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Framework for the regulation of childminding and day care

Including the inspection of funded early education in the non-maintained sector

**Better
education
and care**

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1. Introduction

In September 2001, the responsibility for the regulation of childminding and day-care provision for children under 8 in England transferred from local authorities to Her Majesty's Chief Inspector of Schools (HMCI) at the Office for Standards in Education (Ofsted). This means that there is now one single regulatory body across England.

The regulatory functions include the registration and inspection of all types of eligible providers of childminding and group day care. Ofsted also investigates concerns and complaints to establish that childminders and day-care providers remain suitable for registration and takes any necessary enforcement action to ensure this or to cancel registration.

Regulation of childcare helps to make sure that children are safe and well cared for in whatever type of registered provision they attend. Children should be looked after by adults who are suitable to care for them and who will make sure that their provision meets minimum government standards, the *National standards for under 8s day care and childminding*.¹

Ofsted also inspects the quality of government-funded nursery education offered by those providers who are on their local authority directory to provide free nursery education to children aged 3 and 4.²

This document has two purposes. First, it describes the main elements of the regulation system set out in Part XA of the Children Act 1989 (as inserted by the Care Standards Act 2000 and amended by the Children Act 2004). Second, it sets out the principles for registration, inspection, investigation of continued suitability and enforcement.

It aims to inform providers (and their representative groups) about how Ofsted carries out regulation work. It is also useful for local authority staff, who have the task of securing provision of information, advice and training for providers of day care and childminding; and any other people and organisations who are affected by the way Ofsted conducts its regulatory responsibilities. This document should be read in conjunction with the National Standards and the *Guidance to the National Standards*.³

¹ The *National standards for under 8s day care and childminding* is published by the Department for Education and Skills (DfES). They are referred to as the 'National Standards' in this document.

² The requirements for inclusion on the directory are set out in the *Code of Practice on the provision of free nursery education places for three and four year olds*, DfES, 2004.

³ *Guidance to the National Standards* (HMI 285–289), Ofsted, 2001.

2. The regulation system

Why the Government needs to regulate childminding and day-care provision

1. Through registering and inspecting childminders and day-care providers, Ofsted aims to:
 - protect children
 - ensure that childminders and registered day-care services provide good outcomes for children that ensure children are safe, well cared for and take part in activities that contribute to their development and learning⁴
 - ensure that childminders and day-care providers meet the National Standards
 - promote high quality in the provision of care and early education
 - provide reassurance for parents.

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

2. Part XA of the Children Act 1989 (the Act) establishes Her Majesty's Chief Inspector of Schools in England (HMCI) as the authority for the regulation of childminders and day-care providers in England.⁵ The Act gives HMCI responsibility for the registration and inspection of such provision and the responsibility for enforcement where it appears that requirements are not being met.
3. The Secretary of State has powers to make regulations governing the activities of registered providers. The regulations include national standards, underpinned by criteria for the fulfilment of the standards and relevant to the type of provision. Ofsted expects providers to show that they comply with the standards, having regard to the particular criteria that apply to them, and to any regulations set by the Secretary of State.
4. Setting up and operating childcare provision, particularly group day care, also entails compliance with other statutory requirements not within Ofsted's remit. These requirements include regulations relating to planning and building control, health and safety, employment law, food and hygiene, disability and anti-discriminatory legislation.

How does Ofsted regulate childminding and day-care provision?

5. There are four aspects to the regulation of childminding and day care for children under 8: registration; inspection; investigation of complaints, to

⁴ The outcomes for children are set out in Section 10 (2) of the Children Act 2004.

⁵ Since 1991, the regulation of childminding and day-care provision for children under eight has been governed by Part X of the Children Act 1989. Part VI of the Care Standards Act 2000 inserts a new Part XA into the Children Act 1989 replacing the previous Part X, and this was further amended by Section 48 and Schedule 4 of the Children Act 2004. This is referred to as 'the Act' in this document.

ensure continued suitability to provide childcare or to ensure that unregistered persons are not providing childcare for which registration is required; and enforcement where requirements are not met.

6. Ofsted will register applicants to provide childcare once it is satisfied that they are qualified (see paragraphs 25 and 26) to care for children.
7. Ofsted will judge applicants as being qualified for registration if they meet requirements regarding the suitability of persons and premises, pay an application fee, meet the National Standards and other regulations. This involves detailed checks and evaluation so that Ofsted can come to an opinion as to whether applicants are qualified. When Ofsted decides that persons (including organisations) are qualified, Ofsted will register those persons. Otherwise, Ofsted will refuse registration.
8. Ofsted will carry out inspections of providers within a prescribed period to ensure a regular check of their work.
9. Inspectors report on the quality and standard of childcare provided against the National Standards, any conditions of registration imposed, and other regulations.
10. In all cases, Ofsted will send a copy of the report to the provider and will publish it on its website. Providers must, except in certain prescribed circumstances, provide a copy of the report to the parents of all children attending.⁶
11. Ofsted will carry out an investigation when information is received that needs further examination to see if a provider remains qualified for registration, or where unregistered childcare or a breach of requirements is known or suspected.
12. Ofsted's childcare inspectors, and others authorised by HMCI, have a right of entry to premises where they have reason to believe that children are being looked after in contravention of the Act. This reason might arise from information that an unregistered person is providing childcare, or a registered provider is acting in contravention of the National Standards, other regulations or conditions of registration. Alternatively, such information may emerge from complaints about providers.
13. Ofsted will carry out enforcement action when requirements are not met. Chapter 8 sets out these actions.

⁶ These circumstances are listed in The Day Care and Child Minding (Inspection) (England) Regulations 2005 No 2300 and the Nursery Education (Inspection) (England) Regulations 2005 No 2299.

Inspection of funded nursery education

14. The arrangements for inspection also incorporate the inspection of the quality of nursery education for children aged 3 and 4 as required by Section 122 of the Schools Standards and Framework Act, 1998. Where a registered provider is on the local authority directory for the provision of free nursery education places for children aged 3 and 4, Ofsted also inspects the quality of early education for the children for whom the provider receives government funding. In some circumstances, Ofsted also inspects early education in the non-maintained sector for providers who are not registered to provide childcare.⁷ Inspectors report on the quality and standards of early education.

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

15. The Act defines the childminder and the day-care provider who require registration.
16. A **childminder** is defined as a person who looks after one or more children under the age of 8 for a total of more than two hours a day on domestic premises for reward.⁸ A person is not acting as a childminder if that person:
- is the parent or a relative of the child
 - has parental responsibility for the child
 - is a local authority foster parent in relation to the child
 - is a foster parent with whom the child has been placed by a voluntary organisation
 - fosters the child privately
 - only looks after the child between the hours of 6pm and 2am
 - looks after children for **two** sets of parents wholly or mainly in the home of either or both sets of parents.⁹
17. **Day care** is care provided at any time (day or night) for children under the age of 8, on premises other than domestic premises, where the period (or total of periods in any day) during which children are looked after at the premises exceeds two hours.
18. A person responsible for providing day care in any of the following establishments does not need to register if the care they provide is an integral part of the establishment's activities:¹⁰
- an appropriate children's home
 - a care home

⁷ The list of those eligible to provide such places is set out in the *Code of Practice on the provision of free nursery education places for three and four year olds*, DfES, 2004.

⁸ 'Domestic premises' means any premises which are wholly or mainly used as a private dwelling.

⁹ This is normally where two families share a nanny

¹⁰ These are outlined in Schedule 9A to the Act, as inserted by Schedule 3 of the Care Standards Act 2000 and amended by the Day Care (Application to Schools) (England) Regulations 2003 No 1992.

- a hospital (where children are looked after as a patient)
 - a residential family centre.¹¹
19. If day care is provided for less than six days in any year it does not require registration, providing that the person has notified Ofsted in writing before the first occasion on which the premises concerned are used.
20. No person shall act as a childminder or provide day care on any premises unless registered by Ofsted. A person who acts as a childminder but is not registered may be subject to an enforcement notice and liable to prosecution. A person who ignores an enforcement notice without a reasonable excuse will be liable to prosecution. Similarly, providers of day care who operate without being registered may also be subject to prosecution (see Chapter 8).

Application for registration

21. A person who wishes to register as a childminder or day-care provider must apply to Ofsted, giving all the information sought by Ofsted. An applicant may withdraw their application except in certain circumstances (see paragraph 95). It is an offence to knowingly make a false or misleading statement in an application.
22. An application is not complete until the person applying for registration has paid the relevant fee.
23. In the case of providers offering day care on more than one site, a separate application is required for each of the premises where the day care is provided.
24. Childminders do not have to make new or separate applications if they move house or wish to care for children from more than one domestic premise. However, they must tell Ofsted in writing of any changes to the addresses where they provide childminding or changes to the premises, in advance if possible, but in any case within 14 days of the change.

