

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

Securing sufficient childcare:

Guidance
for local
authorities
childcare
act 2006

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

department for
children, schools and families

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Contents

	Page
Introduction	2
Chapter 1 Planning and Commissioning	4
Chapter 2 The Duty to Secure Sufficient Childcare	9
Chapter 3 The Duty to Secure Free Early Years Provision	16
Chapter 4 The Powers and Responsibilities of Local Authorities	18
Chapter 5 Particular Issues in Securing Sufficiency	28
Chapter 6 Who Should Provide Childcare?	39
Chapter 7 Workforce and Market Development	41
Chapter 8 Monitoring Performance	49
Chapter 9 Further Information and Resources	51

Introduction

The Childcare Act 2006 ('the 2006 Act') expands and clarifies in legislation the vital role local authorities should play as strategic leaders in facilitating the childcare market, which was first laid out in the Children Act 2004. The 2006 Act reinforces the framework within which they already work – in partnership with families and private, voluntary and independent (PVI) sector providers – to shape children's services. It focuses in particular on working more effectively with delivery partners and tailoring actions more closely to the particular needs of children and families; and is a key part of both the children's services and regeneration and employment strategies.

To improve provision further we need to move from a world of separate ambitions and activities to an integrated system that meets the needs of all children and families. The local authority has the responsibility and lead role in coordinating effort across services, enabling different organisations, such as Sure Start Children's Centres, extended schools, childcare providers from all sectors, JobCentre Plus and local health services, to work together to secure sufficient high quality, sustainable, provision that is responsive to the needs of children and their families. A key part of achieving this vision will be listening to the views and experiences of parents and children, maintaining a user focus and breaking down internal barriers which get in the way.

Section 6 of the 2006 Act gives local authorities a new duty to secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area in order to enable them to work or undertake education or training leading to work. Section 7 gives them a related duty to secure free early years provision for pre-school children of a prescribed age. Sections 8, 9 and 10 are concerned with the powers of local authorities in relation to the provision of childcare. Section 13 (described later in this guidance) gives them a duty to provide information, advice and training to childcare providers and practitioners.

Section 11 of the 2006 Act gives local authorities a related duty to undertake childcare sufficiency assessments, the first of which must be completed within one year of the duty coming into force in April 2007. The assessment is a necessary step towards securing sufficient provision, enabling local authorities to identify gaps and establish plans to meet the needs of parents. Guidance on completing this assessment can be found in the publication *Childcare Sufficiency Assessments: Guidance for Local Authorities* and in the section 11 regulations (see <http://www.everychildmatters.gov.uk/earlyyears/sufficiency/>). A toolkit on completing the assessment is also available on this site.

Following on from those assessments, this guidance is concerned with securing sufficient high quality, accessible, affordable childcare to meet parents' needs. It is **statutory** guidance in relation to sections 6, 7, 8 and 13 of the Act. The content of all chapters except Chapter 5 is, therefore, statutory and local authorities must have regard to it when discharging their duties.

Meeting the duty in section 12 to provide information, advice and assistance to parents is a vital aspect of achieving an effective childcare market where parents are able to articulate their needs and access support and provision easily. Local authorities will need to take a strategic view of how the different duties fit together so that their actions can be timely, efficient and effective. Doing this will be an important contribution to fulfilling the duty to improve young children's outcomes (sections 1-4).

Timing

To enable local authorities to complete their first childcare sufficiency assessment and make the necessary preparations in order to secure sufficiency, the duty to assess the sufficiency of childcare (section 11) came into force on the 1st April 2007. The powers in relation to the provision of childcare contained in sections 8, 9 and 10, and the section 13 duty to provide information, advice and training to childcare providers, will come into force in October 2007, in order to give further assistance to local authorities in preparing for the duty to secure sufficient childcare which will come into force in April 2008.

The section 7 duty to secure prescribed early years provision free of charge (described briefly in Chapter 3 of this guidance) is expected to come into force in September 2008. It will replace local authorities' current duty, under Section 118 of the *School Standards and Framework Act 1998* and Section 153 of the *Education Act 2002*, to ensure that all parents of three and four year olds are able to access the minimum free entitlement for up to two years before their child reaches compulsory school age. More detailed guidance on the section 7 duty will be issued and will replace the existing *Code of Practice on the Provision of Free Nursery Education Places for Three- and Four-Year-Olds* (the 'Code of Practice').

Funding

Local authorities' role in facilitating the childcare market is supported by both capital and revenue funding from within the General Sure Start Grant. In addition, a number of initiatives are likely to play an important part in securing sufficient childcare, including: the universal free offer for all 3 and 4 year olds; extended schools funding from the Standards Fund; the childcare element of Working Tax Credits; Care to Learn funding available for teenage parents; the New Deal for Lone Parents and New deal for Partners plus other discretionary funding from Jobcentre Plus; the Transformation Fund; workplace nurseries; employer supported childcare voucher schemes operated by Her Majesty's Revenue and Customs; and the Childcare Affordability Pilot which offers subsidised childcare places for parents in London. Local authorities and their partners should be proactive and innovative in exploring and securing funding to support local initiatives and in ensuring families are encouraged to claim the financial support available.

The Government has also committed £340 million towards a package of policies to support disabled children and their families. This includes £35 million to fund a pilot project (announced on 21 May 2007 and beginning in April 2008) to provide accessible childcare for disabled children, promote training, and tackle other barriers to accessing childcare. Specific funding will be available to enable the parents of disabled children to increase their involvement in shaping services and for evaluation and benchmarking of good practice on early intervention for disabled children and their families. In addition, the Budget 2007 announced free childcare places for up to 50,000 workless parents undertaking training, to enable more parents to move back into work. (More information relating to this will be available in the autumn.)

Chapter 1: Planning and Commissioning

- 1.1. A good start in life is essential if children are to fulfil their potential, and high quality early education and childcare will result in better outcomes for children, their families and society. A childcare market which offers quality, accessibility, diversity and affordability will produce the best outcomes for children, reduce inequality and contribute to ending child poverty. Provision should be reliable, flexible and sustainable, using the optimum combination of skills and experience from the private, voluntary and independent (PVI) and maintained sectors to enable parents to make real choices about balancing work and family life and to give every child the best possible start.
- 1.2. The strategic role which the 2006 Act places on local authorities is a core component of the framework for children and young people established by the Children Act 2004. The 2004 Act requires local authorities, under the leadership of the Director of Children's Services and Lead Member for Children's Services, to make arrangements to promote co-operation between authorities, their partners and appropriate bodies to improve children's well-being; and introduced the requirement for a Children and Young People's Plan (CYPP), which is the single strategic and overarching plan for children and young people in a children's trust area.
- 1.3. Within this framework, the duty to improve the well-being of young children and reduce inequalities between them (under sections 1-4 of the Childcare Act) specifically adds, for the first time, JobCentre Plus as statutory partners who must work together with local authorities and their health partners to plan and deliver integrated early childhood services, including early years provision and information services for parents. This will complement and consolidate the involvement of jobcentres with local authorities in working towards the sufficiency of childcare. The well-being duty also requires local authorities to work with parents and PVI providers in the planning and delivery of integrated early childhood services, and to take account of the "voice" of young children. (Guidance relating to the early years outcomes duty is expected to be published on the *Every Child Matters* website in Autumn 2007.)

Joint Commissioning Framework

- 1.4. Local authorities' role within the childcare market will now bear a greater similarity to the role they carry out in other mainstream children's services. This guidance should, accordingly, be read in the context of the *Joint Planning and Commissioning Framework for Children, Young People and Maternity Services* (referred to in this document as the *Joint Commissioning Framework*), which all local authorities should already be using in relation to the provision of children's services.
- 1.5. The *Joint Commissioning Framework* guidance suggests a nine-step procedure for commissioning children's services, as shown in *figure 1*. The local authority's actions to secure sufficient childcare should be carried out according to this framework.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

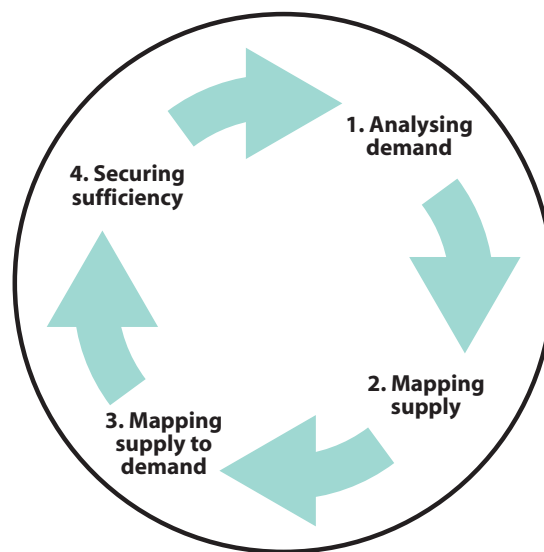
Figure 1 – Joint Commissioning Framework for Children’s Services



- 1.6. As childcare has a distinctive and well established delivery mechanism, primarily through the PVI sector, local authorities’ planning and commissioning role acts mainly through facilitating and supporting the market, though with some important direct commissioning through the delivery of the free entitlement for 3 and 4 year olds. The key elements of the commissioning framework relating to the childcare market are, therefore, those set out in the four stage model, shown in *figure 2*, which clarifies the series of steps the local authorities should take to fulfil their section 11 and section 6 duties.
- 1.7. The first three stages (analysing demand, mapping supply, and mapping supply to demand) together make-up the duty on local authorities to assess the sufficiency of provision (under section 11 of the 2006 Act) and sit – in the context of the framework set out at *figure 1* – within the functions headed “Look at particular groups of children and young people” and “Develop needs assessment with user and staff views”.

