

Review
Better Regulation Task Force

Early Education and Day Care

July 1998

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Foreword

We are pleased to publish this review of the regulation on early education and day care.

We were appointed by the Chancellor of the Duchy of Lancaster in September 1997 to advise the Government on improving the quality of government regulation. (You can find a complete list of members at **Annex A.**)

Our first task was to establish general principles of good regulation – **transparency, accountability, targeting, consistency and proportionality**. We have used these in all our reviews to judge the standard of existing and proposed legislation. (You can find a full explanation of these terms at **Annex B.**)

We chose to review the legislation of early education and day care because we found that parents, providers and regulators are all concerned about the inadequacies, anomalies and inconsistencies in the current regulatory frameworks. We also believe that the existing regulation falls short of our principles of good regulation. This review is timely given the economic and social significance of early education and day care to the planned reforms in education and welfare, and the Government's commitment to reviewing regulation in this area.

This report contains recommendations which are directed at Government. We expect them to be taken seriously.



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Chairman



DR CHAI PATEL
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Executive summary

The Better Regulation Task Force has assessed the regulation of early education and day care against the principles of transparency, accountability, targeting, consistency and proportionality. It has been guided primarily by contacts with consumer (or user) groups and those who provide and regulate early education and day care.

Major inconsistencies between the separate regulatory frameworks for education and care cause concern to parents, providers and regulators alike. Whilst we support the need for these regulatory frameworks to be integrated, neither this, nor the introduction of the Working Families Tax Credit, should be allowed to distract from the primary purpose of regulation in this area – the protection of children – or from the role that parents need to play in helping to assure this.

Key recommendations for Government:

- Make clear that the primary purpose of regulation in this area is the **protection** of children through guaranteed minimum standards of care. It follows that OFSTED should not play the lead role in an integrated regulatory framework.
- **Regulatory requirements should be set nationally** and overseen by a national advisory body to avoid inconsistencies between different parts of the country.
- At the local level, an integrated approach to registration and inspection of all aspects of early education and day care should preferably be achieved through better **joint working** and greater clarity of roles between current regulatory bodies. Failing this a **single local or regional regulator** should be given sole responsibility.
- The **registration process should be speeded up**, although not at the expense of the checks that must be made for children's protection.
- National standards are required for the recruitment and training of inspectors. Inspectors should adopt **good enforcement practice** and better targeting. Inspection reports need to be more transparent and easily available to parents.
- Regulation should **not be tightened or extended** to currently unregulated provision unless warranted by the need to protect children. In particular, **licensing of nannies or nanny agencies would fail our tests of targeting and proportionality**.
- Parents¹ should be given clear information on what to expect from regulation and on **parents' responsibility in helping to ensure that essential requirements are met**.
- The new **Working Families Tax Credit** needs careful implementation to prevent it from having any unintended effects on childcare provision.

¹ Wherever we have used the term 'parent', we also mean 'guardian' and 'carer'.

1. The scope of our review

This report examines the regulation of early education and day care for children in England.²

The Government has recently published a consultation paper on the regulation of early education and day care.³ We support the Government's broad intentions as set out in this paper. As detailed in Annex D, our review responds to many of the questions raised in the paper, but does not set out to answer them point by point. We do not address the regulation of residential care for young children;⁴ or OFSTED's work in inspecting schools for children aged five and over.

2. The objectives of our review

We have been guided in our work by our desire to see a regulatory framework that provides effective protection for vulnerable children. Another key objective was to avoid unnecessarily constraining the growth and diversity of early years services.

We recognise this is a deeply sensitive area. Even during our review, we have seen reports alleging harm and abuse of children. There are, unfortunately, those who would intentionally harm children, and other environments in which unintended harm could occur. There are a few libertarians who might argue that regulation is unnecessary, and that parents should take complete responsibility for ensuring a child's safety. Others may see the whole answer in regulations, demanding that the state act as guarantor that no harm is allowed to come to children. We reject both approaches as unsatisfactory. We believe that regulation based on the principles⁵ we have published should drive away those providers who are inappropriate, and should deliver an effective degree of diligence by others. In addition, it would recognise that parents and guardians have an irreducible level of responsibility for their children.

While we recognise the importance of the Government's New Deal (Welfare to Work) programme and the pressure to achieve its objectives at lowest cost, the interests of children must remain paramount.

² This review covers proposals for England. However, many of the issues raised are relevant across the UK.

³ *The Consultation Paper on the Regulation of Early Education and Day Care*, DfEE/DH, 1998 is available from DfEE Publications Centre. Telephone 0845 602 2260.

⁴ The regulation of residential care for children is currently the subject of work within Government. This follows the publication of the Utting report into the care of children looked after away from home and the North Wales inquiry into abuse within children's homes.

⁵ *Principles of Good Regulation* published by the Better Regulation Task Force, 1998.

We have concentrated on identifying areas where progress is possible in the short term as well as making longer-term recommendations for the establishment of a new regulatory regime.

Developments in early years services should be seen as part of the wider developments in the regulation of care. In producing this report, the Task Force has drawn on its report into the Regulation of Long-Term Care, published on 13 May 1998.⁶

3. Our approach

As part of our review, we approached a number of user groups, providers, regulators and others to get a better understanding of how the current regulations work. (**Annex C** lists these organisations.) We are grateful for the contributions received.