Registration requirements

25. A person qualifies for registration as a childminder if:
- he or she, and every other person looking after children on any premises where he or she is or is likely to be childminding, is suitable to look after children under the age of 8

¹¹ The exemption from registration may not apply, for instance, where:

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

- every person living or employed on the premises in question is suitable to be in regular contact with children under the age of 8
 - the premises are suitable to be used for looking after children under the age of 8, having regard to their condition and the appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises.
26. A person is qualified for registration for providing day care on particular premises if:
- every person looking after children on the premises is suitable to look after children under the age of 8
 - every person living or working on the premises in question is suitable to be in regular contact with children under the age of 8
 - the premises in question are suitable to be used for looking after children under the age of 8 having regard to their condition and the appropriateness of any equipment on the premises and to any other factor connected with the situation, construction or size of the premises.
27. If, following receipt of an application for registration for childminding or day care, HMCI is of the opinion that the applicant is, and will continue to be, qualified for registration, HMCI shall grant the application; otherwise he shall refuse it. The applicant may object to Ofsted's notice of intention to refuse registration. If Ofsted decides to refuse registration after issuing an intention to do so, and where applicable, following any objection, the applicant also has rights of appeal to the Care Standards Tribunal (see Chapter 8).

3. National Standards and regulations

28. The National Standards apply to all types of childcare. The standards are mandatory and are set out in regulations under the Act.¹²
29. Ofsted registers and inspects providers against these national standards, ensuring that the care they provide meets requirements wherever the providers are located in England.
30. The National Standards are written as outcomes, and the onus is on providers to demonstrate how they meet the standards. The National Standards are set out in Annex B.¹³
31. The National Standards define five different types of childcare. Each type must meet the same headline standards as described in Annex B.
32. Each standard is underpinned by criteria that show how the standard can be achieved. The criteria are distinctive to each of the five types of childcare to reflect the different nature of each type of provision. Both Ofsted and providers must have regard to these criteria, with providers having to demonstrate to Ofsted how they meet the National Standards in their particular circumstances.
33. For the purpose of registration, childcare is assigned to one of five categories set out in the National Standards. The categories are as follows.
34. A **childminder** is registered to look after one or more children under the age of 8 to whom they are not related, on domestic premises, for reward and for a total of more than two hours in any day.
35. The definition of **full day care** is:

Facilities that provide day care for children under 8 for a continuous period of four hours or more in any day in premises which are not domestic premises. Examples are day nurseries and children's centres, and some family centres.

¹² The documents setting out the National Standards are listed in The Day Care and Childminding (Functions of Local Authorities: Information, Advice and Training) (England) (Amendment) Regulations 2005.

¹³ Copies of the National Standards may be obtained from DfES publications on 0845 602 2260 or from the SureStart website www.surestart.gov.uk.

36. The definition of **sessional day care** is:

Facilities where children under 8 attend day care for no more than five sessions a week, each session being less than a continuous period of four hours in any day, in premises which are not domestic premises. Where two sessions are offered in any one day, there is a break between sessions with no children in the care of the provider. This is intended to cover provision which offers children part-time care and the opportunity to engage in activities with their peer group, e.g. playgroups.

37. The definition of **crèches** is:

Facilities which provide occasional care for children under 8 and are provided on particular premises on more than five days a year. They need to be registered where they run for more than two hours a day, even where individual children attend for shorter periods. Some are in permanent premises and care for children while parents are engaged in particular activities, e.g. shopping or sport. Others are established on a temporary basis to care for children while their parents are involved in time-limited activities e.g. a conference or exhibition.

38. The definition of **out of school care** is:

Facilities that provide day care for children under 8 which operate during one or more of the following periods: before school; after school; during the school holidays. The total care provided is for more than two hours in any day, and for more than five days a year.

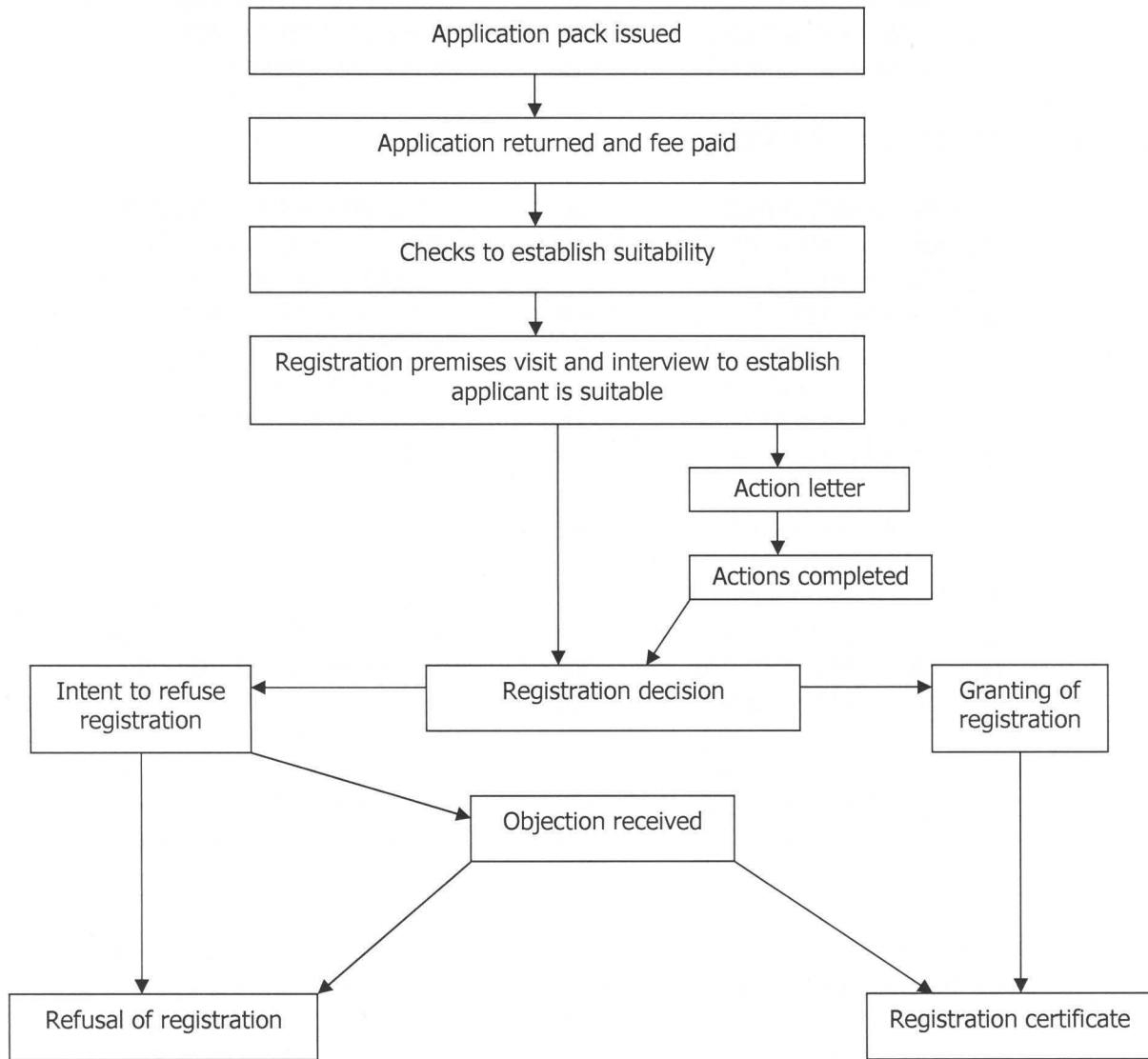
A main purpose of the provision is to look after children in the absence of their parents. This form of care can include children from 3 years old, and children over 8 may use it. Examples are summer camps, holiday play schemes, breakfast clubs and after school clubs.

Open access schemes are included. These may be permanent or short-term schemes and generally cater for older children; however, children aged 5 to 7 may attend. The main purpose of the provision is to provide supervised play opportunities for children in a safe environment in the absence of their parents.

39. In addition, regulations under 79C of the Act require childminders and registered day-care providers to meet a number of additional requirements. These are set out in Annex C.

4. The registration process

40. The flow chart shows an example of the steps an applicant needs to follow in order to become registered.



41. Ofsted will process an application as quickly as circumstances allow. However, the completion of a number of these stages depends on information from other agencies and the applicant taking any required action. Ofsted will normally be able to inform applicants of the decision about registration within six months of receiving a day-care application, and within three months of receiving an application to provide childminding.

Information and application pack issued

42. Ofsted will refer all prospective applicants to their local authority for information and advice about pre-registration briefing sessions, training and any other aspect of advice and support that the local authority makes available. The local authority will make available the National Standards documents, guidance and application packs. The potential applicant should read all information carefully before deciding whether or not to make an application. Application packs are also available on Ofsted's website.
43. Potential **childminders** are expected to attend a pre-registration briefing session arranged by the local authority. At these sessions, the application forms and the registration process are explained and questions are answered. The potential applicant is given an application pack if they decide to make an application. Local authorities will provide information and advice about becoming a childminder, and about the training opportunities available.
44. Not all local authorities provide pre-registration briefing sessions for potential **day-care providers**. Where these are not provided, application packs are still available to potential applicants from their local authority who also provide information and advice about becoming a day-care provider and about the training opportunities available.

