available to parents. OFSTED expects the complainant to discuss their concerns with the provider in the first instance unless there is reason not to do so. OFSTED's role is to ensure, through inspection and other sources of information, that complaints are handled effectively and to the satisfaction of complainants. This is an important part of OFSTED's responsibility to regulate and monitor the overall quality of the care given by the provider.

Principles

133. OFSTED's handling of complaints accords with the following principles:

i. Confidentiality

OFSTED respects confidentiality as far as that is consistent with its duties. Complainants may wish to remain anonymous but OFSTED will explain to them that it may be necessary for them to make a statement or act as a witness should the case go to court or tribunal and thus their identity disclosed. Those who are the subject of a complaint also have a right to expect that details of the complaint are restricted to those that need to know.

ii. Fairness

OFSTED considers complaints as allegations until proved otherwise and always maintains impartiality. OFSTED considers complaints in a reasonable and even-handed manner. It makes every effort is made to gather sufficient evidence to inform a conclusion to the case. However, it is

⁹ A complaint can be defined as an expression of concern, grievance or an allegation directed against any person who is or should be registered under the terms of Part XA of the Children Act 1989.

inevitable that in some instances OFSTED may not be able to reach an authoritative conclusion.

iii. Timeliness

OFSTED will handle complaints in a timely manner, having regard to the seriousness of the allegation.

Complaints process

134. OFSTED's process for handling complaints together with that of registered providers:
- provides an effective means of allowing parents and others to complain about the quality of day care services;
 - ensures complaints are acted on;
 - aims to resolve complaints quickly, and with the people concerned, as long as this is safe, acceptable and appropriate;
 - ensures complaints are properly recorded and monitored; and
 - provides OFSTED with an additional means of monitoring the continued suitability of the registered provider.

Who handles the complaint

135. When a complaint is referred to OFSTED, it is checked to find out whether it should be handled by OFSTED or whether it is the responsibility of another authority. For instance, where the complaint involves or might involve issues of child protection, the matter is referred immediately to the relevant officer in the Local Authority Child Protection Team in accordance with the OFSTED protocol with local authorities on this matter.
136. Once it is clear that the complaint falls within OFSTED's remit, it is checked to make sure it is OFSTED who investigates it in the first instance. As a general principle, queries and complaints should be handled by the provider who is the subject of the complaint. Therefore, if a person wishes to complain, the provider should look into the matter (and inform OFSTED in writing of the outcome).
137. Where the complaint provides sufficient reason to believe that a standard, regulation or condition of registration is being breached then the matter is investigated directly by OFSTED.

Investigation

138. An investigation may be triggered by the receipt of information from a number of sources. This includes information or concerns coming to the notice of inspectors or administrators, through an external agency or person, arising from an inspection, or through receipt of a complaint.
139. All information gathered or received on registered providers forms part of the process of evaluating the continued suitability of the registered person¹⁰.
140. HMCI may take into account any allegations about the failure of a registered person to meet any of the Standards or underpinning criteria to which they must have regard.
141. When the results of any investigation require legal action to be taken, OFSTED's policy for taking enforcement action comes into play.
142. Often, a visit to the provider is necessary in order to check the facts of the complaint. Child care inspectors (and other persons authorised by HMCI) have a statutory right of entry to any premises on which child minding or day care is provided at any reasonable time, if they have reason to believe that a child is being looked after in contravention of requirements. Any person exercising these rights of entry produces a document authorised by HMCI showing that they have the authority to do so. Obstructing a registered inspector or an authorised person is an offence. Such a person entering premises under this section may:
- inspect the premises;
 - inspect and take copies of any records kept by the provider and any other relevant documentation (including computerised records);
 - seize and remove any document or other material or thing found there which the inspector has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement;
 - require any persons to afford him facilities and assistance within that person's control as are necessary to enable the member of staff to exercise his powers;
 - take measurements and photographs;
 - inspect any children being looked after and their welfare;
 - interview the provider; and
 - interview in private any person looking after children or living there who consents to be interviewed.

