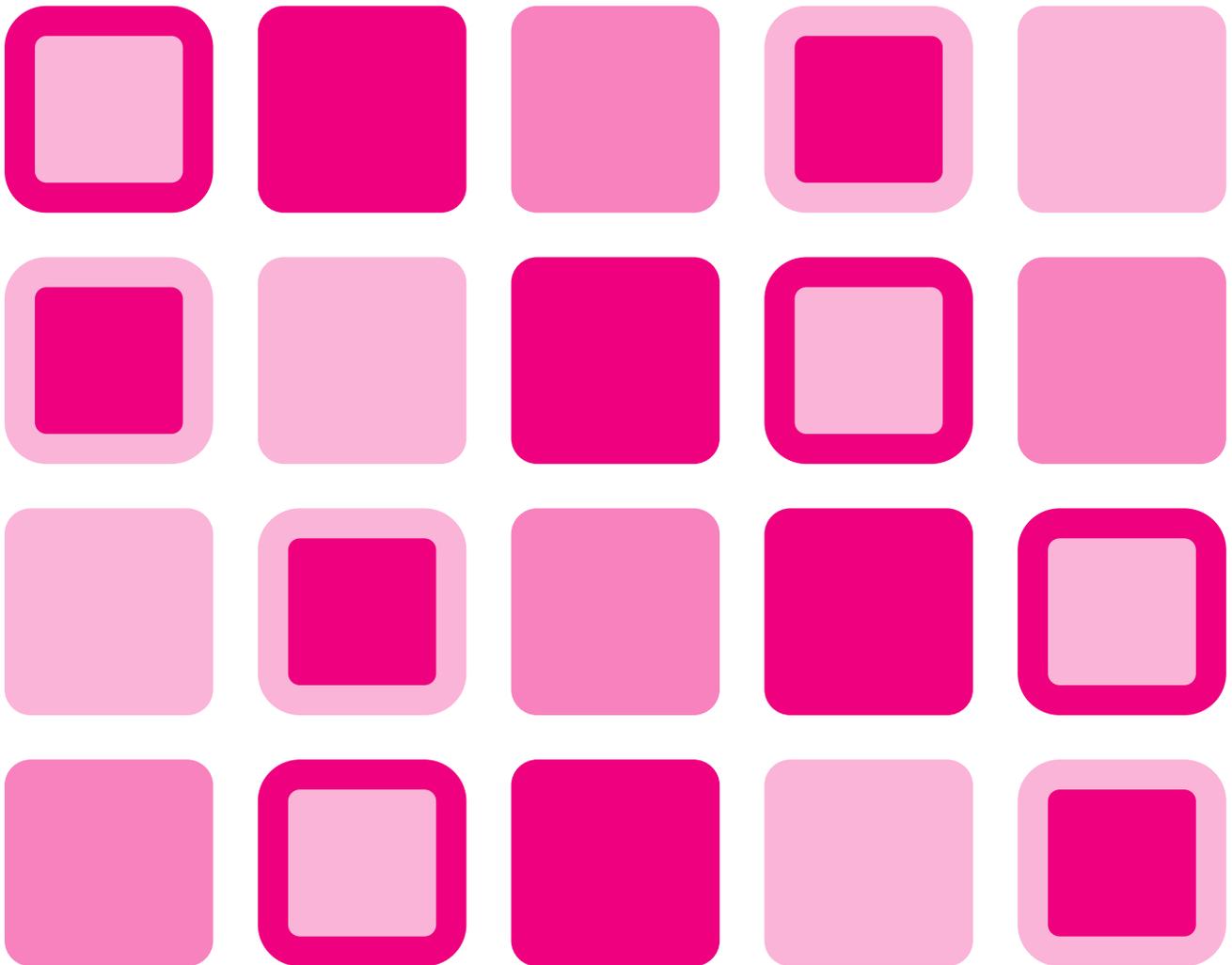




# *Early Years and Childcare Regulation*

Annexes





# Annex A

## **PARTIAL REGULATORY IMPACT ASSESSMENT FOR PROPOSALS TO EXTEND CHILDREN ACT CHILDCARE REGULATION TO SCHOOLS**

### **Issue**

- 1** Childcare provided by maintained and independent schools is currently exempt from the minimum quality requirements imposed on other childcare providers under the Children Act 1989. This has led to a situation where young children, particularly those under three years old, are at greater risk of harm because of the more lax quality controls over schools' childcare facilities. Furthermore, because they are able to operate at lower standards (for example, with ratios of fewer adults to children), it is argued that they are able to reduce costs and unfairly undercut their competitors in the childcare market who are obliged to meet Children Act requirements.