Payment of the application fee

45. An application is not complete until Ofsted receives the relevant application form and the applicant pays the application fee.¹⁴ The application fee cannot be refunded if the applicant subsequently withdraws their application or Ofsted refuses to grant registration.

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

46. For **childminder applicants** Ofsted has to come to a decision about the suitability of the applicant and of all relevant individuals involved in an application for registration.
47. For **day-care applicants** Ofsted has to come to a decision about the suitability of the applicant and the manager of the day-to-day care of children. The decision regarding suitability of employees – including those who work with children and others who work on the premises, or any

¹⁴ The requirement for the fee is from the Children Act 2004. Information about the application fee can be found in The Day Care and Child Minding (Registration Fees) (England) (Amendment) Regulations 2006 No 2081.

other person who lives or works on premises where day care is provided – is the responsibility of the day-care provider.

People who are disqualified

48. Some people are not allowed to provide registered childcare because they are disqualified from working with children.¹⁵ Causes of disqualification from working with children include:
- convictions or charges of an offence against a child
 - convictions or charges of certain offences against an adult (for example, murder, kidnapping, rape, indecent assault, assault occasioning actual bodily harm)
 - being on the Protection of Children Act (POCA) list of persons considered unsuitable to work with children
 - being on the DfES List 99 of people that are considered not fit and proper persons to work with children
 - being made the subject of a disqualifying order
 - being made the subject of an order where a child has been removed from his/her care or been prevented from living with him/her
 - having registration as a childcarer refused or cancelled.
49. People who are disqualified may sometimes register as a childcare provider by applying for a waiver from Her Majesty's Chief Inspector (HMCI). Ofsted will make a decision about whether to waive the disqualification or refuse to waive disqualification. The applicant for the waiver has rights of appeal to the Care Standards Tribunal where Ofsted refuses to waive disqualification. Ofsted cannot waive a disqualification for people who are included on the POCA list.

Applicants and day-care managers

50. As part of the application, Ofsted will seek from the applicant a completed application form CM1 (for childminders) or DC1 (for day care). In the case of a company or other organisations, it should be signed by the chairperson, or somebody in a comparable position who has the authority to sign on behalf of the organisation.
51. In the case of day-care applications, Ofsted requires completed declaration and consent forms (DC2) from the applicant and the manager, any partners, committee members, directors or members of the governing body where childcare is the main purpose of the organisation. Otherwise, Ofsted will seek such a declaration from the person who has the delegated responsibility for providing and managing the childcare.

¹⁵ A full list of all the circumstances that disqualify people from working with children is available in The Day Care and Child Minding (Disqualification) (England) Regulations 2005 no. 2296.

52. The application form (CM1) and declaration and consent form (CM2/DC2) ask for a declaration about criminal records and other matters of suitability, and for consent to pursue checks with a number of organisations to establish the suitability of each person to work or be in regular contact with children under the age of 8.
53. Ofsted will seek an application for a criminal records disclosure for each person who has given consent unless the applicant can satisfy Ofsted by demonstrating proof of a recent disclosure.
54. Applicants subject to criminal records checks will be asked to provide:
 - original documents (not photocopies) to verify identity, date of birth and any name change. This includes photographic verification, such as a passport or a photo-style driving licence, marriage certificates or deed poll papers, as appropriate, to confirm any change of namesand may be asked to provide:
 - a health declaration (only the manager providing actual day care and childminding applicants will normally be asked for this); Ofsted will seek information from the GP of these individuals
 - verification of any relevant qualifications.

Other people looking after children

Applicants to provide childminding

55. Childminder applicants are required to notify Ofsted of any assistants they propose to employ to help them look after children. In each case, the childminder must send Ofsted the following documents, completed by the person they propose to employ:
 - a declaration and consent form (CM2)
 - an application for a criminal records disclosure (a copy of a recently obtained disclosure may be sufficient, where available, but Ofsted may ask for a further check); this should include a signed declaration by the childminder that they have verified the identity details of the individual concerned.
56. The applicant for registration as a childminder has to demonstrate that any assistant is suitable in accordance with the National Standards. As well as the criminal records check, Ofsted may carry out additional checks to establish suitability. Ofsted may ask an assistant to attend an interview to assess suitability, where necessary.
57. Ofsted will inform the applicant if Ofsted judges that an individual is not suitable as a result of any of these checks. The decision about employment is entirely the responsibility of the employer. Ofsted will take employment decisions into account in coming to an opinion about the qualification of the person to be registered as a childminder.

Applicants to provide day care

58. Applicants to provide day care are not required to notify Ofsted of any employees other than the manager of the day-to-day provision. Instead they must have in place robust recruitment and employment procedures to ensure that all those who work with children are suitable to do so.
59. It is an offence for an employer to employ someone they know to be disqualified from working with children (see paragraphs 48–49). A potential employee may apply to Ofsted to have their disqualification waived. Ofsted will make a decision about whether to waive the disqualification but will not make the employment decision. If Ofsted decides to waive the disqualification, the employer must still carry out the required vetting to make the decision of whether the person is suitable to work or be in contact with children.
60. The vetting procedures must include a check with the Criminal Records Bureau (CRB). Ofsted does not carry out such checks on behalf of day-care employers. Instead the employer must obtain such a check by:
- registering with the CRB as a body allowed to carry out such checks
 - using another registered body (known as an umbrella body)
 - using a registered body contracted by the DfES to provide subsidised checks, in certain circumstances.¹⁶
61. The decision about suitability for employment to work or be in regular contact with children under 8 is entirely the responsibility of the day-care employer. Ofsted will take employment decisions into account in coming to an opinion about the qualification of the person to be registered as a day-care provider.

Other people living or working on the premises and not looking after children

Applicants to provide childminding

62. The applicant is required to notify Ofsted of every person aged 16 or over who lives or works on the premises where childminding is to be provided. All such people must be suitable to be in regular contact with children. In each case the childminder must send Ofsted the following documents, completed by the individual concerned:
- a declaration and consent form (CM2)
 - an application for a criminal records disclosure (a copy of a recently obtained disclosure may be sufficient, where available, but Ofsted may ask for a further check); this should include a signed declaration by the childminder that they have verified the identity details of the individual concerned.

¹⁶ Further information is available from Ofsted, your local authority or the DfES.

63. Ofsted will take the results of information received through checks into account in assessing the suitability of the person to have regular contact with children. Ofsted may ask people to attend an interview following these checks in order to assess suitability, where necessary.

Applicants to provide day care

64. Applicants to provide day care are not required to notify Ofsted of any persons who live or work on the premises where they propose to provide day care. Instead they must have in place robust vetting procedures to ensure that all those who live or work on the premises are suitable to be in regular contact with children aged under 8.
65. The vetting procedures must include a check with the Criminal Records Bureau (CRB). Ofsted does not carry out such checks on behalf of day-care employers. Instead the employer must obtain such a check by:
- registering with the CRB as a body allowed to carry out such checks
 - using another registered body (known as an umbrella body)
 - using a registered body contracted by the DfES to provide subsidised checks, in certain circumstances.¹⁷
66. The decision about suitability for those who live or work on the premises where day care is provided is entirely the responsibility of the day-care provider. Ofsted will take suitability decisions into account in coming to an opinion about the qualification of the person to be registered as a day-care provider.
67. A person is not treated as working on the day-care premises in question if:
- none of his or her work is done in the part of the premises in which children are looked after
 - he or she does not work on the premises at times when children are looked after.¹⁸

Registration visit

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

Ofsted may have to make more than one visit before making a decision about registration.

¹⁷ See note 14.

¹⁸ Part XA of the Children Act 1989, Section 79B(5).

Conducting the registration visit

69. Applicants should refer to the relevant national standards and the *Guidance to the National Standards* to help prepare for the visit. The guidance gives information about what the inspector will look for. The applicant should make sure that all documents mentioned in the National Standards are available for the inspector to see during the visit.
70. Before the visit, the inspector will contact the applicant to confirm the date and to make sure the applicant has all the necessary documents to hand.

During the visit

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

Direct observation

72. Inspectors check the premises for safety, security and suitability. They make sure that there is sufficient space for children and that facilities are appropriate for the type of childcare proposed. Inspectors will expect applicants to meet any requirements or recommendations made by other authorities in connection with premises safety, such as planning, fire safety and environmental health departments.
73. Inspectors examine equipment that the applicant intends to use with the children to make sure that it is safe and appropriate for the age and developmental needs of the children.
74. Inspectors check all the rooms and any outdoor space to be used for children. They also check safety equipment and determine how any animals that are on the premises are housed and controlled. If the applicant intends to use a vehicle to transport children, inspectors need to see evidence that it is roadworthy, taxed and insured, and that appropriate child safety restraints are available.
75. Inspectors check arrangements for children's personal hygiene and for food preparation and storage.

