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Guidance

Early years and childcare enforcement policy

Updated 1 November 2024

Applies to England

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Introduction

Ofsted is the Office for Standards in Education, Children's Services and Skills. We inspect and regulate services that care for children, and services providing education and skills for learners of all ages. Find out more about [what we do](#).

Read [Ofsted's strategy](#).

This guidance sets out the principles and approach we will follow when exercising our enforcement powers. We exercise these powers to reduce the risk of harm to children who use regulated early years services, to enforce compliance with the law and to improve the quality of services. The protection of children is paramount to our approach to enforcement.

Purpose and principles of enforcement

The law gives Ofsted a range of powers to regulate early years settings. The enforcement action we take is set out in the legislation.

The protection of children is paramount to our approach to enforcement. We:

- act immediately on any information that suggests that the welfare of children is not safeguarded or that they are at risk of harm or being harmed
- take appropriate and targeted action that:
 - reduces the risk of harm or actual harm to children
 - considers the particular circumstances of each case and is proportionate to the seriousness of the non-compliance
 - is agile and revises our approach as appropriate
 - secures compliance with the law and improves the quality of the setting
 - implements fairly our statutory or non-statutory enforcement powers when a relevant threshold is met

- is transparent
- is accountable and complies with the [Regulators' Code](#)

Ofsted's powers of enforcement

Our enforcement powers are set out in the [Childcare Act 2006](#) and associated regulations. They apply to the early years providers and agencies that we regulate. These are:

- [Early Years Register](#) – childminders (with domestic premises and without domestic premises) and childcare providers caring for children aged from birth to the 31 August following their fifth birthday
- [Childcare Register](#) – childcare providers who care for children from the 1 September following their fifth birthday until they reach the age of 8, and those who choose to register with us on the voluntary part of the Childcare Register (later years provision)
- [Childminder agencies](#) – organisations able to register childminders, childminders without domestic premises and childcare on domestic premises providers and offer childminders support services, training and development. They also carry out assessments of the childminders registered with them

If you are registered on both the Early Years Register and the Childcare Register, you should refer to the [Early Years Register enforcement actions section](#) in the first instance.

The law gives Ofsted a range of powers to deal with:

- persons providing childcare without the appropriate registration
- registered providers that fail to meet the legal requirements for early years settings that are regulated under the Childcare Act 2006

This policy sets out the principles and approach we will follow when exercising our enforcement powers.

Our [code of conduct](#) applies to all of our work. Inspectors will give the provider an opportunity to discuss and/or give us information on potential equalities duties, including requests for adaptations due to a protected characteristic or reasonable adjustments due to a disability. We recognise that using our enforcement powers may cause distress to individuals and affect their well-being. We expect our

inspectors to act with professionalism, courtesy, empathy and respect at all times. We exercise these powers to reduce the risk of harm to children who use regulated early years services, as well as to protect children from unregistered services, to enforce compliance with the law and to improve the quality of services.

Legislation and related guidance

This policy should be read alongside other guidance documents:

- our [inspection handbooks](#), which describe our approach to registration and inspection
- statutory guidance and regulations

Statutory guidance and regulations

The legal basis of our enforcement work is set out in the [Childcare Act 2006 and its associated regulations](#).

Specific legislation/guidance is as follows:

Early Years Register

- [The Childcare \(Early Years Register\) Regulations 2008](#)
- the [‘Statutory framework for the early years foundation stage’ \(EYFS\)](#)
- [‘The Early Years Foundation Stage \(Welfare Requirements\) Regulations 2012’](#)

Childcare Register

- [The Childcare \(Early Years and General Childcare Registers\) \(Common Provisions\) Regulations 2008](#)
- This includes [The Childcare \(General Childcare Register\) Regulations 2008](#), as amended in [The Childcare \(Welfare and Registration Requirements\) \(Amendment\) Regulations 2014](#)

Childminder agencies

- [The Childcare \(Childminder Agencies\) \(Registration, Inspection and Supply and Disclosure of Information\) Regulations 2014](#)

How we respond to information we receive

This section covers the action we take when we receive information that may suggest that:

- children are, or may be, at risk of harm
- a registered person/provider is not meeting the relevant regulations or conditions of registration
- a registered person may no longer be fit to carry on the running of a setting
- an unregistered person or agency is operating a service

Where information comes from

We may receive information from a variety of sources, including from:

- childminders and childcare providers through [notifications](#). The law requires childminders and childcare providers to inform us of certain matters (notifications). An online notification must be made as soon as reasonably practicable, and in any case within 14 days of a notifiable event happening, for any safeguarding and welfare incidents. Any administrative notifications, such as a change in opening hours or updated contact information, can be emailed to enquiries@ofsted.gov.uk
- childminder agencies
- [parents and carers](#)
- children, or their representatives
- local authorities
- other agencies, such as schools, environmental health, fire safety authorities, safeguarding partners and local authority designated officers
- other regulators/inspection bodies, such as the Care Quality Commission, Food Standards Agency and HM Inspectorate of Constabulary and Fire & Rescue Services

- members of staff
- members of the public
- Ofsted's inspections of early years, social care or other settings

Data protection

Your data will be handled in accordance with our [privacy policies](#).

We have a corporate retention schedule in place, which sets out the length of time certain information needs to be retained for business, operational or legal purposes. If information is processed under the Law Enforcement Directive, the information will be held for the duration of the case as a minimum, even if this is longer than specified in our retention schedule. Once a case has closed, the retention rules for the information will revert to the rules specified in the retention schedule. The information stays on record and will be referred to as necessary for determining a person's suitability in respect of any ongoing registration, other registrations they hold or future applications for registration.

We normally record evidence electronically using a range of devices, including laptops, mobile telephones and tablets. All evidence, including any handwritten evidence, is securely transferred to Ofsted's systems for storage. It will not be retained by the inspector personally. Original copies of handwritten notes are destroyed. Inspectors should only take photographs using Ofsted mobile telephones, an Ofsted tablet or an Ofsted computer; therefore, inspectors are required to carry this equipment with them. Any photos taken with an Ofsted mobile phone, computer or tablet will be deleted from the device once they have been transferred to our systems. When the inspector judges that they need photographic evidence, they should ask the childcare provider for permission to obtain this. However, if a provider does not agree to this then the inspector will highlight Ofsted's legal power under section 77(d) of the Childcare Act 2006 to 'take measurements and photographs or make recordings'. Inspectors will not include identifiable staff or children in any photographs they take.

When we receive concerns from a member of the public, parents of children being cared for or other similar third party, we always try to keep their name and details confidential if that is their wish. However, sometimes the provider may be able to guess their identity from the information provided. Occasionally, we may have to reveal the identity of a complainant to allow a thorough review of the concern, or when action results in a court or tribunal hearing. In these cases, we would always

discuss this with the complainant before doing so.

Safeguarding and child protection concerns

We follow our [safeguarding policy](#) and statutory government guidance in '[Working together to safeguard children](#)' and will always carry out an assessment of risk on receiving any information. This will determine whether any safeguarding or enforcement action is required. We liaise with other agencies as necessary, but we always carry out our own inspection or enquiries where appropriate.

Ofsted is not the statutory authority for enquiries into specific child protection concerns under [section 47 of the Children Act 1989](#). If we receive any concerns about safeguarding or allegations of abuse, we will refer them to the relevant local authority children's services and/or the police. It is for local authorities to determine whether concerns reach their threshold and decide which concerns they will investigate. We will also carry out our own assessment of whether the provider meets the requirements for continued registration and decide on the appropriate action to take. We will work closely with the local authority and the police when there is a section 47 investigation. If the information suggests risk of harm, we may use our urgent enforcement powers.

Local authority children's services arrange strategy discussions to assist them in deciding whether the information they hold about a child meets their threshold to investigate a child protection concern and, if so, the steps they need to take in response.

Ofsted's role at strategy meetings

At strategy meetings, we support robust and timely steps to protect children and promote their welfare. We challenge decisions that we believe will not do so. When invited, we attend strategy discussions when the investigation concerns a:

- registered person or their nominated individual
- childminder and childminder without domestic premises (as the registered person)
- person aged 16 or over who lives or works on the premises where childminding (on domestic premises), and/or childcare on domestic premises, takes place
- person aged 16 or over who looks after children as part of a childminder without domestic premises registration

- complex abuse case

Although we will participate in all relevant discussions about the suitability of the registered provider, we are unable to get involved in the decision-making for any strategy meeting outcome. This is because Ofsted does not hold a statutory responsibility for child protection matters. However, we will work with other statutory agencies by sharing the information we hold to protect the welfare of children and young people.

We work with other agencies to:

- always share any information we have that is relevant to the concern being investigated
- identify any limitations on the information that we can share (which should be discussed and agreed before the strategy meeting with Ofsted's legal advisers)
- provide background details to our involvement with the registered setting/provider, including any decisions or actions we have taken in respect of the concern
- provide information about any actions we may take to make the registered setting safe for children
- explain our regulatory functions and powers. This includes our responsibility, as the regulatory authority, to satisfy ourselves that a registered provider remains suitable for registration. We must make clear that, to do this, we may carry out our own enquiries to determine that the registered setting continues to be fit to provide a service. This may result in Ofsted initiating and completing its enquiries before the child protection investigation is completed
- ask that we receive minutes from future meetings (if we intend to take no further action) to enable us to reassess whether there is further information that needs us to become involved again

We also explain to other agencies that the registered provider can appeal to the tribunal against some of the decisions we make. We ensure that we secure the agreement of those attending the strategy meeting to attend any tribunal, if necessary, and/or supply witness statements.

We must also agree with the other organisations what information we can share with the registered provider about the concern. The police or local authority have to decide how much information they are willing to place in the public domain, without it having a negative impact on their investigation. However, they need to understand the constraints that this can place on our actions.

Local authority children's services may decide to investigate the concern under

section 47 of the Children Act 1989, or the police may decide to make enquiries as to whether an offence has occurred. We will not be involved directly in these investigations. We do not carry out child protection investigations with, or on behalf of, children's services or the police.

At the close of an external agency investigation

When an external agency investigates concerns and makes decisions about the welfare of children, we continually reassess whether the registered provider continues to meet the regulations and/or remains suitable for registration. When we close a case, we must consider the information from others' investigations in determining when to schedule our next inspection or whether we should carry out any further regulatory activity. We must record this decision on our internal system. Some regulatory cases will remain open until we know the outcome of any legal action.

How we act on information

When we receive information or allegations that suggest a breach of relevant regulations or legislation, we check whether children are at risk of harm and/or whether a provider is complying with the law.

We may choose to gather further information and evidence before we make a decision about what enforcement action, if any, we will take. When we are notified of an event, we may ask the provider notifying us to provide us with more information about what it has done in relation to the event.

We assess all the information we receive against the details we already hold about the registered provider or setting to decide on the appropriate action to take. Information may not suggest a risk when viewed in isolation. However, when viewed in the context of other recent events and information, it may suggest greater concern. Information that suggests a provider may be operating without registration is dealt with in accordance with our guidance on [unregistered services](#).

We may receive concerns that do not suggest a risk to the safety or well-being of children. In this case, and when the provider's inspection history does not give us cause for concern, we note the information so that it can inform the next visit or inspection. In these instances, we also write to the provider giving them the information and asking them to take appropriate action. The letter makes it clear that the provider must record the information and the action they have taken in their

complaints record. They do not need to tell us what action they took in response, but we will assess that action as part of the next visit or inspection.

If information comes from an anonymous source, we encourage them to speak directly to the provider. If the information-giver gives us their name and contact details, but wishes to remain anonymous from the provider, we will respect their wishes if we can, but we cannot guarantee that their identity will not be deduced by the provider.

Ofsted may share information about registered providers and other individuals electronically with other agencies, such as the Student Loans Company (The Childcare Grant) and HM Revenue and Customs (Tax-Free Childcare). We do this when we or the other agency have identified concerns that suggest possible fraud, regulatory breaches or issues around the suitability of a provider to provide childcare. In these cases, we may carry out regulatory activity or an inspection.

We may receive a concern about a registered provider on the Childcare Register. For these providers, in most cases, we will carry out a compliance inspection to make sure that the provider continues to meet requirements and remains suitable for registration.