- 1.8. This guidance covers the fourth step in the wheel and the remaining steps of the *Joint Commissioning Framework* by looking at the particular approach to market facilitation that will be required in 'securing sufficiency'.

Figure 2: Four Key Steps to Sufficiency



Planning Provision

- 1.9. The CYPP is an integral part of the *Every Child Matters: Change for Children* programme and plays an important part in bringing partners together, through the children's trust, to plan the integrated services needed to achieve improvement in the outcomes for children and young people. All local authorities (except those which have received a "four star" rating in their latest Comprehensive Performance Assessment) are required to produce a CYPP and to review it at least annually. This guidance should be read in the context of the *Guidance on the Children and Young People's Plan* and the relevant regulations.
- 1.10. The CYPP encompasses steps four and five of the *Joint Commissioning Framework* ('Identify resources and set priorities' and 'Plan pattern of services and focus on prevention') and will capture the headline strategies, priorities and actions for childcare in a local area. The childcare sufficiency assessment should form a key part of the comprehensive assessment of need which underpins the CYPP. Following on from this, local authorities will be able to plan the steps they need to take in order to ensure that all partners are working effectively together, resources are deployed to best effect, and gaps in provision are filled.
- 1.11. The local authority will take the lead in:
- Agreeing clear targets and priorities, in the context of what is "reasonably practicable" (see paragraphs 2.22 to 2.27).
 - Identifying the actions and activities needed to achieve them, and ensuring delivery.
- 1.12. It will be crucial to review regularly the demand for, and availability of, childcare (in line with section 11 and the *Childcare Sufficiency Assessments* guidance and regulations) in order to evaluate the progress of initiatives and ensure support is targeted at those families most in need.

Co-operation and Communication

- 1.13. While the local authority has a duty to secure sufficiency, its role is to act as the co-ordinating body drawing up plans with the active involvement of a wide range of partners: for example, local health partners, JobCentre Plus, second tier authorities, schools, children's centres, the Local Safeguarding Children Board, Children's Workforce Development Council, childcare providers and other groups consulted as part of the sufficiency assessment. The views of parents and children should determine how and what provision is secured. It will be important to involve all these groups at a formative stage, probably as part of developing the CYPP, and to give time for a full discussion of the findings of the childcare sufficiency assessment and for agreeing the priorities to be addressed and the best way of working jointly to implement planned changes. These requirements are reinforced and complemented by the new statutory duties for partnership working and the involvement of parents and children in the planning and delivery of integrated early childhood services.

Working in Partnership

West Berkshire

West Berkshire Early Years and Childcare Team cemented their close working relationship with JobCentre Plus staff using a Statement of Working Agreement.

The aim of this agreement was to:

- outline the complementary roles of the two organisations in helping people move into employment and training.
- establish a system of partnership working which will enable both parties to assist customers, avoiding duplication of effort and services to the best effect.
- establish the responsibilities and share good practices of both parties.

<http://www.everychildmatters.gov.uk/search/TP00014/>

- 1.14. It is vital that providers, from all sectors, are able to contribute effectively to local decision making. Following on from the assessment and initial planning process, the local authority should establish a clear and well signposted mechanism for the routine consultation between themselves and local childcare providers. This should be done by setting up, or using existing, provider forums through which local authorities can seek the views of a range of providers on local issues facing the sector and ways of tackling them. In establishing such channels of communication it will be important that they are well structured and publicised and that all local providers, including childminders, are given the opportunity to contribute.
- 1.15. Provider forums should be consulted on a range of issues including the planning and commissioning of childcare, funding arrangements (including the funding of the free entitlement to early learning and care) and the nature and content of support and training. Local authorities should consider how the views of childcare providers are effectively fed into the local decision making process. It will be important, particularly in relation to delivering the free entitlement, for this to include enabling providers to contribute to and be represented on other relevant groups, such as Schools Forums. Local authorities will want to ensure that action in this regard is consistent with the announcements made on 25 June 2007, following the consultation on schools, early years and 14-16 funding 2008-11. (For further information see www.teachernet.gov.uk/schoolfunding2008to11).

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



- 1.16. It may also be appropriate for the local authority to provide an online forum or message board which, being updated and accessed regularly, can be used to share experiences and update providers on upcoming events and initiatives, as well as the issues discussed at local and regional meetings and the progress made.

Listening to Families

- 1.17. The participation of children, young people and families in the planning process is crucial. Care should be taken to include the views of low income families and parents of disabled children. (The Disability Discrimination Act 2005 already requires public authorities to take into account the needs of children and young people with disabilities when developing and delivering policy.) The Government has also made available £5 million over the next three years to enable the parents of disabled children to get more involved in shaping services at local level, including through parents forums, to ensure that disabled children and their families are supported and empowered. Other groups whose views it would be useful to obtain include those at risk of social exclusion (see paragraph 2.20).
- 1.18. Mechanisms for consultation can be set up through existing forums, such as Youth Parliaments and Councils, or School Councils – these should be accessible to, and reflect the interests of, disabled children – or by arranging special events. Much of this activity will already be taking place as part of the consultation on the CYPP. In addition, links developed as part of the sufficiency assessment process may provide local authorities with a useful foundation on which on-going dialogues with particular groups can be established.

Children's Participation in Shaping Services

London Borough of Newham

'Jigsaw' Children and Young People's reference group meets regularly and works actively with planning groups in the council to make sure young people's services are appropriate, and up-to-date. The group is really important in ensuring that the adults who make decisions about young people's services know what children and young people really think and want.

<http://www.everychildmatters.gov.uk/strategy/planningandcommissioning/casestudies/>

Chapter 2: The Duty to Secure Sufficient Childcare

What is Childcare?

- 2.1. Childcare is defined in legislation for the first time in the 2006 Act. Section 18 of the Act defines childcare as “any form of care for a child” including “education ... and any other supervised activity” but *excluding*:
 - education or activities provided by a school for a pupil during school hours, unless that pupil has not yet started key stage 1 (thereby including nursery and reception classes);
 - care provided for a child by a parent, step-parent or person with parental responsibility; or any relative; or foster parent (local authority or private); or
 - care provided by a children’s home, a care home, a hospital or a residential family centre, a young offenders’ institution, a secure training centre, or a secure care home within any of those establishments.
- 2.2. The 2006 Act removes the legal distinction between early education and childcare for young children aged 0-5 years. From September 2008, all settings, including schools, registered to offer childcare for children from birth to the end of the August following their 5th birthday will be required to deliver the Early Years Foundation Stage, which integrates learning, development and care. Under the 2006 Act this is referred to as *early years provision* and comes within the definition of childcare. In this guidance, all references to ‘childcare’ should be read as including ‘early years provision’ for 0-5 year olds.
- 2.3. The 2006 Act defines childcare provided for children from 1st September following the child’s 5th birthday up to the child’s 18th birthday as *later years provision*. Regulations made under the 2006 Act will create appropriate inspection regimes for these different types of provision.
- 2.4. The section 6 duty is limited to childcare provision which is required in order to enable parents to work or undertake training leading to work. There are, of course, many other reasons why parents may require childcare. Local authorities should ensure that their activities in relation to section 6 complement and reinforce any existing role they have in relation to childcare, such as the provision of free nursery education (see Chapter 3 of this guidance) and provision of services for children in need. Accessing these services, and similar provision, is beneficial to children whether or not their parents work.
- 2.5. Childcare includes some ‘supervised’ provision for under 18 year olds, which may also fall under separate legal provisions found at section 507B of the Education Act 1996 (inserted by section 6 of the Education and Inspections Act 2006, and which came into force in January 2007.) Under those provisions, local authorities have a duty to secure access for young people aged 13-19 (extended to 25 for young people with learning difficulties) to sufficient ‘positive’ leisure-time activities. Local authorities will, therefore, need to ensure that they look at all the needs of children and their parents and secure provision that is both sufficiently reliable to enable parents to work or train and gives children and young people the opportunity to develop skills and contribute. Guidance on section 507B is expected to be issued in July 2007.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