Suitable person interview

Discussions with the applicant and manager (if applicable)

76. Inspectors discuss aspects of **all** the National Standards with the applicant. In the case of an organisation such as a company, partnership, statutory body, society or other organisation, this discussion will be with a named individual known as the 'nominated person'; this person must have the authority to speak on behalf of the organisation. In the case of day care, the manager in charge of the actual day-to-day care of the children

- is also interviewed. The discussion reflects the type of provision that the applicant is intending to provide. For example, discussions about organisational matters in a large day nursery, employing a number of full and part-time staff, have a different emphasis to those held with a childminder, who is usually working alone in her or his own home.
77. Inspectors discuss with applicants the kinds of activities they intend to offer children. They check that the planned activities will provide a breadth of experiences for young children and help them to develop emotionally, intellectually, socially and physically. If the setting is to receive funding to provide free nursery education for children aged 3 and 4, inspectors also check that the activities that applicants plan to offer will help these children progress towards the early learning goals.¹⁹
 78. Inspectors check the applicant's knowledge and understanding of the steps that need to be taken to ensure the good health of children, and the need for practices to meet hygiene requirements. They check arrangements for administering first aid and medicines, as well as procedures that will be followed if children have an accident or become ill.
 79. Inspectors talk with the applicant about how they intend to promote quality of access and opportunity and anti-discriminatory practice. They evaluate how well the needs of all children, including those with special educational needs and disabilities, will be catered for, and how positive an account will be taken of their social and economic background, family structure, culture, ethnicity, gender, ability and religion and beliefs.
 80. Inspectors discuss how the applicant will manage children's behaviour. They check how the applicant intends to promote good behaviour and what he or she will do when children's behaviour is challenging.
 81. Inspectors are interested to know how the applicant intends to establish and develop good relationships with parents. They want to know about how information is to be exchanged, and how parents' wishes about their child's care and welfare are taken into account.
 82. Inspectors evaluate the applicant's understanding of child protection issues. They ensure that the applicant knows what is expected of him/her in relation to all regulations.
 83. Inspectors also discuss any issues that have arisen from the checks or other information that causes concern about an applicant's suitability for working or having regular contact with children (see paragraphs 46–49).

¹⁹ These are set out in *Curriculum guidance for the foundation stage* published in 2000 by the Qualifications and Curriculum Authority (QCA) and the Department for Education and Employment (DfEE).

84. Inspectors scrutinise documents kept by the provision, such as records on children, as appropriate to the type of setting. These are listed in the National Standards and the *Guidance to the National Standards*.
85. Throughout the registration visit inspectors judge the all-round suitability of the applicant to provide childminding or day care. The onus is on the applicant to show how they intend to meet the National Standards.

Feedback and outcomes of the visit

86. Before inspectors leave, they give feedback so that the applicant is clear whether anything needs to be done before registration is granted. If the applicant needs to do something, an agenda for action, with appropriate timescales, is discussed and agreed. The inspector also tells the applicant about any conditions that may be imposed on the registration (see paragraph 90).

Actions set before the registration decision

87. Ofsted may issue an action letter to the applicant, detailing work that needs to be done to meet the National Standards. The applicant is given a period of time, usually not more than two weeks, in which to comply.
88. When the applicant has completed the required actions, they must inform Ofsted in writing within the required timescale. Ofsted may carry out an additional visit to check that the actions have been completed satisfactorily.

Registration decision

89. After considering the suitability of all persons connected with a registration, the suitability of the premises and equipment for childcare, and the applicant's knowledge and understanding of the National Standards, Ofsted makes the registration decision.

Granting of registration

90. Where a person demonstrates they are qualified for registration (see paragraph 27) Ofsted grants registration and issues a certificate of registration. The certificate sets out the name of the registered person; the address, or in the case of childminding the address(es), at which childcare can take place; the type(s) of childcare a registered person can provide; and conditions of registration. Conditions of registration are restrictions to the provision of childcare that apply at all times, such as the number of children for which a person may provide care. It is an offence not to comply with conditions of registration without reasonable excuse. Ofsted publishes all conditions of registration on its website.

Refusal of registration

91. Where Ofsted intends to refuse registration it sends out a notice of its intention to refuse. This is a legal document that gives the applicant a right to object to Ofsted's intention.
92. If the applicant wishes to object to refusal of registration, they must inform the regional centre in writing within 14 days of the issue of the notice of intention. There is information about the objection process in Chapter 8.
93. If no objection is received to the notice of intention to refuse registration within 14 days, Ofsted issues a notice confirming the decision to refuse registration. The applicant has the right to appeal to the Care Standards Tribunal. There is information about the appeal process in Chapter 8.

Withdrawal of application

94. Applicants may withdraw their application at any stage up to the issue of a notice of intention to refuse registration. Applicants may not withdraw their application once Ofsted has issued such a notice.

5. Inspection

95. Ofsted will inspect and write a report about each registered provision at least once in every successive period of three years. These inspections will report on the quality and standard of the childminding or day care provided. They will identify strengths and weaknesses in provision, so that providers can improve the quality of what they offer.
96. Where registered providers are included on the local authority directory to offer free nursery education to children aged 3 and 4, Ofsted will inspect the quality of that education, alongside the inspection of care in an 'integrated' inspection.
97. Some independent schools and other providers do not offer registered childcare, but are included on the local authority directory. These providers will receive an inspection of the quality of their nursery education as required by Section 122 of the School Standards and Framework Act 1998.
98. Where Ofsted inspects day care and/or nursery education provided directly by a school, Ofsted will normally carry out such an inspection at the same time as the inspection of the whole school. This is not always possible where:
 - day care takes place only in school holidays
 - the school is an independent school where currently the prescribed interval for inspections of the whole school is six years.

Purposes

99. The purposes of inspection are:
 - to report on the quality and standards of the childminding or day care provided, and of the nursery education, where applicable
 - to check that the registered provider continues to be qualified to provide childminding or day care.
100. Inspections:
 - help to ensure that children are safe and well cared for
 - give information on the quality and standards of the childcare and nursery education
 - are rigorous, but with the minimum of bureaucracy and disruption
 - are carried out with regard to the principles that apply to all Ofsted inspections and which are outlined in Annex D.
101. Inspection findings contribute to HMCI's Annual Report to parliament and form the basis of advice to the Secretary of State for Education and Skills.

The Early Years Evaluation Schedule

102. The Early Years evaluation schedule (Annex E) is the basis for inspecting the quality and standards of day care and childminding and, where applicable, nursery education. It sets out the specific requirements for evaluating and reporting on the work of a day-care provider or childminder, and sets out the summary of the inspection report.
103. Ofsted inspects providers to see if they continue to meet the National Standards for the type(s) of childcare they provide and, where applicable, that they follow the Foundation Stage curriculum as set out in the *Curriculum guidance for the Foundation Stage*.
104. Ofsted has grouped the National Standards and the criteria for inspecting nursery education under four of the outcomes for children, and under the organisation of the childcare. Ofsted reports on the quality and standards of care and of nursery education under these outcomes. These are:
- being healthy
 - staying safe
 - enjoying and achieving
 - making a positive contribution.

The outcomes for children are enshrined in law in Section 10 (2) of the Children Act 2004.

105. Ofsted also reports on how the organisation of childminding and the leadership and management of any day-care provision contributes to the outcomes for children, and how the childcare provision meets the needs of the range of children for whom care and early education are provided.
106. For settings that provide government-funded nursery education, Ofsted also reports on whether the spiritual, moral, social and cultural development of the children is fostered.

Before the inspection

107. All providers should read *Are you ready for your inspection*, available on Ofsted's website www.ofsted.gov.uk. This booklet helps providers to prepare for the visit. It gives information about what the inspector will look for and on what they will base their judgements. Providers should make sure that all records detailed in Annex C, and other documents they wish to present, are available for the inspector to see during the visit.
108. Providers should complete and regularly update the simple self-evaluation form included at the back of the booklet *Are you ready for your inspection* and keep this to share with the inspector.

109. Inspections are carried out with little or no notice. Inspections of day care will normally have no notice.²⁰ Inspections of childminding will have a few days notice so that Ofsted does not waste resources by visiting at times when childminders are out.
110. Inspectors check any previous inspection reports including: any conditions imposed; any actions, key issues or recommendations raised; and any complaints received. This prepares inspectors to follow up any points during the inspection.
111. The views of parents and carers are sought about the quality of the childcare and nursery education. Ofsted seeks such views ahead of an inspection by asking providers to display a poster, telling parents how to contact Ofsted.