A constructive dialogue with officials from the Department for Education and Employment and the Department of Health has also helped us in framing recommendations. We are grateful to the departments for allowing us the chance to make an early input into their thinking on the consultation document. We are pleased to see that the document recognises many of the concerns we raised.

4. Our findings and recommendations

4.1 The current regulatory environment

Early education and day care services range from state school provision to informal care in the home. At present, there are separate regimes covering when and how, and by whom these services are regulated. (Key features of the current regulatory environment are shown in table 1.)

⁶ The Better Regulation Task Force *Review of Long-Term Care* is available from the Better Regulation Task Force at Room 67a/3 Horse Guards Road, London SW1P 3AL. Telephone 0171 270 6601.

Table 1

Type of provision	Legislation	Inspection
Pre-schools and Playgroups	The Children Act 1989	Registered & inspected under t
	Nursery Education and Grant Maintained Schools Act 1996	If receiving a nursery education inspectors (NEIs) appointed by on the quality of education pro
Maintained Nursery Classes & Nursery Schools	The Schools Inspection Act 1996	Inspection carried out by OFST published
Private Nursery Schools	The Children Act 1989	Registered & inspected under t
	Nursery Education and Grant Maintained Schools Act 1996	If receiving a nursery education inspectors (NEIs) appointed by on the quality of education pro
Day Nurseries	The Children Act 1989	Registered & inspected under t
	Nursery Education and Grant Maintained Schools Act 1996	If receiving a nursery education inspectors (NEIs) appointed by on the quality of education pro
Childminders	The Children Act 1989	Childminders are registered and However, if they become part of provision of nursery education reported on by NEIs appointed
Reception Classes (Maintained Primary Schools)	The Schools Inspection Act 1996	OFSTED inspects education as inspection
Independent Schools	The Education Act 1996	Registered with the DfEE
	The Schools Inspection Act 1996	Inspected by OFSTED If receiving a grant for nursery NEIs appointed by OFSTED to quality of education provided for

	Adult:child ratios	Scope of regulation
annually Nursery education inspect and report	1:8 (children aged 3 to 5) Higher ratios apply for younger children	Premises, number of children, adult:child ratios, fitness of manager, care and activities Educational provision for 4 year olds if receiving Nursery Education Grant
report is	2:26 (one qualified teacher and a qualified nursery nurse) or 1:10 (where head teacher teaches)	Premises, educational provision, qualifications of teachers, adult:child ratios
annually Nursery education inspect and report	2:26 (one qualified teacher and a qualified nursery nurse) or 1:10 (where head teacher teaches)	Premises, number of children, adult:child ratios, fitness of manager, care and activities Educational provision for 4 year olds if receiving Nursery Education Grant
annually Nursery education inspect and report	1:8 (children aged 3 to 5) Higher ratios apply for younger children	Premises, number of children, adult:child ratios, fitness of manager, care and activities Educational provision for 4 year olds if receiving Nursery Education Grant
the LA. network the ed and	May vary locally, but normally: 1:3 children under 5 1:6 children aged 5–7 1:6 children under 8 (no more than 3 under 5) In all cases the ratios include the minders' own children	Premises, number of children and suitability of childminder and household
normal school	No regulation covering adult:child ratios or class size that can be up to 35 children	Premises, educational provision, qualifications of teachers
inspected by report on the	No regulation covering adult:child ratios or class sizes	Standards of education, health and safety Educational provision for 4 year olds

The Children Act 1989 applies to all forms of 'formal' care. It focuses on standards of care. Part 10 of the Act places a duty on day care providers and childminders to register with local authorities. It gives local authorities wide discretionary powers regarding the 'fitness' of providers (and others living at the premises), and their premises. The Secretary of State has issued guidance to local authorities on the exercise of these powers.⁷ The guidance focuses on a number of areas, including staff ratios and space standards, and lists factors to be taken into account by local authorities in assessing this 'fitness'. Ultimately, however, it is left to each social services department to interpret this guidance and establish their own local requirements.

State nursery classes and nursery schools are currently inspected by OFSTED under the Schools Inspection Act 1996. Where pre-schools, private nurseries and other childcare services are receiving a nursery education grant they are inspected by Nursery Education Inspectors appointed by OFSTED under the Nursery Education and Grant Maintained Schools Act 1996. The Education Acts⁸ place a greater emphasis on assuring educational quality and ensuring that public funding is appropriately spent, although they do also cover child welfare. In particular, personal and social development is one of many areas covered by nursery inspections and this includes an element of child welfare.

The introduction of OFSTED inspections for nurseries, day care centres and those independent schools that receive State funding for the education of four year olds means that they are now subject to dual inspection. However, while this inspection covers the educational standards for four year olds it does not look at the standards of care for younger children.

Other forms of provision remain unregulated. For example, there are no regulations covering short-term care (less than two hours per day and six days per year); provision for over-eights; and most care in the child's own home. Nannies are exempt from registration, except where they are shared between more than two families. There is also an 'informal' childcare sector, primarily childminding by family and friends, and paid carers who may be operating illegally (without having been registered and approved).

The local authority regulation of after-school and holiday play schemes depends on the frequency and duration of the care. Supervised activities for under-eights such as Brownies, Cubs and sports clubs are potentially subject to registration and monitoring. Current regulations do not satisfactorily deal with new developments such as holiday camps and children's hotels.