Gathering evidence

¹⁰ Section 79G in part XA of the Children Act provides for cancellation of registration where the authority is of the opinion that the person has ceased or will cease to be qualified for registration

143. When gathering evidence, inspectors make sure that clear and accurate recordings are made. Detailed notes, and records of telephone calls, are kept and are checked ensuring that there is a mutual understanding of what was said or has taken place. Where the result of the investigation may be enforcement action, any evidence gathered may need to stand up in a Magistrate's Court or Tribunal.
144. When gathering evidence, inspectors must be aware of the distinction between the standards of proof required in a civil case, such as a tribunal where judgements are made on the 'balance of probabilities', and criminal cases that may lead to criminal offences and prosecution where the standard of proof required is 'beyond reasonable doubt'. This is a higher standard of proof than is required in civil cases.
145. Where it is possible that such an investigation may lead to prosecution for the commission of an offence (see next chapter), inspectors gather evidence in accordance with the requirements of s.66 of the Police and Criminal Evidence Act (PACE) 1984.

10. ENFORCEMENT

146. OFSTED has powers of enforcement where registered persons are failing to meet or are in breach of standards, regulations or conditions of registration or where an unregistered person is providing day care and childminding.
147. Such powers provide:
- a sanction to help ensure that providers of day care continue to adhere to requirements; and
 - a means by which to cause a registered provider (or unregistered provider) to act within the requirements of the law or to remove their registered status.
148. OFSTED uses the appropriate means of enforcement to match the situation. OFSTED's action is consistent and even-handed.
149. An inspector considers with his/her line manager and (where statutory action is being considered) the area manager and complaints, investigation and enforcement team at the regional centre which is the most appropriate action in the circumstances.
150. The Government's principles of better regulation (consistency, proportionality, targeting and openness) are set out for enforcement agencies in the Enforcement Concordat. An Enforcement Statement outlining how OFSTED addresses the Principles of Good Enforcement is at Annex A.
151. The following section outlines the range of enforcement measures that can be taken by inspectors. It represents a menu of sanctions ranging from non-statutory measures, through the hierarchy of civil sanctions from imposition of conditions to cancellation of registration. As a last resort, OFSTED may resort to the criminal sanction of prosecution for an offence.

Non-statutory means of ensuring compliance

152. If a registered person is not fully complying in some minor way with the National Standards or other regulations or conditions of registration, OFSTED encourages compliance without recourse to its statutory powers of enforcement. For instance, for very minor matters, where it is clear that the registered person is receptive, OFSTED may judge that a formal explanation, as part of feedback after an inspection, is sufficient to rectify the situation.
153. Alternatively OFSTED may decide to agree a non-statutory action with the registered person to remedy the situation. This is notified by letter, and the registered person is given a period of time in which to comply. When the registered person has completed the required actions they must inform the

regional centre in writing within the required timescale. An additional visit may be carried out.

154. Where such action does not have the desired effect, OFSTED will consider whether to resort to statutory means of enforcement. The most likely outcome of this means of enforcement is the imposition or variation of a condition of registration, for example where slight non-compliance becomes more serious with neglect over time.

Statutory powers of enforcement: civil sanctions

155. OFSTED has a range of statutory powers of enforcement. It can:

- i) serve an enforcement notice on an unregistered person acting as a childminder;
- ii) refuse to register an applicant;
- iii) cancel a registered person's registration;
- iv) impose upon a registered person new conditions of registration or vary (or remove) existing ones;
- v) serve a compliance notice;
- vi) apply to a Justice of the Peace for an emergency order which would do iii) or iv) where it would appear that a child is suffering, or would be likely to suffer, serious harm;
- vii) suspend a provider's registration;

Serving an enforcement notice on an unregistered person acting as a childminder

156. No one shall act as a childminder in England unless s/he is registered by OFSTED. Where it appears that a person is acting in contravention of this, OFSTED may serve an enforcement notice. This notice will last for a year from the date it is issued even if the person moves house. The notice provides OFSTED with the grounds to prosecute any childminder who continues to operate unregistered once the notice has been served.