The Duty

- 2.6. The section 6 duty makes securing sufficient high quality childcare a core local authority responsibility for the first time. All local authorities must do what is “reasonably practicable” (see paragraph 2.22) to secure sufficient childcare to allow parents in their area to work. Local authorities should view this duty as a key part of both their children’s services and regeneration and employment strategies.
- 2.7. Securing ‘sufficiency’ does **not** mean local authorities providing childcare themselves (although they may do so in certain circumstances). The 2006 Act sets the local authority role as one of market facilitation and support across the sector to ensure that childcare provision is sufficient to enable parents to work or make the transition to work. In accordance with section 8(3), local authorities should only provide new childcare themselves when there is no other person or provider willing to provide it. If another provider is prepared to make provision, the authority may only make the provision itself if there is good reason for it to do so. (This restriction does not apply to the provision of childcare by the governing body of a maintained school or for children in need under section 18(1) or (5) of the Children Act 1989. See Chapter 6 of this guidance.)
- 2.8. Section 6(1) of the 2006 Act places a duty on local authorities to:
“secure, so far as is reasonably practicable, that the provision of childcare (whether or not by them) is sufficient to meet the requirements of parents in their area who require childcare in order to enable them:
 - to take up, or remain in, work, or
 - to undertake education or training which could reasonably be expected to assist them to obtain work.”
- 2.9. Section 6(2) of the Act provides that, when determining whether the provision of childcare is sufficient, the local authority *must* have regard to the needs of parents for the provision of childcare for which the childcare element of the Working Tax Credit can be claimed, and childcare suitable for disabled children¹. (Up-to-date information on the childcare element of the Working Tax Credit can be found at <http://www.hmrc.gov.uk/>). Local authorities may also take into account provision available outside their area, given that some parents living in the local authority area will access childcare provision elsewhere. For example, some parents may go outside the area to use a work-place nursery offered by their employer.

¹ ‘disabled child’ means a child who has a disability for the purposes of the Disability Discrimination Act 1995.

Childcare provision for which the childcare element of the Working Tax Credit is payable (as at June 2007) and future changes

Qualifying parents can claim for the costs of eligible childcare. In England this means the childcare must be provided by a person or organisation that is:

- a childcare provider registered by OFSTED, or
- a school providing out-of school-hours childcare on school premises or supervised activity-based childcare, or a local authority or childcare provider registered by OFSTED providing such childcare, or
- until 1 October 2007, an approved provider (for example, an out of school hours scheme approved by an accredited organisation), or
- a person approved under the Childcare Approval Scheme providing childcare in the child's home or in other domestic premises, or
- an approved foster carer (the care must be for a child who is not the foster carer's foster child), or
- a domiciliary worker or nurse from an agency registered under the Domiciliary Care Agencies Regulations 2002 providing childcare in the child's home

Changes to Registration Procedures and Tax Credits Eligibility

The Government is changing the arrangements for the registration of childcare providers. Ofsted will operate two registers: the Early Years Register (EYR) and the Ofsted Childcare Register (OCR). The timetable for the implementation of these changes is outlined below:

From April 2007

- The voluntary part of the OCR began – for care for children over 7 and care for children of any age that are not required to register.

From 1 October 2007

- Carers will no longer be able to apply to be approved on the Childcare Approval Scheme, although they will still be eligible for tax credit purposes until the expiry of their current approval. After that they will have to register on the OCR if they are to be eligible for tax credit purposes.

From September 2008

- The EYR will begin – for care for children aged under 5
- The compulsory part of the OCR will begin – for care for children aged 5 to 7
- All carers currently registered by Ofsted will be transferred onto the EYR and/ or OCR.

Transitional arrangements for existing approval schemes are being put in place. Local authorities should consult the HMRC website for latest information on eligibility for the childcare element of Working Tax Credit. (See <http://www.hmrc.gov.uk/>)

- 2.10. Section 6(5) of the Act provides that, except in relation to a disabled child, the section 6 duty does not apply to childcare for a child on or after the 1st September following the child's 14th birthday. For a disabled child, section 6(5) states that the duty does not apply to childcare on or after their 18th birthday.

Who is the duty intended to help?

- 2.11. The duty is intended to help *all* parents who are in work and have childcare needs. In fulfilling the duty, local authorities will need to pay particular attention to meeting the specific childcare needs of parents on low incomes² or who have children with disabilities.
- 2.12. It also specifically includes the childcare needs of people who are actively job seeking and who require childcare to undertake education and training that could be reasonably expected to lead to work. Securing sufficient childcare should be seen as intrinsic to local authorities' wider regeneration and employment strategies, and as part of the wider strategy to improve the economic wellbeing of the local community and to lift children out of poverty. It is vital that local authorities work with partners such as local Jobcentre Plus and educational and training organisations to understand and meet the needs of this group. They should also work with partners such as the Learning and Skills Council to identify and improve access to resources which support people in obtaining childcare to help them find work or undertake education and training to enable them to improve their families' life chances. (See the 'Camden Childcare Support Fund' example on page 27 of this guidance.)
- 2.13. The Government is committed to encouraging people to make a contribution to society through voluntary work, which is defined as unpaid work for the benefit of others outside the home and the immediate family. Local authorities should, therefore, consider the needs of parents wishing to undertake voluntary as well as paid work.

Sufficiency

- 2.14. The assessment of childcare provision in their area which local authorities will be undertaking under Section 11 of the 2006 Act will help them determine what will be "sufficient" to meet the needs of parents locally.
- 2.15. There are a number of factors which can be regarded as the 'benchmark' of sufficiency. Local authorities will need to satisfy themselves that, so far as is reasonably practicable:
- There are sufficient **places overall** in each sub-local authority area, having regard to demographic trends and to patterns of employment and of travelling to work.
 - There is sufficient **flexibility**, with places being available at the right times (for example, in the early morning, late evening, at weekends or during school holidays), to fit in with working patterns.
 - Places are sufficiently **accessible**, so that parents do not have to travel too far out of their way to access childcare. (See paragraphs 5.39-5.42.)
 - Childcare places are high **quality**, in terms of judgements made by Ofsted. (See paragraphs 5.1-5.13.)

² local authorities may wish to use 'low-income' as defined for the purpose of administering Working Tax Credits.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



- There is sufficient **range**, with the balance between sessional and full day care appropriate to meet the needs of parents identified through the assessment.
- There is sufficient **knowledge and information** about supply of places (see separate guidance and regulations on the provision of information, advice and assistance under section 12 of the 2006 Act).
- Childcare places are sufficiently **affordable**, as described in paragraphs 5.18-5.24.
- Childcare places are sufficiently **inclusive** and meet **particular needs**, as described in paragraphs 5.25-5.38.
- Childcare places are sufficiently **sustainable**, as described in paragraphs 5.14-5.17.

2.16. In securing sufficiency, local authorities should focus on the long-term delivery of reliable and sustainable childcare services which allow parents to make decisions about the balance between work and family life. Sufficiency will be met when parents in the local area are able to access the childcare they need to enable them to work or train.

- 2.17. Local authorities should not only secure childcare to meet parents' current, expressed demand for childcare to enable them to work, but also support the development of provision to meet parents' potential demand in the foreseeable future. For example, a family's expressed demand may be low at the current market price; but if more affordable childcare became available the family's demand may change. Other developments, like increases in support for childcare costs through tax credits or changes to the free entitlement offer, are also likely to influence parents' demand for childcare.
- 2.18. Over time, as working patterns and childcare expectations change, the level of childcare that would be deemed sufficient will also change. Local authorities should expect to have to assess and act to meet these changing requirements. This may include increasing the level of childcare provision to enable more parents, when they wish to work, to participate in the labour market. Effective partnership working with JobCentre Plus will be vital to ensure that parents have the information and support they need to make this transition. Local authorities will be expected to do this within resource limits through successive programmes of action which, once bedded into the market, become self sustaining, thereby freeing up future resources to address new challenges and gaps in provision. It is, therefore, important that provision is sustainable.
- 2.19. In determining whether the provision of childcare is sufficient, the 2006 Act provides in particular that local authorities must have regard to the need for childcare:
- in respect of which the childcare element of the Working Tax Credit is payable; and
 - which is suitable for disabled children.
- 2.20. Local authorities will need to work with providers to secure childcare that is suitable for, and inclusive of children at risk of exclusion, such as:
- children with special educational needs;
 - children from ethnic minority groups, and refugees and asylum seekers; and
 - children from disadvantaged and socially excluded groups (for example, children who are looked after, children with particular health needs, traveller children, and families with a disabled or teenage parent).
- 2.21. In addition, in accordance with section 13 of the 2006 Act and the associated regulations and guidance, local authorities should support settings in meeting the requirements of anti-discrimination legislation, ensuring provision is suitable for the needs of disabled children, maintaining the inclusiveness of their setting and ensuring equal opportunities for all children, including those at risk of exclusion. (See Chapter 7 of this guidance.)

What does 'reasonably practicable' mean?