⁷ The Children Act 1989: Guidance and Regulations Volume 2, Family Support, Day Care and Educational Provision for Young Children.

⁸ Education (Schools) Act 1992 and The Nursery Education and Grant Maintained Schools Act 1996.

The application of the different regimes described above leads to inconsistency between the statutory, private and independent provision of similar types of services; and between geographical areas.

There are discrepancies between the conditions that apply to services for children of the same age depending on whether they are registered under the Children Act or within the Education Acts. These discrepancies include: premises and space standards; adult:child ratios; inspection frequency and approach; and 'fit person' criteria. Some of these differences arise from the different statutes, others from the different guidance provided under each and the interpretation placed on them by the local authorities.

In particular, there are key differences between the maintained and the non-maintained sectors for four year olds. The former offers education, while the latter offers education and day care facilities, and caters for very young children.

There are also significant geographical variations in the requirements applied in the voluntary and private sectors (including childminders), because of differences in the focus and emphasis required by different local authorities and different inspection teams within an authority. Specific inconsistencies include:

- space standards;
- staff ratios;
- variations in the training and qualifications required by local authorities for childcare workers;
- variations in the level of police checking;
- local variation in the stringency of safety regulations.

There is currently a significant amount of informal care operating outside the regulatory framework. The new Childcare Tax Credit, part of the Working Families Tax Credit, will offer up to £105 per week towards the cost of registered childcare.⁹ This could lead to many of the currently unregistered providers applying for registration, as well as encouraging many more genuinely new childcare places. Along with other government measures, this could lead to a very substantial increase in the number of registered childcare providers.

Recommendation

- *We urge the Government to press ahead with the unification of the existing regulatory frameworks as an effective long-term means of addressing the inconsistencies caused by different regulations and local interpretation of the guidance.*

⁹ The Childcare Tax Credit will cover up to 70% of childcare cost, up to a maximum of £70 for one child and £105 for two or more children.

4.2 Clarity of purpose and terminology

Many people are confused about the purpose, and indeed the meaning, of the term 'regulation' in early education and day care.

Most childcare provision is registered and inspected by local authorities under the Children Act 1989. While some of this provision will include an element of education, the Act focuses on promoting the welfare and protection of the child. A relatively small proportion of this provision is inspected by OFSTED in addition to the Children Act inspections.

The use of the term 'regulation' in the educational context can be misleading and confusing. OFSTED's role includes assessing financial efficiency as well as inspecting against educational standards. If not handled carefully, a 'merging' of the regulation of care with the OFSTED regime could deflect attention away from the imperative of ensuring a safe environment for children receiving day care outside the home onto the checking of provision against desirable educational outcomes. We believe that the primary purpose of regulation should be to protect, in this case by assuring guaranteed minimum standards of care.

There is already some overlap between the inspection regimes in the area of 'personal and social development'. This concept appears to need unpicking to distinguish more clearly between protective care and developmental objectives.

Regulation is only one influence on early years services. Other important factors include levels of funding and staff training, availability of suitable premises, parental awareness and involvement, and the existence of independent quality accreditation and benchmarking schemes. We welcome the publication of the Government's Green Paper *Meeting the Childcare Challenge* in which the Government seeks to put regulation in this wider context.¹⁰

Other areas of regulation also apply. For example, many early years services are subject to separate local authority inspections under health and safety law that, while primarily directed at the safety of those employed, is also concerned with the health and safety of children.

Expertise in care regulation is currently shared with, and lessons learned from, the regulation of other forms of social care. In developing a new early years regulatory regime it will be important to have regard to developments elsewhere in the regulation of social care.

Recommendations

- *Government should clarify the role of regulation in early years provision in relation to its wider policy objectives, and clarify the terminology of the regulation.*

¹⁰ *Meeting the Childcare Challenge*, 1998, published by DfEE, DSS and Ministers for Women.

- *Government should make clear that the primary objective of regulation in this area is to protect children by providing guaranteed minimum standards of care.*
- *Government should ensure that early years regulations are complementary to other regulation affecting early education and day care providers.*

4.3 Registration and inspection requirements

As described above, inconsistency between the requirements applied to providers of the same type of service, or different services for children in the same age range, is a major cause of concern with the current regime.

The discrepancies in provision for four year olds pose some obvious questions. For example, the Education Acts permit one newly qualified teacher in a school reception class to supervise 26 children, when an equally qualified teacher in a nursery is restricted (by the Children Act 1989) to eight children of the same age. The evidence is that this has contributed to the state sector burgeoning at the expense of declining independent provision. We recognise that there have been other factors here such as the previous Government's Nursery Voucher Scheme.

National guidance drawn up under the Children Act lacks status and gives local authorities powers to interpret the guidance very differently. We see no reason why local variations in interpreting what the regulations require should be allowed to cause differences in practice. Clear national regulatory requirements must be consistently applied by all local authorities.

There is confusion over what constitutes essential requirements (the 'guaranteed standards', which the state should seek to assure) and what is best practice (or 'aspirational standards'). This has contributed to inconsistencies under the Children Act. While inconsistency has not been such an issue, we question whether OFSTED's criteria and judgements for educational inputs and desirable outcomes distinguish clearly between minimum standards and best practice. Government and others will wish to continue to produce best practice guidance that goes beyond statutory requirements. This may be particularly appropriate in relation to educational outcomes. Nevertheless, it is important to recognise that, while inspectors may give advice in line with these best practice standards, parental choice and innovation by providers should be the main ways of promoting such standards. National standards and clear accessible information are required to support this.

