Guidance

Your childcare business: legal structure

This page provides information on the legal requirements and responsibilities for different types of childcare business.

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Applies to England

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Legal responsibility for registration: the registered person

If you wish to apply to register as a childcare provider, your application must be submitted by the person or organisation that will form the legal entity of the childcare provision. We call this person or organisation the ‘registered person’.

A registered person will be:

- for a childminder registration, the individual who is going to provide the childminding
- for a childcare on domestic or non-domestic premises registration, the individual or organisation that is going to be the provider of the childcare setting(s)

If we are unsure about who the registered person is, we consider the following questions to determine which person or organisation is operating the provision:

- Who recruits and employs staff at the childcare setting(s), and who pays the staff’s wages?
- Who pays for equipment?
- What arrangements are in place for using the premises? (Is it leased to a company/individual or mortgaged, and if so who holds the lease/mortgage?)
- Who enters into care agreements with parents?
- Who is responsible for any fees charged and collected for using the daycare facility?
- Who draws up and implements the policies and procedures?
- Who holds liability insurance for the provision?
- Who would represent the organisation in court if Ofsted needed to carry out enforcement action?

The registered person: registering as an individual

If you are registering as an individual, you will register as a sole trader.

A sole trader is a single person who holds all ownership and responsibility. All childminders and nannies must be registered with Ofsted as sole traders. Some group providers may choose to register as sole traders.

The registered person: registering as an organisation

If you are registering as an organisation, it must be in one of the following categories:

Companies and limited liability partnerships

These are organisations that are registered on Companies House. Companies include some school academies and community interest companies (CICs) and can be formed with one or more people. Limited liability partnerships are organisations formed of 2 or more people.

Charities

These are organisations that have registered with the Charity Commission and have charity status. They are non profit and can be:

- committee run
- company run
- trust run
- a Charitable Incorporated Organisation (CIO) foundation (run solely by the trustees)

- a CIO association (with a wider membership that can vote at an annual general meeting)

Committees

These are informal associations or groups of people – for example, a group of parents joining together to run a playgroup in the local community.

Informal partnerships

This refers to 2 or more people who share profits and liabilities but have not registered the business as a limited liability partnership (LLP).

Maintained schools and statutory bodies

This includes local authorities, healthcare trusts and schools. It does not include some academies, as some are exempt from registration.

Reporting an organisation's main purpose

If the registered person is an organisation, you will need to tell us what the sole or main purpose of the organisation is. We need to know this to determine who we need to carry out checks on.

When a company is registered with Companies House, you will need to state the nature of business. We will also check this. This helps us to determine what the sole or main purpose is.

The nominated individual

If you are registering as an organisation, you must nominate an individual to deal with matters relating to the registration and to oversee (either alone or jointly

with others) the management of the provision. We refer to this person as the ‘nominated individual’ (NI).

The NI is responsible for applying to register the provision and will act as the primary point of contact with Ofsted on issues relating to the application and registration. This includes telling us about any changes to registered people.

The NI must be suitable to be in regular contact with children, whether or not they will be. They must be declared suitable by Ofsted to fulfil the role.

The NI’s role is strategic. They must be able to act with authority and have oversight across all settings on the organisation’s behalf, either alone or jointly with others, and will normally need to be a member of the organisation’s governing body.

Changing the nominated individual

If your NI changes, you do not need to register again, but you do need to let us know so that we can carry out suitability checks on the new NI.

The outgoing NI must provide us with written confirmation that they are stepping down and let us know the details of the new NI, and the registered person must contact us to formally nominate the new NI. The new NI cannot usually begin to fulfil the role until we have checked that they are suitable.

If it is not possible for the current NI to inform us that they are stepping down, the registered person or (if it is an organisation) someone who is part of the registered person should email enquiries@ofsted.gov.uk directly.

Who we need to know about

To keep children safe, we need to know about you as

the applicant and other people who will be associated with your registration. Who we need to know about and who we carry out suitability checks on depends on:

- whether you are registering as an individual or organisation
- the type of organisation and roles within it
- whether you are registering on the Early Years Register and/or the General Childcare Register
- the type of provision

You can find more information about the types of checks we carry out for applicants and those associated with an application on our suitability checks page.

If the sole or main purpose of the organisation is childcare, and you want to join the Early Years Register and/or the compulsory part of the General Childcare Register, we need to know about everyone forming part of the 'registered person'. This could include every partner, director, secretary, other officer or member of the governing body.

You do not need to tell us about employees who work at the setting unless they form part of the registered person.

If the sole or main purpose of an organisation is not childcare, or you only want to register on the voluntary part of the General Childcare Register, we only need to know about the NI.

Making changes to your organisation: when you need to register again

You need to tell us if you make any changes to your organisation, including if its main or sole purpose changes.

In some cases, a new registration may be required. This will depend on the type of organisation.

If the legal entity that provides the childcare changes to a different legal entity from the one that is registered, the new provider must apply to register.

Some examples of this are:

- a sole trader registered as an individual incorporates and becomes a limited company (either as the sole director or with other directors)
- ABC Ltd acquires registered provider XYZ Ltd and starts running the provision under ABC Ltd
- a school that offers separately registered childcare provision joins or leaves a federation (for more information, see our guidance on registering and inspecting school-based provision)
- a registered charity makes changes to its legal structure, or converts to a CIO
- all the members of a committee change
- in an unincorporated partnership, there is a change of partners
- a statutory body changes

You cannot provide childcare until your new organisation is registered with us. To do so would be an offence.

Acquisitions

If your organisation takes over an existing childcare provider through an acquisition, you need to make sure that the childcare is registered correctly with Ofsted. You cannot provide childcare on the existing premises until you have either:

- registered the new legal entity with Ofsted

- applied to Ofsted for approval of the additional premises

If the individuals making up the registered person change, the NI must tell Ofsted about any changes. Any new individuals must complete an EY2 form and get an enhanced check with barred lists from the Disclosure and Barring Service (DBS).

For more information, see our guidance on the checks we carry out on people associated with Ofsted-registered childcare.

When you do not have to make a new application

You do not have to make a new registration application if either of the following apply:

- you acquire a company that retains the registered person's company number and continues to trade under the existing company name
- the sole trader or organisation changes its name or registered address (the address where Ofsted sends legal documents), but the registered person remains the same

If you are acquiring a setting as part of your existing organisation, you can apply for approval to add this to your registration.

Separate legal entity

If you want to keep the existing provider as a separate legal entity from your other organisation, you should register this through a new application.

Continuity of care

In an acquisition, the person or organisation that is registered with Ofsted remains responsible for

childcare until they contact Ofsted to resign the registration. If continuity of care for children is an issue, they may want to consider delaying their resignation until Ofsted has issued a new registration certificate.

If they want to resign before the new applicant is registered, the provision must stop operating.

If you acquire an existing provision, everything that has been published on the Ofsted reports website about that setting will remain for 5 years.

New legal entity

If Ofsted has completed checks on the applicant before, we will not redo these unless there are any concerns or new people connected with the provision.

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