If the concern does not prompt an immediate inspection, we may refer it back to the provider to take action and will check what they have done at their next Childcare Register inspection. Childcare Register inspections are a compliance check, unlike other Ofsted inspections that focus on quality and standards of provision. We may gather further information before inspection where the information involves other agencies, such as the police or child protection services.

Escalation route for 3 or more concerns (including notifications by the provider) in a 2-year period

Irrespective of the nature of the concern, if we continue to receive multiple concerns (3 in a 2-year period) then we will always consider whether to bring forward an inspection or carry out regulatory activity. Our relevant regional team will decide on the next step. This will usually be an inspection but may be other regulatory activity. This can be announced or unannounced.

In relation to escalating concerns, a notification from the provider is not the same as a concern that comes from another person about the provision. While 3 or more notifications from a provider may indicate that there are serious weaknesses within the setting, they could also indicate that the provider is dealing proactively with issues that arise and complying with their legal responsibility to notify us

appropriately. When considering cases in which there have been 3 or more notifications from the provider, the risk assessment team will consider the information received and the provider's history in deciding whether the matter should be escalated for further action.

If a series of notifications arise over a short period identifying similar matters, the risk assessment team will follow the guidance above.

Regulatory activity and inspections

We may respond to concerns in one of the following ways:

- noting low-level concerns to consider at the next visit or inspection
- carrying out an inspection with notice
- carrying out an inspection without notice
- carrying out regulatory activity by telephone or video call
- carrying out a regulatory visit, with or without notice

During the regulatory activity or inspection

We inform the registered provider (or its nominated individual) that we are looking at a concern and of any information we have that suggests non-compliance. They can then provide additional information.

We will share as much information about the concern as possible. We may not do so if there is an allegation about an individual linked to the childcare setting, or where sharing the information could compromise another agency's investigation.

If a registered person or other staff member employed at the setting refuses to cooperate, the inspector will explain our powers under the Childcare Act 2006 to enter the premises. We will do this in order to:

- inspect the premises
- inspect, and take copies (either by photocopying or taking a photo with an Ofsted mobile telephone or tablet computer) of any records kept by the person providing the childcare and any other documents containing information relating to that provision
- seize and remove any document or other material that the inspector has reasonable grounds to believe may be evidence of a failure to comply with any relevant condition or requirement (however, we would usually take photos as explained above)
- take measurements or make recordings

- observe any children being cared for there, and the arrangements made for their welfare
- interview in private the childcare provider
- interview in private any person caring for children or living or working on the premises who consents to be interviewed

We will seek the permission of the homeowner/occupier to enter the premises where nannies (home childcarers) work. We also require the consent of an adult occupier to enter a domestic premises if it is not the home of the person providing care.

If the inspector believes the registered person is obstructing them, this is a criminal offence and so the inspector will consider whether it is appropriate to caution the person about their rights under the Police and Criminal Evidence Act 1984 (see the [‘Prosecution’ section](#)) before asking them further questions.

We will use the information we have gathered in our inspection or regulatory activity to determine whether the registered provider:

- is complying with the relevant legislation
- is meeting statutory requirements and remains suitable for registration
- has committed an offence under the Childcare Act 2006 or associated regulations

The inspector will allow the provider to raise any issues or concerns, or to seek clarification, including related to the conduct of the regulatory event or inspector. The inspector will explain that the provider can also contact Ofsted on the working day after the end of the regulatory event, if needed. This will be an opportunity for the provider to raise informal concerns about the regulatory event or outcomes, ask about next steps or highlight information that they feel was not fully considered during the regulatory event. This will be directed to an inspector who is independent of the regulatory event, to discuss and to resolve any concerns at the earliest opportunity.

We will write and publish a report following an inspection. This will report on any breaches or requirements that we find and any action taken. For our regulatory activity, we will write and publish an outcome summary to report on any breaches of requirements that we find and any action taken.

Outcome summaries

We will always write and publish an outcome summary after any type of regulatory activity, if we or the provider have identified a breach of requirements, including if the

provider has already taken action to address this. This is to make parents and the public aware of any concerns and action taken at the childcare setting. We will also publish an outcome summary if we take steps to cancel a childminder or childcare provider's registration.

We will not publish an outcome summary when:

- we carry out any type of inspection, because the inspection report will set out any breaches of requirements that we find and any action taken
- we suspend a provider's registration, because we use other ways to let parents and carers know about the suspension. However, if we have also taken other enforcement action and we publish an outcome summary for this, we will state whether we have also suspended the provider

We publish outcome summaries on the same page as the provider reports on our [reports website](#).

Notifying other agencies and parents of our action

If we take action to suspend or cancel the registration of a childminder or childcare provider or take steps to cancel a childminder agency, we tell the local authority where the provider/agency is located. We may also notify other relevant agencies, as appropriate, under our information-sharing protocols. We have working arrangements for childcare protocols between Ofsted and other organisations to ensure that working practices are consistent with the role and responsibilities of the appropriate organisations.

We gather parents' and carers' details from the provider or childminder when we issue the suspension, and we will write to them to inform them if we suspend a childminder or childcare provider's registration.

Our enforcement actions: Early Years Register

This section sets out our powers of enforcement for providers on the Early Years Register. It describes what we can do if registered providers are failing to meet the requirements of the [Early Years Register](#) or conditions of registration.

The types of enforcement action we can take against providers breaching the

requirements of the Early Years Register include:

- refusing a registration
- refusing approval of additional or different premises
- imposing or varying conditions of registration
- raising an action
- welfare requirements notices
- suspending a registration
- cancelling a registration

The enforcement powers available to us do not have to be used consecutively or in any order. We can also use more than one type of enforcement action at the same time. We will use our enforcement powers proportionately, keep our enforcement action under review and adjust any steps we are taking where appropriate.

Some enforcement actions allow periods for written representations and appeals before the action takes effect. It may, therefore, be appropriate in some circumstances to also take urgent enforcement steps, for example suspension, at the same time as taking longer-term action.

We will only take urgent action if there is a reasonable belief that a child or children may be at risk of harm.

Refusing a registration

When we receive [an application to register](#), we will consider whether the applicant meets, and is likely to continue to meet, the registration requirements under the [Childcare \(Early Years Register\) Regulations 2008](#). These requirements include the applicant's suitability and that they will meet the requirements of the statutory framework for the EYFS.

If it appears that the requirements are satisfied, and will continue to be satisfied, we will grant the application to register. Otherwise, [the application will be refused](#).

If we intend to refuse an applicant's registration, we will serve a [notice of intention](#) (NOI). This will set out the reasons for the refusal. The applicant may [make an objection to Ofsted](#). If the objection is not upheld, we will serve a [notice of decision](#) (NOD) and the applicant may choose to [appeal to the First-tier Tribunal](#).

Under [section 73\(10\) of the Childcare Act 2006](#), applicants to the Early Years Register may withdraw their application at any stage up to when an NOI to refuse registration is served. Applicants may not withdraw their application after that point unless we agree that they can do this.

If we have concerns about an applicant who withdraws their application before an NOI to refuse is served, we will record our concerns and may consider them further if the applicant applies to register in the future. We will write to the applicant to let them know we have done this. We will also consider referring them to the Disclosure and Barring Service (DBS) or other agencies, if appropriate, in line with our safeguarding obligations.

If we proceed to serve an NOD refusing registration, it means a person becomes disqualified from providing, being directly concerned in the management of, and employed in connection with childminding and childcare. If the applicant is a company, it is the company that is disqualified and not the individuals listed as directors. The disqualification takes effect when an NOD is served. See [‘Disqualification and waivers’ section](#) for further information.

Refusing approval of additional or different premises

A registered provider must [apply to Ofsted for approval before operating a nursery or other daycare from additional premises](#). It is an offence to provide childcare on non-approved premises.

The registered provider must demonstrate that the requirements will be satisfied, and are likely to continue to be satisfied, in relation to the proposed provision. We will look at whether the additional premises and the arrangements for childcare on those premises are suitable. If we intend to refuse an applicant’s registration for additional or different premises, [we will serve an NOI](#) setting out the reasons for the refusal. In this case, the person may [make an objection to Ofsted](#). If the objection is not upheld, we will serve an NOD against which the provider may choose to [appeal to the First-tier Tribunal](#).

If we refuse to approve additional premises, this will not necessarily impact on the provider’s registration. However, if the reason for refusal of approval of additional/different premises relates to, for example, leadership and management or suitability of the provider, then we may consider other enforcement steps.

Imposing or varying conditions of registration

In some circumstances, we can impose, vary or remove conditions of registration. We can do this when a provider is first registered or at any time afterwards. It is an offence to fail, without reasonable excuse, to comply with a condition of registration.

We may impose, vary or remove conditions of registration on a provider's registration under [section 38 of the Childcare Act 2006](#) by issuing an NOI setting out the reasons for the action proposed. The provider may object. However, if these objections are not upheld, an NOD will be served against which a provider may appeal.

We have the power to impose conditions at the point of registration. However, we will not impose at this stage a condition that replicates a legal requirement. If we are not satisfied that an applicant is able to meet the prescribed requirements for registration, we must not register them, as per [section 35](#) and [section 36](#) of the Childcare Act 2006.

Once registration has been granted, if we are concerned that a requirement is not being met, we may use a condition as a means of enforcing that requirement.

The legislation states that Ofsted can impose any condition it thinks fit on a provider's registration. We will not impose a condition that conflicts with the legal requirements, including the EYFS. For example, we will not impose a condition that is less onerous or less restrictive than a statutory requirement or appears to have the effect of removing a statutory requirement. We will only use clear, proportionate and reasonable conditions.

We may also seek to impose conditions in [an emergency](#).

Raising an action

Early years providers must meet the requirements of the EYFS. We will consider raising an action when both of the following apply:

- the provider is not meeting one or more of the learning and development requirements and/or safeguarding and welfare requirements
- leaders and managers or the childminder demonstrate an understanding of the requirements and we believe that they may have the ability to make the necessary improvements without the need for statutory enforcement action at that time

If actions are set at inspection, they will be listed in the inspection report and followed up at the next inspection. If actions are set during regulatory activity outside of inspection, we will issue the provider with an actions letter. The report or letter sets out the actions that a provider must take to meet the particular EYFS requirements, and the timeframe to do so.

When actions are set following regulatory activity, then the provider must notify us by email (or by letter if email is not possible), within the specified timescale, about the action that they have taken to meet the requirements. We will review the response. If we are satisfied that a provider has met the actions, we will confirm this by responding to the email and updating the published outcome summary. In some cases, we may need to ask the provider for further information so we can find out whether the actions have been met.

When the inspection follows other regulatory action we have taken, the inspector will check that the provider is compliant with any actions or other enforcement measures that result from that previous action. If the provider fails to comply with the action, we will consider whether further enforcement action is appropriate.

Welfare requirements notices

Early years providers must meet the requirements of the EYFS. If we consider that a provider is failing (or has failed) to meet one or more of the safeguarding and welfare requirements of the EYFS, we may serve a welfare requirements notice (WRN) under [Regulation 10 of The Early Years Foundation Stage \(Welfare Requirements\) Regulations 2012](#). We cannot serve a WRN for failure to meet learning and development requirements.

We will consider whether to serve a WRN when leaders and managers or the childminder do not demonstrate an understanding of the requirements and we do not believe that they may have the ability to make the necessary improvements. We will do this only after considering factors such as the seriousness of the non-compliance, the impact on children, the history of the registered person's compliance, and other actions available to us.

We normally serve a WRN where one or more of the following apply:

- leaders and managers or childminders do not demonstrate their understanding of how to meet the safeguarding and welfare requirements of the EYFS
- there have been previous occasions of non-compliance with the same or different

requirement(s)

- the provider has not completed actions relating to existing failures to meet safeguarding and welfare requirements satisfactorily

The aim of a WRN is to direct a provider to take immediate steps to meet a requirement(s). The notice sets out action(s) that a provider or childminder must perform within an appropriate timeframe. The provider commits an offence if they fail to carry out the WRN actions within the specified time.

Monitoring the WRN

If we have served a WRN to a provider, we usually check compliance with it after the due date has passed and usually within 5 days of that date by either:

- carrying out a monitoring visit to the provider
- contacting the provider by telephone or video call
- scheduling an inspection to check compliance with the WRN and to ensure that the provider is meeting all requirements

The inspector will decide how to monitor compliance with the WRN, including whether monitoring visits will be announced or unannounced. If the inspector makes a visit or contacts the provider before some actions are due to be completed, they will review and record evidence about the progress the provider is making. They will also update the published outcome summary to show whether the WRN actions have been met.