Regulatory requirements should strike the right balance between promoting consistency (but not uniformity) and allowing flexibility. To achieve this, statutory requirements for premises should generally be goal-based, allowing the circumstances of the provider to be taken into account in meeting the regulatory objective. For example, access to nearby open spaces may be an acceptable

alternative to having an outside play area. However, clear examples of what is acceptable should be set down in the national guidance to avoid local inconsistencies. To provide parents and providers with even greater certainty (while retaining some flexibility), Approved Codes of Practice could be used. These can set down a legally acceptable means of meeting the regulatory objective, while allowing the provider to demonstrate that they have met the objective in some other equally effective manner. While this suggests that providers should play a greater part in assessing their premises against the regulatory requirements, this will not replace the need for independent inspection at initial registration and subsequently.

Recommendations

- *Regulatory requirements should be set out clearly at the national level.*
- *Regulatory requirements in statute should be goal-based and focused on core safety and environmental requirements. Acceptable ways of complying should be set out clearly in national guidance or Approved Codes of Practice.*
- *Regulatory requirements should be justified against the purposes of regulation, particularly discrepancies in for example adult:child ratios between types of provision.*
- *Clear distinctions should be made between regulatory requirements and any guidance published on 'best practice'.*

4.4 Provision of information

We discovered that neither OFSTED nor many local authorities give parents clear information on what requirements their child's care provider is to meet. This is a serious concern, given that parents are in daily contact with the provider and their premises, whilst inspection can only provide an occasional snapshot of care provision. We would commend the information currently available from the National Early Years Network¹¹ as an example of what can be provided. We believe that empowering parents by providing information would go a long way to ensuring that providers comply with regulatory requirements.

Information for parents will be particularly important where currently unregulated forms of provision are brought within regulation. Information will help to combat any feeling that the state is taking over responsibility.

We welcome Government's proposals for providing information to parents as set out in *Meeting the Childcare Challenge*. However, we would stress that at a minimum the information provided to parents should point them to what to

¹¹*Choosing What's Best for Your Child*, originally commissioned by DfEE for circulation under the Nursery Voucher Scheme is now available to local authorities for distribution to parents.

expect from the childcare provider and avoid creating the impression that registration itself will ensure safety. A possible vehicle for giving parents information could be the child benefit system, which could potentially reach 98% of eligible families.

There is room for improvement in making information available for providers (although more is currently available than for parents). Many providers are keen to comply with the regulatory requirements, but are hampered by confusion over what they are expected to do.

Recommendations

- *The Government should provide parents with clear guidance on what to expect from their care provider; the child benefit system could be a useful way of contacting eligible parents.*
- *Information available for would-be and established providers should be reviewed and made more accessible.*

4.5 The role of parents

The current regulatory frameworks do not give parents a clear role in monitoring the standards of the care into which they are placing their child. Public reassurance is an important purpose of regulation. It is equally important that regulation does not create a false sense of security by appearing to guarantee better protection, development or educational achievement than it can deliver. Creating extra bureaucracy that delivers little in terms of protection, for example in relation to nannies or after school clubs, would be counter-productive.

The state cannot take over the parent's responsibility for carefully monitoring childcare provision – whatever form that care may take. Parents will generally have a much better day-to-day insight into their child's care environment than an inspector who visits at set intervals. We appreciate that for some – low income families in particular – the lack of good affordable day care forces them to accept poor quality care even if they have concerns.

However, many parents are currently unsure about what to look for when placing their child in registered care, or what they should expect in terms of education. They do not know where to find information that will help them make informed choices about day care or educational services. We appreciate that some parents do not have the necessary skills or confidence to complain effectively when they encounter problems and will need additional support, and others may be concerned about the possible repercussions that complaining may have on their children.

Recommendation

- *The Government should invest in parent education and guidance to empower parents.*

4.6 Operation of the registration process

We have found evidence of long delays in gaining registration as a childminder or other type of childcare provider. We question whether the 3–6 month registration process envisaged nationally is as quick as it could be and have been told that in some areas delays can be more than this. These delays and inconsistencies may reflect the low priority this work has with some local authorities and the limited resources made available.

This could be resolved by making the registration process self-financing through charging. However, it would be necessary to prevent this acting as a further disincentive for registration. Childminders may already have to meet the cost of, for example, the annual registration fee and any safety improvements to the home. Any significant changes in charging may therefore need to be accompanied by eligibility for a small business start-up grant.

Assessment of the fitness of the persons and premises involved also causes delays. It may be possible, in some cases, to shorten the process. While a 'fit person' check is vital, if the person has previously been assessed by the same or other local authorities, or has relevant training or qualifications, the checks should not need repeating simply because the applicant has changed their premises. Similarly, premises checks should be flexible enough to take account of membership of voluntary accreditation schemes and the extent to which the provider has carried out a self-assessment and put in place risk management measures. While some level of independent checking would still be necessary, particularly at the registration stage, this could allow the process to be simplified.