Refusal of registration

157. OFSTED may refuse to register an applicant in the following circumstances:

- in the case of an applicant for childminding, OFSTED is of the opinion that the person is not qualified for registration for childminding; (see paragraph 22)
- in the case of an applicant for providing day care on any premises, OFSTED is of the opinion that the person has ceased or will cease to be qualified for registration for providing daycare; (see paragraph 23) or
- if the prescribed fee for registration has not been paid.

Cancellation of registration

158. OFSTED may cancel a registered person's registration in the following circumstances:
- in the case of a childminder, where OFSTED is of the opinion that the person has ceased or will cease to be qualified for registration for childminding; (see paragraph 22)
 - in the case of a person registered for providing daycare on any premises, OFSTED is of the opinion that the person has ceased or will cease to be qualified for registration for providing daycare; (see paragraph 23) or
 - if an annual fee which is due from the registered person has not been paid.
159. Where a condition to make changes, or additions to any service, equipment or premises has been imposed on a registered person, OFSTED can only cancel that person's registration on the ground of any defect or insufficiency in the services, equipment or premises in the following circumstances:
- the time set for complying with the requirements has expired; or
 - it is shown that the defect or insufficiency is due to the changes or additions having been made.
160. OFSTED will issue a notice of intention to cancel in writing specifying the reasons.
161. The registered person may object to a notice of intention to cancel registration (see below).

Variation, imposition (or removal) of conditions of registration

162. OFSTED grants the registered person's registration subject to conditions of registration listed on the registration certificate. The registered person must comply with these conditions in order to continue to be qualified to be registered. These may be standard conditions such as the condition that the registered person must provide certain information to OFSTED at certain times. They may also be other conditions imposed at the registration stage requiring the registered person to take certain appropriate action to ensure that they fully meet all of the National Standards.
163. OFSTED may decide, on account of shortcomings identified at inspection or through an investigation visit or a follow-up/ monitoring visit, that a registered person's registration should only be allowed to continue subject to a new condition or conditions, or subject to the variation of an existing

condition. Such enforcement action may occur, for example, where evidence emerges that the provider is:

- falling short of full compliance in one or more of the National Standards (or other regulations);
- where this is the most appropriate and proportionate response; or
- where the situation is not so serious to warrant cancellation (or suspension) of registration.

164. The registered person is subject to conditions of registration which are set out on the registration certificate. OFSTED uses variation of conditions as a means to respond appropriately to changes notified by the registered person. For example, where a provider intends to expand or change premises. OFSTED may also remove conditions when they are no longer appropriate. For example, where the condition has been met within the required timescale. Registered persons may apply to OFSTED to have conditions removed or varied. All requests to vary or remove conditions must be in writing following which a decision will be made by OFSTED to agree or refuse such an application.

165. A registered person may object to OFSTED's notice of intention to:

- i) impose a new condition;
- ii) vary an existing condition;
- iii) remove an existing condition; or
- iv) refuse to grant an application to vary or remove conditions (see notice of intention below).

166. Where a new condition has been imposed or an existing one varied, OFSTED may wish to carry out a follow-up visit to check compliance.

Serving a Compliance Notice

167. Where a registered person is found to be in breach of regulations relating to the National Standards or the keeping of records, they are given the opportunity to comply. If, however, the registered person takes no action then OFSTED may issue a Compliance Notice requiring them to do so. The notice tells registered persons what they must do by a specified date to comply. It has immediate effect, and registered persons have no statutory right of appeal. Failure to comply with the Notice within the given time is an offence and may lead to prosecution.

Emergency cancellation where a child is suffering or likely to suffer significant harm

168. OFSTED has the power in cases of emergency to apply to a Justice of the Peace (JP) to:

- cancel a person's registration;
 - vary an existing condition; and
 - to remove or impose a condition.
169. OFSTED may make such an application without giving notice to the registered person. If at all possible OFSTED supports the application with a written statement of the reasons for making the application.
170. Before making an order for emergency changes of these sort, the JP must be satisfied that a child who is being, or may be, looked after by a registered person is suffering, or is likely to suffer, significant harm. The order must be made in writing.
171. Where a JP makes such an order, OFSTED must serve it on the registered person as soon as is reasonably practicable with:
- i) a copy of any written statement of OFSTED's reasons for making the application;
 - ii) a notice explaining the right of the registered person to appeal.
172. OFSTED alerts the local authority child protection team when it identifies any concerns about child protection.
173. OFSTED may commence ordinary cancellation proceedings at the same time as seeking to use the emergency cancellation powers.
174. The registered person has a statutory right of appeal against the use of these emergency powers.