- 2.22. The local authority should take action to fill gaps in provision identified by its Childcare Sufficiency Assessment and meet the childcare needs of local families, as set out in the previous section on 'sufficiency'. Regular reviews of this assessment will enable the authority to monitor the effectiveness of its interventions and its progress towards sufficiency, and to make changes where necessary. In the event that its performance in fulfilling this duty is challenged, and it is shown that particular needs have not been met, the authority would need to show that it had taken action to secure sufficient childcare "so far as is reasonably practicable".

2.23. In assessing what is reasonably practicable the local authority may take into account:

- the state of the local childcare market, including the level of demand in a particular locality and the amount and type of supply that currently exists. (The Childcare Sufficiency Assessment will be key for providing this information.);
- the state of the labour market and the potential for increasing the number of people working in childcare;
- the resources available to, and capabilities of, childcare providers. ('Resources' means not just the available funding but also staff and premises and 'capabilities' will include experience and expertise);
- the need to develop an effective, phased programme to meet the sufficiency duty; and
- the local authority's resources, capabilities, and overall budget priorities. (However, the status in primary legislation of the duty to secure sufficient childcare should have a significant influence on those priorities.)

If challenged a local authority may be called upon to demonstrate how it has done all that it can to secure sufficiency, taking into account these constraints. These factors should not, however, be taken as permanent constraints on sufficiency. Local authorities should work, over time, to reduce particular constraints, for example by building their own capabilities and expertise, and those of local providers.

2.24. The Government has established a framework which helps to make childcare affordable for parents, including such elements as the free entitlement for 3 and 4 year olds (described in Chapter 3 of this guidance) and assistance through the childcare element of the Working Tax Credit. The role of local authorities will be to work within that framework, adding their own help with affordability through targeted support and intervention for particular groups, and dealing with specific anomalies and failures in the local childcare market.

2.25. "Reasonably practicable" allows some flexibility. It will depend on the particular circumstances of the local authority and each particular unmet need for childcare. What is practicable or impracticable in one time and place may not be in another. Local authority decisions to address gaps in childcare through one method rather than another which are made on the basis of what is judged as reasonably practicable should be documented and published, within the CYPP framework, to allow scrutiny and challenge.

2.26. Although a local authority must take action to secure childcare to meet unmet needs, the sufficiency duty is phrased in general terms and it will be for the authority to decide what is sufficient given the needs of parents in its area. A local authority may not be failing to fulfil the duty simply because an individual parent's particular need is not being met at a particular time, as it may be judged to be not reasonably practicable to do so. However, a local authority should not assume that it is not reasonably practicable to secure childcare that meets particular needs, such as childcare for disabled children or at atypical hours, simply because it is difficult to do so.

2.27. Local authorities will themselves be able to judge the extent to which the sufficiency duty is being satisfied from the assessments of childcare provision that they are required to undertake every three years (and to keep under review between the formal assessments). In addition, Ofsted will be looking for evidence of robust systems and processes being followed in local authorities – and will be ready to investigate if concerns are expressed about whether or not the sufficiency duty is being satisfied. (See Chapter 8 of this guidance.)

Chapter 3: The Duty to Secure Free Early Years Provision

- 3.1. Section 7 of the 2006 Act places a duty on local authorities to secure a prescribed amount of early years provision free of charge for children of a prescribed age living in their area. It will come into force from 1 September 2008. Regulations made under section 7 are expected to provide that:
 - the free entitlement must be made available for all three and four year olds; and
 - the minimum free entitlement that local authorities must provide for each eligible child is 12.5 hours per week for 38 weeks a year, rising to 15 hours per week for 38 weeks a year by 2010.
- 3.2. *The Code of Practice on the Provision of Free Nursery Education Places for Three and Four Year Olds* (which can be found online at: <http://www.surestart.gov.uk/publications/index.cfm?document=1747>) came into force on 1 April 2006. Local authorities have a statutory responsibility to have regard to it when fulfilling their duties (under section 118 of the School Standards and Framework Act 1998) in relation to the provision of free nursery education.
- 3.3. The Code of Practice also contains information about longer term measures to implement the changes outlined in the ten-year strategy. By 2010, the free entitlement will be extended to 15 hours a week for 38 weeks of the year.
- 3.4. Having consulted on the current Code of Practice, the Government has decided to extend the free entitlement gradually between 2007 and 2010. From April 2007, 20 pathfinder areas began rolling out the new offer (see <http://www.everychildmatters.gov.uk/earlyyears/flexibleentitlement/> for more information). The pathfinders are assessing the demand for different patterns of flexibility in how the entitlement is accessed, for example enabling parents to take up 15 hours free provision over three days. They are exploring ways of working that will ensure such demand can be met by a diverse childcare market. In the context of the 2007 Comprehensive Spending Review, detailed work is underway on the approach to extending the free entitlement from 12.5 to 15 hours per week and making it more flexible.
- 3.5. Detailed guidance to local authorities on discharging their duties under Section 7 will draw on the experiences of, and solutions modelled by, the pathfinders. The Department will also consult on the regulations and guidance relating to the extension of the free early years entitlement, and issue the final version, before the policy is implemented.
- 3.6. It will be important for local authorities to ensure that sufficient childcare is available which offers the early years free entitlement, including sufficient 'stand-alone' places for parents who want to take up only the free entitlement and sufficient accessible places for low income families.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



- 3.7. Take up of the free entitlement by low income families is, at present, below that of higher income families. Promoting full take-up of the free entitlement for 3 and 4 year olds by low income families is vital to narrowing the achievement gap that currently exists between well-off and disadvantaged children. In working towards sufficiency, therefore, local authorities will need to secure provision which is appropriate to, and accessible for, all families in the area, and to promote such provision among groups where take-up is lower, explaining to parents the benefits, regardless of their employment status, of early years education and care for young children.
- 3.8. As with childcare generally, such provision will need to be accessible, flexible, inclusive and provided in a range of settings. It should meet the needs of disabled children where required, and have regard to the needs of the key groups of children at risk of exclusion set out at paragraph 2.20. When ensuring the sufficiency of it, local authorities should consider carefully the future planned changes to the free entitlement offer. They should plan, so far as is possible, to cater for any changes in demand that may be expected to follow.

Chapter 4: The Powers and Responsibilities of Local Authorities

- 4.1. The childcare market in England is a diverse one, with provision delivered by private, voluntary, maintained and independent providers, including childminders, on both a full daycare and sessional basis. PVI providers currently deliver the majority of childcare in England and play a vital role, in partnership with children centres and extended schools, in providing children and families with the flexible, responsive services that they need. The 2006 Act, building on the 10 year childcare strategy, aims to maintain and strengthen this diversity and give choice to parents in accessing high quality, sustainable provision in a variety of settings.