During the inspection

112. Inspectors gather evidence of the quality and standards of care by evaluating how well the provider meets the National Standards and taking full account of any previous actions or recommendations raised and other information gathered during the visit.
113. Inspectors gather evidence of the quality and standards of nursery education by evaluating how the quality of teaching promotes children's progress through the 'stepping stones' towards the early learning goals as set out in the *Curriculum guidance for the Foundation Stage*.
114. Inspectors gather evidence and information through discussion, direct observation and looking at relevant documents. Inspectors check much of the provision in a similar way to the registration visit. But they observe, in particular, what the children are doing, the way in which adults relate to them, and how well they care for the children and help them learn.
115. Inspectors share with the provider the inspection report paragraphs on 'information about the setting' and 'previous complaints' for the provider to check for factual accuracy.

At the end of the inspection

116. At the end of the inspection, inspectors give feedback on their findings, including their judgement on the quality and standards of the care and, where applicable, the nursery education provided.

²⁰ Exceptions are inspections of day care in schools where the day care inspection is carried out at the same time as the whole school inspection; and short-term crèches and playschemes, where Ofsted seeks reassurance that childcare is taking place at the same time the inspections is scheduled. These settings will have a few days' notice.

117. Inspectors will grade the quality of care and/or nursery education according to the findings during the inspection. Ofsted uses a four-point grading scale of:
- outstanding
 - good
 - satisfactory
 - inadequate.
118. Those judged as outstanding are given no areas to improve. All other providers are given at least one aspect to improve.
119. Those providers who are judged as satisfactory or good are given recommendations to improve the quality of care and/or nursery education. Ofsted reports on the progress made with recommendations at the next inspection.
120. Those providers whose care or nursery education is judged as inadequate, but who demonstrate a capacity and willingness to improve, are given a notice of action to improve in which the inspector raises actions for the provider to take within a set timescale.
121. When providers complete the required actions, they must inform the regional centre in writing within the required timescale. Ofsted may carry out an additional visit to check that the actions have been completed satisfactorily.
122. Ofsted takes appropriate enforcement action for those providers whose care is judged as inadequate, and who do not demonstrate a capacity or willingness to improve. The range of enforcement actions is set out in Chapter 8.
123. Where Ofsted judges that nursery education is inadequate, Ofsted will also make a judgement about whether the setting has the capacity or willingness to improve. Ofsted notifies the local authority of all judgements of inadequate nursery education. The local authority will decide whether funding for nursery education will continue.
124. Ofsted will inspect those providers who receive a judgement of inadequate more frequently. Ofsted will also inspect providers more frequently where it believes that children's welfare may not be safeguarded. A list of prompts for more frequent inspection is available on Ofsted's website.²¹
125. As a result of inspection, Ofsted may also impose new conditions of registration, or vary or remove existing conditions.

²¹ This list is available under 'how we regulate childcare' on www.ofsted.gov.uk, or at the following address: <http://www.ofsted.gov.uk/howwework/index.cfm?fuseaction=howwework.inspections&id=2>.

The report

126. After the inspection, the provider is sent a copy of the written report. Providers must give all parents a copy of the report, except in certain prescribed circumstances, and any other person who asks for a copy.²² Providers may charge people, other than parents, who ask for a copy a fee no greater than the cost of making such a copy.
127. The inspection report gives the findings of the inspection. These include an overall judgement on the quality and standards of care and, where applicable, the nursery education; the strengths and weaknesses of provision in relation to the outcomes for children; and what must be done to improve the quality of the care and nursery education.
128. Ofsted will publish inspection reports on its website and make copies of reports available to the local authority. Ofsted will not publish the name or full address of childminders.

Notice of intention

129. At each inspection, where conditions are imposed, varied or removed, Ofsted will send providers a notice of intention to do so. The notice of intention sets out the conditions of registration that apply. The provider has the right to object to conditions being imposed, varied or removed.

Intent to cancel registration

130. When Ofsted decides to cancel a registration following an inspection, a notice stating the intention to cancel is sent. The provider has the right to object.

Objection

131. If providers wish to object to a condition imposed, varied or removed, or to cancellation of registration, they must inform the regional centre in writing within 14 days of the issue of the notice of intention. There is information about the objection process in Chapter 8.

Notice of decision

132. Ofsted will normally issue a notice confirming the decision following a notice of intention. The provider has the right to appeal about Ofsted's decision. There is more information about the appeal process in Chapter 8. Ofsted does not issue a notice of its decision where the provider has requested a change to registration conditions and Ofsted has agreed to the request.

²² These circumstances are set out in The Day Care and Child Minding (Inspection) (England) Regulations 2005 No 2300 and the Nursery Education (Inspection) (England) Regulations 2005 No 2299.

Registration certificate

133. Ofsted will issue a new registration certificate where conditions are imposed, varied or removed. Ofsted publishes all conditions of registration on its website.

6. Childcare inspectors

134. Registration visits and inspections are usually carried out by Ofsted's childcare inspectors. Childcare inspectors carry identification which is shown to providers on each visit.
135. Inspectors who carry out registration, inspection and investigation visits for Ofsted are trained in how to conduct these, including training in the requirements of the Children Act 1989 and other accompanying regulations, the National Standards and the outcomes for children. Those who carry out inspections of nursery education are trained to assess the quality of such education.
136. Registration visits, inspections and investigations must be carried out in a way which aims to secure the full cooperation of the provider. Inspectors must inspire confidence in their work and their judgements, and create a climate in which the inspection process makes a valuable contribution to improvement. Inspectors will:
- be thoroughly prepared for inspection, and understand the nature of the provision
 - have thorough knowledge and understanding of the Act, regulations, inspection requirements and guidance, and the standards and criteria relevant to each type of provider
 - maintain the highest professional standards in line with Ofsted's code of conduct.
137. Ofsted inspectors may use a laptop computer in settings when carrying out regulatory visits, to record evidence and make judgements. Where an inspectors use laptops they will, where applicable, show the judgements to the provider on the laptop screen. Inspectors have guidance on using computers in settings covering health and safety issues

The code of conduct

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

- respect the confidentiality of information they receive, but state that any concerns about child protection matters are reported to the appropriate agency.

The standard and quality of inspections

139. Before the inspection, the childcare inspector considers a range of information about the provider and the setting, and shares this with the provider during the inspection to make sure it is factually accurate.
140. To make sure that the inspection satisfies Ofsted's quality standard, childcare inspectors must ensure that:
- **judgements** about the provision and what needs to be improved are fair and accurate
 - **evidence** is secure and substantiates all inspection judgements
 - **communication** of inspection findings is clear and helpful to the provider
 - the **conduct of the inspection** is to a high professional standard.
141. **Judgements** about the provision, and what needs to be done to improve, are fair and accurate when they:
- are clear about the quality and standards of the provision, and its strengths and weaknesses
 - give providers a clear basis for action by identifying issues that are central to their improvement
 - are fully consistent with the inspection evidence.
142. **Evidence** is secure and substantiates all inspection judgements when it:
- is sufficient in quantity and range to be representative of the provision, and includes first-hand observation of adults and children in the setting and discussion with them and others
 - involves careful analysis and interpretation of all information, including previous registration information, information from any complaints about the provider and/or inspection reports/records and the views of parents
 - is well documented to provide a record which underpins and secures the inspection and on which legal action could be taken if necessary.
143. **Communication** of inspection findings, both orally and in writing is clear and helpful to the provider when:
- judgements are conveyed in plain language easily understood by the intended audience, particularly parents in the case of the written report
 - judgements are consistent and unequivocal, with explanations and illustration.
144. The **conduct of the visit or inspection** is to a high professional standard when inspectors:
- are thoroughly prepared and understand the nature of the individual provision, the outcomes for children, the National Standards and

particular criteria for that type of provision and the needs of the children and their parents

- uphold the code of conduct
- contribute to the value of the inspection for the provider through developing professional relationships with the adults or staff involved.

145. If applicants or providers wish to complain about their inspection, registration or investigation visit, including the outcome of the visit and the conduct of the inspector(s), they should write to Ofsted. The leaflet *Complaints about Ofsted*, explaining the complaints process, is available on Ofsted's website www.ofsted.gov.uk.