Suspension of registration

175. OFSTED may suspend the registration of a person for up to twelve weeks where there are reasonable concerns that there is danger to a child's safety or welfare and where emergency action is not appropriate. The registered person has a right of appeal against suspension.

Resignation of registration

176. Registered persons may resign their registration. The only exception to this is where OFSTED has issued a notice of intention to cancel the registration.

Arriving at decisions

177. Evidence of non-compliance may emerge from the annual inspection, from information or complaints passed to OFSTED, from additional or investigation visits or from any documentation supplied by the provider.
178. OFSTED will take into account any allegation that a person has failed to meet or have regard to the National Standards or regulations in the exercise of its functions or in any prosecution.

Notice of intention to take a step

179. Where a decision has been arrived at to exercise the power to:
- refuse an application for registration;
 - cancel a registration;
 - remove or vary any condition or impose a new one; or
 - refuse to grant an application to remove or vary a condition;

OFSTED will send a notice of intention to take this step in writing to the registered person (or applicant) not less than fourteen days before taking the step. Such a notice must:

- give OFSTED's reason for proposing to take the step; and
- inform the person concerned of his/her rights to object and appeal.

Registered person's right to object

180. The registered person (or an applicant refused registration) has a right to object to the step in the notice of intention, in writing, in person or by means of a representative.
181. Following the communication of the objection in writing or in person or by means of a representative, OFSTED weighs up the merits of the objection and a decision is made either to accept or reject the objection. This decision will be made known to the registered person in writing.
182. Where OFSTED decides to cancel or remove, vary or impose a condition, the decision will not take effect until the period allowed for appeal has expired or an appeal is heard, withdrawn or abandoned. However, the step may take effect from the time when the provider notifies OFSTED in writing that he/she intends not to appeal.

Appeal to an independent Tribunal or Magistrates Court

183. Providers and applicants have a statutory right of appeal to the Care Standards Tribunal¹¹ or Magistrates Court where OFSTED has made a decision to:

- refuse an application for registration;
- cancel a registration;
- remove, vary or impose a condition;
- refuse to grant an application to remove or vary a condition;
- suspend registration; or
- when an emergency order has been issued by a Justice of the Peace.

184. The Tribunal may:

- confirm the taking of the step or the taking of the order, or direct that it shall not have, or shall cease to have, effect; and
- impose, vary or cancel any condition.

Decisions of the Tribunal will have immediate effect.

Statutory powers of enforcement: prosecution (criminal sanctions)

185. OFSTED will only undertake prosecution where evidence (that would demonstrate that the commission or omission of a relevant act is 'beyond reasonable doubt') can be gathered. This inevitably means that OFSTED's recourse to criminal sanctions will only be available in limited circumstances.

186. Where an inspector suspects that an offence has been committed an interview must be conducted under caution according to Police and Criminal Evidence Act requirements.

Offences

187. There are various circumstances where registered (or unregistered) persons who fail to comply with the requirements of the law are guilty of an offence.

¹¹ The Care Standards Tribunal will not come into effect until April 2002. From September 2001 to March 2002 it is uncertain to which court such appeals will go, (this may continue to be the Magistrates Court or possibly the existing Protection of Children Act Tribunal).