### **Objective**

- 2** We are proposing measures to reduce the risk of harm to young children cared for in schools. We are also aiming to achieve a more "level playing field" in the childcare market, so that the prospect of unfair competition does not deter potential providers from setting up businesses. The achievement of this objective will contribute to the Government's National Childcare Strategy and targets for the expansion of childcare places.

### **Scope of proposals**

- 3** In practice the current exemption only applies to independent schools. The law does not allow maintained schools to run their own childcare business, although changes are proposed in the current Education Bill to enable them to do so.
- 4** The latest figures show that more than 75% of independent schools offer services for the under 5s age group (around 70,000 children) and just over 45% have some children aged under 3. Most schools with under 3s would be offering childcare facilities in addition to their educational provision. These facilities could be for children as young as 6 weeks, and are often for extended days (from 8.00am to 6.00pm) over 50 weeks of the year.

## Risk assessment

- 5** Since the introduction of childcare regulation under the Children Act 1989 the risk of harm to children being cared for in settings outside their own home has been reduced. Local authorities have developed standards, based on guidance under the Children Act, and although these have been variable they have imposed a quality baseline for all providers. Even greater consistency in the minimum quality threshold will now be achieved as the responsibility for childcare regulation has been transferred from 150 local authorities to OFSTED, and National Standards are being applied in place of the local standards used previously.
- 6** But schools have always been exempt from these requirements. The benefits of the Children Act arrangements in terms of reducing risks for young children have not been applied to schools. The Department's objective is to ensure that children using childcare facilities in schools are given the same level of protection as those in other childcare settings, and that all settings are operating on the basis of the same minimum quality level. It could be argued that the risk of children coming to harm is in any case lower in schools because their activities are monitored in other ways and such risks are managed as part of their normal business. However, the evidence summarised in the following paragraphs does not support this.
- 7** Although in most independent schools the educational provision for under 5s is judged by OFSTED to be satisfactory or good, in a significant minority – and this particularly applies to those which are not subject to other quality assurance arrangements (such as the requirements of membership of organisations affiliated to the Independent Schools Council) – it is unsatisfactory or poor. OFSTED inspections of independent schools have revealed a number of concerns about their early years provision which would raise doubts about the standard of childcare provided for the under 5s age group. A sample of issues raised includes: no criminal records checks on staff; inadequate staff:child ratios; overcrowded premises with insufficient space for play; rooms for very young children with no access to toilets or running water; inadequate heating, and no area for sleeping babies. Under the current arrangements such poor quality provision would only be picked up when school or nursery education inspections occurred, and that could be as infrequently as every 6 years.
- 8** There is also evidence that unscrupulous nursery providers are deliberately setting up as independent schools to avoid having to meet Children Act registration requirements and standards. It is known that several independent schools started as private nursery schools, and recruited a small number of compulsory school age children only when they had run into difficulties with their local authority Children Act inspections.

- 9** In the last five years the number of schools offering services for under 3s has grown by 150%. By 2001 there were just under 200 independent schools, or 10% of the total number in the country, with more children under 5 than of compulsory school age. Of that 200, around 10% are provisionally registered, and of those about 70% present cause for concern as their provision does not come up to an acceptable standard. Over 130 registered independent schools with under 5s provision are due for re-inspection at intervals of three years or less because there is concern about some aspect of the school.
- 10** Taking into account the age of the children being cared for (with so many schools offering services for under 3s), and the fact that the current education inspection arrangements do not adequately cover a school's childcare provision, we do not consider that the current arrangements provide a sufficient level of quality assurance. Under the preferred options, annual inspections and effective sanctions would significantly reduce the risk of young children coming to harm as a result of poor quality provision.
- 11** The current inequality of treatment whereby Children Act regulation is applied to private and voluntary sector nurseries but not to maintained and independent schools also brings with it the risk of unfair competition. Childcare is not generally subsidised from public funds and private/voluntary sector nurseries are concerned that schools not subject to the same level of regulation and minimum quality standards are able to operate at lower costs, charging the consumer lower prices. This unfair competition is such as to deter potential providers from entering the childcare market and threaten the viability of existing providers. This, in turn, puts at risk the expansion which lies at the heart of the National Childcare Strategy and the achievement of Government targets for more childcare places. The Department's objective is to reduce this risk of unfair competition by making a more "level playing field" as far as minimum standards are concerned.