If the inspector finds that a provider has met all the WRN action(s), they will update the published outcome summary to confirm this.

An inspector will also consider whether further enforcement action is appropriate.

Suspending a registration

We suspend registration if we reasonably believe that the continued provision of childcare by the registered person to any child may expose the child to a risk of harm. [\[footnote 1\]](#)

The legal definition of 'harm' is as set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment

of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical.

We can suspend registration for all of a provider's settings or in relation to particular premises.

We suspend a provider's registration under [section 69 of the Childcare Act 2006](#) and the [Childcare \(Early Years and General Childcare Registers\) \(Common Provisions\) Regulations 2008](#). It is an offence for a provider registered on the Early Years Register and/or compulsory part of the Childcare Register to fail to comply with a suspension notice.

In some cases, the suspension may be lifted without any further action as the enquiries confirm that the provider continues to meet the requirements of registration. Suspension gives us or other agencies, such as the police or the local authority, the time to investigate concerns or look into/carry out enquiries. It also gives time for us or the provider to take steps to reduce or remove any risk to children.

Where a provider has more than one setting on their registration, we may choose to suspend individual settings or the whole registration, depending on the nature of the concerns. If the suspension notice relates only to particular premises, the registered person can continue to operate from other approved premises that are not suspended.

In some cases, we may take steps to [cancel a registration](#) while a suspension is in place. If such a registration covers more than one setting, cancellation will apply to all settings in that registration.

We may serve the notice of suspension in person, by email (subject to the registered person's agreement) or by post.

The notice sets out:

- the reasons for suspension
- the period of the suspension
- our legal powers
- the [provider's right to appeal](#)

The notice includes as much information as possible about why we believe the continued provision of childcare exposes children to a risk of harm. However, we

cannot always tell registered providers the full reasons for the suspension if other agencies are involved, such as the police. This is because it may jeopardise other agencies' investigations.

The law requires providers registered on both the Early Years Register and Childcare Register to display a notice of suspension if we suspend their registration on the Childcare Register, regardless of whether we also suspend their registration on the Early Years Register.

When the law requires a registered person to display a notice of suspension, we issue a display notice at the same time as the notice of suspension. We do this to comply with the Data Protection Act 2018 and the General Data Protection Regulation (GDPR), as our notices of suspension can contain personal or sensitive information.

We also write to all parents and carers of children on roll to inform them of our decision to suspend the registration. Providers will be asked to supply relevant contact details for parents and carers, including email addresses. We expect providers to be open and honest with us when providing these contact details and ensure that details are provided for all children who attend, including family members and those who may only attend part time and/or only before and after school.

The initial period of suspension is 6 weeks. It takes effect as soon as the notice is served. If necessary, we can impose a further 6-week period of suspension on the same grounds, and in exceptional circumstances we can suspend beyond this.

We can only consider extending a suspension beyond 12 weeks if one or both of the following apply:

- it is not reasonably practicable (for reasons beyond our control) to complete any enquiries or for any steps to be taken to eliminate or reduce the risk of harm
- we are satisfied that the grounds for continued suspension still exist

We will monitor a provider's compliance with the suspension, usually by carrying out an unannounced visit to the suspended premises at least once within each 6-week period of suspension. If an inspector carries out a monitoring visit and the registered person is operating in breach of the suspension notice, the inspector must caution them, as it is an offence to fail to comply with the suspension notice, and record any response in their evidence.

We also review suspension on an ongoing basis to consider whether there continues to be a risk of harm to children. We lift the suspension when we are

satisfied that the grounds identified for suspending a registration, generally or only in relation to particular premises, no longer apply.

Providers can inform us about any new information that indicates a change in their circumstances and request that we lift the suspension. In these cases, we consider the impact of the information and whether the suspension remains an appropriate step.

If we decide to lift the suspension, we will inform the registered person. The suspension is lifted as soon as we inform them. We will also inform parents and carers when the suspension has been lifted.

If a provider decides to voluntarily cancel/resign their registration while suspended, we will retain information about the concerns that led to suspension. We may consider these further if a provider reapplies for registration. We will always consider whether there are further actions for us to take, for example making a referral to other agencies, including the DBS. We will retain information about the concerns that led to suspension. We may consider these further if a provider reapplies for registration.

The registered person can [appeal to the First-tier Tribunal against each period of suspension](#). An expedited appeals process will apply and the appeal must be determined by the Tribunal before the period of suspension ends.

Providers on both registers

A provider may be registered on both the Early Years Register and the Childcare Register. In this case, we would consider whether to suspend registration:

- for all settings
- for particular premises
- across one or both registers
- across one or both parts of the Childcare Register

The suspension notice will set out the full details of the suspension.

Providers who divide their time between domestic and non-domestic premises

Childminders and childcare on domestic premises providers can operate from approved non-domestic premises for some of their total time. [\[footnote 2\]](#) 'Some' time can mean the majority. There is no maximum amount of time a provider can spend at

their non-domestic premises, but they must spend time at their domestic premises.

We can suspend a provider's registration for non-domestic premises or both the non-domestic and domestic premises.

We cannot suspend providers from operating only on the domestic premises. If we suspend the domestic premises, then the suspension applies to the non-domestic premises too. If we only suspend the registration in relation to their non-domestic premises, they will still be able to operate from their domestic premises.

Childminders without domestic premises

For a childminder without domestic premises, we can suspend registration for any additional non-domestic premises or both the primary non-domestic and additional non-domestic premises. We cannot suspend childminders without domestic premises from operating only on their primary premises. If we suspend the primary premises, then the suspension applies to all the premises used. If we only suspend the registration in relation to their additional premises, they will still be able to operate from their primary premises.

Cancelling a registration

We can [cancel a provider's registration with an NOI](#) under [section 68 of the Childcare Act 2006](#). In this case, the provider may [make an objection to Ofsted](#). If the objection is not upheld, we will serve an NOD against which the provider may choose to [appeal to the First-tier Tribunal](#).

In all instances, if a registered person operates more than one setting, cancellation will apply to all their settings.

Cancellation, other than [voluntary cancellation](#) or cancellation for non-payment of fees, disqualifies a person from providing, being directly concerned in the management of, or employed in connection with childminding and childcare. This includes cancellation when we have been unable to establish contact with a provider and can no longer be satisfied that the prescribed requirements for registration are being met. For example, we could be trying to contact them to arrange an inspection or confirm they are caring for children, or because we want to talk to them about their

registration.

If a provider whose registration is cancelled carries on operating, they will be committing a criminal offence and [we may prosecute](#).

Making the decision to cancel a provider's registration

[Section 68 of the Childcare Act 2006](#) sets out grounds for cancellation as follows:

- the registered person has become disqualified
- the prescribed requirements for registration have ceased, or will cease, to apply
- the registered provider has failed to comply with a condition imposed on their registration
- the registered provider has failed to comply with a requirement imposed on them by the regulations
- a provider registered on the Early Years Register has failed to meet the learning and development requirements of the EYFS
- the registered person has failed to pay a registration fee
- a registered childminder with domestic premises (on either register) has not provided childminding for more than 3 years
- a registered childminder without domestic premises (on either register) has not provided childminding for more than 3 years
- the registered provider has not made themselves available for inspection despite our reasonable attempts to contact them on the basis that we cannot be sure that they continue to satisfy the requirements for registration

If a registered person has become disqualified, then we must cancel registration as this is a mandatory ground for cancellation.

If any of the other grounds for cancellation apply, then we may cancel registration as these are discretionary grounds for cancellation. In these cases, we will always exercise discretion in a reasonable, proportionate and consistent way.

We are likely to cancel registration where:

- a child in the care of the provider has been exposed to, or has suffered, serious harm or injury
- cancellation is the only way to assure the safety and well-being of children due to risk of harm or potential risk of harm
- other compliance action is inappropriate or has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale

- the provider has failed to make or sustain improvement in practice over a period of time, and we do not believe that they can consistently meet the relevant requirements for registration
- there has been a continued failure to meet the learning and development requirements
- the registered provider has not made themselves available for inspection despite our reasonable attempts to contact them on the basis that we cannot be sure that they continue to satisfy the requirements for registration

The above list is not conclusive, however, and we may proceed to cancellation in other circumstances where grounds to cancel exist, and it is reasonable and proportionate to do so.

We will ensure that the evidence in support of the grounds for cancellation meets the required standard, which is the 'balance of probabilities'. In other words, that it is more likely than not to be correct or true.

In some cases, we will have taken other enforcement action before taking steps to cancel. This is because we try, where appropriate and in the interests of children, to give providers time and opportunity to put matters right. When a registered provider has failed to respond and/or we have lost confidence in their ability to make and sustain improvements to meet regulations, we may decide to cancel their registration.

We may, however, cancel a provider's registration without taking any previous enforcement action if a concern is sufficiently serious and/or when children are at risk of harm.

If we have judged a provider as inadequate at 2 consecutive inspections and there is no improvement, we would usually take steps to cancel their registration. We may also consider cancellation at an earlier stage where appropriate, notwithstanding the provider's inspection history.

Monitoring visits following an NOD to cancel pending an appeal hearing

The registered person remains registered until 28 days after we have served the NOD to cancel. At this point, the decision takes effect, unless the provider has appealed to the First-tier Tribunal, in which case the provider remains registered until the appeal is determined. If they inform us that they do not intend to appeal to the Tribunal, the decision takes effect at that point.

As an appeal may take some time to process, we will usually carry out monitoring

visits or further inspections during the interim period. We may consider additional enforcement action, such as suspending a provider's registration, if we have reason to believe that children may be suffering or likely to suffer harm.

The Tribunal will consider whether cancellation remains appropriate at the point when the appeal is determined. Therefore, although the history of the registration will remain relevant, the Tribunal can also take account of evidence that has come to light since the decision to cancel was made, including evidence gathered at monitoring visits.

Emergency action

Under [section 72 of the Childcare Act 2006](#), if there is evidence that a child, for whom early years provision is being or may be provided, is suffering or is likely to suffer significant harm, we may apply to the family proceedings court for an emergency order to:

- cancel a registration
- vary, remove or impose a condition of registration

The legal definition of 'harm' is as set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical. Where the question of whether harm suffered by a child is significant depends on the child's health or development, their health or development shall be compared with that which could reasonably be expected of a similar child.

Emergency orders take effect immediately and apply to all settings under a single registration.

Where possible, we will give the registered person notice of our application for an emergency order and give reasons for it, so that they may attend the hearing and make representations.

There are some circumstances, however, where it will be necessary to make the application without notice to the registered person. For example, when:

- notifying them might place children at risk of harm
- the risk is so serious that there is no time to notify them

- notifying them would risk that they would destroy evidence
- it has not been possible to notify them despite efforts to do so

If an emergency order is granted, the registered person may [appeal to the First-tier Tribunal](#). The order will remain in place until the appeal is determined.

Voluntary removal/resignation

A registered provider may give notice to Ofsted for voluntary removal from the register under [section 70 of the Childcare Act 2006](#). This is sometimes also referred to as voluntary cancellation or resignation.

The provider should not assume that we will remove their registration under section 70, for example, if the annual fee is not paid. If the annual fee is not paid, we will cancel the registration unless we are given notice that the provider wants to be removed from the register.

In most circumstances where notice is given, we will remove the provider from the register. This will not result in disqualification.

If we have concerns about the provider, we will keep the information on record because we may wish to consider this should the provider seek future registration with Ofsted. We will write to the provider to let them know we have done this. Voluntary removal will not prevent us from making a referral to the DBS or to any other agencies if appropriate.

For providers registered on the Early Years Register and the compulsory parts of the Childcare Register, if we have already served the provider with an NOI to cancel registration, we will not remove the provider from the register unless we have decided not to pursue cancellation. For providers registered on the Early Years Register and the compulsory parts of the Childcare Register, we will not remove them from the register after an NOD has been served.

Our enforcement actions: Childcare Register

This section sets out our powers of enforcement for providers on the Childcare Register only. It describes what we can do if registered providers are failing to meet the requirements of the [Childcare Register](#) or conditions of registration.