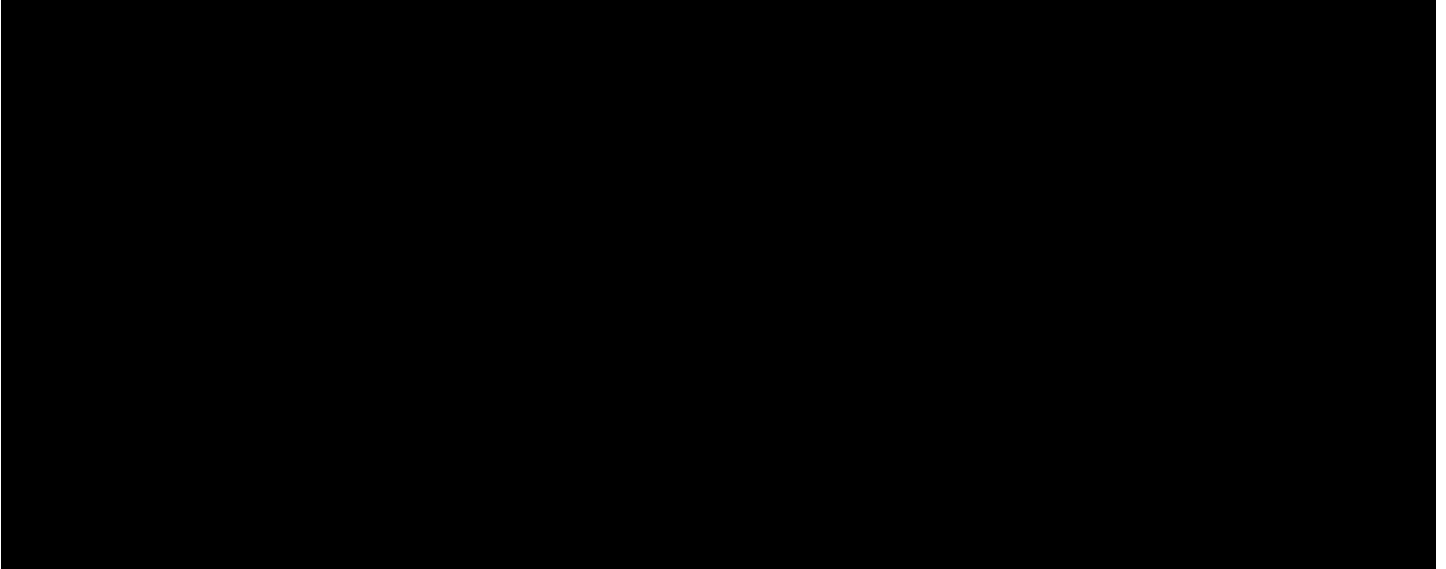
Local authority powers

- 4.2. Sections 8, 9 and 10 of the 2006 Act give local authorities the powers they need to fulfil their duties under sections 6 and 7 to secure sufficient childcare for working parents and to secure prescribed early years provision free of charge.
- 4.3. Section 8(1) gives local authorities the power to assist any person providing, or proposing to provide, childcare and to make arrangements for the provision of childcare. It also gives them a power to provide childcare, subject to the limitations in the Act (see the following paragraph.) Section 8(2) specifies that the assistance local authorities may give includes financial assistance.
- 4.4. Section 8(3) specifies that a local authority may not provide childcare unless it is satisfied that no other person is willing to provide it or, if another person is willing to do so, that in the circumstances it is appropriate for the local authority to provide the childcare. (See chapter 6 for full details.) Section 8(4) states that this does not affect the provision of childcare by the governing body of a maintained school; and section 8(5) states that it does not apply to the provision of childcare for children in need under section 18(1) or (5) of the Children Act 1989. There are, however, separate existing procedures involving local consultation which schools need to follow if they wish to open provision for children younger than their normal age range.
- 4.5. Section 9 provides that where local authorities make arrangements with a provider for childcare in return for financial assistance given by the authority, they may impose requirements on any provider receiving financial assistance, and have the power to require the repayment of the whole, or any part of, any financial assistance given where these requirements have not been satisfied. (The section does not, however, apply to maintained schools.)
- 4.6. Section 10 gives local authorities a power to charge for any childcare they provide, except when that provision is made under section 7, or where the childcare is day care for children in need, provided under section 18(1) and (5) of the Children Act 1989 (provision as to charges for such care being made by section 29 of that Act).

The Strategic Role of Local Authorities

- 4.7. In order to fulfil the duties placed on them, local authorities will need to play a strategic role both in assessing needs and 'commissioning' services in their area. In this context, commissioning does not just relate to the procurement or delivery of childcare provision itself. It includes all local authority actions in relation to facilitating and shaping the childcare market, such as providing business support or incentivising providers to meet the needs of disabled children.
- 4.8. The guiding principles that local authorities should bear in mind when facilitating and supporting their local childcare market are:
 - Ensuring that provision is high quality and that it meets the appropriate standards of learning and care so that children of all ages are given the opportunity to improve and develop.
 - Maintaining a diversity of supply, so that parents have a choice over where to obtain childcare, including the free entitlement, and the diverse needs of all children, including those at risk of exclusion, are met.
 - Giving priority to integrated delivery, ensuring childcare provision is embedded within and working effectively with other children's services, in line with the *Every Child Matters* programme (in particular early childhood services, as required by the Early Years Outcomes Duty, which is found in sections 1-4 of the 2006 Act and the related guidance);
 - Ensuring a cost effective and sustainable market which efficiently meets the needs of parents; and
 - Offering fair, equitable and transparent support to providers in the childcare market.
- 4.9. There are no limitations in the 2006 Act on the types of assistance local authorities can give providers. They should, however, establish mechanisms for consulting on solutions to supply difficulties (see paragraph 1.13-1.16) and publicising the support they are securing, particularly where additional goods and services are required to support disabled children or those with special educational needs.
- 4.10. In their approach to securing sufficiency, local authorities should also ensure that they are meeting their 'best value duty' to make arrangements to secure continuous improvement in economy, efficiency and effectiveness, taking into account the statutory guidance issued by the Department for Communities and Local Government.

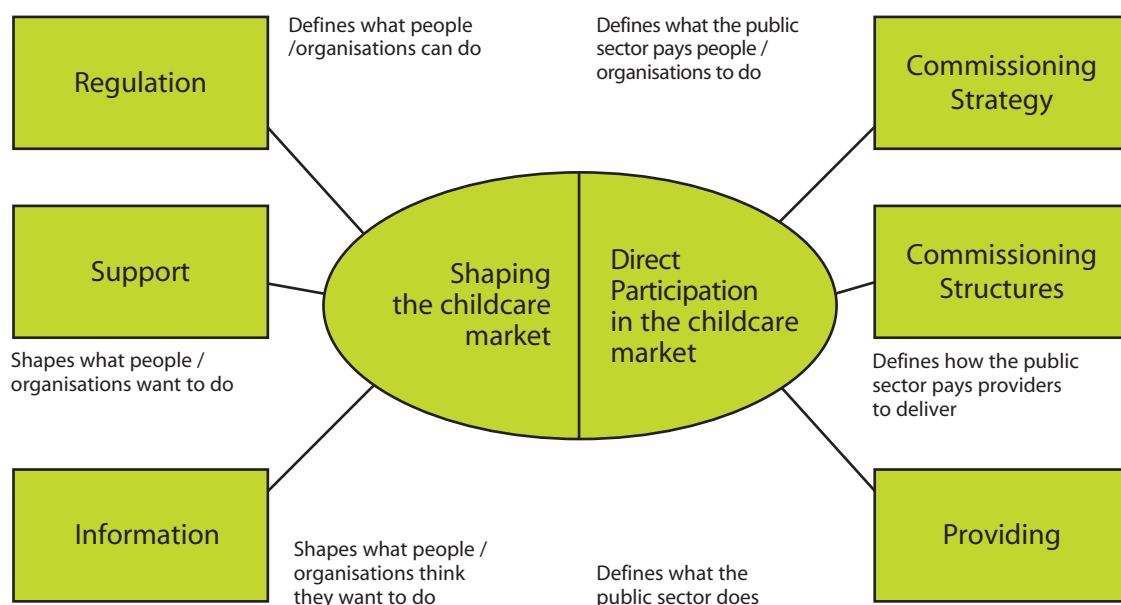
PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Levers in relation to Securing Sufficiency

- 4.11. In attempting to facilitate their local markets and secure sufficiency, local authorities should be wary of attempting to 'buck the market'. Around 12-14 per cent of all small businesses close every year as a natural outcome of market mechanisms, and local authorities should bear this in mind when deciding how to support providers. Local authorities need to understand the market and to concentrate intervention in cases of market failure – for example, overcoming barriers to entry by new providers; overcoming information failures; and encouraging childcare providers to move into new markets which are currently not well served. They should recognise that intervention may result in unintended consequences and distortion of the market.
- 4.12. There are six main levers, shown in *figure 3*, which can be used to shape markets generally. All are relevant to the childcare market, though to different extents in different circumstances. For example, direct provision is specifically limited in scope by the 2006 Act; and there will be a greater commissioning role in relation to the free entitlement than for other provision.

Figure 3 – The Six Market Levers



- 4.13. In relation to facilitating their local markets and securing sufficient childcare, local authorities' strategic market management role should mainly include:

Information

Using and disseminating the findings of their childcare sufficiency assessments will be a key method of influencing the market. This may include:

Strategic Brokerage – sharing assessment findings with providers to help them better respond to parents' needs (See 'Matchmaking' example on page 26).

Partnerships and networks – utilising existing, and establishing new, networks and relationships, particularly with JobCentre Plus, local employers and health services to assist in disseminating information effectively, sharing good practice and ensuring parents can access flexible provision at a number of settings. (See Southampton example below).

Providing information and advice to childcare providers – in accordance with regulations and Chapter 7 of this guidance.

Informing parents – ensuring that they know about the range of services, support and childcare settings available to them and are provided with a "brokerage" service to help match individuals' needs with local provision in accordance with section 12 of the 2006 Act and the related guidance.

Children's Information Services (CIS)

Southampton City Council

Southampton City Council CIS have been working closely with local health visitors to raise awareness of the CIS with parents. All health visitors are supplied with CIS stickers that they put in each child's personal health record; the CIS manager attends city-wide health visitor meetings on a regular basis and the CIS runs training for professionals (including health visitors) twice a year. A health visitor also sits on the CIS Working Group.

This joined-up working has proved very successful and health visitors are the biggest source of CIS referral in Southampton.

This is just one example of the many ways in which information can be shared more effectively by utilising a wider range of outlets.

<http://www.everychildmatters.gov.uk/search/?asset=document&id=42624>

Support

Local authorities may assist any person providing, or proposing to provide, childcare. This could include:

Training or business support – to improve quality (as with the Transformation Fund) or to enable providers to adapt to new regulatory requirements or to meet unsatisfied demand.

One-off financial support – capital or short-term pump-priming linked to a business plan for 'self sustainability', particularly for groups or areas where there is unmet demand. (See paragraph 4.27 and the Rochdale example on page 26).

Long-term financial support – exceptionally, and in the light of available resources, where market failure will lead to supply disappearing in a key area unless the local authority intervenes. (See paragraph 4.28).

Providing financial support for families – for example, the local authority could choose to support particular families, such as those with disabled children in accessing the childcare they need. This could take the form of financial support or additional services, such as assistance with transport. (See paragraph 5.38 for further details.)