### **Options**

- 12** We have looked carefully at the advantages and disadvantages of maintaining the status quo, ie continuing the exemption for schools from the Children Act arrangements for childcare regulation. The benefits and costs would remain neutral. However, in doing nothing we would maintain the current level of risk in terms of children's welfare and continue to give preferential treatment to schools in terms of the requirements of childcare regulation. In our view, particularly to tackle the risks to children that currently exist in some independent schools because their childcare is not adequately regulated, and to introduce safeguards for children who will in future be looked after in childcare facilities within maintained schools, it is the right time to

be addressing these issues. Subject to resources, therefore, we would like to make changes to the status quo.

**13** We have identified three options for change:

**Option 1** Apply the National Standards,<sup>1</sup> annex D and supporting criteria to schools without modification using the procedures and sanctions available under the Children Act;

**Option 2** Apply the National Standards to schools, in a modified form that recognises their particular child-related business, but still using the procedures and sanctions available under the Children Act;

**Option 3** Apply the National Standards to schools, either without modification or in a modified form that recognises their particular child-related business, using the controls available to OFSTED and the Department through the school inspection arrangements and other performance management measures under education legislation.

**14** Our preliminary view is that the third option will not sufficiently meet the objective set out in paragraph 2 above. In any case education legislation would require substantial amendment to enable inspections and sanctions comparable to those available under the Children Act to be applied to a school's childcare facilities. Without such primary legislation, which we have no current plans to introduce, less frequent inspection of childcare facilities in schools, by schools inspectors who may not be childcare specialists, would offer inadequate reduction in the risk of harm to children and would not produce a "level playing field".

**15** The consultation is therefore based on proposals around the other two options. Following consultation, and subject to resources being available to implement the proposals, this assessment will be refined to take into account a wider range of views.

### **Benefits and costs**

**16** The appendix to this document describes the options in more detail and sets out a preliminary assessment of benefits and costs for each option.

**17** Our preliminary research has not produced any evidence on which we can quantify the benefits of our proposals. However, through this consultation and further research we are aiming to gather more information that will enable us to provide a better indication of the benefits.

<sup>1</sup> The National Standards for Day Care and Childminding are given force through regulations under the Children Act 1989.

- 18** We are also using this consultation to get more information about the costs, and the value of the "level playing field" that options 1 and 2 will achieve. We would expect that a more competitive environment will, in the longer term, encourage more providers into the market because they will have a fairer environment in which to operate. However, there is a risk that in the shorter term a small amount of existing provision in independent schools would find adapting to the National Standards too costly, and might close down as a result. We will use the responses to this consultation to make a more informed judgement about the significance of this risk, and whether adjustments should be made to allow such provision to continue, subject always to the principle that children's safety and welfare must not be compromised. At this stage, albeit on limited evidence, our view is that our proposals could be implemented in a way that would have a negligible impact on the Government's childcare expansion targets.
- 19** The focus for some of this expansion is disadvantaged areas, where any adverse impact on independent school provision would have a minimal effect. Independent schools are less likely to be operating in such areas where, typically, the voluntary and public sectors play a greater role. Existing voluntary and public sector childcare provision is already subject to Children Act regulation. In addition, there is more Government support for sustaining and developing childcare provision in disadvantaged areas, so it is less likely that provision would be forced to close because it was too expensive to raise standards to an acceptable level.

#### **Issues of equity and fairness**

- 20** As indicated in paragraph 11 above, the objective of the proposals under consideration is to produce a more equitable system so that all childcare providers are treated equally as far as the regulatory requirements are concerned. We recognise, however, that childcare providers range from self employed childminders operating on their own, to large nursery chains with considerable administrative and technical backup facilities. The varying nature of childcare provision is acknowledged both in the National Standards, where different criteria apply to different types of settings, and in OFSTED's processes so that, for example, the length of the inspection is proportionate to the size of establishment, the number of children being cared for and the length of time it is operating. There would also be scope to take account of the particular circumstances of schools in determining the precise inspection arrangements and application of national standards so that regulation is proportionate.

### **Consultation with the small business sector**

- 21** Most childcare providers would be classed as small businesses. Preliminary estimates of the compliance costs have been made on the basis of informal discussions with the National Day Nurseries Association which represents many providers who are in the regulated sector as well as some who are in the independent unregulated sector. These costs will be refined following wider consultation.