The types of enforcement actions we can take against providers breaching the requirements of the Childcare Register include:

- refusing a registration
- refusing approval of additional or different premises
- imposing or varying conditions of registration
- raising an action
- suspending a registration
- cancelling a registration

We will consider enforcement action where appropriate, including for those providers that are registered only on the voluntary part of the Childcare Register (and whose activities do not require registration). Although enforcement action such as suspension or cancellation does not necessarily stop the provision of childcare for which registration is not required, it will impact on the provider's registration. We make clear to parents and the public who look at the Ofsted reports website that there are concerns and/or that Ofsted does not consider this provider suitable to provide childcare.

Refusing a registration

When we [receive an application to register](#), we will consider whether the applicant meets, and is likely to continue to meet, the [registration requirements of The Childcare \(General Childcare Register\) Regulations 2008](#).

If we intend to refuse an applicant's registration, [we will serve an NOI](#). In this case, the person may [make an objection to Ofsted](#). If the objection is unsuccessful, [we will serve the NOD](#) and the applicant can then [appeal to the First-tier Tribunal](#) against any NOD served.

Applicants for the compulsory part of the Childcare Register may withdraw their application at any stage up to the point when an NOI to refuse registration has been served. Applicants may not withdraw their application after that point unless we agree they can do this.

Applicants for the voluntary part of the Childcare Register only may withdraw their application for voluntary registration at any stage. However, if we have concerns about an applicant who withdraws their application, we will record our concerns and may consider them if the applicant applies to register in the future. We will also

consider referral to the DBS or other agencies if appropriate.

[If we refuse registration, the person becomes disqualified](#) from providing, being directly concerned in the management of, and employed in connection with childminding and childcare.

Imposing or varying conditions of registration

In some circumstances, we can impose, vary or remove conditions of registration. We can do this when a provider is first registered or at any time afterwards. It is an offence to fail, without reasonable excuse, to comply with a condition of registration.

For those on the general Childcare Register, we impose, vary or remove conditions under [section 58 of the Childcare Act 2006](#). For those on the Voluntary Childcare Register, we do this under [section 66 of that Act](#). We serve an NOI setting out the reasons for the action proposed. The provider may object. However, if these objections are not upheld, an NOD will be served against which [a provider may appeal](#).

We have the power to impose conditions at the point of registration. We will not impose, at this stage, a condition that replicates a legal requirement. If we are not satisfied that an applicant is able to meet the prescribed requirements for registration, we must not register them, as per [sections 54, 55, 62 and 63 of the Childcare Act 2006](#).

The legislation states that Ofsted can impose any condition on a provider's registration that it thinks fit. We will not impose a condition that conflicts with the legal requirements. For example, we will not impose a condition that is less onerous or less restrictive than a statutory requirement, or appears to have the effect of removing a statutory requirement. We will only use clear, proportionate and reasonable conditions.

We may also [seek to impose conditions in an emergency](#). Conditions can also be imposed as a result of a recommendation by the First-tier Tribunal.

Raising an action

Providers on the Childcare Register must meet the requirements of [The Childcare](#)

[\(General Childcare Register\) Regulations 2008.](#)

If a provider is not meeting these requirements, but the inspector judges that the leadership has the capacity to remedy this quickly, we will set actions.

These actions are included in the compliance inspection. The letter sets out the actions that a provider must take by a certain date to meet the requirements.

The provider must notify us by email (or by letter if email is not possible), within the specified timescale, about the action that they have taken to meet the requirements. We will review their response and may inspect again to check that they are meeting all the regulations.

If the provider fails to comply with the action, we will consider the appropriate enforcement action, in line with our enforcement thresholds and decision-making provisions.

Suspending a registration

We suspend registration if we reasonably believe that the continued provision of childcare by the registered person to any child may expose the child to a risk of harm.^{[\[footnote 1\]](#)}

The legal definition of 'harm' is set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical.

We can suspend registration for all a provider's settings or for particular premises. We can suspend a provider's registration under [section 69 of the Childcare Act 2006](#) and the [The Childcare \(Early Years and General Childcare Registers\) \(Common Provisions\) Regulations 2008](#). It is an offence for a provider registered on the Early Years Register and/or compulsory part of the Childcare Register to fail to comply with a suspension notice.

It is not an offence for a provider registered on the voluntary part of the Childcare Register to continue to provide care for children while suspended, because registration is not compulsory. However, we will only suspend where we believe

there may be a risk of harm. Therefore, if a provider on the voluntary register continues to provide childcare while suspended, we may consider whether this warrants a review of that registered person's suitability to remain registered.

In some cases, the suspension may be lifted without any further action as the enquiries confirm that the provider continues to meet the requirements of registration. Suspension gives us or other agencies, such as the police or the local authority, the time to investigate concerns or look into/carry out enquiries. It also gives time for us or the provider to take steps to reduce or remove any risk to children.

Where a provider has more than one setting on their registration, we may choose to suspend individual settings or the whole registration, depending on the nature of the concerns. If the suspension notice relates only to particular premises, the registered person can continue to operate from other approved premises on their registration that are not suspended.

In some cases, we may take steps to [cancel a registration](#) while a suspension is in place. If such a registration covers more than one setting, cancellation will apply to all settings in that registration.

We may serve the notice of suspension in person, by email (subject to the registered person's agreement) or by post.

The notice sets out:

- the reasons for suspension
- the period of the suspension
- our legal powers
- the [provider's right to appeal](#)

The notice includes as much information as possible about why we believe the continued provision of childcare exposes children to a risk of harm. However, we cannot always tell registered providers the full reasons for the suspension if other agencies are involved, such as the police. This is because it may jeopardise other agencies' investigations.

The law requires providers on the Childcare Register (except home childcarers) to display a notice of suspension.

When the law requires a registered person to display a notice of suspension, we issue a display notice at the same time as the notice of suspension. We do this to

comply with the Data Protection Act 2018 and GDPR, as our notices of suspension can contain personal or sensitive information.

We also write to all parents and carers of children on roll to inform them of our decision to suspend the registration. Providers will be asked to supply relevant contact details for parents and carers, including email addresses. We expect providers to be open and honest with us when providing these contact details and ensure that details are provided for all children who attend, including family members and those who may only attend part time and/or only before and after school.

The initial period of suspension is 6 weeks. It takes effect as soon as the notice is served. If necessary, we can impose a further 6-week period of suspension on the same grounds, and in exceptional circumstances we can suspend beyond this.

We can only consider extending a suspension beyond 12 weeks if one or both of the following apply:

- it is not reasonably practicable (for reasons beyond our control) to complete any enquiries or for any steps to be taken to eliminate or reduce the risk of harm
- we are satisfied that the grounds for continued suspension still exist

We will monitor a provider's compliance with the suspension, usually by carrying out an unannounced visit to the suspended premises at least once within each 6-week period of suspension. It is an offence to care for children on the compulsory part of the Childcare Register while suspended.

We also review suspension on an ongoing basis to consider whether there continues to be a risk of harm to children. We lift the suspension when we are satisfied that the grounds identified for suspending a registration, generally or only in relation to particular premises, no longer apply.

Providers can inform us about any new information that indicates a change in their circumstances and request that we lift the suspension. In these cases, we consider the impact of the information and whether the suspension remains an appropriate step.

If we decide to lift the suspension, we will inform the registered person. The suspension is lifted as soon as we inform them. We will also inform parents and carers when the suspension has been lifted.

If the suspension notice relates only to particular premises, the registered person can continue to operate from other approved premises that are not suspended. If a provider decides to voluntarily cancel/resign their registration while suspended, we

will retain information about the concerns that led to suspension. We may consider these further if a provider reapplies for registration. We will always consider whether there are further actions for us to take, for example making a referral to other agencies, including the DBS. We will retain information about the concerns that led to suspension. We may consider these further if a provider reapplies for registration.

The registered person can [appeal to the Tribunal against each period of suspension](#). An expedited appeals process will apply and the appeal must be determined by the Tribunal before the period of suspension ends.

Providers on both registers

A provider may be registered on both the Early Years Register and the Childcare Register. In this case, we would consider whether to suspend registration:

- for all settings
- for particular premises
- across one or both registers
- across one or both parts of the Childcare Register

The suspension notice will set out the full details of the suspension.

Providers who divide their time between domestic and non-domestic premises

Childminders and childcare on domestic premises providers can operate from approved non-domestic premises for some of their total time.

We can suspend their registration for non-domestic premises or both the non-domestic and domestic premises.

We cannot suspend providers from operating only on the domestic premises. Suspension would apply to their non-domestic premises too. If we only suspend the registration in relation to their non-domestic premises, they will still be able to continue to operate from their domestic premises.

Childminders without domestic premises

For childminders without domestic premises, we can suspend registration for any additional non-domestic premises and/or both the primary non-domestic and additional non-domestic premises. We cannot suspend providers from operating only on the primary premises. Suspension would apply to all the premises used. If we only suspend the registration in relation to their additional premises, they will still

be able to continue to operate from their primary premises.

cancelling a registration

We can [cancel a provider's registration with an NOI](#) under [section 68 of the Childcare Act 2006](#). In this case, the provider may [make an objection to Ofsted](#). If the objection is not upheld, we will serve an NOD against which the provider may choose to [appeal to the First-tier Tribunal](#).

In all instances, if a registered person operates more than one setting, cancellation will apply to all their settings.

Cancellation, other than [voluntary cancellation](#) or cancellation for non-payment of fees, disqualifies a person from providing, being directly concerned in the management of, or employed in connection with childminding and childcare. This includes cancellation when we have been unable to establish contact with a provider and can no longer be satisfied that the prescribed requirements for registration are being met. For example, we could be trying to contact them to arrange an inspection, confirm they are caring for children or because we want to talk to them about their registration.

If a provider whose registration is cancelled carries on operating, they will be committing a criminal offence and [we may prosecute](#).

Making the decision to cancel a provider's registration

[Section 68 of the Childcare Act 2006](#) sets out grounds for cancellation as follows:

- the registered person has become disqualified
- the prescribed requirements for registration have ceased, or will cease, to apply
- the registered provider has failed to comply with a condition imposed on their registration
- the registered provider has failed to comply with a requirement imposed on them by the regulations
- a provider registered on the Early Years Register has failed to meet the learning and development requirements of the EYFS
- the registered person has failed to pay a registration fee
- a registered childminder (on either register) has not provided childminding for more than 3 years

- the registered provider has not made themselves available for inspection despite our reasonable attempts to contact them on the basis that we cannot be sure that they continue to satisfy the requirements for registration

If a person has become disqualified, then we must cancel registration as this is a mandatory ground for cancellation.

If any of the other grounds for cancellation apply, then we may cancel registration as these are discretionary grounds for cancellation. In these cases, we will always exercise discretion in a reasonable, proportionate and consistent way.

We are likely to cancel registration where:

- a child in the care of the provider has been exposed to, or has suffered, serious harm or injury
- cancellation is the only way to assure the safety and well-being of children due to risk of harm or potential risk of harm
- other compliance action is inappropriate or has failed to achieve, or is unlikely to achieve, the outcome needed within a reasonable timescale
- the provider has failed to make or sustain improvement in practice over a period of time, and we do not believe that they can consistently meet the relevant requirements for registration
- the registered provider has not made themselves available for inspection despite our reasonable attempts to contact them on the basis that we cannot be sure that they continue to satisfy the requirements for registration

The above list is not conclusive, however, and we may proceed to cancellation in other circumstances where grounds to cancel exist, and it is reasonable and proportionate to do so.

We will ensure that the evidence in support of the grounds for cancellation meets the required standard, which is the 'balance of probabilities'. In other words, that it is more likely than not to be correct or true.

In some cases, we will have taken other enforcement action before taking steps to cancel. This is because we try, where appropriate and in the interests of children, to give providers time and opportunity to put matters right. When a registered provider has failed to respond and/or we have lost confidence in their ability to make and sustain improvements to meet regulations, we may decide to cancel their registration.

We may, however, cancel a provider's registration without taking any previous

enforcement action if a concern is sufficiently serious and/or when children are at risk of harm.

Monitoring visits following an NOD to cancel registration pending an appeal hearing

The registered person remains registered until 28 days after we have served the NOD to cancel. At this point, the decision takes effect, unless the provider has appealed to the First-tier Tribunal, in which case the provider remains registered until the appeal is determined. If they inform us that they do not intend to appeal to the Tribunal, the decision takes effect at that point.