Local authorities should bear in mind that the Government already supports some sections of the market, for example, through the childcare element of the working tax credit, employer supported childcare voucher schemes and free nursery provision.

Regulation

Regulation in childcare is generally set at the national level through Ofsted registration and inspection. However, local authorities have a role to play locally in setting:

local arrangements in relation to funding the early years free entitlement (in accordance with Chapter 3 of this guidance); and

requirements imposed on providers receiving financial assistance (in accordance with Chapter 4 of this guidance).

When considering setting local arrangements and requirements, local authorities should bear in mind the potential risks of over-burdening providers. Local authorities also have a role to play in supporting providers to meet national requirements, such as the registration requirements (see Chapter 7).

Provision

Providing new childcare directly – although this should only occur when it is not possible or appropriate to secure provision through working with the PVI sector in accordance with Chapter 6 of this guidance.

Commissioning strategy and structure

Commissioning services – local authorities should put in place commissioning systems which ensure a level playing field for all providers and ensure that decisions are driven by needs and a desire to improve outcomes.

When providing childcare directly local authorities are put in the position of being both commissioner and provider, with a potential risk of conflict of interest. It is important that such decisions are made within the *Joint Commissioning Framework*.

In relation to the early years free entitlement – in accordance with the associated regulations and statutory guidance.

Effective Planning and Commissioning

4.14. When planning and commissioning services, local authorities should ensure that they comply with procedures set out in the *Joint Commissioning Framework*. In particular, they should ensure that they make a clear distinction between agreements which are:

- Offering an advisory/consultancy service;
- Supplying managerial or agency service agreements; or
- Providing direct delivery of childcare services in the marketplace.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Transparency and Fairness

- 4.15. Funding and support should be made available in line with local authority strategic objectives against a visible set of criteria.
- 4.16. Local authorities should consider all viable options for provision of childcare and other services in their area and should take action to ensure that childcare providers and other relevant partners are fully and routinely consulted when making judgements about the planning and commissioning of services (see paragraph 1.13-1.16). Smaller providers in the private, voluntary and community sectors, small and medium enterprises, and social enterprise models can be well placed to deliver services that are competitive, responsive, efficient and effective. Often the best way to involve such providers is through setting up or utilising existing networks or groups of providers, which are then able to work in partnership to support flexible, continuous provision locally.
- 4.17. Where appropriate (taking account of the nature and value of the contract) there should be competitive tendering between providers.
- 4.18. Local authorities should ensure that appropriate criteria are in place for deciding which providers should receive support, and that funding systems treat providers in all sectors of the market equitably. Decisions to refuse or cease support should be based on a clear and publicised rationale, and informed by evidence and a full assessment of different options available.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



- 4.19. Support should be based on a well researched and evidenced business case which outlines the type and nature of support required. Local authorities should ensure that they are funding activity which clearly provides added value, which can be measured, has an agreed timeframe, and can be monitored without creating excess bureaucracy.
- 4.20. Robust contracts should be agreed with any provider being supported that include:
- Measurement of performance against direct outcomes which are clearly aligned to key strategic objectives.
 - Clear development and financial support mechanisms for providers, with defined end dates. Childcare providers should be encouraged to reach a sustainable position rapidly and support should be focused accordingly. In general, therefore, open-ended, repeated subsidies to providers will not be appropriate.
 - Agreements should contain the facility for local authorities to require the repayment of funding if agreed outcomes are not achieved or specified conditions not met.
 - Local authorities should ensure, so far as possible, that arrangements they set up with partners are future proofed to comply with agreed or likely changes to policy, delivery approaches or structures and that such arrangements fall within, and comply with, the local authority's wider commissioning strategy and agreements.
- 4.21. Commissioning approaches should be compatible with UK and EU law, regulations and guidance, including EU State Aid rules. The EU Public Services Procurement Directive emphasises the importance of transparency and consistency in contracts, tender weightings, processes and awards³. Additional guidance and case studies related to planning and commissioning can be found at <http://www.everychildmatters.gov.uk/planningandcommissioning/>.

³ This directive is the latest in EU regulation for procurement in public services. Directive 2004/18/EC as implemented in England, Wales and Northern Ireland by the Public Contracts Regulations 2006 (SI 2005/5). See www.opsi.gov.uk/si/si2006/uksi/20060005_en.pdf

- 4.22. Local authorities should always – and particularly when working with small providers or the Voluntary and Community Sector – work to measure and reduce the administrative burdens arising from contracts, and the existing administrative burden measurement process.

The free entitlement to early education

- 4.23. In relation to the free entitlement to early education for 3 and 4 year olds, any conditions local authorities decide to place on providers joining the 'Directory of Providers' should be in line with the guidelines set out in the Code of Practice. This does not mean, however, that the local authority is then obliged to support providers on the Directory over and above the funding they receive for delivering the free entitlement. Additional support, such as to ensure sustainability or increase the quality of provision, should be provided in accordance with the guiding principles and steps set out in this guidance.

Children's Centre based provision

- 4.24. Local authorities should follow this guidance when commissioning childcare provided at, or in partnership with, Sure Start Children's Centres. However, there is additional best practice guidance on engaging the PVI sector set out as part of the 'Contestability Check Process'. This checklist provides a source of information and advice for both providers and local authorities and can be downloaded from <http://www.surestart.gov.uk/publications/index.cfm?document=1848>

Extended Schools

- 4.25. The Government has committed that every school will be an extended school by 2010 and currently over 5,000 schools are providing access to the full extended schools core offer, including childcare provision. Local authorities will need to pay special attention to the commissioning relationship with colleges, schools, school trusts, and clusters of schools, to take account of their relative independence and own role as commissioners of children's services.
- 4.26. *Planning and Funding Extended Schools: A guide for Schools, Local Authorities and their partner organisations* makes clear that schools need to work in partnership with their local authorities, with other schools, the PVI sector and other children's services to develop services which can complement, not duplicate, existing provision. Schools are legally required to consult local authorities in order to identify local demand and unmet needs, and to communicate the range and timing of the opportunities they plan to offer. Local authorities should advise schools, using the findings of their childcare sufficiency assessment, on areas of unmet needs and how these can best be met. They will need to offer all schools the benefits of partnership work, which could include sharing the joint commissioning unit's skills and experience, and supporting schools and clusters through procurement decisions to ensure that services are cost effective and strategically aligned. Successful extended schools have found that early, thorough consultation with local authorities, families and communities has been crucial in developing successful activities and support services.

Providing 'one-off' financial support

4.27. Local authorities may consider 'one-off' subsidies to providers in certain circumstances.

These might include:

- Offering start up grants to key provider groups which are necessary to secure sufficiency. These grants should be allocated with reference to the needs of the local childcare market, as determined in the childcare sufficiency assessment.
- Providing support to a provider who has suffered a rare 'shock' which has heavily impacted their capacity to deliver.
- Supporting providers who are needed to secure sufficiency but are facing the threat of closure. Local authorities should consider carefully what has caused this sustainability issue before providing support. It may be preferable to support such a provider through business development support/training – ensuring, for example, that they have a comprehensive and realistic business plan – rather than financial payments. A short term injection of cash will not usually make an unsustainable provider sustainable and often a change in business model is required.
- Acting to reconfigure the market by encouraging the involvement of new providers to encourage diversity and inclusion, and ensure choice for parents.
- Providing short term support to assist providers to establish services or develop existing ones in circumstances where this would otherwise be difficult. For example, developing services that reach out to, and meet the needs of, disadvantaged groups, or that are suitable for disabled children who would otherwise be unable to access sufficient childcare.

Matchmaking and Start-up funding

Rochdale Metropolitan Borough Council

Statistics and maps produced by Rochdale Council are used to demonstrate areas of under and over supply of childcare by ward, sector and type/time. This information is then used to start a process of local providers looking at meeting local needs, and who might best meet those needs, as distinct from local providers looking at individual needs. For example, in one area it was agreed with local providers that the best solution to an out of school demand was a childminding network and not a school based after school club.

This information is also used to target start up funds at particular areas. For example, grants to out of school clubs and to childminders to encourage them to offer atypical hours are only given in target areas. Additionally, funding from the General Sure Start Fund is also used for short term funding for providers wishing to offer inclusive services. This funding is linked to attending relevant training.

<http://www.everychildmatters.gov.uk/search/?asset=document&id=42606>

Providing long-term financial support

- 4.28. Although it is most efficient only to support provision which is capable of becoming sustainable, long term financial support by local authorities may be justified in exceptional cases:
- Where provision is unlikely ever to be self sustaining but there is a need for childcare and no more cost-efficient form of provision is available. In such cases, local authorities will have to consider whether it is reasonably practicable for them to commit to long-term ongoing support and what form this should take.
 - Where provision is sustainable, but only when charging fees which exclude a group of parents for whom the local authority is attempting to secure childcare. If the local authority believes it is reasonably practicable to do so, it can enter into a long term arrangement with the provider or parents to subsidise places. (See paragraphs 5.18-5.24 for more detailed guidance on 'Affordability'.)
- 4.29. In both cases the local authority should ensure that they have considered and adhered to existing rules and guidance relating to the role of market testing and competitive tendering between providers. Arrangements should be formalised with contracts which clearly set out the terms of the subsidy and require repayment if conditions of payment are not met.