188. A person is guilty of an offence and can be prosecuted in a Magistrates Court if s/he:

- is a registered person who has contravened or otherwise failed to comply with any condition imposed on his/her registration without reasonable excuse;
- is a registered person who without reasonable excuse contravenes, or otherwise fails to comply with any of the National Standards or regulations¹²;
- acts as a childminder or provides day care without being registered without reasonable excuse;
- acts as a childminder at any time when s/he is disqualified for registration in accordance with Sch.9A(4);
- is a person who has been served with an enforcement notice;
- is a person who knowingly made a statement in an application which is false or misleading in a material particular;
- is a registered provider who has a disqualified person living or working on the premises;
- is a person who has wilfully obstructed the right of entry of or inspection by a registered inspector or authorised person (OFSTED may apply to a Magistrates Court for a warrant authorising any police officer to assist that person in the exercise of those powers, using reasonable force if necessary).

189. Such persons are liable to prosecution and OFSTED as the regulatory authority has responsibility for investigating possible offences with a view to their being brought to court.

190. In each case such a person is liable on summary conviction to a fine.

191. Any allegation that a person has failed to meet or have regard to National Standards, criteria or regulations may be taken into account by OFSTED in the exercise of its functions, or with respect to any of the above offences.

¹² It is the intention that these regulations should also provide that where HMCI considers that a registered person has contravened or otherwise failed to comply with the National Standards and other regulations under 79C, he may serve a notice on that person specifying -

- a) in what respect in his opinion that person has failed or is failing to comply with the requirement of that regulation;
- b) what action, in the opinion of HMCI, the person should take so as to comply with the regulation;
- c) the period within which the person should take action.

192. OFSTED will bring proceedings for an offence within six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the procedures came to be known.

Annex A

Enforcement statement

OFSTED has regard to the seven Principles of Good Enforcement when exercising its enforcement powers and responsibilities. It seeks to fulfil these principles in the following ways.

Standards

OFSTED publishes clear standards setting out the level of the service that providers can expect to receive.

Openness

OFSTED provides information and advice about its policies, procedures and requirements in plain language. OFSTED consults with businesses, partnerships, voluntary organisations, relevant individuals and local authorities and their services about relevant matters that are likely to impact upon them.

Helpfulness

OFSTED works actively with registered persons to advise them about what is expected of them. Registered persons are encouraged to seek advice from OFSTED about compliance with requirements.

Complaints about service

OFSTED provides an effective complaints procedure and makes it known.

Proportionality

OFSTED ensures that the action it requires registered persons to take is proportionate to the risk involved to the safety and welfare of children. OFSTED seeks to minimise the costs of compliance to the registered person.

Consistency

OFSTED carries out its duties in a fair, even-handed and consistent manner. There are arrangements in place to deal consistently with other authorities.

Procedures

OFSTED gives clear advice and puts it in writing on request.

Annex B

Requirements in regulations which all childminders must meet

Besides the National Standards, there are certain requirements that all registered childminders must meet.

1. Let OFSTED know of changes and relevant events

Childminders should inform OFSTED at the earliest opportunity of any changes or proposed changes. Where it is not possible to notify OFSTED in advance, childminders must let OFSTED know of the change as soon as possible (no later than 14 days after the event occurs).

Change to premises and provision

Childminders must inform OFSTED of:

- a change of address;
- a significant change to the premises (for example a conversion or extension of part of the building);
- any change in the hours during which child minding is provided;

Changes to people and their suitability

Childminders must inform OFSTED of:

- any change of name;
 - any changes to people:
 - i) living on the premises (including letting OFSTED know when a person living there reaches the age of 16);
 - ii) looking after children on the premises; and,
 - iii) employed on the premises.
- Childminders must tell OFSTED of the new person's date of birth, full name, any former names and their full address. Childminders must also tell OFSTED of any change to the name or home address of any of the types of people named in i) to iii).*
- any other matter which may affect the suitability of any person looking after children to do so or the suitability of any person living, working or employed on the premises to be in regular contact with children.

Matters affecting the welfare of children

Childminders must inform OFSTED of:

- the outbreak of an infectious disease which a registered medical person considers sufficiently serious to be notified.
- any serious injury to or serious illness or death of any child or other person on the premises;
- any allegations of serious harm against or abuse of a child by any person looking after children or living, working or employed at the premises.
- any serious matter or event which is likely to affect the welfare of any child on the premises.