Some local authorities insist that potential childminders apply for planning permission for a change to business use. This can be made worse by the imposition of business rates. The Government needs to make clear that childminders, as with most other homeworkers, should not be subject to such controls.

Currently whether all staff in early years settings are subject to police checks depends on the policy of the local authority. However, government guidance only allows schemes established before 1993 to operate. We welcome the Government's moves to create an integrated system of police and other checks.¹² However, it will be important to ensure that any charges for these checks are not

¹² This includes The Department of Health 'Consultancy Index' and the Department for Education and Employment 'List 99'.

disproportionate, for example, to small voluntary organisations for police checks on their volunteers, or to childminders who could then have to pay for checks on all members of the household over the age of 16.

Recommendations

- *The Government should ensure that the registration and inspection process is consistently and adequately resourced at the local level. Any charges this creates should be proportionate and accompanied by measures to assist applicants who have limited resources.*
- *Greater flexibility should be introduced into the requirements for 'fit persons' and premises checks, avoiding needless repetition of checks.*
- *Police check systems should be integrated and should be easily available and cost effective.*

4.7 Scope of regulatory framework

There are a number of issues that the Government needs to address when covering the scope of the regulatory framework. Namely, whether the existing scope of regulation is justified, whether there is a need to regulate forms of childcare that are currently outside the scope of regulation, and how developments such as overnight care should be handled.

4.7 (i) Childminding

Childminders have unsupervised responsibility for under-eights away from the home environment. We agree that some form of 'fit person' check is generally appropriate.

If unregistered providers such as friends, and even possibly family, wish to register to benefit from funds under the Working Families Tax Credit, the regulations must include proportionality and targeting. We are concerned that families may arrange for the care of the child to be moved from their home to that of the carer, in order to qualify for the tax credit.

We accept that where the state is paying for a service there needs to be a clear trail of public accountability. However, we do not believe that because care is state-funded it necessarily must be regulated – only where this is warranted by the need for protection. Children whose parents are paying for their care should not have a lower standard of protection than children in receipt of state support. For example, where care being provided by family and friends in an environment which is well known to the child's parents is registered as a result of these changes, there is an argument that the fit person test or premises test would not always be needed. This may be important both to avoid the unintended effect of forcing children to move from a care environment or carer with whom they are

familiar as well as helping to keep the registration process manageable following the likely surge in applications. Such exemptions might be possible alongside the existing requirement that those offering childcare generally (i.e. where the carer is not a relation or previously known to parents) should be subject to controls. What we envisage is a three-tier system as shown in table 2 below.

4.7 (ii) *Nannies and au pairs*

There has been much recent debate about the need for the registration or licensing of nannies and au pairs, or agencies that place them. The relevant principles here are targeting and proportionality. The Government would need to be able to demonstrate that any such proposals were targeted on risk and that an appropriate balance had been struck between the costs and benefits.

A minority of nannies and au pairs are placed through agencies, with most recruited through private advertisements and by word of mouth. Agencies are already subject to regulation (the Employment Agencies Act). In addition, the Federation for the Recruitment and Employment Services has developed voluntary codes of practice for nanny agencies and the recruitment of au pairs which go beyond current statutory regulation. The Task Force is of view that further statutory regulation in this area would not meet our principles of targeting and proportionality. Instead it would stand the risk of reinforcing a false sense of security that may already exist amongst parents using these agencies.

The licensing of individual nannies would clearly be disproportionate given the lack of evidence of risk and the bureaucracy that would be involved. We envisage that they would remain unregulated or subject to minimal checks as shown in table 2 below.

Table 2

Tier 1 – Forms of provision subject to full regulation	Nurseries, pre-schools, normal commercial childminding
Tier 2 – Types of provision subject to limited regulatory checks and vetting	Current unregistered care arrangements which qualify for payment of the Working Families Tax Credit, i.e. family and friends
Tier 3 – Types of provision which would remain unregulated or subject to minimal checks	Unregistered informal (and unpaid) care, nannies, au pairs

Whatever method parents use for recruiting nannies and au pairs we believe that parental responsibility is the key to ensuring that children are protected. The Government's role should be limited to providing parents with clear information on the steps that they should take when employing a nanny or au pair. This could include information on relevant training and qualifications, although even these are no guarantee of an appropriate attitude to children. This information could build

on what is already available, for example, from the Home Office in relation to the employment of au pairs and from a number of independent organisations such as the National Childbirth Trust.

There is also the issue of how enforceable the regulation of nannies might be. We know that people pay family and friends to act as childminders even when the law requires them to be registered. How possible would it be to enforce a regulation that covers what happens behind, say, 100,000 closed doors in private homes? Many parents would regard it as unwarranted intrusion, and believe that they are quite capable of making decisions as to who comes into their home (and indeed often lives with the family).

There is also the question of registration officers' workload. Some au pairs and nannies do the job untrained only for a few months, a year at most, as they take time out between school and university or between a degree course and starting long-term work: there is a high turnover. Parents cannot afford to wait for three months between carers while checks are carried out. Similarly, rather than spend three months without earnings while they complete registration, potential carers may simply choose to do something else – creating a worse shortage.

4.7 (iii) *The over-eights*

The key distinction between over- and under-eights is that older children are often more able to express their own opinions about care provided outside the home. We have heard nothing from our contacts to suggest that extending registration requirements to protect children in older age groups is justified. Many of these children are in any case already afforded protection by virtue of attending day care provision that caters for children under eight. And given that these are still vulnerable children, parental responsibility remains crucial.