Breaking through the Childcare Barrier to Employment

Camden Childcare Support Fund

This innovative form of subsidy is targeted at parents making the transition from unemployment into training, employment or education. Parents identify their own childcare and the funding follows the parents, allowing them to move through their employment/training options in the confidence they are able to meet the costs of their childcare choices.

Parents are also provided with non-financial support such as advice and information during transition periods. Building strong links with local statutory and voluntary agencies has been vital in ensuring that parents' support needs are met.

Socially excluded communities are placed at the heart of this agenda and funding is targeted at families living in disadvantaged areas, prioritising lone parents, black and minority ethnic parents, homeless parents, disabled parents and parents of disabled children. However, the fund is open to all parents in Camden.

<http://www.everychildmatters.gov.uk/earlyyears/implementation/market/>

Chapter 5: Particular Issues in Securing Sufficiency

Quality and Standards

- 5.1. For childcare to be 'sufficient' it must be high quality. There is strong evidence that high quality early learning increases children's development by age 5 and improves their outcomes in the longer term. In addition, evaluation of full service extended schools shows that extended services are having significant positive effects on children, adults and families, including benefits for schools in terms of improvements in performance measures such as pupil attainment and exclusion rates. This builds on earlier evaluation from Ofsted which suggests that extended services are helping to enhance self-confidence, improve relationships, raise aspirations and lead to better attitudes to learning. It is, therefore, crucial that quality is central to local authorities' vision for the early years, and for improving the outcomes of older children, and that settings are in no doubt about their need to assess themselves and continuously improve.
- 5.2. High quality provision also focuses strongly on reducing inequalities. Every child needs the best start in life – especially those whose backgrounds and personal circumstances might hold them back. The duty under sections 1-4 of the 2006 Act requires local authorities and their partners to reduce inequalities in outcomes for young children aged 0-5; and it is supported by statutory early years targets on local authorities. The target to reduce inequalities is focused on those at risk of falling into the lowest 20% of Foundation Stage Profile results (to be superseded under the Childcare Act by the Early Years Foundation Stage). Childcare therefore need to focus strongly on the needs of: children from low income families, children from black and ethnic minority communities, disabled children, children with special educational needs, and other groups at risk of social exclusion. Possible issues facing particular disadvantaged groups are discussed later in this Chapter.
- 5.3. In securing sufficiency, local authorities therefore need to commission and secure childcare that is high quality, and this requires setting a clear vision for quality services, benchmarking and reviewing quality, and using strong performance management. The Childcare Act 2006 set in place a new and stronger legislative framework for quality and standards in early learning, which forms the essential background against which local authorities should secure high quality childcare provision.

Childcare Act Registration Framework

- 5.4. The Childcare Act 2006 introduces a new registration framework, which aims to drive up quality and give parents greater assurance that essential standards have been met. From September 2008, the Early Years Foundation Stage (EYFS) will come into force, setting out a single quality framework for children's learning, development and care in all settings. Settings will be inspected by Ofsted against the EYFS statutory framework.
- 5.5. Currently, childcare for children aged 7 and under has to be registered by Ofsted except, for example, where that care is activity based or provided in the child's own home. Childminders who care for children aged 8 and over, or provide care in the child's own home, can also, at present, be approved under the Childcare Approval Scheme. Care for children aged 8 and over can be approved under a variety of quality assurance schemes.
- 5.6. The Government is simplifying these arrangements through the new registration framework. Ofsted will operate two registers:
 - The Early Years Register (EYR) – for care for children from birth to the 1 September following their fifth birthday (from September 2008); and
 - The Ofsted Childcare Register (OCR) – consisting of 2 parts:
 - the compulsory part – for care for children aged 5 to 7 (from September 2008)
 - the voluntary part – for care for children of any age that is not required to be registered (from April 2007).
- 5.7. From September 2007, childcare approved under quality assurance schemes will no longer qualify for tax credits. The Childcare Approval Scheme will also be closed for new applications from that date.
- 5.8. As part of securing sufficient high quality childcare and meeting their duty under section 13 of the 2006 Act, local authorities are required to support providers in satisfying the registration and regulatory requirements as they currently stand and as they will be after implementation of Part 3 of the 2006 Act (see paragraph 7.11).
- 5.9. Employers must also be confident that those working with children are safe to do so. It is vital that childcare providers adopt recruitment and selection procedures and other human resources processes that help to deter, reject, or identify people who might abuse children, or are otherwise unsuited to work with them. Prescribed recruitment and vetting checks should also be carried out. The vetting and barring scheme (due to be operational from 2008) provides employers with a more effective and streamlined vetting service for potential employees. Employers must ensure that staff working with children are trained in safeguarding, and are able to identify and act on any concerns about a child's welfare. Local authorities have a role to play in ensuring that childcare providers are able to do this effectively – see paragraph 7.24.

Improving Quality

- 5.10. In order successfully to secure high quality provision as part of the sufficiency duty, local authorities will need to plan, commission and maintain services on the basis of robust and up to date information and data on settings, children and families, and the workforce, including data from the Primary National Strategy. The new legislative framework will empower local authorities to do this. However, in maintaining sufficiency, local authorities will also need to drive forward Continuous Quality Improvement (CQI) across childcare provision. This means working with all providers, whether or not they are required to register, to improve continually the quality of their provision.
- 5.11. Continuous Quality Improvement (CQI) needs to be a central and on-going priority, built in at every stage of service development. Some recent progress is encouraging – 73% of staff in full daycare settings report having at least a Level 3 qualification compared with 57% in 2003 – but there is much further to go.
- 5.12. In developing a Quality Improvement Strategy as part of securing sufficiency, local authorities should be aware of the National Quality Improvement Network (NQIN) set up by the National Children’s Bureau (NCB), which provides a network of mentoring, peer support and sharing of good practice focused on quality improvement. The Network aims to introduce greater consistency in how quality is benchmarked and improved across existing local authority schemes. In particular, local authorities should use the Quality Improvement principles developed by NCB as a key tool in steering the development of their performance management systems. (See www.ncb.org.uk/qualityimprovement for further guidance).

Lesley Pollit, Nursery Manager/Owner, Cosy Toes Nursery, Rochdale

‘We’ve worked hard to develop a comprehensive staff training and development programme. Without doubt it’s improved the staff’s skills, their confidence in their roles and their commitment and morale. We’ve seen increased staff retention too, due to our investment in them – and the consequent improvement in continuity has pleased our parents and families, helping to build our strong customer base. Quality of care has improved, increasing our customers’ confidence in the services we offer. All this has greatly enhanced our local and borough-wide reputation.’

<http://www.everychildmatters.gov.uk/deliveringservices/workforcereform/earlyyearsworkforce/>

- 5.13. Finally, the Transformation Fund gives providers additional financial support to improve their services and the qualifications of their staff whilst maintaining the sustainability of the setting. It provides financial support for staff in full day care settings to undertake training towards Early Years Professional Status; and for staff in private, voluntary and independent settings to improve their early years skills and qualifications through training, including training to work with children with disabilities and special educational needs, and also children with English as an additional language. Active promotion of the Transformation Fund to providers is a key lever in improving the quality of early years provision, and local authorities should have a clear policy on use of the Fund to drive up the number of Early Years Professionals leading practice in settings, alongside more direct use of funding from the General Sure Start Grant to support workforce development in settings. (For more information on the Transformation Fund see <http://www.everychildmatters.gov.uk/deliveringservices/workforcereform/earlyyearsworkforce/>)

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES

Sustainability

- 5.14. Ensuring that childcare is reliable and sustainable is a key challenge for local authorities. Local authorities should support providers to make choices in balancing work and family life. Local authorities should support businesses which have the capacity to develop successfully to maturity, and assist providers to do this by ensuring that appropriate business support and training is available (see paragraph 7.13).

Supporting Sustainability

Rochdale Metropolitan Borough Council

Rochdale Council has produced a Marketing Toolkit and a Business Toolkit, which they send to all providers and distribute at pre-registration and daycare guidance sessions for new providers.

Pre-registration sessions and follow-on training for childminders, and day care briefings also include specific sections relating to business and financial issues.

<http://www.everychildmatters.gov.uk/earlyyears/implementation/market/>

- 5.15. Although local authorities cannot stop businesses entering the market, they can choose not to fund or support those they believe are unlikely to be sustainable without on-going financial support. However, as outlined in paragraph 4.28, there may be exceptional circumstances where local authorities need to provide on-going financial support, to ensure that all children are able to access high quality and affordable childcare locally.
- 5.16. Where local authorities choose to provide financial support, they will need to decide whether to support new provision or sustain that which is already in existence. Both approaches can be valid. There may, for example, be circumstances in which it is better for the local authority to support the creation of a new provider, under a different business model, rather than making grants or loans available to a provider which is unlikely to be sustainable in the longer term.
- 5.17. Before providing financial support, local authorities should consider whether commercial or bank loans would be available to any providers who make an application for funding.