7. Complaints and investigations

Complaints

146. From time to time, Ofsted receives complaints and other information about childminders and day-care providers.²³ As the authority responsible for their regulation, Ofsted looks into such matters to see if they provide evidence of non-compliance with the National Standards, regulations and conditions of registration by registered persons. Ofsted does not act as a complaints arbiter or judge whether a complaint is founded or unfounded. Instead Ofsted's role is to ensure that the provider continues to meet the National Standards and remains qualified for registration.
147. Ofsted also receives information that people are providing childcare without registration. Ofsted looks into such information to make sure that people are not providing childcare for which registration is required.
148. Ofsted expects complainants to discuss their concerns with the provider in the first instance, unless there is reason not to do so. Providers have a duty to investigate any complaint from a parent of a child attending their setting that relates to the National Standards, to keep a record of such complaints and to share the results of any investigation about a complaint with parents.²⁴
149. Complaints give providers opportunities to consider improvement of the quality of their service. By highlighting a specific area of the service, providers can examine whether improvements can be made, irrespective of whether the complaint is valid or not. This approach benefits the service, children and their parents and the complainant who will have the satisfaction of knowing that the complaint resulted in action being taken.
150. From time to time Ofsted also receives complaints about its own service. Ofsted has a three stage complaints procedure for such complainants, including an independent review by Ofsted's independent complaints adjudicator (ICA). More information about this procedure is available in the complaints leaflet *Complaints against Ofsted* on Ofsted's website www.ofsted.gov.uk.
151. The role of the ICA is to:
- review the inspectorates' handling of individual complaints, where the complainant remains dissatisfied after the internal complaints process has been exhausted

²³ A complaint can be defined as an expression of concern, grievance or an allegation directed against any person who is or should be registered under the terms of Part XA of the Children Act 1989.

²⁴ Further information is available in the Day Care and Child Minding (National Standards) (Amendment) (England) Regulations 2005 No 2303.

- provide general advice and recommendations arising from the handling of complaints in order to improve the inspectorates' systems and procedures
 - mediate between complainants and the inspectorates to produce a resolution.
152. The ICA cannot overturn the professional judgements of an inspector and cannot deal with complaints from inspectorate staff and contractors, complaints about government policy and legislation, or issues subject to court or tribunal proceedings.
153. The recommendations made by the ICA help Ofsted to review its service and make improvements.

Principles

154. Ofsted's handling of complaints accords with the following principles:

Confidentiality

Ofsted respects confidentiality in so far as it is consistent with its duties. Ofsted will explain to complainants that it may not be possible to keep their identity confidential. Those who are the subject of a complaint have a right to expect that details of the complaint are restricted to those that need to know.

Fairness

Ofsted considers complaints as allegations until proved otherwise and always maintains impartiality. Ofsted considers complaints in a reasonable and even-handed manner. It makes sure every effort is made to gather sufficient evidence to inform a conclusion to the case. However, it is inevitable that in some instances, Ofsted may not be able to reach an authoritative conclusion.

Timeliness

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

Complaints process

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

Who handles the complaint?

155. When a complaint is referred to Ofsted, staff check to see if it should be handled by Ofsted, or whether it is the responsibility of another authority. For instance, where the complaint involves or might involve child protection issues the matter is referred immediately to the social services child protection team in the relevant local authority.
156. Once it is clear that the complaint falls within Ofsted's remit, that is, relates to the National Standards, staff check to make sure it is Ofsted who investigates it in the first instance. As a general principle, the provider who is the subject of the complaint should first try to resolve any concerns, look into the matter and inform the complainant and Ofsted of the outcome.
157. Ofsted may investigate directly where complainants provide sufficient reason to believe that a standard, regulation or condition of registration is being breached and it is not appropriate for providers to investigate themselves.

Investigation

158. Information from a number of sources may trigger an investigation. This includes information or concerns through an external agency or person, arising from an inspection, or through receipt of a complaint.
159. All information gathered or received about registered providers forms part of the process of evaluating the continued suitability of the registered person.
160. Ofsted takes account of any allegations about the failure of a registered person to meet any of the National Standards or underpinning criteria to which they must have regard, even if such allegations subsequently prove to be malicious or vexatious. This is because, at the point of receiving the information, Ofsted cannot know if this is the case.
161. Ofsted also investigates allegations of persons providing childcare without registration. It is an offence to provide day care without registration or to provide childminding after Ofsted has served an enforcement notice. There is more information on offences in Chapter 8.
162. When the results of any investigation indicate that a person has committed an offence, or has placed the welfare of children at risk, Ofsted will take enforcement action that is appropriate to the findings of the investigation.

163. A visit to the provider is often necessary in order to check the facts of the complaint. Childcare inspectors (and other persons authorised by HMCI) have a statutory right of entry to any premises on which childminding or day care is provided at any reasonable time, if they have reason to believe that a child is being looked after in contravention of requirements. Persons exercising these rights of entry produce an identity document authorised by HMCI showing that they have the authority to do so. Obstructing a registered inspector or an authorised person is an offence. Persons entering premises under this section may:
- inspect the premises
 - inspect and take copies of any records kept by the provider and any other relevant documentation (including computerised records)
 - seize and remove any document, or other material or thing found there, which the inspector has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement
 - require any persons to afford him facilities and assistance within that person's control as are necessary to enable the member of staff to exercise his powers
 - take measurements and photographs
 - inspect any child being looked after, and their welfare
 - interview the provider
 - interview in private any person looking after children or living there who consents to be interviewed.

Gathering evidence

164. When gathering evidence, inspectors make sure that clear and accurate records are made. This includes detailed notes and records of telephone calls. Where an investigation results in enforcement action, Ofsted may use any evidence gathered to support civil or criminal action cases.
165. When gathering evidence, inspectors are aware of the distinction between standards of proof. That required in a criminal case, where the standard of proof required is 'beyond reasonable doubt', is of a higher standard than is required in civil cases such as a tribunal, where judgements are made on the 'balance of probabilities'.
166. Where it is possible that such an investigation may lead to prosecution for the commission of an **offence** (See Chapter 8), inspectors gather evidence in accordance with the requirements of S.66 of the Police and Criminal Evidence Act (PACE) 1984.

8. Enforcement

167. Ofsted has powers of enforcement where registered persons are failing to meet or are in breach of the National Standards, regulations or conditions of registration or where an unregistered person is providing day care or childminding.
168. Such powers provide:
- a sanction to help ensure that childminders and day-care providers continue to adhere to requirements
 - a means by which to cause a registered provider (or unregistered provider) to act within the requirements of the law, or to remove their registered status.
169. Ofsted aims to take consistent and even-handed action using an appropriate means of enforcement to match the situation.
170. The government's principles of better regulation (consistency, proportionality, targeting and openness) are set out for enforcement agencies in the Enforcement Concordat. Annex E sets out Ofsted's enforcement statement outlining how Ofsted implements the principles of good enforcement.
171. The following sections outline the range of enforcement measures that Ofsted takes. It represents a menu of sanctions ranging from non-statutory measures, through the hierarchy of civil sanctions from imposition of conditions to cancellation of registration. Ofsted may also resort to the criminal sanction of prosecution for an offence.

Non-statutory means of ensuring compliance

172. If a registered person is not fully complying in some minor way with the National Standards, or other regulations or conditions of registration, Ofsted encourages compliance without recourse to its statutory powers of enforcement.
173. For very minor matters, where it is clear that the registered person is receptive, Ofsted may judge that a formal explanation, as part of feedback after an investigation or inspection, is sufficient to rectify the situation. Alternatively, Ofsted may make recommendations to improve the quality of care as a result of an investigation or inspection.
174. Where a provider does not meet a National Standard, Ofsted may decide to issue the registered person with a notice of action to improve, setting out action(s) to ensure that National Standards are met. The notice is issued in writing, and the registered person is given a period of time in

which to comply. When the registered person has completed the required actions, they must inform Ofsted in writing within the required timescale. Ofsted may carry out a visit to check the provider then meets the National Standards.

175. Where such a notice of action to improve does not have the desired effect, Ofsted will consider whether to resort to statutory means of enforcement.

Statutory powers of enforcement: civil sanctions

176. Ofsted has a range of statutory powers of enforcement. It can:
- serve an enforcement notice on an unregistered person acting as a childminder
 - refuse to register an applicant
 - cancel a registered person's registration
 - impose upon a registered person new conditions of registration or vary (or remove) existing ones
 - serve a compliance notice
 - apply to a Justice of the Peace for an emergency order to cancel registration or impose new conditions of registration, or vary or remove existing ones where it would appear that a child is suffering, or would be likely to suffer, serious harm
 - suspend a provider's registration
 - prosecute a provider for committing an offence, or ask the provider to accept a caution.
177. Ofsted will monitor compliance with enforcement action.

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

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

Refusal of registration

140. Ofsted may refuse to register an applicant in the following circumstances:
- in the case of an applicant for childminding, Ofsted is of the opinion that the person is not qualified for registration for childminding (see paragraph 26).

- in the case of an applicant for providing day care on any premises, Ofsted is of the opinion that the person is not qualified for has ceased, or will cease to be, qualified for registration for providing day care or the person has not paid the relevant fee.

Cancellation of registration

141. Ofsted may cancel a registered person's registration in the following circumstances:
- in the case of a childminder, where Ofsted is of the opinion that the person has ceased, or will cease to be, qualified for registration for providing childminding (see paragraph 26)
 - in the case of a person registered for providing day care on any premises, Ofsted is of the opinion that the person has ceased, or will cease to be, qualified for registration for providing day care (see paragraph 27)
 - if the fee for continued registration is not paid.
179. Ofsted will issue a notice of intention to cancel, in writing, specifying the reasons for cancellation.
180. The registered person may object to a notice of intention to cancel registration (see below).