### **Enforcement, sanctions monitoring and review**

- 22** Regulation of childcare under the Children Act 1989 carries with it an effective enforcement regime, administered by OFSTED. Measures can range from agreed action plans for improvement to legal proceedings in serious cases, for example where children are at immediate risk of harm.
- 23** The National Standards for childcare were published in May 2001 and will be subject to review in 2003. Other arrangements will be subject to regular and continuing review on the basis of the information collected by OFSTED in the course of its regulatory activity and other evidence.

| Option | Description  | Benefits  | Costs  |
|--------|--|---|--|
| 1      | <p>Schools' current exemption from Children Act registration and inspection would be removed. Where childcare is provided for under 8s the normal regulation processes would be applied. The appropriate National Standards would be applied unmodified (although subject to review in 2003) so that, for example, full day care provided in a school would comply with the normal Standards and criteria for full day care, and after school clubs would comply with the Standards and criteria for out of school care. Compliance with the National Standards would be enforced through the normal Children Act sanctions.</p> | <p>The most significant benefits of the regulation of childcare facilities in schools would be the achievement and promotion of basic minimum standards for quality of care, and the consequent reduced risk of harm to young children. The sanctions that can currently be applied where quality of childcare is unacceptably low are limited. The Children Act arrangements would provide better protection for children. It is not possible to quantify this benefit in terms of reduced incidence and impact of harm caused to young children.</p> <p>A more "level playing field" would increase fair competition in the childcare market. This would potentially create more childcare places, in accordance with Government targets for the expansion of the market, and more choice for parents, particularly those who may be concerned about the quality of care in schools. Applying the National Standards without modification for schools would guarantee minimum quality across the different types of childcare.</p> <p>It is not possible at present to quantify these benefits with any degree of accuracy. Through the consultation on this assessment we are aiming to gather more information about the value of these benefits.</p> | <p><b>Costs for schools</b></p> <p>Implementation Initial registration fee £ 121<br/>costs* Subsequent annual fee £ 94</p> <p>We estimate that schools may incur additional implementation costs associated with the registration and annual inspection process (these are approximate amounts per school, costs will inevitably vary between settings). As a result of this consultation these figures will be adjusted to reflect schools' views of costs:</p> <p>Implementation Possible costs associated with registration £1,600<br/>costs** Other possible annual costs*** £1,400</p> <p>Policy costs Initial compliance with National Standards**** £N/A</p> <p>*The fees that OFSTED charge for registration and subsequently on an annual basis are being reviewed. They will not be changed before April 2003.</p> <p>**Other implementation costs are based on OFSTED's expectations of the preparation that providers may need to make for registration and inspection, and on information about the costs of staff time and other resources gained in discussion with the National Day Nurseries Association.</p> <p>***Other annual costs would be about 80% lower in the year that schools received inspections of their education provision as the additional staff and administration activity surrounding the childcare inspection would be happening anyway.</p> <p>****Information about the cost of compliance with the National Standards is being gathered as part of this consultation exercise. The implementation arrangements would allow time for independent schools with existing childcare facilities to comply with new requirements, subject to any serious concerns being met, so that initial costs of compliance with the National Standards could be spread.</p> <p><b>Other costs</b></p> <p>There would be additional costs to OFSTED in carrying out childcare inspections, even though some of these costs would be recouped from registration and annual fees. These costs will be estimated in the light of the detailed policy and implementation arrangements (which will be determined as a result of this consultation), and published in the final assessment.</p> |

| Option | Description  | Benefits   | Costs   |
|--------|--|--|---|
| 2      | <p>Schools' current exemption from Children Act registration and inspection would be removed. Where childcare is provided for under 8s the normal regulation processes would be applied. However, the National Standards would be modified to reflect the particular circumstances of schools as childcare providers. For example, modifications might be made to the adult:child ratios or staff qualifications requirements. Compliance with the National Standards would be enforced through the normal Children Act sanctions.</p> | <p>In terms of reducing the risks of harm to children, the benefits are as for option 1.</p> <p>As for option 1, this option would provide progress towards a "level playing field" for providers across all sectors, although any modifications to the National Standards to take account of schools may be regarded as perpetuating unfairness between providers in the sector. Any deviation from the current National Standards would need to be fully justified.</p> <p>As for option 1 further information about the value of the benefits of this option is being sought through this consultation process.</p> | <p><b>Costs for schools</b></p> <p>The compliance costs for schools might be lower with this option, depending on the modifications to the National Standards. It is not possible to identify these costs until the results of this consultation identify the modifications that may be required. Information about costs will be gathered through the consultation process.</p> <p><b>Other costs</b></p> <p>OFSTED costs would be the same as for option 1.</p> |