2. Keep the following records

Childminders must keep records of the following at the premises.

1. The name, home address and date of birth of each child who is looked after on the premises.
2. The name, home address and telephone number of a parent.
3. The name, home address and telephone number of the registered person and every other person living or employed on the premises.
4. The name, home address and telephone number of any other person who will regularly be in unsupervised contact with the children looked after there.
5. A daily record of the names of the children looked after on the premises, their hours of attendance and the names of the persons who look after them.*
6. A record of accidents occurring on the premises.*
7. A record of any medicine administered to any child on the premises, including the date and circumstances of its administration, by whom it was administered, including medicine which the child is permitted to administer to himself, together with a record of a parent's consent. *

* In these cases childminders must keep the record for two years from the time the event took place.

Requirements in regulations which all providers of day care must meet

Besides the National Standards, there are certain requirements in regulations that all registered providers of day care must meet.

1. Let OFSTED know of changes and relevant events

Day care providers must inform OFSTED at the earliest opportunity of any of the following changes or proposed changes. Where it is not possible to notify OFSTED in advance, day care providers must let OFSTED know the change as soon as you can (and no later than 14 days after the event occurs).

Change to premises, facilities and provision

Day care providers must inform OFSTED of:

- any change in the address of the premises;
- any change in the facilities to be used for day care on the premises, including changes to the number of rooms, their function, the number of lavatories and washbasins, any separate facilities for adult workers and access to the premises for care;
- any change in the hours during which day care is provided;
- any change in the childcare category applicable to the provision (for instance, if a day care provider wishes to set up a crèche or extend sessional care to full day care).

Changes to people and their suitability

Day care providers must inform OFSTED of:

- any change to the person in charge;
- any changes to:
 - i) people looking after children on the premises;
 - ii) people living on the premises (please let us know when a person living there reaches the age of 16);
 - iii) people working on the premises (unless none of their work is done in the part of the premises in which children are looked after or if they do not work on the premises at times when the children are looked after there);
 - iv) the Chairman, Secretary or Treasurer (or person holding a comparable position in the organisation) where the day care is provided by a partnership, committee or corporate or incorporate body.

Day care providers must tell OFSTED of the new person's date of birth, full name, any former names and their full address. You must also tell OFSTED of any change to the name or home address of any of the types of people names in i) to iii).
- any other matter which may affect the suitability of any person looking after children to do so or the suitability of any person living, working or employed on the premises to be in regular contact with children.

Matters affecting the welfare of children

Day care providers must inform OFSTED of:

- the outbreak of an infectious disease which a registered medical person considers sufficiently serious to be notified;
- any serious injury to or serious illness or death of any child or other person on the premises;
- any allegations of serious harm against or abuse of a child by any person looking after children or living, working or employed at the premises.

- any serious matter or event which is likely to affect the welfare of any child on the premises.

2. Day care providers must keep the following records at the premises.

1. The name, home address and date of birth of each child who is looked after on the premises.(a)
2. The name, home address and telephone number of a parent.(b)
3. The name, home address and telephone number of the registered person and every other person living or employed on the premises.
4. The name, home address and telephone number of any other person who will regularly be in unsupervised contact with the children looked after there.
5. A daily record of the names of the children looked after on the premises, their hours of attendance and the names of the persons who looked after them.(a)(b)
6. A record of accidents occurring on the premises.(b)
7. A record of any medicinal product administered to any child on the premises, including the date and circumstances of its administration, by whom it was administered, including medicinal products which the child is permitted to administer to himself, together with a record of a parent's consent.(b)
8. A statement of the procedure to be followed in the event of a fire or accident.
9. A statement of the procedure to be followed in the event of a parent failing to collect a child or of a child being lost.
10. A statement of the procedure to be followed where a parent has a complaint about the service provided by the registered person.
- 11.] A statement of the arrangements in place for the protection of children, including arrangements to safeguard the children from abuse or neglect and procedures to be followed in the event of allegations of abuse or neglect.

(a) This is not required with respect to open access schemes.

(b) Every entry in these cases must be kept for a period of two years from the date on which the entry is made.