As an appeal may take some time to process, we will usually carry out monitoring visits or further inspections during the interim period. We may consider additional enforcement action, such as suspending a provider's registration, if we have reason to believe that children are suffering or likely to suffer harm.

The Tribunal will consider whether cancellation remains appropriate at the point when the appeal is determined. Therefore, although the history of the registration will remain relevant, the Tribunal can also take account of evidence that has come to light since the decision to cancel was made, including evidence gathered at monitoring visits.

Emergency action

Under [section 72 of the Childcare Act 2006](#), if there is evidence that a child, for whom later years provision is being or may be provided, is suffering or is likely to suffer significant harm, we may apply to the family proceedings court for an order to:

- cancel a registration
- vary, remove or impose a condition of registration

The legal definition of 'harm' is as set out in [section 31 of the Children Act 1989](#). In this context, 'harm' means ill-treatment or the impairment of health or development, including, for example, impairment suffered from seeing or hearing the ill-treatment of another. 'Development' means physical, intellectual, emotional, social or behavioural development. 'Health' means physical or mental health. 'Ill-treatment' includes sexual abuse and forms of ill-treatment that are not physical. Where the question of whether harm suffered by a child is significant depends on the child's health or development, their health or development shall be compared with that which could reasonably be expected of a similar child.

Emergency orders take effect immediately and apply to all settings under a single

registration.

Where possible, we will give the registered person notice of our application for an emergency order and give reasons for it, so that they may attend the hearing and make representations.

There are some circumstances, however, where it will be necessary to make the application without notice to the registered person. For example, when:

- notifying them might place children at risk of harm
- the risk is so serious that there is no time to notify them
- notifying them would risk that they would destroy evidence
- it has not been possible to notify them despite efforts to do so

If an emergency order is granted, the registered person may [appeal to the First-tier Tribunal](#). The order will remain in place until the appeal is determined.

Voluntary removal/resignation

A registered provider may give notice to Ofsted for removal from the register under [section 70 of the Childcare Act 2006](#). This is sometimes also referred to as voluntary cancellation or resignation.

The provider should not assume that we will remove their registration under section 70A, for example, if the annual fee is not paid. If the annual fee is not paid, we will cancel the registration unless we are given notice that the provider wants to be removed from the register.

In most circumstances where notice is given, we will remove the provider from the register. This will not result in disqualification.

If we have concerns about the provider, we will keep the information on record because we may wish to consider this should the provider seek future registration with Ofsted. We will write to the provider to let them know we have done this. Voluntary removal will not prevent us from making a referral to the DBS or to any other agencies if appropriate.

For providers registered on the compulsory parts of the Childcare Register, if we have already served the provider with an NOI to cancel registration, we will not remove the provider from the register unless we have decided not to pursue cancellation. For providers registered on the compulsory parts of the Childcare Register, we will not remove them from the register after an NOD has been served.

Our enforcement actions: childminder agencies

This section applies to [providers registered as childminder agencies](#). Childminder agencies are responsible for supporting and quality assuring the childminders and childcare on domestic premises providers that are registered with them. Throughout this section, we use the term 'childcare provider' to refer to both childminders and childcare on domestic premises providers.

There are 4 aspects to Ofsted's regulation of childminder agencies. These are:

- registering agencies
- inspecting registered agencies
- checking that agencies meet the legal requirements for registration
- taking enforcement action where an agency does not meet the requirements for registration

We have a range of enforcement powers to use in regulating childminder agencies, including:

- refusing a registration
- imposing or varying conditions of registration
- raising an action
- cancelling a registration

We will consider all available evidence and information about non-compliance, as well as the enforcement options available, before we make a decision.

Refusing a registration

When we [receive an application to register](#), Ofsted will consider whether the childminder agency meets, and is likely to continue to meet, the requirements of [The Childcare \(Childminder Agencies\) \(Registration, Inspection and Supply and Disclosure of Information\) Regulations 2014](#). The registration requirements are outlined in our [registration guidance for childminder agencies](#).

If it appears that the requirements are satisfied, and will continue to be satisfied, we will grant the application to register. Otherwise, the application will be refused

([sections 51a and 61a of the Childcare Act 2006](#)).

If we intend to refuse an applicant's registration, [we will serve an NOI](#). This will set out the reasons for the refusal. The applicant may [make an objection to Ofsted](#). If the objection is not upheld, [we will serve an NOD](#) and the applicant may choose to [appeal to the First-tier Tribunal](#).

Childminder agency applicants may withdraw their application for registration at any stage. If we have concerns about an applicant who withdraws their application, we will record our concerns and may consider them if the applicant applies to register in the future. We will write to the applicant to let them know we have done this. We will also consider referrals to the DBS or other agencies, if appropriate, in line with our safeguarding obligations.

Imposing or varying conditions of registration

In some circumstances, we can impose, vary or remove conditions of registration. It is an offence to fail, without reasonable excuse, to comply with a condition of registration.

We may impose, vary or remove conditions of registration on an agency's registration under [section 51c](#) and [section 61d](#) of the Childcare Act 2006. We serve an NOI setting out the reasons for the action proposed. The agency may object. However, if these objections are not upheld, an NOD will be served against which [an agency may appeal](#).

We have the power to impose conditions at the point of registration of a childminder agency. However, we will not impose at this stage a condition that replicates a legal requirement. If we are not satisfied that an applicant is able to meet the prescribed requirements for registration, we will not register them as suitable to operate a childminder agency.

The legislation states that Ofsted can impose any condition it thinks fit on a provider's registration. We will not impose a condition that conflicts with the legal requirements, including the EYFS. For example, we will not impose a condition that is less onerous or less restrictive than a statutory requirement or appears to have the effect of removing a statutory requirement. We will only use clear, proportionate and reasonable conditions.

Raising an action

If a childminder agency is not meeting the requirements of the [relevant regulations](#) we will set actions.

These actions are normally included in the inspection report but may be sent in a separate letter following regulatory activity. The letter sets out the actions that a childminder agency must take by a certain date to meet the requirements.

We expect the registered person to demonstrate how the action taken is improving the standards of the agency, as well as the standards of the agency's employees and childcare provider registered with it. They should also demonstrate how the action taken ensures that they meet the requirements so that children's safety and welfare are maintained.

The agency must respond, within the specified timescale, setting out the action that they have taken to meet the requirements. We will review their response and may visit or inspect again to check that they are meeting all the regulations.

If the provider fails to comply with the action, we will consider whether further enforcement action is appropriate.

Cancelling a registration

[We can cancel an agency's registration with an NOI](#) under [section 69B of the Childcare Act 2006](#). In this case, the agency may [make an objection to Ofsted](#) and [appeal to the First-tier Tribunal](#) once the [NOD has been served](#), either after the NOI has been served or after an unsuccessful appeal.

Cancellation will apply to all of the agency's registrations.

If an agency whose registration is cancelled carries on operating, they will be committing a criminal offence and [we may prosecute](#).

Making the decision to cancel an agency's registration

[Section 69B of the Childcare Act 2006](#) sets out grounds for cancellation as follows:

- the registered person has become disqualified
- the prescribed requirements for registration have ceased, or will cease, to apply

- the registered person has failed to comply with a condition imposed on their registration
- the registered person has failed to comply with a requirement imposed on them by the regulations
- the registered person has failed to pay a registration fee

If a person has become disqualified, then we must cancel registration as this is a mandatory ground for cancellation.

If any of the other grounds for cancellation apply, then we may cancel registration as these are discretionary grounds for cancellation. In these cases, we will always exercise discretion in a reasonable, proportionate and consistent way.

We are likely to cancel registration where one or both of the following apply:

- there is evidence to suggest that the provider is not acting purposefully to resolve the matter within a reasonable timescale
- we consider that cancellation is the only way to assure the safety and well-being of children

The above list is not conclusive, however, and we may proceed to cancellation in other circumstances where grounds to cancel exist, and it is reasonable and proportionate to do so. For example, we may proceed to cancellation if we judge a childminder agency to be ineffective.

We will ensure that the evidence in support of the grounds for cancellation meets the required standard, which is the 'balance of probabilities'. In other words, that it is more likely than not to be correct or true.

We will try, where appropriate and in the interests of children, to give childminder agencies time and opportunity to put matters right. When a registered childminder agency has failed to respond and/or we have lost confidence in their ability to make and sustain improvements to meet regulations, we may decide to cancel their registration.

We may, however, cancel an agency's registration immediately if a concern is sufficiently serious and/or when children are at risk of harm.

Monitoring visits following an NOD to cancel registration pending an appeal hearing

The childminder agency remains registered until 28 days after we have served the

NOD to cancel. During that time, childcare providers registered with the agency are still able to operate. After 28 days, the decision takes effect, unless the agency has appealed to the First-tier Tribunal, in which case they remain registered until the appeal is determined. This means that childcare providers registered with the agency are still able to operate. If the agency informs us that they do not intend to appeal to the Tribunal, the decision takes effect at that point and the agency is no longer registered and the childcare providers registered with the agency are no longer able to operate.

As an appeal may take some time to process, we will usually carry out monitoring visits or further inspections during that the interim period.

The Tribunal will consider whether cancellation remains appropriate at the point when the appeal is determined. Therefore, although the history of the registration will remain relevant, the Tribunal can also take account of evidence that has come to light since the decision to cancel was made, including evidence gathered at monitoring visits.

Impact of cancellation on childcare providers registered with the agency

If we cancel a childminder agency's registration with Ofsted, any childcare providers who are registered with the agency (unless they are disqualified or we think they may be disqualified) will have their registration transferred to Ofsted when the decision takes effect. This is either 28 days after the NOD was served or, if there is an appeal, when the outcome is determined and the First-tier Tribunal upholds the decision to cancel. Childcare providers registered with the agency can continue to operate until the agency's registration is cancelled.

If we take steps to cancel the agency's registration, we will write to the agency's childcare providers to:

- explain that we have served the agency with an NOI to cancel its registration
- advise them that they must either apply to register with another agency or be transferred automatically to Ofsted once the NOD is served

Childcare providers must be registered with Ofsted or a childminder agency to provide childcare.

If we think childcare providers may be disqualified

All childcare providers still registered with the agency at the point of cancellation will be transferred to Ofsted, unless they are disqualified or we think they may be disqualified. We may carry out checks on childcare providers so that we can

establish whether they are disqualified.

If any childcare provider is disqualified, they will need to [apply to Ofsted for a waiver](#) and apply to register in the usual way.

Voluntary removal from the register

[Section 70 of the Childcare Act 2006](#) sets out that a childminder agency may give notice to Ofsted of their wish to be removed from the register.

The agency should not assume that we will remove their registration under section 70, for example, if the annual fee is not paid. If the annual fee is not paid, we will cancel the registration unless we are given notice that the agency wants to be removed from the register.

In most circumstances where notice is given, we will remove the agency from the register. This will not result in disqualification.

If we have concerns about the childminder agency, we will keep the information on record as we may wish to consider this should they seek future registration with Ofsted. We will write to the agency to let them know we have done this. This will not prevent us from making a referral to DBS or to any other agencies if appropriate.

Section 70 of the Childcare Act 2006 also sets out that if we have already served the childminder agency with an NOI to cancel registration, we will not agree to the request for removal unless we have decided not to take that step. We will not accept a request to remove the agency from the register after an NOD has been served.

Where an agency voluntarily resigns their registration, any childcare providers who are registered with the agency will have their registration transferred to Ofsted when the resignation takes effect (unless they are disqualified or they have notified Ofsted they do not wish to transfer). Ofsted will require information about the providers that are being transferred which will be obtained from the agency or the provider themselves. The transferred registration will end 6 months after the agency resigns. If by then the provider has not had an application granted for ongoing registration with Ofsted or another childminder agency, their registration with us will end and it will not be legal for them to continue operating.

Surveillance

Ofsted is authorised under the [Regulation of Investigatory Powers Act \(RIPA\) 2000](#) to carry out directed surveillance to prevent or detect a crime.

We only use directed surveillance in the regulation of early years providers when we need to provide evidence that a provider has committed or is committing an offence and we have exhausted all other methods of gathering evidence, such as unannounced visits.

See our [directed surveillance policy](#) for more information.

CCTV

Providers may choose to use webcams and closed-circuit television (CCTV) to allow parents to see children and to allow managers to monitor staff and children. It is for providers to decide whether these arrangements are appropriate and operated in line with the GDPR, the Data Protection Act 2018 and the Human Rights Act 1998. The use of CCTV is not covered by the EYFS. Ofsted neither endorses nor prevents the use of CCTV.