| Option | Description  | Benefits  | Costs  |
|--------|--|---|--|
| 3      | <p>Schools would continue to be exempt from Children Act regulation for the childcare they offer. School inspections would be enhanced to cover this element of their provision in greater depth. It might be possible for the National Standards to be applied without modification, although it is likely under this option that different standards would be appropriate. Education legislation would be substantially modified to extend coverage of the school inspections and provide sanctions that could address poor quality childcare.</p> | <p>More in-depth monitoring of childcare facilities is likely to produce some reduction in the risk of harm to young children. However, enhanced inspections on a 6 year cycle would not be frequent enough to provide the necessary checks on childcare provision, and under current legislation would provide inadequate sanctions for use against poor quality providers.</p> <p>Furthermore, were this option to be implemented it would not result in the kind of “level playing field” that regulated childcare providers would find satisfactory. There would still be the perception that schools were being given an unfair advantage. If schools were not required to meet the same minimum standards for childcare facilities, they would be given a competitive advantage over those providers that were required to meet them.</p> | <p>There would be some costs to OFSTED in carrying out enhanced inspections.</p> <p>Compliance costs for schools would be minimal if childcare was simply incorporated into the school inspection system without any requirement to comply with the National Standards, as they would be preparing for school inspections anyway. Costs could be higher if the National Standards were applied in some way, and compliance measures (eg inspection frequency) were more in line with those under the Children Act.</p> |



# Annex B

## **PARTIAL REGULATORY IMPACT ASSESSMENT FOR PROPOSALS TO ISSUE CERTIFICATES OF SUITABILITY TO CHILDCARE PROVIDERS CARING FOR CHILDREN OVER THE AGE OF 7**

### **Issue**

- 1** Childcare provided for children under the age of 8 has to be registered by the Office for Standards in Education (OFSTED) under the Children Act 1989, subject to certain exemptions. Registration imposes minimum quality requirements and an assessment as to whether all adults working or living on the premises are suitable to be in regular contact with children. Those caring for children aged 8 and over (in this document referred to as children aged over 7) do not have to comply with any requirements under the Children Act and unscrupulous childcare providers could escape scrutiny by choosing to care only for children over 7 years old.
- 2** The age of 8 is in some respects an artificial cut-off point. Parents need reassurance that, whatever the age of their children, those working with them are suitable to do so and their children are not being put at risk.

### **Objective**

- 3** Subject to resources we would like to introduce a scheme for the certification of providers who care for children aged over 7 and under 15 (17 for children with disabilities and special educational needs) in order to protect them from unsuitable adults.
- 4** This objective acknowledges the result of a consultation carried out by the then Department of Education and Employment and the Department of Health in 1998 (98% of respondents wanted some form of regulation for over 7s childcare); plans announced by the Government in 1999, and provisions subsequently included in the Care Standards Act 2000.

### **Scope of proposed scheme**

- 5** It is not easy to estimate the number of providers that may be required to participate in the proposed scheme: there is no current register as there is for providers caring for the younger age group. In 2001 138 Early Years Development and Childcare Partnerships were aware of 205 settings that only catered for over 7s. Figures available suggest that around 45% of 8–14 year olds are in some form of childcare, the majority of which is 'informal'. It is estimated that in the year 2000 about 242,731

8 to 14 year olds were in recognised care such as childminding and out of school clubs. Some are in registered day care and childminding that caters for children of all ages. Registered providers of childcare who already cater for children aged 7 and under would not be required to apply for certificates of suitability under the proposed over 7s scheme.

- 6 In March 2001 the number of children aged 5–7 in out of school provision was 152,800, with 598,000 participating in holiday play schemes. There is no evidence to suggest that this number dramatically declines when a child reaches their 8th birthday.
- 7 In accordance with the guidelines, annex C, activity based settings and short term educational provision (eg study support) are exempt both from Children Act registration in the case of providers of childcare for younger children, and the proposed Children Act certification scheme for over 7s childcare providers which is the subject of this assessment.

## **RISK ASSESSMENT**

- 8 The Nurseries and Childminders Regulation Act 1948 introduced regulation for those caring for children under the age of 5 to reduce the risk of harm to such children from unsuitable people. The Children Act 1989 extended regulation to those caring for children aged 7 and under. Increased levels of regulation have not prevented the expansion of childcare for this age group. We are now proposing further to reduce the risk of harm to children by introducing a limited form of regulation for over 7s childcare providers.
- 9 In recent years there have been a number of cases where unsuitable people have been allowed to come into contact with older children because of inadequate checks. Research has shown that procedures involving the supply of a range of information about providers, including information from criminal records checks, offers safeguards to children. Part of the reason for this is the deterrent effect of having a thorough vetting process in place.
- 10 A report of the public enquiry into the shootings at Dunblane Primary School, published in 1996, said: “It is preferable to take an approach which is directed to safeguarding children from the attentions of unsuitable people rather than create additional offences to deal with problems after they have occurred.” It also said that “Parents sometimes have to take a great deal on trust; and it is reasonable that they should be assured that the clubs or groups which their children attend have shown that they provide an adequate degree of protection against abuse. The children’s safety is paramount.”