Recommendations

- *Care providers should only be subject to registration where the risks and benefits justify it, and where regulation can deliver effective protection.*
- *The Government should look at the scope for exemptions (or other reforms) within the registration requirements for childminders, to reflect the likely changes in the number and type of carers applying for registration as a result of the Working Families Tax Credit.*
- *The Government should not introduce registration for individual nannies, au pairs, baby-sitters or the supervision of over-eights, nor for agencies, unless this can be shown to be justified against the principles of good regulation. We do not believe this to be the case.*

4.8 The regulatory institutions

We have noted above the need to integrate the current regulatory regimes. The need for national consistency of standards creates a need for an independent advisory body to set, monitor and review standards. Such a body – which could be new or already in existence – should be accountable to the relevant Secretary of State.

A national advisory body need not, however, be responsible for managing the registration and inspection process. It is important for inspectors to have local knowledge, be accessible to parents, accountable to local communities and be able to develop constructive working relationships with providers. The contracting of inspectors by a national body on individual or short-term inspection contracts, as in the OFSTED model, militates against the development of local knowledge and accessibility by parents. It can be argued that local authorities, as purchasers and providers of services, lack accountability as regulators; but we have noted that their funding and provision of childcare is very limited, and we do not therefore see this as an insurmountable problem.

While we support the integration of the current inspection regimes, we have noted throughout the report that the primary objective of regulation in this area should be to assure protection. Educational goals are important but secondary to this. OFSTED's expertise is primarily in educational requirements, although we have noted the element of welfare consideration in its work. We do not believe that OFSTED has the capability to take the lead role in a new regime, particularly in respect of younger children.

One alternative would be to combine the care and educational roles at local authority level, or in new local or regional bodies (as we have recommended for the regulation of long-term care in our report on the subject), that have a strong core of expertise in care regulation. Indeed, we note that some social services inspectors have already undergone the necessary training to become 'combined' inspectors. This could be extended. We wonder however whether structural change of this sort is necessary to deliver the objective of a single regulatory framework. We have looked with interest at previous examples of joint working between local authority and OFSTED inspectors. Better co-ordinated joint working, perhaps also involving collaboration with the Audit Commission, could provide an alternative with minimal disruption.

Any new regulatory bodies, or forms of joint working, should avoid duplicating the efforts of other enforcement bodies active in this area (for example, health and safety).

Recommendations

- *The Government should explore the scope for more effective joint working between existing bodies before deciding whether to make any more fundamental structural changes.*
- *If a single regulatory body needs to be created, it should be centred on local authorities or the proposed new local or regional care regulators, rather than OFSTED.*
- *A national regulatory body is necessary to set, monitor and review standards. Its primary focus should be on care regulation.*

4.9 Enforcement

The effective enforcement of regulation is an important factor in maintaining public confidence in this area.

Local authorities have difficulty in enforcing the duty on an individual to register a childminder, as required under the Children Act 1989. First, the duty to register needs to be brought to potential childminders' attention. Second, unless the person has been served with a notice explaining the requirement, we understand that the Act effectively gives them the defence of ignorance. While inspectors need to concentrate on promoting compliance they also need an appropriate range of sanctions to support their work, with courts involved in extreme cases only. This also highlights the importance of the same regulator being responsible for registration, inspection and enforcement.

Enforcement is made easier where everyone has clear expectations. There needs to be clear national guidance for all concerned, and local compliance strategies should be developed alongside this guidance. These should reflect the central and local government **Concordat on Good Enforcement**.¹³ Some local authorities are already providing clear information about the registration and inspection process. This will help to take the fear out of the system and foster a more co-operative approach between childcare providers and the enforcers. Co-operation with other enforcement authorities (health and safety, fire etc.) is also needed. The lack of national recruitment and training standards for inspectors adds to the potential for inconsistency in interpretation and application of standards.

We have found little evidence of inspection and enforcement focusing on risk. We have also found that there are delays in resolving enforcement issues. This situation could be improved by better targeting of inspections and varying the frequency of inspections (this to some extent is built into OFSTED inspections). How often inspections take place should take account of the type of provision,

¹³ *Enforcement Concordat*, 1998, published for central and local government by the Cabinet Office (OPS).

findings from registration, inspection or other visits, evidence from membership of accreditation schemes, previous inspection reports, complaints received from parents etc. We commend the practice of some local authorities in using pre-inspection questionnaires to parents to inform inspections.

There is an argument for the development of a national database of providers (and even of refused and cancelled registrations). This could reduce the need to reregister the provider who changes location but not their other circumstances. A minimum inspection frequency will still be necessary to ensure public confidence.

In addition to enforcing minimum standards, enforcement agencies should have a role as advisors, using their knowledge of best practice. However, providers must be able to recognise clearly the distinctions between essential improvements required by statute and recommendations on best practice. These different roles of inspectors are inadequately defined under both the Children Act and OFSTED regimes.

OFSTED's system for publishing inspection reports of both schools and nurseries (including on the Internet) is to be commended for its openness. This contrasts with the practice of many local authorities. However, reports are often long documents, using complex language. We are not convinced that they provide real transparency to parents. Although we understand that OFSTED is working to improve the quality of the reports, at present they do not appear to distinguish clearly between essential improvements (for example, in the numbers and quality of staff or safety features of the premises) and best practice guidance, particularly in relation to desirable educational outcomes. This could lead to confusion or over-reaction by parents.