If using CCTV means that the provider fails to meet any other requirements of the EYFS, we would take action. We expect providers to share information with parents on the use of CCTV and how images of their children are stored and destroyed. We would also expect providers to do the same with inspectors on visits/inspections.

[The Information Commissioner's Office](#) will be able to advise providers on storing records and other aspects of data protection.

Referrals to the DBS

We have a statutory power to refer individuals to the DBS under [section 45 of The Safeguarding Vulnerable Groups Act 2006](#). We will do this when the conditions set out in legislation are satisfied. The DBS can decide whether to include the individual on its lists of people who are barred from working with children and/or vulnerable adults (known as 'barred lists').

The DBS is responsible for deciding whether to include a person on a barred list. The DBS has [guidance about the referral process](#).

We can use our power to refer where we think a person has either:

- harmed or poses a risk of harm to a child or vulnerable adult
- satisfied the 'harm test' (see definition below)

We can also use it where:

- the person has received a caution or conviction for a relevant offence
- the person is, or might in future be, working in a regulated activity
- we think the DBS may consider it appropriate for the person to be added to a barred list

The 'harm test' is set out in [section 45\(3\) of the Safeguarding Vulnerable Groups Act 2006](#). It is that the person may:

- harm a child or vulnerable adult
- cause a child or vulnerable adult to be harmed
- put a child or vulnerable adult at risk of harm
- attempt to harm a child or vulnerable adult
- incite another to harm a child or vulnerable adult

'Harm' is not defined in the legislation. However, the DBS states that it views harm as 'its common understanding or the definition you may find in a dictionary'. Its guidance goes on to state that harm is considered in its widest context and may include:

- sexual harm
- physical harm
- financial harm
- neglect
- emotional harm
- psychological harm
- verbal harm

In some cases, we may decide to refer an individual to the DBS before we have gathered all the evidence relating to misconduct, but when the limited information that we have satisfies the relevant tests for referral. For example, we may do this when a registered early years provider applies for voluntary cancellation before we complete our assessment and we have not served a notice of our decision to cancel but we have concerns about that person.

Under the same Act, providers have a legal duty to refer to the DBS when the conditions are met, and [it is an offence to fail to provide relevant information to the DBS without a reasonable excuse](#).

Registered persons, therefore, must understand and act on their obligations to refer an individual to the DBS in the appropriate circumstances.

If we become aware that the registered person has not taken this step, we will:

- make the referral ourselves
- let the DBS know that the registered person failed to make the appropriate referral
- consider why they did not do so, and whether this failure affects their suitability to remain registered and/or their suitability to work with children and/or vulnerable adults

Disqualification and waivers

Disqualified persons

The law disqualifies some people from registering as a childminder or childcare provider. See guidance on [how to tell if you might be disqualified](#).

The disqualification provisions are set out in [section 75](#) and [section 76](#) of the Childcare Act 2006 and in the [Childcare \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018](#).

A person who is disqualified must not provide early or later years childcare provision that requires registration or be directly concerned in the management of this provision. It is an offence if they do so.

It is also an offence to knowingly employ a disqualified person in connection with this provision.

A childminder agency must not register a person who is disqualified from registration and it is an offence to knowingly do so.

The law also disqualifies some people from registering as an early or later years

childminder agency ([section 76A](#) and [section 76B](#) of the Childcare Act 2006).

It is an offence for a person who is so disqualified to:

- exercise any functions of a childminder agency
- represent that they can exercise such functions
- be a director, manager, officer of or partner in a childminder agency, or be on the governing body or be directly concerned in the management of the childminder agency
- work for a childminder agency in any capacity that involves entering premises on which early or later years childcare is provided

A childminder agency must not employ a person disqualified from registering as a childminder agency in any capacity that involves being directly concerned in the management of a childminder agency or where they may enter premises on which early or later years childcare is being provided. It is an offence to knowingly do so.

The circumstances that cause disqualification are set out fully in the [Childcare \(Disqualification\) and Childcare \(Early Years Provision Free of Charge\) \(Extended Entitlement\) \(Amendment\) Regulations 2018](#).

In considering whether or not a person is disqualified, we also consider the provisions in the [Rehabilitation of Offenders Act 1974](#) and [The Rehabilitation of Offenders Act 1974 \(Exceptions\) Order 1975](#), which set out when convictions and cautions become spent. However, we will not consider the convictions and cautions to be spent in relation to the suitability of a person if they are directly providing, involved in the management of, or employed in connection with childcare. The same applies if the person lives or normally works on childcare premises. See further guidance on the provisions for [rehabilitation of offenders](#).

Duty to disclose

Registered persons on the Early Years Register and/or Childcare Register must tell us about any information that disqualifies them or disqualifies them by virtue of living with a disqualified person (where childcare is provided in domestic settings or under a domestic premises registration).

They must provide:

- details of the precise order, determination, conviction or other ground for

disqualification

- the date when the order, determination, conviction or other ground for disqualification arose
- the name of the body or court
- the sentence imposed (if any)
- a copy of the relevant order

The information must be provided to Ofsted (or to the childminder agency if a childminder is registered with one) as soon as reasonably practicable, but in any event within 14 days of the time when they became aware of the information, or would have become aware had they made reasonable enquiries. A failure to meet this requirement may lead us to consider taking enforcement action.

In the case of early years providers, there is also a requirement to [notify Ofsted of certain significant events](#). This includes notifying us of 'any other significant event which is likely to affect the suitability of the early years provider or any person who cares for, or is in regular contact with, children on the premises on which childcare is provided to look after children'. This would include telling us about a disqualification. Childminders with domestic premises and providers of childcare on domestic premises also have to tell us about the disqualification of any person they live with or any person living or working on the premises where childcare is provided. Childminders without domestic premises must tell us about the disqualification of any person looking after children at any non-domestic premises used for childcare. These events must be notified in advance where practicable, and otherwise as soon as reasonably practicable, but in any event within 14 days of when the event occurred. Failure to notify us of these events, without reasonable excuse, is an offence.

Providers must inform us if they want to employ, or discover they have employed, a disqualified person. This includes any person who was not previously disqualified but is now disqualified under any new or amended regulations, or through any new offences or disqualifying events that happen after the registration is granted since the person was employed.

If we receive information that an existing registered person or staff member is disqualified from registration, we will inform the registered person. We will confirm in writing that we have received information indicating they are, or a staff member is, disqualified. We do this to allow the registered provider to take action before we do. We would expect to receive a waiver application from the registered person within 14 days. The registered person will also need to consider whether they need to take any further action regarding the staff member or their role with the setting.

For those registered on the Early Years Register and the Childcare Register, the law requires us to cancel the registration of a registered person who becomes disqualified. It does not give us any discretion not to do so. We must write to the registered person and tell them that the law requires us to cancel their registration. This will include all settings within the registration. They can apply to us to waive their disqualification. We must receive their application to waive disqualification within 14 days of receipt of the NOI.

If an application for registration indicates that a person is disqualified

We cannot grant an application to register with Ofsted if the application indicates that any of the following individuals are disqualified from registration:

- the applicant for registration
- a person making up the registered organisation
- someone living or working on the premises where childminding or childcare on domestic premises is provided

We cannot consider the application to register unless:

- we have waived the disqualification
- the disqualified person is removed from the application to register
- the person has provided evidence that they are not disqualified

In these cases, we will inform the applicant of the reasons why we cannot grant the application to register. In refusing, we must be clear that the reason for refusal is because of the disqualification.

Applying to waive disqualification

Ofsted has the power to [waive disqualification](#).

However, we have no power to waive the disqualification if a person:

- is included on a DBS barred list
- has committed an offence against a child within the meaning of [section 26\(1\) of](#)

[the Criminal Justice and Courts Services Act 2000](#) (despite the offence now being repealed) and the court ordered that they are disqualified from working with children – under [sections 28\(4\), 29A\(2\) or 29\(4\) of the same Act](#)

If this is the case, we write to the individual to inform them that we cannot waive their disqualification.

For childminders, nannies and providers of childcare on domestic premises, people may be ‘disqualified by association’. This happens if they live on premises where a disqualified person lives or works. In these cases, the individual disqualified by association must apply to waive the disqualification, rather than the disqualified individual, or ‘associate’.

We consider a waiver application before, and separately from, any application to register. If we waive disqualification, a person may then apply for registration. This does not automatically mean we will grant registration. We encourage applicants to give us as much information as possible, including details of their job description if they are applying for a specific role. This helps us to determine the waiver application. The waiver process and registration process are different processes.

Making the decision on waiving disqualification

When we receive an application to waive a disqualification, we will check that the person in question is disqualified from registration. If we have the power to waive that disqualification, we will follow our decision-making process.

We consider each request on its own merits. We take into account:

- the reasons for the disqualification
- the length of time since the matter took place that disqualifies the person
- the reasons in the application for wanting us to waive the disqualification
- any risks to children from allowing the person to provide or work in early years and childcare provision

We may ask the applicant for more information or to get a criminal conviction certificate, a criminal record certificate or an enhanced criminal record certificate, as appropriate, from the DBS. We may also ask the applicant to attend an interview with us. We will carefully consider the application and the circumstances of the disqualification. We will notify the applicant in writing, usually by email, of our decision.

If we decide to waive a disqualification, the letter we send will explain the

circumstances that apply to our decision. The applicant will need to keep the letter in case it is needed to show an inspector or new employer. This also applies to anyone connected with the application.

Extent of consent to waive disqualification

We may specify the extent to which we agree to waive a disqualification. For example, we may limit it to a particular setting or role.

Limiting the decision to waive disqualification in this way means that the individual has to reapply if their circumstances change or the risk to children changes.

Refusal to waive disqualification

If someone is already registered with us and we decide not to waive disqualification, we will write to the registered person explaining our refusal. We will send an NOI to cancel at the same time.

The registered person can object to other issues raised in the NOI to cancel, if we have also included points relating to non-compliance with regulations or other factors concerning their suitability. Even if we uphold the provider's objection to these other issues, we must still serve a notice of our decision to cancel the registration on the grounds that the registered person is disqualified, unless they provide evidence that the information we have about the disqualification is inaccurate and they are not disqualified. The person can appeal to the Tribunal.

If the disqualification relates to a member of staff at a childminding or childcare setting, the registered person commits an offence if they continue to employ the disqualified person after our refusal. It is also an offence for a disqualified person to be directly involved in the management of the provision. We may prosecute a person who knowingly employs a disqualified person. This does not apply to a person who is registered only on the voluntary part of the Childcare Register.

How to appeal if we refuse to waive a disqualification

The disqualified person can appeal to [the First-tier Tribunal](#) against our decision to refuse an application to waive their disqualification. The appeal must be made in writing within 28 days of the date of our decision letter.

Notices of intention and decision

Some enforcement steps can only be taken through the NOI and NOD process. Throughout this process, we continue to monitor the provider's compliance with the relevant requirements and, importantly, any risk to children.

We serve these notices when taking certain steps, including:

- refusing a registration application
- refusing approval to add additional or different premises to an existing registration
- imposing, varying or removing conditions imposed on a person's registration
- refusing to grant an application to vary or remove conditions
- refusing to waive a disqualification
- cancelling a person's registration

The steps involved in this process are:

- serving the NOI: we must lawfully serve the notice on the correct registered provider or applicant for registration
- objections: a registered provider or applicant for registration has 14 days from the time when we serve the NOI to make an objection to us
- NOD: if we decide not to uphold an objection, or an objection is not made, we write an NOD telling the registered provider or applicant for registration why we have decided to take this action and detailing our evidence
- appeals to the First-tier Tribunal: in most cases, a registered provider or applicant for registration has 28 days after we serve the NOD to appeal to the First-tier Tribunal
- NOD takes effect: an NOD to refuse takes effect immediately; other NODs take effect once the 28-day appeal window has lapsed and the registered provider or applicant for registration has not lodged an appeal or their appeal is dismissed. We write to the registered provider or applicant for registration to inform them that the action has now taken effect
- monitoring compliance: we must ensure that the registered provider is complying with the notice

Serving a notice

We serve NOIs in writing under [section 73 of the Childcare Act 2006](#). This notice gives our reasons for proposing to take the step and sets out the recipient's rights to object to our action.