- 11** Fair Play for Children offers a service to their voluntary sector members, which enables them to have those with substantial access to children checked. This service was used by 100 organisations in the mid 1990s. As a result of cases since then highlighting the risks of unsuitable adults gaining access to children, more than 4,000 organisations now use their services. Fair Play for Children cite one case where an enhanced police check revealed that the police had known about a certain person since 1978, as a man at the centre of concerns relating to boys between 3 and 11 years old. He has since been convicted of offences against children. Clearly, without such checks there would be increased risk of children coming to harm.
- 12** Children with special needs can be more vulnerable as their age may not relate easily to their capabilities. A child whose development is delayed may have greater difficulty in protecting himself or herself from inappropriate behaviour from an adult and seeking help. The law therefore provides that the proposed certification scheme covers children under the age of 15, and children with disabilities and special educational needs under the age of 17.
- 13** As indicated in paragraph 4 above, the proposed over 7s scheme will be limited to facilities in which childcare is the main purpose. Uniformed organisations, sports clubs, drama schools study support sessions and other such provision of regular but short duration, where childcare is incidental to the main purpose, will not be covered. Whilst many of these providers will submit their staff to checks and have quality assurance in place as part of their affiliation to umbrella organisations, this will not be a legal requirement.
- 14** The risks associated with older children are recognised both in Northern Ireland and Jersey where there are compulsory checks on adults working with children up to the age of 12.

## **OPTIONS**

- 15** There are a number of approaches to the question of whether and how to regulate over 7s childcare providers. The options are as follows.
- a. *Option to maintain status quo (ie no regulation of over 7s childcare providers)*  
The Government made a commitment to take an early opportunity to ensure that anybody working in a childcare setting with children aged over 7 is a person fit to do so. Subsequently provisions were included in the Care Standards Act 2000 which set the legal framework for a mandatory certification scheme for over 7s childcare providers. A regulatory impact assessment was completed at the time the Care Standards Bill was being considered by Parliament. As the Government

has determined to introduce some form of regulation for over 7s childcare providers, and the legislative framework for a light touch scheme has been approved by Parliament through its inclusion in the Care Standards Act, we would like to make changes to the status quo.

- b. *Option to introduce a permanent voluntary scheme or code* A voluntary scheme or code would have the benefits of being less costly to childcare providers, whilst encouraging and motivating them to adopt best practice. But such a scheme would not maximise the benefits in terms of protection for all children over the age of 7 in childcare, assurance for parents, and enhanced status for the sector as a whole. In any case, the Care Standards Act envisages a scheme requiring mandatory participation and there are no plans to revisit this element of the primary legislation at this stage. Given Government's comparatively recent commitment and subsequent decision on the legislative framework for this scheme, we have not explored this option for the purpose of this consultation, or attempted to value the benefits and costs.
- c. *Options for a scheme for certification of all over 7s childcare providers* This is the scheme on which we are currently consulting. OFSTED currently regulate provision for younger children using the National Standards for Under 8s Day Care and Childminding (see annex D). We believe that it makes sense to have an assessment of suitability to look after over 7s based on the first of these Standards – the so called "suitable person" Standard – and supporting criteria. There is a range of checks and requirements which could be developed to inform OFSTED's assessment of suitability: for example, criminal records checks (through the services of the Criminal Records Bureau), medical records checks, social services records checks, checks to confirm previous experience of working with children, and checks and requirements on qualifications. The options for checks and requirements are described in the appendix to this document. The consultation asks for views on which checks and requirements should be undertaken in any certification scheme, and whether there are any additional checks or requirements, not currently being considered, that might be included to help OFSTED make an assessment of a childcare provider's suitability.

## **BENEFITS AND COSTS**

- 16** The appendix also sets out a preliminary assessment of benefits and costs for each of the options currently under consideration.
- 17** Our preliminary research has not produced any evidence on which we can quantify the benefits of our proposals. However, through this consultation and further research we are aiming to gather more information that will enable us to provide a better indication of the benefits.
- 18** Similarly, through our initial consultation and further development work we will be able to make a better assessment of the costs, and the extent to which providers already meet the possible requirements.