Given that childcare providers are diverse and many are small in scale, an accessible appeals system is vital to fairness and proportionality. Where regulatory responsibility remains with local authorities, appeals will continue to be best handled by the authority in the first instance (first by officials, then by elected members), rather than by a new independent tribunal. However, local authorities should aim for a quicker, more locally-based appeals process; and one which individual childminders and users will have confidence in approaching without representation. We question the role of Magistrates' Courts as a second tier appeals mechanism and urge the Government to find an alternative.

Recommendations

- *The role of inspectors in enforcing standards should be distinguished clearly from that of providing advice on best practice.*
- *Registration, inspection and enforcement should be carried out by the same body.*
- *Frequency of inspection should be based on risk, but a minimum frequency should remain in place.*

- *A national database of providers to deal with providers changing location should be established and this should be kept up to date and be locally accessible.*
- *Inspection reports should be published in a form that is accessible to parents.*
- *The representations and appeals process should be reviewed with a view to streamlining it and substituting an independent tribunal for the courts.*
- *Publication of local compliance strategies, which should reflect the Concordat on Good Enforcement, should be promoted.*

4.10 Complaints

The range of regulators, the scope of their responsibilities and the lack of transparency all act to deter complaints from parents. Given the important role that parents should play, a one-stop local complaints mechanism accessible to all parents must be a key part of an effective enforcement regime. As with appeals, we believe that a locally accountable regulator, such as the local authority, will be best placed to deliver this. Independent review should be retained and an independent adjudicator would help, as would clear guidance issued by a central body on the setting up of a complaints mechanism.

Recommendation

- *Encourage complaints by setting up effective and accessible local complaints mechanisms, with independent review and adjudication.*

5. The next steps

We call on the Government to take account of our recommendations in its review of regulation in this area. In addition to new primary legislation, we see a need for short-term action to be taken, for example in relation to consistency in regulatory requirements and enforcement, and information for parents.

Our report refers to the need for progress on funding, training and parental education. While simplification or consistency of regulation may help, simply attempting to tighten regulatory requirements will do little to raise quality without progress in these other areas.

The impact of any proposals for a new regulatory framework should be carefully assessed and tested on some providers at an early stage of the process. This is important in the case of the many individual, voluntary and community organisations. In developing new regulatory arrangements, the Government will need to avoid fragmentation and loss of continuity of expertise and to ensure that the complementary sources of advice and development, currently provided by Social Services Departments, continue to remain available. This means that

changes will need to be carefully managed and include ways of making full use of the expertise within the present system.

This report has been produced with the help of the Social Regulation Branch of the Better Regulation Unit who would be happy to receive feedback. Please contact Peter Richardson or Andrea Farmer at Cabinet Office (OPS), Social Regulation Branch BRU, Room 65a/3 Horse Guards Road, London SW1P 3AL.

Annex A

Better Regulation Task Force

The Task Force is an independent advisory group. Members, appointed for two years, are unpaid. They come from a variety of backgrounds but all have experience of regulatory issues. Half represent small businesses; others represent big business, citizen and consumer groups, the voluntary sector and those enforcing regulations. The Chair, who is appointed for three years, is Christopher Haskins.

Terms of reference

To advise the Government on action which will improve the effectiveness and credibility of government regulation by making sure that it is necessary, fair and affordable, simple to understand and administer, and takes particular account of the needs of small businesses and ordinary people.

Members

Christopher Haskins, Chair	<i>Northern Foods</i>
Teresa Graham, Deputy Chair	<i>Baker Tilly</i>
Stephen Alambritis	<i>Federation of Small Businesses</i>
Sarah Anderson	<i>Mayday Group</i>
Allan Charlesworth	<i>West Yorkshire Police</i>
Hugh Field	<i>BCB International</i>
Ram Gidoomal	<i>Winning Communications</i>
Sir Simon Gourlay	<i>Farmer</i>
Pamela Meadows	<i>Economist</i>
Chai Patel	<i>Chai Patel Associates; formerly of Care First plc</i>
Robert Purry	<i>Grant Thornton</i>
Janet Russell	<i>Kirklees Metropolitan Council</i>
Peter Salsbury	<i>Marks & Spencer</i>
Helena Shovelton	<i>National Association of Citizens Advice Bureaux</i>
Sue Slipman	<i>Gas Consumers Council</i>
Ed Sweeney	<i>Banking Insurance and Finance Union</i>

Details of the Working Group on Early Education and Day Care

Sarah Anderson is Chief Executive of her own company, Mayday Group, a London-based employment agency with 35 full-time employees providing catering staff, and is also a non-executive director of a day nursery in Swindon. She sits on the CBI SME Council, is a Training and Enterprise Council assessor and chairs both the board of Lewisham College and the London Enterprise Agency.

Pamela Meadows is an economist. She was until recently the Director of the Policy Studies Institute. She is part of a European group of experts looking at the future of labour regulation, which has recently reported to the European Commission, and was formerly a government economist.