We serve a notice:

- in person
- by courier
- by post, including in a registered letter or by the recorded delivery service

Making an objection

We do not serve an NOD until at least 14 days from the service of the NOI. Please see our [guidance on how to object to an NOI](#).

We will confirm our objection decision in writing. If we uphold the objection, we will send an outcome letter confirming that we will not proceed with an NOD. If we do not uphold the objection, we will set out the reasons in the outcome letter. Where possible, we send the NOD at the same time as the outcome letter. We include information about the right to appeal against our decision to the First-tier Tribunal.

Notice of decision

We will not serve an NOD until 14 days after service of the NOI, unless an objection is received.

If an objection is made and not upheld, the NOD will include the reasons why we have decided to take the step, including any matters we considered during the objection. The NOD will include information about the right to appeal to the Tribunal.

For registered providers, decisions do not come into effect until either:

- 28 days after the NOD has been served
- after the outcome of any appeal the provider makes to the First-tier Tribunal (if the appeal is not successful)

For applicants for registration, the decision to refuse registration takes effect on service of the NOD.

If the applicant, provider or childminder agency tells us, in writing, that they do not intend to appeal against the decision, the decision takes immediate effect.

Appeals

A registered person or applicant may appeal to the [First-tier Tribunal \(Care Standards\)](#) against an NOD or a suspension notice.

Providers may also appeal to the Tribunal against an emergency order made by a magistrate to:

- cancel a registration
- vary, remove or impose a condition of registration

How to appeal

Please see our [guidance on how to appeal](#).

An appeal must be lodged within the correct timeframes as set out in the notice that is the subject of the appeal.

To appeal, the registered person or applicant should email cst@hmcts.gsi.gov.uk

They must include a copy of the notice against which the appeal is brought, and an appeal application form. See [forms and other information for the First-tier Tribunal](#).

Tribunal hearings take place around the country or remotely. It may also be possible to request a paper hearing of the appeal.

Withdrawing an appeal

Either party may ask to withdraw their case by sending a written notice to the First-tier Tribunal or orally at a hearing. The Tribunal must consent to the withdrawal.

The party that requested the withdrawal can apply to have its case reinstated. They must do this in writing within 28 days of the written notice to withdraw or the oral hearing occurring.

Notice of the First-tier Tribunal hearing

The First-tier Tribunal will give at least 14 days' notice of the time and place of the hearing, or if this changes.

For expedited appeals, the Tribunal will give notice as soon as the hearing is set.

Burden of proof

For registered providers, the burden of proving the case rests with Ofsted. For example, in an appeal against a cancellation decision, it is our responsibility to establish the grounds for cancellation and that our decision is reasonable and proportionate in the circumstances.

However, for those applying to be registered, the law places the burden of proof on the applicant to demonstrate their suitability.

Legal advice or representation

Providers may wish to seek legal advice and/or representation for an appeal against a decision Ofsted has made. It is not unusual for parties who appeal to the First-tier Tribunal to represent themselves. If so, the Tribunal will usually try to ensure that the provider or applicant understands the process and what they need to do.

How the Tribunal makes a decision

The First-tier Tribunal will consider the case based on the evidence available on the date of the hearing. This means that the Tribunal may take account of evidence that has come to light since the original decision was made. This might be evidence from monitoring visits and/or an inspection, or other evidence that the person appealing wants to provide.

The outcome of the appeal

In oral hearings, the First-tier Tribunal may choose to tell both parties its decision verbally, but more commonly it will reserve its decision while considering the facts and submissions.

The Tribunal must provide each party with:

- a notice stating the Tribunal's decision
- written reasons for the decision
- details of how to ask it to review the decision, or how to appeal

Reviewing the decision

In certain circumstances, either party may apply to the principal judge of the Tribunal for a review of the decision. Neither party can apply for a review on the grounds that they do not agree with the decision. They can only apply for a review if they believe there is an error of law in the decision.

If the First-tier Tribunal decides not to review the decision, or reviews it and decides to take no action, the party can apply for permission to appeal. The Tribunal must send to both parties:

- a record of its decision
- a statement of its reasons
- details of any rights to appeal to the Upper Tribunal and the timeframes for this
- details of any rights to make representations

Appeals to the Upper Tribunal

Either party may apply to the Upper Tribunal for permission to appeal. A party can only do this after it has first applied to appeal to the First-tier Tribunal and had this application refused. They must apply in writing no later than 1 month after the First-tier Tribunal made the decision to refuse permission to appeal.

Prosecution

Ofsted's prosecution function is an important part of its wider regulatory enforcement approach, which aims to safeguard children.

If we suspect that a relevant criminal offence is being or has been committed, we may carry out a criminal investigation. The relevant criminal offences are listed in [Annex B](#).

All investigations of criminal offences should be carried out having regard to any relevant principles contained in the [Police and Criminal Evidence Act 1984 \(PACE Act\)](#) and [codes of practice](#).

The decision to prosecute and the way in which we pursue a prosecution will vary, depending on the offence and any actions that we must take first. Prosecution for some offences can only be brought after we have taken certain procedural steps. For example, some require a suspect to have had an opportunity to make representations. Other offences do not need any steps before bringing a prosecution.

If an offence is committed by a registered provider, we will consider whether we should take regulatory enforcement action (such as cancellation of registration) instead of a criminal investigation. This will depend on the nature and seriousness of

the offence. In certain cases, we may need to take both regulatory and criminal action.

Where a registered person or body is convicted of an offence that we have prosecuted, we will consider any conviction in determining their ongoing suitability for registration. We may also take this into account when determining any new application for registration. Some convictions also lead to a person becoming disqualified from certain activities involving the care of children.

Deciding who to prosecute

We will identify and prosecute any person (including, for example, individuals, bodies corporate or unincorporated associations), where we consider this is warranted.

For offences committed by bodies corporate, if the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager or similar (or anyone acting in these capacities), that person is also guilty of the offence. This is in addition to the body corporate being guilty. The person is therefore liable to be proceeded against and punished accordingly. Therefore, we will consider the management arrangements and the role played by individual directors and managers in these cases. We will consider taking action against them where the investigation reveals that the offence was committed with their consent or connivance or was attributable to their neglect, and where it would be appropriate to do so in accordance with this policy.

Deciding whether to prosecute

We will only prosecute when:

- there is sufficient evidence to provide a realistic prospect of conviction (this is called 'the evidential test')
- prosecution is in the public interest

Evidential test

We must be satisfied that there is sufficient evidence to provide a realistic prospect

of conviction against each suspect on each charge. We must consider what the defence case may be and how it is likely to affect the prospects of conviction.

A case that does not pass the evidential test must not proceed, no matter how serious or sensitive it may be. Our view that there is a realistic prospect of conviction must be based on an objective assessment of the evidence, including the impact of any defence and any other information that the suspect has put forward or that they might rely on. It means that an objective, impartial and reasonable bench of magistrates or judge hearing a case alone, properly directed and acting in accordance with the law, is more likely than not to convict the defendant of the charge.

The evidential test is a different test from the one that the criminal courts must apply. A court may only convict if it is sure that the defendant is guilty.

When deciding whether there is sufficient evidence to prosecute, we may consider:

- whether the evidence can be used in court
- the likelihood of that evidence being held as inadmissible by the court
- the importance of that evidence in relation to the evidence as a whole
- the reliability of the evidence, including its accuracy and integrity
- whether the evidence is credible and whether there are any reasons to doubt this

Public interest test

In every case in which there is sufficient evidence to justify a prosecution, we will go on to consider whether a prosecution is required in the public interest.

We will only consider this stage if the evidential test is met. The list is not exhaustive, but some of the factors we may take into account are as follows.

a) How serious is the offence?

The more serious the offence, the more likely it is that a prosecution is required.

When assessing the seriousness of an offence, we will consider the suspect's culpability and the factors relating to harm. We will do this by asking ourselves the questions at b) and c).

b) What is the level of culpability of the suspect?

The greater the suspect's level of culpability, the more likely it is that a prosecution is required.

Culpability is likely to be determined by answering questions such as:

- what was the suspect's level of involvement?
- what was the period, or extent, of the offending?
- what was the role of the suspect in the offence (particularly where there are multiple suspects)?
- to what extent was the offending premeditated and/or planned?
- was there any deliberate or malicious intention to avoid compliance, or prevent the discovery of an offence and/or regulatory breach?
- has the suspect misled anyone as to their registration status?
- to what extent has the suspect benefited, or intended to benefit, from the offence?
- does the suspect have any previous convictions or cautions, or have they previously been sent warning letters, for similar offences?
- is the offending likely to be continued, repeated or escalated?
- has the suspect displayed genuine remorse and shown insight into the offending?
- how did the offending come to an end? For example, did it end voluntarily and before Ofsted discovered it, or on our discovery? Or did it continue even after the suspect was made aware they were under investigation or after they were served with a warning letter?

c) What are the circumstances of harm, or potential harm, caused by the offence, in particular to children?

The greater the harm caused by the offence, or the risk of harm created by the offence, the more likely it is that a prosecution is required.

Questions relevant to harm to ask include the following:

- has actual harm been caused or was there a risk of harm being caused?
- how serious was the harm (whether actual harm or potential harm)?
- has the suspect's registration been cancelled previously or have they been refused registration with Ofsted, and what were the reasons for the cancellation or refusal; for example, did they relate to safeguarding concerns?
- has there been a failure to comply with a formal notice imposed by Ofsted to address a risk of harm, such as a notice of restriction, suspension or emergency condition?
- have the suspect's actions negatively impacted on a third party?

d) Is prosecution important in order to maintain public confidence in the

system of regulation, with the overall aim of upholding standards and safeguarding children?

It is likely to be in the public interest to prosecute where a person commits an offence having previously been disqualified or served with an enforcement notice.

It is also likely to be in the public interest to prosecute where not holding the person to account is likely to undermine public confidence, or the confidence of registered providers, in the system of regulation.

e) Is prosecution a proportionate response?

To answer this, we may ask:

- where a suspect is a registered person, is it sufficient to take regulatory action in response to the offence?
- would an alternative disposal be appropriate in all of the circumstances and meet the needs and seriousness of the case?
- is the likely cost of bringing the prosecution a reasonable and effective use of resources, given the circumstances and merits of the case?

Discontinuing a prosecution

Ofsted will decide whether to discontinue a prosecution. This will be based on the evidential test and public interest factors set out above.

If a case is discontinued, this decision can be reviewed if, for example, further evidence comes to our attention.

Releasing information about criminal prosecutions

Except where we think ongoing enforcement action may be compromised, we will normally release details of all criminal convictions, when requested.

It is important that media enquiries are directed to our press office. We do not routinely prepare press releases in advance of any prosecution, but we will respond to media enquiries through our press office about a prosecution or other matters.

Warning letters

Warning letters are non-statutory actions. We may issue a warning letter where we have a reasonable belief that an offence is being committed. We may send a warning letter without seeking to carry out a PACE interview under caution with the suspect.

A warning letter sets out the offence that we reasonably believe is being committed. It informs the person that if they are committing the offence, they should stop immediately.

If the offence involves carrying on a provision while not registered, we also inform the person that if they wish to operate provision that requires registration, they must apply for registration. We will also notify them that it is an offence to operate until they are registered, including while an application is in progress. We may also notify and/or share information with other relevant agencies that we have served a warning letter.

We may issue a warning letter and go on to determine whether an offence has been and/or is continuing to be committed. If the evidence meets the test for prosecution, we may also instigate a prosecution.

Ofsted cautions

An Ofsted caution should not be confused with a caution or a conditional caution from the police. The Ofsted caution is non-statutory and not recorded on the Police National Computer. It may be used in cases where we have sufficient evidence to bring a prosecution and the offender has admitted the offence but there are public interest factors that weigh against prosecution.

There is no obligation on a provider to accept a caution. If a provider refuses a caution, we will usually proceed to prosecution.

We may issue a caution against any person, whether registered with us or not, who commits an offence for which we are the prosecuting authority.

If a person has previously received a caution, we would not normally consider issuing a further caution. However, if there is a sufficient lapse of time to suggest that a previous caution was a significant deterrent (2 years or more), or the subsequent offence is unrelated, we may consider a further caution.

We may take an Ofsted caution into account when making any judgements about the registration of a person or body, including their suitability to be registered. Also, if a person is prosecuted for an offence, we may apply to cite details of any Ofsted

caution as evidence of the person's bad character.