## **ISSUES OF EQUITY AND FAIRNESS**

- 19** The aim of the proposals under consideration is to protect children, reassure parents and ensure all childcare providers are treated equally in relation to checking their suitability to be in regular contact with children.
- 20** Any vetting procedure may have aspects which appear to compromise human rights. However, before regulations are made to implement a statutory scheme, a full assessment of the implications for human rights legislation will be carried out.
- 21** The new proposals would not replace current quality assurance and accreditation schemes. But they will complement existing arrangements and help providers achieve the criteria for employing staff who are suitable to work with children.

## **CONSULTATION WITH THE SMALL BUSINESS SECTOR**

- 22** Most childcare providers would be classed as small businesses. This partial assessment has been discussed with organisations representing the relevant childcare providers. Where available, preliminary information on the compliance costs of the different options has been obtained and these costs will be refined following wider consultation. The view of those organisations representing providers has been that, in general terms, the proposed additional checks and requirements on providers will not have an adverse effect on the supply of childcare.

## **ENFORCEMENT, SANCTIONS, MONITORING AND REVIEW**

- 23** The legal framework allows for regulations to make it an offence for a childcare provider not to hold the required certificate and to produce it when required. Regulations may also make it an offence to make a false statement for the purpose

of obtaining a certificate. We propose that OFSTED's response to non-compliance is proportionate. Initially they would serve a notice to a non-compliant provider. Continuing failure to comply could lead to prosecution.

- 24** We are proposing to implement the scheme, subject to resources, in a way that fully reflects the views of childcare providers as well as the need to offer greater protection for children. After the introduction of the proposed scheme, no earlier than April 2004, a review would take place, with particular emphasis on whether it might be appropriate to extend some of regulation to activity based settings that are initially excluded.

## APPENDIX

| Option | Check/<br>requirement | Description   | Benefits   | Costs  |
|--------|-----------------------|---|--|--|
| 1      | 1                     | Criminal records checks using the services of the Criminal Records Bureau. These checks will be carried out using the Bureau's procedure for applying for enhanced disclosure certificates, and will include checks against the Protection of Children Act list and DfES List 99. | <p><b>For children</b><br/>A thorough vetting process for those looking after over 7s would reduce the risk of harm to children from people who were unsuitable.</p> <p><b>For parents</b><br/>The scheme would provide assurance to parents that people caring for their children were suitable to do so.</p> | <p><b>Costs to childcare providers</b><br/><i>Policy costs:</i> The cost to providers would be: £12 for Criminal Records Bureau checks (unless the 2002-03 subsidy is extended); and charges associated with medical checks (the British Medical Association currently suggests GPs charge £40). For an individual childcare provider with a partner and one child over 16 the total cost of the checks would be £76. For an out of school childcare provider employing 3 staff, the total cost would be £156, but this could be reduced to £76 if medical checks were only carried out on the provider, not the other staff, or less if a self certification method was used.</p> <p><i>Implementation costs*:</i> The administration costs would be minimal – say £15 representing 2 hours or so to complete the application forms and for telephone and postage costs. The cost might be lower, say £10, for individual childcare providers, and marginally higher, say £20, for a large provider with a number of employees. OFSTED will be looking at ways of reducing these costs to a minimum. The cost of a renewal certificate would be less.</p> |
|        | 2                     | Medical checks. There are a number of ways in which these could be carried out, including self certification, with OFSTED only requiring information from a GP in cases of doubt.   |  | <p>*These costs have been estimated following information gathered from a typical childminder and out of school childcare provider registered to deliver services for younger children.</p>  |

| Option | Check/<br>requirement | Description   | Benefits   | Costs   |
|--------|-----------------------|---|--|---|
| 1      | 3                     | Checks against social services records, in particular to obtain relevant information about involvement in family proceedings. | <p><b>For childcare providers</b></p> <p>Providers would benefit from greater public confidence in their services and from support (eg funding and training) that would become available through Early Years Development and Childcare Partnerships.</p> <p>It is not currently possible to quantify any of these benefits. Further information about the value of these benefits to stakeholders is being sought through this consultation.</p> | <p>NB Further work is required to estimate the total number of childcare providers who would be covered by the proposed over 7s scheme. Many reputable providers will have already had the required checks done because they belong to an existing accreditation or quality assurance scheme, such as Kids' Club Network's Aiming High, or through membership of or affiliation to such organisations as the YMCA, the Federation of City Farms and Community Gardens, and Fair Play for Children.</p> <p><b>Other costs</b></p> <p>There would be additional costs to OFSTED in implementing a scheme for dealing with applications and issuing certificates to over 7s childcare providers, and for the associated enforcement work. The law does not currently allow OFSTED to recoup any of its costs by charging providers for the certificates. The costs will be identified in the final assessment, once work to establish the detailed arrangements is underway.</p> |
|        | 4                     | Checks against OFSTED's own records of providers of under 8s childcare.   |  |   |