Variation, imposition (or removal) of conditions of registration

181. Ofsted grants registration, subject to conditions of registration listed on the registration certificate. The registered person must comply with these conditions, in order to continue to be qualified to be registered. These may be standard conditions that apply to all providers, such as the condition that the registered person must display the certificate. There may also be other conditions imposed at the registration stage, for example restricting childcare to certain areas of the premises, to ensure providers fully meet all of the National Standards.
182. Ofsted may decide, on account of shortcomings identified at inspection, or through an investigation visit, or a visit following up any actions raised, that a registration should only be allowed to continue subject to a new condition or conditions, or subject to the variation of an existing condition. Such enforcement action may occur, for example, where evidence emerges that the provider is:
- falling short of full compliance in one or more of the National Standards (or other regulations)
 - where this is the most appropriate and proportionate response
 - where the situation is not so serious to warrant cancellation (or suspension) of registration.

183. Ofsted uses variation of conditions as a means to respond appropriately to changes notified by the registered person: for example, where a provider intends to expand or change premises. Ofsted may also remove conditions when they are no longer appropriate: for example, where the condition no longer applies because the provider has improved facilities. Registered persons may apply to Ofsted to have conditions removed or varied. All requests to vary or remove conditions must be in writing, following which Ofsted will make a decision to agree or refuse such an application.
184. A registered person may object to Ofsted's notice of intention to:
- impose a new condition
 - vary an existing condition
 - remove an existing condition
 - refuse to grant an application to vary or remove conditions (see notice of intention below).
185. Where Ofsted has imposed a new condition or varied an existing one, Ofsted may carry out a follow-up visit to check compliance.

Serving a compliance notice

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

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

187. Ofsted has the power in cases of emergency to apply to a justice of the peace (JP) to:
- cancel a person's registration
 - vary an existing condition
 - remove or impose a condition.
188. Ofsted may make such an application without giving notice to the registered person. If at all possible, Ofsted supports the application with a written statement of the reasons for making the application.
189. Before making an order for emergency changes of these sort, the JP must be satisfied that a child who is being, or may be, looked after by a registered person is suffering, or is likely to suffer, significant harm. The order must be made in writing.

190. Where a JP makes such an order, Ofsted must serve it on the registered person as soon as is reasonably practicable with:
- a copy of any written statement of Ofsted's reasons for making the application
 - a notice explaining the right of the registered person to appeal.
191. Ofsted alerts the local authority social services child protection team when it identifies any concerns about child protection.
192. Ofsted may commence ordinary cancellation proceedings at the same time as seeking to use the emergency cancellation powers.
193. The registered person has a statutory right of appeal against the use of these emergency powers.

Suspension of registration

194. Ofsted may suspend the registration of a person for up to twelve weeks where there are reasonable concerns that there is danger to a child's safety or welfare and where emergency action is not appropriate. The registered person has a right of appeal against suspension. Ofsted may impose a further period of suspension where concerns continue following the end of this period, and are still being investigated or remedied.

Resignation of registration

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

Notice of intention to take a step

196. Where Ofsted has made a decision to:
- refuse an application for registration
 - cancel a registration
 - remove or vary any condition or impose a new one
 - refuse to grant an application to remove or vary a condition.

Ofsted will send a notice of intention to take this step in writing to the registered person (or applicant) not less than 14 days before taking the step. Such a notice must:

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

Registered person's right to object

197. The registered person (or applicant refused registration) must inform Ofsted of his/her intention to object, in writing, within 14 days of the date of the notice of intention.
198. The registered person (or applicant refused registration) has a right to object to the step in the notice of intention, in person or by means of a representative.
199. Following an objection, Ofsted weighs up the merits of the objection and a decision is made either to accept or reject the objection. Ofsted makes this decision known to the registered person in writing.
200. Where Ofsted decides to cancel or remove, vary or impose a condition, refuse registration, or refuse to grant an application to vary or remove a condition, the decision will not take effect until the period allowed for objection has expired or an objection is heard, withdrawn or abandoned.

Appeal to an independent tribunal

201. Providers and applicants have a statutory right of appeal to the Care Standards Tribunal, an independent tribunal, where Ofsted has made a decision to:
 - refuse an application for registration
 - refuse to waive disqualification following an application to do so
 - cancel a registration
 - remove, vary or impose a condition
 - refuse to grant an application to remove or vary a condition
 - suspend registration
 - when an emergency order has been issued by a justice of the peace.

Ofsted has a leaflet explaining the objection and appeal process, available on its website www.ofsted.gov.uk.

202. The Tribunal may:
 - confirm the taking of the step or the taking of the order, or direct that it shall not have, or shall cease to have, effect
 - impose, vary or cancel any condition.

Any decisions made by the Tribunal have immediate effect.

Statutory powers of enforcement: prosecution (criminal sanctions)

203. Ofsted will only undertake prosecution where it can gather evidence that would demonstrate that the commission or omission of a relevant act is 'beyond reasonable doubt'. This inevitably means that Ofsted's recourse to criminal sanctions is only available in limited circumstances.

204. Where an inspector suspects that an offence has been committed, the inspector carries out an interview under caution according to Police and Criminal Evidence Act requirements.

Offences

205. A person is guilty of an offence and can be prosecuted in a Magistrates Court if he or she:
- is a registered person who has contravened or otherwise failed to comply with any condition imposed on his or her registration without reasonable excuse
 - is a registered person who has contravened or otherwise failed to comply with any of the National Standards or regulations without reasonable excuse²⁵
 - provides day care without being registered without reasonable excuse
 - acts as a childminder or provides day care at any time when he or she is disqualified for registration
 - is a person who has been served with an enforcement notice and continues to provide childminding without registration during the period the notice is in force
 - is a person who knowingly made a statement in an application which is false or misleading in a material particular
 - is a registered provider who has a disqualified person living or working on the premises
 - is a person who has wilfully obstructed the right of entry of an inspection by a registered inspector or authorised person (Ofsted may apply to a Magistrates Court for a warrant authorising any police officer to assist that person in the exercise of those powers, using reasonable force if necessary).
206. Such persons are liable to prosecution, and Ofsted as the regulatory authority has responsibility for investigating possible offences with a view to bringing them to court.
207. In each case, such a person is liable on summary conviction to a fine, not exceeding Level 5 on the standard scale (up to a maximum of £5,000).
208. Ofsted will bring proceedings for an offence within six months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the procedures can be known.
209. Ofsted may, in certain circumstances, offer a person a caution instead of prosecuting him or her for an offence.

²⁵ These regulations also provide that where HMCI considers that a registered person has contravened or otherwise failed to comply with the National Standards and other regulations under 79C, he may serve a notice on that person specifying:

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

Annex A. Glossary of terms

Applicant	a person who applies for registration as a childminder or day-care provider.
Provider	a person who provides childminding or group day care.
Registered person	a person, or organisation, who has overall responsibility for the childcare provision and is registered as suitable to care for children.
Qualified	the person meets prescribed requirements regarding the suitability of persons and premises and adheres to the National Standards and other regulations.
Regulation	covers registration, inspection, investigation and enforcement.
Registration	the process of checking that an applicant is suitable to care for children in safe and suitable premises.
Inspection	a system to provide a regular check within prescribed intervals to ensure that providers meet the National Standards.
Investigation	the action taken following a concern or complaint to establish whether a registered provider continues to be suitable for registration; or whether an unregistered person is providing childcare for which registration is required.
Enforcement	the action taken when requirements are not met.

For definitions of the five types of childcare provision, see paragraphs 34 to 38.

Annex B. The National Standards

National Standards for under 8s day care and childminding

Standard 1. Suitable person

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

Standard 2. Organisation

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

Standard 3. Care, learning and play

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

Standard 4. Physical environment

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

Standard 5. Equipment

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

Standard 6. Safety

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

Standard 7. Health

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

Standard 8. Food and drink

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

Standard 9. Equal opportunities

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

Standard 10. Special needs (including special educational needs and disabilities).

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

Standard 11. Behaviour

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

Standard 12. Working in partnership with parents and carers

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

Standard 13. Child protection

The registered person complies with local child protection procedures approved by the Area Child Protection Committee and ensures that all adults working and looking after children in the provision are able to put the procedures into practice.

Standard 14. Documentation

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

Annex C. Requirements in regulations

Requirements in regulations which all childminders must meet

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

1. Let Ofsted know of changes and relevant events

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

Change to premises and provision

You must tell Ofsted about:

- a change of your address
- a significant change to your childcare premises (for example a conversion or extension of part of the building)
- any change in the hours that you provide childminding, which mean that you would provide overnight care.