An Ofsted caution is not disclosable as a part of any DBS check. However, we may share the information relating to the caution with other agencies in appropriate circumstances.

Unregistered childcare providers and provision on unapproved premises

Most childcare providers looking after children under the age of 8 must register with Ofsted or with a childminder agency, apart from in [certain exemptions](#). There are a number of offences linked to providing unregistered childcare.

We consider information about unregistered services and provision on unapproved premises and take appropriate action. We consider all of the information available to us, including whether the person is previously known to Ofsted. We normally visit when the information indicates there is unregistered childcare, or childcare is being provided on unapproved premises.

We may:

- contact the person (or registered person for childcare being provided on unapproved premises) for a description of the service that they are providing or are alleged to be providing
- carry out a visit to assess whether registration is required
- refer the information to the local authority or the police, if it suggests there are child protection concerns
- decide, from information we have received about the service provided, that the person does not need to register with us and confirm this in writing
- serve an enforcement notice if it appears a person is acting as a childminder without being registered
- issue a warning letter (sending a warning letter does not mean that we will not also seek to prosecute where evidence meets the test for prosecution)
- begin a criminal investigation, which may include an interview under the PACE Act
- prosecute the person for committing an offence

If appropriate, we encourage the person to apply for registration.

Unregistered childminder agencies

Childminder agencies must register with Ofsted and be inspected by us. Registration allows an individual or organisation to operate as a childminder agency. We are responsible for ensuring that only those who are suitable and ready to operate as an agency are registered.

A childminder agency must not operate without being registered and must meet a range of legal requirements. It is an offence to falsely represent that you are a childminder agency, to knowingly make a false or misleading statement in applying to register as an agency, or to exercise the functions of a childminder agency, work for or manage such an agency if you are disqualified. You may be prosecuted if you do these.

We may:

- contact the person for a description of the service that they are providing or are alleged to be providing
- visit the person to assess whether registration is required
- refer the information to the local authority or the police, if it suggests there are child protection concerns
- decide, from information we have received about the service provided, that the person does not need to register with us and confirm this in writing
- issue a warning letter (sending a warning letter does not mean that we will not also seek to prosecute where the evidence meets the test for prosecution)
- begin a criminal investigation, which may include an interview under the PACE Act
- prosecute the person for committing an offence

If appropriate, we encourage the person to apply for registration.

Enforcement notice (childminding on domestic premises only)

We serve an enforcement notice under [section 33](#) and [section 52](#) of the [Childcare Act 2006](#). An enforcement notice is a legal letter that we send to a person telling them that they cannot provide childminding on domestic premises without being registered.

We serve an enforcement notice if it appears to us that a person is providing childminding from a domestic premises for which registration is required, without being registered.

An enforcement notice takes immediate effect from the date it is served. It lasts until we revoke it. Failure to comply with the notice is an offence.

If a person applies to register as a childminder with Ofsted or with a childminder agency after we have served an enforcement notice, we will revoke the notice if we or the childminder agency grant registration.

If a person applies to register with a childminder agency after we have served an enforcement notice the childminder agency must notify us, under [section 82 of the Childcare Act 2006](#), if they intend to grant registration. We will then revoke the enforcement notice so registration can be granted, and the childminder can operate legally.

If we or the childminder agency decide to refuse registration, the notice remains in effect.

We may monitor compliance with the notice. If we are no longer concerned that a person may be providing childminding, we will revoke the notice. When we decide to revoke a notice, we send the person confirmation of our decision in writing.

If we receive information that indicates that unregistered childminding is taking place after we have served an enforcement notice, we may prosecute.

It is automatically an offence if, without reasonable excuse, a person provides childminding on non-domestic premises without registration where registration is required.

Annex A: notifications to Ofsted

Childminder agencies

Childminder agencies should tell Ofsted about any changes or significant events, as set out in the [requirements for registration](#). This includes changes to the identity of

the nominated individual, changes to the identity of those who make up the registering body and any changes to the statement of purpose.

Childminder agencies must also notify Ofsted if they believe an offence has been committed by one of their childminders and provide information as required.

Childminder agencies will not have to share with Ofsted information on childminders they register as a matter of course. However, they must do so when we request it, for example for us to sample childminders as part of our inspection of the agency.

Providers on the Early Years Register and Childcare Register

Registered providers must tell Ofsted about serious incidents or changes to their registration as soon as practical, but within 14 days. If you fail to inform us you may commit an offence.

Incident or change	Childminders and childcare providers on the Early Years Register	Childminders, nannies and childcare providers on the Childcare Register	How to notify Ofsted
---------------------------	---	--	-----------------------------

Allegations of serious harm or abuse by any person living, working or looking after children at the premises where childcare takes place (whether the allegations relate to harm or abuse committed on the premises or elsewhere) and any relevant actions

Yes

Yes (no qualification to any person, and not required to notify Ofsted of action taken)

[Report a serious childcare incident](#)

taken.

Serious accident (including food poisoning affecting 2 or more children) or injury to, or death or illness of, any child while in their care, and the action taken (see guidance on reporting accidents and injuries)	Yes	Yes (not required to notify Ofsted of action taken)	Report a serious childcare incident
Death or illness of, or serious accident or injury to, any other person on the premises.	No	Yes (except nannies)	Report a serious childcare incident
The sudden serious illness of any child for whom later years provision is provided.	No	Yes	Report a serious childcare incident
Details of any order, determination, conviction or other ground for disqualification from registration that affects either: - the registered person - any adult living, or providing childminding or childcare on domestic premises	Yes	No	Report a serious childcare incident Please provide: - the date of the order, determination or conviction, or the date when the ground for disqualification arose - the name of the body or court that made the order, determination or conviction, and the sentence (if any) imposed - a certified copy of the

relevant order (for an order or conviction)

Details of any criminal convictions and cautions of the nominated individual or anyone applying to register to provide later years provision.

No

Yes

[Report a serious childcare incident](#)

Please provide:

- the date of the offence
- the nature of the offence
- the place where the offence was committed
- the name of the court, the date of conviction and the penalty imposed/the date of the caution

Any significant event, or change to health, that is likely to affect the suitability of the registered person or any person who cares for, or is in regular contact with, children on the premises to look after children.

Yes

Yes

[Report a serious childcare incident](#)

Any change:

Yes

Yes (except nannies) (The General Childcare Registration Regulations, schedule 3, paragraph 26(b) refers to suitability rather than just

Email enquiries@ofsted.gov.uk

- in the address of the premises
- to the premises that may affect the space available to children and the quality of childcare available to them
- to the name or

address of the provider, or the provider's other contact information - to the person who is managing the early years provision		change of details)	
Any change to adults (persons aged 16 years or older) living or working on childminding or childcare on domestic premises.	Yes	Yes	Report new adults in the home Tell Ofsted about adults leaving the home
Any change to adults (persons aged 16 or over) looking after children on any non-domestic premises where a childminder without domestic premises provides care.	Yes	Yes	Report new adults in the home
Change to the registered person, nominated individual or manager.	Yes	Yes	Report changes to registered people in your nursery or other daycare
Change to the name or registered number of the company or charity providing care.	Yes	Yes	Email enquiries@ofsted.gov.uk
Change of name or address of the committee, partnership, unincorporated body	No	Yes	Email enquiries@ofsted.gov.uk

or agency.

Days and hours during which later years childcare is to be provided.	No	Yes	Email enquiries@ofsted.gov.uk
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Any proposal to change the hours during which childcare is provided or if the provision will include overnight care.	Yes	No	Email enquiries@ofsted.gov.uk
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Change of member of the partnership, committee or corporate or unincorporated body.	No	Yes	Email enquiries@ofsted.gov.uk
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If the childcare is provided by a partnership, body corporate or unincorporated association whose sole purpose is the provision of childcare, any change to the individuals who are partners in it, or any change in a director, secretary or other officer or members of its governing body.	Yes	Yes	Email enquiries@ofsted.gov.uk
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If the childcare is provided by a partnership, body corporate or	Yes	Yes	Email enquiries@ofsted.gov.uk
--	-----	-----	---

unincorporated
association, any
change to the
'nominated individual'.

Annex B: offences

A relevant criminal offence also includes those associated with any offence, for example aiding, abetting, counselling, procuring or conspiring to commit a relevant offence.

Childminders and childcare providers on the Early Years Register

Offences under the Childcare Act 2006 are:

- providing childminding on domestic premises while not registered and an enforcement notice is in effect, without reasonable excuse (under sections 33(7) and 52(7))
- providing early or later years provision (except childminding) while not registered, without reasonable excuse (under sections 34(5) and 53(5))
- providing early or later years childminding without domestic premises while not registered, without reasonable excuse (under sections 34(5) and 53(5))
- failing, without reasonable excuse, to comply with any condition imposed on registration (under sections 38(5), 58(5) and 66(5))
- acting as a childminder or providing childcare, without reasonable excuse, while registration is suspended (under section 69(9)); this does not apply to the voluntary part of the Childcare Register or to childminding/childcare activities that are exempt from registration
- providing early or later years provision or being directly involved in the management of early years or later years provision while disqualified (under section 76(4)); this does not apply if disqualification is only by virtue of the provider living in the same household as a disqualified person or if a disqualified person is employed and the provider can prove that they did not know and had no reasonable grounds for knowing that they were living in such a household (under

section 76(5))*

- employing, in connection with the provision of early or later years provision, a person who is disqualified by the regulations (under section 76(4)); this does not apply if the provider can prove that they did not know and had no reasonable grounds for believing that the person was disqualified (under section 76(6))*
- intentionally obstructing a duly authorised person exercising any power under section 77 (such as rights of entry, rights to inspect documents or rights to interview) (under section 77(8))
- knowingly making a statement that is false or misleading in a material particular in an application for registration (under section 85(1)); this applies to all registers including the voluntary part of the Childcare Register
- providing childcare provision other than on approved premises is an offence under section 7.B(1) [The Childcare \(Early Years and General Childcare Registers\) \(Common Provisions\) Regulations 2008](#).

The 2 offences marked with an asterisk (*) in this list apply equally to provision run by schools, which are otherwise exempt from regulation under sections 34(2) and 53(2).

Offences under The Early Years Foundation Stage (Welfare Requirements) Regulations 2012 are:

- failure, without reasonable excuse, to comply with the requirements of:
 - Regulation 7(1) – not to use corporal punishment and, so far as is reasonably practicable, to ensure that corporal punishment is not used on the child by any person who cares for or is in regular contact with children or any person living or working on the premises
 - Regulation 8 – to notify of events specified in the schedule within the prescribed time
 - Regulation 10(2) – failure to comply with a welfare notice within the specified period

Childcare providers on the Childcare Register

The offence under The Childcare (General Childcare Register) Regulations 2008 is failure, without reasonable excuse, to comply with the requirements of paragraph 5 of schedule 3. The requirements are that the registered person does not give corporal punishment, and ensures that no person who cares for the child, or who

lives or works on the premises, gives corporal punishment to the child (Regulation 9).

This applies to those registered on Part A of the General Childcare Register only. Former offences under the Children Act 1989 may be subject to prosecution if the offence took place before 1 September 2008.

Childminder agencies

Relevant offences under the Childcare Act 2006 apply to childminder agencies.

Relevant offences under the Childcare Act 2006 include:

- failing to comply with a condition of registration (sections 51C(4) and 61D(4))
- falsely representing that the person is a childminder agency (sections 51f and 61g)
- registering a childminder who is disqualified (section 76(4))
- running or being involved in the management of a childminder agency, or working for an agency in a capacity that involves entering a childminder's home while disqualified (section 76B(3))
- employing a person in a childminder agency who is disqualified (if that role involves being directly concerned in the management of the agency or entering a childminder's home) (section 76B(3))
- intentionally obstructing a person carrying out their statutory duties (section 78A(8))
- knowingly making a false or misleading statement in applying to register as an agency (section 85(2))

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-
1. The 'reasonable belief' test means that a person, judging a situation in the light of the law and the information concerned, would have reason to believe that a child might be at risk. We can only suspend registration if we are satisfied this test is met. [↩](#) [↩](#)²
 2. Ofsted assesses whether the domestic premises are suitable and whether the children's needs are being met. Providers can then choose to spend most of their time on non-domestic premises. They can also choose how they divide their time between domestic and approved non-domestic premises. [↩](#)

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