| Option | Check/<br>requirement | Description  | Benefits  | Costs  |
|--------|-----------------------|--|---|--|
| 2      | 1-4<br>above          | Criminal records, medical and other checks as described in 1-4 above.  | The benefits under this option will be increased: children would benefit from more experienced providers; parents from the assurance that more experienced providers can offer, and providers from the enhanced status of their services. | <p><b>Costs to childcare providers</b></p> <p>The costs to providers would be as outlined for option 1. We have no data about the levels of experience amongst providers of over 7s childcare, or the costs to providers of requiring experienced managers. More information on this is being sought by means of this consultation.</p> <p><b>Other costs</b></p> <p>OFSTED costs would be the same as for option 1.</p> |
|        | 5                     | A requirement on minimum period of relevant experience for group care setting managers. Information about previous experience would need to be sought as part of the application process, and may need to be verified through the provision of references. | As with option 1, information about the relative value of these benefits will be gathered as part of this consultation.   |  |

| Option | Check/<br>requirement | Description  | Benefits  | Costs   |
|--------|-----------------------|--|---|---|
| 3      | 1-5<br>above          | Checks and requirement on minimum experience as described in 1-5 above.  | Applying the full "suitable person" Standard and criteria, including a requirement on providers to hold appropriate qualifications, would raise minimum quality further, and the consequent benefits. | <b>Costs to childcare providers</b><br><i>Policy costs:</i> The cost to providers would be as for options 1 and 2 above, plus costs for meeting any qualifications requirements. For an individual childcare provider the only qualifications requirements would be attending a pre-registration or induction course (these are usually provided free of charge to potential childminders as part of the local partnership's recruitment activity), and going on a child carers' First Aid course at an average cost of £22. For out of school group providers, assuming a level 3 qualification is required, the cost would average £400 (within a range of free – ie paid for from Government funds – to £1,200)*. However, it is possible that many providers will already have the appropriate level of qualification, and for these no further training cost would need to be incurred. Further information on this will be gathered in this consultation. |
|        | 6                     | A requirement on minimum qualification levels. Information would need to be sought and evidence of training and qualifications provided.<br><br>There is a range of possibilities for qualifications requirements, from evidence that the provider has been on appropriate First Aid training, to the full qualification requirements within Standard 1 of the National Standards applicable to the younger age group. | As with options 1 and 2, information about the relative value of these benefits will be gathered as part of this consultation.  | <i>Implementation costs:</i> The administration costs would be as for options 1 and 2.<br><br>*The costs of training have been estimated from information gathered from colleges and local Early Years Development and Childcare Partnerships.<br><br><b>Other costs</b><br>OFSTED costs would be the same as for options 1 and 2.  |

# Annex C

## **GUIDELINES FOR OFSTED CHILDCARE INSPECTORS**

There is no statutory definition of ‘care’ in Part XA of the Children Act 1989. “Care” should therefore be given its natural meaning, which signifies protection, supervision or charge – “looking after” – when used in the context of one person’s relationship to another. “Care” in the context of “day care” as defined in part XA of the Children Act 1989 means looking after a child.

### **Points to consider when deciding whether the level of “looking after” is such that it constitutes day care**

#### What is the primary purpose?

- If the main purpose of the service, or of any aspect of the service, is to look after children;
- if the provision would reasonably be regarded as somewhere that parents leave their children to be cared for whilst they are working, training, shopping, etc, even if some recreation or instruction is provided in the course of it; or
- if the looking after is a purpose or a facet of the whole provision which is not dependent on other services which are or may be involved but is identifiable as a service in its own right.

then the provision will normally fall to be registered.

- If the primary purpose of the service is not care but rather a recreational activity such as sport, dance, drama, and music, or subject based instruction and tuition;
- if the looking after is only minor or occasional and incidental to another service (“incidental” means something that is not an integral part of the main provision but happens in connection with it);

then the provision will not normally need to be registered. Some recreational activity, however, may be regarded as open access provision, which is covered specifically in the National Standards for Under 8s Day Care and Childminding, and which should normally be registered.

Other factors to be taken into account in reaching a decision about whether a particular service should be registered or not.

- the age of the children using the provision, bearing in mind that the younger the children, the more likely they are to be the subject of care as opposed to subject based instruction, etc.; and
- the length of time and how often children attend the provision. It is likely that provision lasting several hours will contain a greater element of care.

# Annex D

## NATIONAL STANDARDS

### 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 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 children's parent.



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