Dr Chai Patel chaired this group. He was until recently the Chief Executive of Care First plc, the largest provider of residential homes, nursing homes and other long-term care services throughout the UK. He was also involved in the Department of Health Benchmark Standards Group, and is Deputy Chairman of the Continuing Care Conference, a member of the Residential Forum and a Governor of the National Institute of Social Work.

Helena Shovelton is the Chair of the National Association of Citizens Advice Bureaux, having previously run a Citizens Advice Bureau herself for seven years. She is a member of the Audit Commission and the Monopolies and Mergers Commission, and Deputy Chair of the Local Government Commission. She is on the Independent Review Body for Banking and Mortgage Lending Codes.

Annex B

Principles of Good Regulation

The Task Force published their Principles of Good Regulation in January 1998. Good regulations and their enforcement should be measured against these principles. Tests of effectiveness identified in this leaflet are as follows:

Transparency

- Policy objectives, including the need for regulation, are clearly defined and effectively communicated to all those concerned.
- Regulations are simple and clear, and come with guidance in plain English.
- Those being regulated understand their obligations and know what to expect from the enforcing authorities.

Accountability

- Regulators are accountable to government, citizens and Parliament.
- Proposals are published and all those affected consulted before decisions are taken.
- There is a well-publicised, accessible, fair and efficient appeals procedure.

Targeting

- The approach taken is aimed at the problem and not scatter-gun or universal.
- A goal-based approach is used where possible to allow for future flexibility. Those being regulated must be left some freedom to decide how to achieve these goals.
- Regulations are reviewed from time to time to test whether they are still necessary and effective. If not, they should be modified or eliminated.

Consistency

- New regulations are consistent with existing regulations.
- Regulations are compatible with EU and international trade and competition policy.
- There is even enforcement by the relevant authorities.

Proportionality

- Alternatives to regulation are fully considered.
- The impact on all those affected by the regulation is identified, establishing the right balance between risk and cost. There are no unnecessary demands on those being regulated – think small first.
- Any enforcement action (i.e. inspection, sanctions etc.) is in proportion to the seriousness of the offence.

Copies of the *Principles of Good Regulation* leaflet are available from the Better Regulation Task Force, Room 67a/3, Horse Guards Road, London SW1P 3AL, or by telephoning 0171 270 6601.

Annex C

Contacts and publications used by the Task Force

Organisations contacted

Association of Directors of Social Services
Barnardos
Bernard Misrahi (former inspector)
London Borough of Barnet Inspection Unit
London Borough of Lambeth Inspection Unit
Child Base
Childcare Association
Day Care Trust
Federation of Small Businesses
Gingerbread Association
Gloucestershire Social Services
Leicestershire County Council Social Services Department
Local Government Association
London Heads of Inspection
National Childcare Campaign
National Child Minding Association
National Council for Voluntary Childcare Organisations
National Council for One-Parent Families
National Children's Bureau
National Heads of Inspection and Registration
National Private Day Nurseries Association
National Early Years Network
OFSTED
The Pre-school Learning Alliance
Teddies Nurseries
Working for Childcare
Working Mothers Association

Publications

The Operation of the Nursery Education Voucher Scheme, The Education and Employment Committee, 1997, published by the Stationery Office.

The Children Act 1989, published by the Stationery Office.

Guidance on the Inspection of Nursery Education Provision in the Private, Voluntary and Independent Sectors, published by the Stationery Office.

The Children Act 1989 Guidance and Regulations Volume 2, Family Support, Day Care and Educational Provision for Young Children, published by the Stationery Office.

Preparing for an Early Years Inspection, 1997, National Early Years Network.

Early Childhood Services: Setting Standards, Diane Robbins and Norma Raynes, 1995, the University of Huddersfield.

Annex D

Responses to questions raised by the DfEE/DH *Consultation Paper on the Regulation of Early Education and Day Care*

Section/question in Consultation Paper	Relevant recommendations of the Task Force Report
Scope of regulation and inspection	<ul style="list-style-type: none">• Scope
Standards	<ul style="list-style-type: none">• Registration and inspection requirements• Regulatory institutions (re national advisory body)• Operation of registration process• Scope (re 'fit person' check and police checks)
Adult:child ratios	<ul style="list-style-type: none">• Current regulatory environment• Scope• Registration and inspection requirements (re justifications for ratios)
Premises	<ul style="list-style-type: none">• Registration and inspection requirements
Organisation of regulation	<ul style="list-style-type: none">• Regulatory institutions (re part OFSTED should play)• Enforcement (re recruitment and training requirements)
Registration	<ul style="list-style-type: none">• Operation of registration process• Regulatory institutions• Enforcement
Models for inspection and enforcement	<ul style="list-style-type: none">• Regulatory institutions• Enforcement
Relationship with inspection of maintained schools	<ul style="list-style-type: none">• Regulatory institutions
National monitoring	<ul style="list-style-type: none">• Registration and inspection requirements
Information for parents	<ul style="list-style-type: none">• Provision of information for parents• Role of parents• Enforcement

Frequency of inspection and accreditation schemes

- Registration and inspection requirements
- Operation of registration process
- Enforcement

Enforcement powers

- Operation of registration process
- Enforcement
(re appeals and national register)

Charging

- Operation of registration process

Adapting to emerging services

- Registration and inspection requirements
(need for legislation to be goal-based)

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Published for the Better Regulation Task Force by the Central Office of Information. CAB1 J98 2797JL