Changes to people and their suitability

You must tell Ofsted about:

- any change of your name
- any changes to people:
 - i) living on the premises (please let us know when a person living there reaches the age of 16)
 - ii) looking after children on the premises
 - iii) employed on the premises.

You must tell Ofsted of the new person's date of birth, full name, any former names or aliases used by them and their full address. You must also tell Ofsted of any change to the name or home address of any of the types of people named in i) to iii).

Matters affecting the welfare of children

You must tell Ofsted about:

- any food poisoning affecting two or more children looked after at the premises, meningitis or other notifiable disease
- any serious accident or injury to, or serious illness of, or the death of any child whilst in your care
- any serious accident or injury to, or serious illness of, or the death of any other person on the premises
- any allegations of serious harm against, or abuse of, a child by any person looking after children at the premises (whether that allegation relates to harm or abuse committed on the premises or elsewhere); or by

the registered person, or any person living, working or employed on the premises

- any other significant event which is likely to affect the suitability of the registered person or any person caring for children on the premises, such as any offences or orders that may disqualify them.

2. Keep the following records

You must keep records of the following at the premises.

1. The name, home address and date of birth of each child who is looked after on the premises.
2. The name, home address and telephone number of a parent of each child who is looked after on the premises.
3. A daily record of the names of the children looked after on the premises, their hours of attendance and the names of the persons who look after them.*
4. A record of accidents occurring on the premises.*
5. A record of any medicine administered to any child on the premises, including the date and circumstances of its administration, by whom it was administered, including medicine which the child is permitted to administer to him/herself, together with a record of a parent's consent.*
6. A record of all complaints for a period of 10 years.

* In these cases you must keep the record for two years from the time of the entry being made or this event taking place.

3. Complaints record

You must keep a record of all complaints that you receive in writing or email from parents. The record should include the action you took following the complaint and the outcome of your investigation. You must share the complaints record with parents.

4. Informing parents of inspection

You must tell parents about any forthcoming inspection if you know the date in advance. You should give a copy of the inspection report to all parents with children in your setting. You must give any other person who requests it a copy of the inspection report but you may charge them the cost of copying.

5. Pay the fee

Regulations require registered persons to pay Ofsted at prescribed times a fee of a prescribed amount. This amount is currently £14 payable annually.

Ofsted will cancel the registration of any person if a fee which is due from the person has not been paid.

6. Use of corporal punishment

You must not give corporal punishment to a child or allow other persons who look after children or live and work on the childcare premises to give corporal punishment.

Requirements in regulations which all providers of day care must meet

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

1. Let Ofsted know of changes and relevant events¹

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

Change to premises, facilities and provision

You must tell Ofsted about:

- any change in the address of the premises
- any change in the facilities to be used for day care that may affect the space available to children and the level of care available to them
- any change in the hours during which day care is provided, which means that you offer overnight care
- any change in the childcare category applicable to the provision (for instance, if you decide you want to set up a crèche or you want to extend sessional care to full day care).

Changes to people

You must tell Ofsted about:

- any change to the manager or person in charge
- any changes:
 - iv) to any person who is a member of a committee or corporate or unincorporated body whose prime purpose is to provide day care
 - v) any person who has delegated, clearly identifiable and direct responsibility for the provision of day care where the day care is provided by a partnership, committee or corporate or unincorporated body whose prime purpose is not the provision of day care
 - vi) to the name or address of the registered person
 - vii) to the name or registered number of the company where day care is provided by a body corporate
 - viii) to the name or registered number of the charity where day care is provided by a registered charity
 - ix) to the name of the body that provides the day care where the day care is provided by a committee, partnership or unincorporated body.

¹ These are set out in the Day Care and Child Minding (National Standards) (England) Regulations 2003 No 1996.

Matters affecting the welfare of children

You must tell Ofsted about:

- any food poisoning affecting two or more children looked after at the premises, meningitis or other notifiable disease
- any serious accident or injury to, or serious illness of, or the death of, any child whilst in the care of a registered person
- any serious accident or injury to, or serious illness of, or the death of, any other person on the premises
- any allegations of serious harm against, or abuse of, a child by any person looking after children at the premises (whether that allegation relates to harm or abuse committed on the premises or elsewhere); or by the registered person, or any person living, working or employed on the premises
- any other significant event which is likely to affect the suitability of the registered person or any person caring for the children on the premises, such as offences or orders that might disqualify them.

2. You must keep the following records at the premises²

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

² These are set out in The Day Care and Child Minding (National Standards) (England) Regulations 2003 No 1996.

- neglect and procedures to be followed in the event of allegations of abuse or neglect.
12. A written complaints procedure including Ofsted's address and telephone number.
 13. A record of any complaints for a period of 10 years.
- (a) Every entry in these cases must be kept for a period of two years from the date on which the entry is made.
 - (b) This is not required with respect to open access schemes.

3. Complaints record

You must keep a record of all complaints that you receive in writing or email from parents. The record should include the action you took following the complaint and the outcome of your investigation. You must share the complaints record with parents.

4. Informing parents of inspection

You must tell parents about any forthcoming inspection if you know the date in advance. You should give a copy of the inspection report to all parents with children in your setting. You must give any other person who requests it a copy of the inspection report but you may charge them the cost of copying. This requirement does not apply to crèches, holiday playschemes or open access schemes.

5. Pay the fee

Regulations require registered persons to pay Ofsted at prescribed times a fee of a prescribed amount. This amount is currently payable annually and is £14 if you care for children continuously for less than four hours in any one day, and £120 if you care for children continuously for four hours or more in any one day. Ofsted will cancel the registration of any person if a fee which is due from the person has not been paid.

6. Use of corporal punishment

You must not give corporal punishment to a child or allow other persons who look after children or live and work on the childcare premises to give corporal punishment.

Annex D. Ofsted principles of inspection

The following principles apply to all inspection activities carried out by, or on behalf of Ofsted. They are intended to ensure that:

- the findings of the inspection contribute to improvement
- the process of inspection promotes inclusion
- inspection is carried out openly with those being inspected
- the findings of inspection are valid, reliable and consistent.

The Principles

- Inspection acts in the interests of children, young people and adult learners and, where relevant, their parents, to encourage high quality provision that meets diverse needs and promotes equality.
- Inspection is evaluative and diagnostic, assessing quality and compliance and providing a clear basis for improvement.
- The purpose of inspection and the procedures to be used are communicated clearly to those involved.
- Inspection invites and takes account of any self-evaluation by those inspected.
- Inspection informs those responsible for taking decisions about provision.
- Inspection is carried out by those who have sufficient and relevant professional expertise and training.
- Evidence is recorded, and is of sufficient range and quality to secure and justify judgements.
- Judgements are based on systematic evaluation requirements and criteria, are reached corporately where more than one inspector is involved, and reflect a common understanding in Ofsted about quality.
- Effectiveness is central to judging the quality of provision and processes.
- Inspection includes clear and helpful oral feedback and leads to written reporting that evaluates performance and quality and identifies strengths and areas for improvement.
- The work of all inspectors reflects Ofsted's stated values and code of conduct.
- Quality assurance is built into all inspection activities to ensure that these principles are met and inspection is improved.

Annex E. Evaluation schedule; for inspections of childcare and nursery education

1. What sort of setting is it?

Inspectors must report on:

- the characteristics of the provision.

2. How effective is the provision?

Inspectors must evaluate and report on:

- how the quality and standards of the childcare – taking account of the 14 National Standards – and of the nursery education (where applicable) promote the following outcomes for children:
 - being healthy (standards 7,8)
 - staying safe (standards 4,5,6,13)
 - enjoying and achieving (standard 3)
 - making a positive contribution (standards 9,10,11,12)
- how well the organisation (standards 1,2,14) of childminding or day care promotes children's well-being.

Inspectors must also evaluate and report on:

- how well the organisation of the childcare and, where applicable, the leadership and management of the nursery education promotes the outcomes for children
- whether the childminding, day care and/or nursery education meets the needs of the range of children for whom it is provided
- how well the partnership with parents and carers promotes the nursery education (where applicable)
- whether children's spiritual, moral, social and cultural development is fostered (nursery education only)
- improvements since the last inspection
- any complaints about the quality of childcare.

3. What must be done to secure future improvement?

*Inspectors must report on **either***

- any recommendations to improve the quality and standards of care and, where applicable, of the nursery education

or

- any provision where the quality and standards of care and, where applicable, of the nursery education causes concern

and

- the action required to ensure that the quality and standards of care and, of the nursery education where applicable, are acceptable

or

- whether Ofsted intends to take enforcement action in respect of the childcare.

Annex F. Enforcement statement

Ofsted has regard to the seven principles of good enforcement when exercising its enforcement powers and responsibilities. It seeks to fulfil these principles in the following ways.

Standards

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

Openness

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

Helpfulness

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

Complaints about service

Ofsted provides an effective complaints procedure and makes it known.

Proportionality

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

Consistency

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

Procedures

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