Affordability

- 5.18. Affordability will be a key issue of concern to many parents, and may influence whether or not particular childcare provision is 'sufficient'. Affordability should be determined by reference to parents' ability to pay for the provision they need. It should take into account wage levels, in an area or for specific families, as well as any subsidies available. Local authorities have a range of tools available to influence the affordability of childcare. Decisions about priorities and how to act to improve affordability should be taken within the framework for determining support outlined in Chapter 4.
- 5.19. Local authorities can influence the affordability of childcare indirectly – for example, by promoting take-up of the childcare element of the Working Tax Credit. They should publicise the Tax Credit helpline (0845 300 3900) and ensure that their information services and all early years and childcare partners, including childcare providers, are aware of the financial support available to parents to help with childcare costs. Whilst tax credits are the main source of support, not all parents are eligible. However, other forms of support are available to improve affordability, including those listed on page 3.
- 5.20. Children's Information Services and JobCentre Plus are likely to play a vital role in increasing parents' awareness of the support available to them and providing advice and assistance to applicants in claiming their entitlement (see paragraph 7.20). Local authorities should also work closely with Childcare Partnership Managers who may be able to advise on discretionary grants. Local authorities could also usefully explore other avenues of increasing take-up, such as workshop events and drop-in sessions where parents can seek advice and assistance on claiming, maintaining and maximising their benefits over time.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



- 5.21. Local authorities can share information about unmet demand for childcare which could be met at a lower but still sustainable price, encouraging providers to enter the market or revise their business model. Local authority activities in relation to section 13 of the 2006 Act will also have an impact on affordability, as improved information and better business skills for providers mean parents and providers will be better able to find each other so that unmet demand can be satisfied.
- 5.22. The childcare sufficiency assessment provides the foundation for a more strategic use of resources targeted at securing sufficiency. Local authorities may, if they consider it reasonably practicable, take action to support parents in accessing childcare places at more affordable prices. In doing this, they should consider the range of ways they can work with providers and parents to reduce costs. This might involve attracting new providers or helping existing providers deliver childcare more cost-effectively, or providing support directly to specific groups of parents. This may be particularly important for families with disabled children where the costs of childcare can be higher, limiting the accessibility of services (see paragraph 5.31).
- 5.23. It is unlikely that on-going financial subsidy will be the most cost-effective way of improving affordability. Where a local authority considers it necessary to provide such support, it should ensure that the issues raised in the section on 'providing long-term financial support' (see paragraphs 4.28-4.29) are fully considered.
- 5.24. In the short-term, local authorities should encourage providers not to adopt pricing strategies which deny access to those with lower incomes (for example, a requirement for large deposits) and ensure that no such strategies prevent families from accessing the free entitlement under Section 7 of the 2006 Act. Local authorities should encourage flexible pricing strategies which allow parents to purchase what they require, perhaps in weekly or even 'per session' instalments. They should also encourage flexibility in the minimum quantity of care that can be purchased, and try to encourage providers to charge by the hour and not to impose charges for whole sessions where the parent requires only half the session.

Inclusion

- 5.25. Local authorities need to secure childcare, including out-of-school care for older children, that is inclusive and should pay particular regard to the needs of children at risk of exclusion (as described in paragraph 2.20). They may place conditions on providers they support to promote childcare that is appropriate and inclusive, such as providing relevant training in equality and diversity issues (see the Rochdale Council "Matchmaking and Start-up Funding" example on page 26) and should work closely with parents, practitioners and the voluntary sector when deciding on, and undertaking, such activities. Chapter 7 gives more details about the types of information, advice and training local authorities should offer to providers to help them meet the needs of particular groups of children.
- 5.26. Section 17 of the 1989 Children Act already places a duty on local authorities to ensure that appropriate services are provided to safeguard and promote the welfare of children in need. Section 18 of the same Act makes provision for local authorities to provide, as is appropriate, day care for children in need within their area who are aged five or under and not yet attending school; and to provide such care or supervised activities as is appropriate for children in need within their area who are attending school outside school hours or during school holidays. Local authorities should ensure that their actions to secure sufficient childcare for working parents complement and reinforce these related duties under the 1989 Act.

Disability and Children with Special Educational Needs

- 5.27. Under the Disability Discrimination Act 1995 (DDA) definition, which is used in the Childcare Act 2006, a child is disabled if they have a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Section 6 of the 2006 Act requires local authorities to secure childcare provision for disabled children up until their 18th birthday.
- 5.28. Disabled children are a diverse group, and they and their families have a range of often complex needs. Under the DDA, childcare providers must make reasonable adjustments for disabled children and they are not allowed to discriminate against them. The DDA also protects the rights of disabled parents, requiring that providers make reasonable adjustments to procedures and policies, or provide aids to increase the accessibility of their services. Public authorities are also required by the Disability Equality Duty proactively to eliminate discriminatory practices, policies and procedures.
- 5.29. It is important that disabled children and those with Special Educational Needs are able (as far as possible) to participate in the same kinds of childcare as their peers. Local authorities are required to have Disability Equality Schemes in place, which should specifically refer to early years settings, explaining their role in improving children's outcomes and narrowing the gap between those children at risk of the poorest outcomes and the rest.
- 5.30. Local health services have an important role to play in the joint commissioning of services and in making referrals to settings. Through the Child Health Promotion Programme, delivered by health visitors, midwives, GPs, family support workers and other practitioners, families are able to access a comprehensive package of care that includes signposting to childcare provision and support. This role is likely to increase in relation to providing childcare for disabled children and children with SEN and/or specific health needs. Working in partnership with local schools and special schools, both in providing childcare directly and in supporting providers to improve the accessibility and quality of their provision, will also be important in ensuring that appropriate out-of-school provision is available for older children. Experience has shown that developing new commissioning strategies and joint services for disabled children and children with SEN, and addressing specific challenges that this brings, can give local authorities the tools to develop services for all children and young people.

Inclusion Support Scheme

Leeds City Council

Leeds Inclusion Support Scheme aims to enable all children to access after school and holiday activities in their local communities, including summer play schemes, uniformed groups, out-of-school clubs, private day nurseries and arts and recreation groups. It provides:

- support and advice to settings;
- access to training for professionals; and
- grants to groups to enable settings to employ extra staff to support inclusion.

<http://www.through-the-maze.org.uk/pages/LeedsInclusionSupportScheme>

- 5.31. In addition, families with disabled children will often be under pressure and can be among the poorest families in the country, at risk of being excluded from mainstream society. Problems they may face include above average childcare costs and lack of appropriate childcare and information about provision, preventing their take up of work or training. Local authorities should actively consider ways in which childcare services and service delivery can be personalised for disabled children and their families, using the Early Support Family File to agree the nature of a child's additional support needs and to share relevant information. To find out more about Early Support visit: www.earlysupport.org.uk.
- 5.32. Affordability is also likely to be important to disabled parents, as nearly 70 per cent of households where neither parent is working include at least one parent who is disabled. In addition, disabled people in work are disproportionately in low paid jobs, making the cost of childcare an increasingly important factor in decisions to take up, or remain in, work. The role of local authorities will be to work within the established affordability framework, including the free entitlement for 3 and 4 year olds, and assistance through the childcare element of the Working Tax Credit, which can help with up to 80% of eligible childcare costs. In relation to the sufficiency duty, the local authority may add its own help with affordability through targeted support and intervention for particular groups.
- 5.33. Local authorities can also advise that financial support may be available to parents and carers of disabled children and children with special educational needs through the provision of Disability Living Allowance (DLA). This is a tax-free benefit for children and adults who need help with their personal care or who have walking difficulties. An award of DLA may also lead to extra support from benefits such as Income Support, Pension Credit, Housing Benefit, Council Tax Benefit, Working Tax Credit, Child Tax Credit and schemes like Motability. Further financial support may be available through Carer's Allowance (CA). This is a benefit paid to a person aged 16 or over who spends at least 35 hours a week caring for a person getting DLA, although CA is usually not payable to people in full time education or earning more than £87 per week.
- 5.34. Disabled parents may also have particular issues relating to the coordination of children's and adults' services, which may reduce the accessibility of childcare provision. Poor coordination of services also affects the parents of disabled children, giving them an additional burden of joining-up advice and support, and co-ordinating what can be a large number of appointments. It also leads to a greater risk that information is not shared, and that disabled children and parents are passed between agencies, falling through gaps, delaying provision of services. Local authorities will need to work with childcare providers and other partners, especially children's centres and local health services, to co-ordinate services.

Black and Minority Ethnic Families⁴

- 5.35. Families from black and minority ethnic communities may have particular needs in terms of venues, languages, cultural appropriateness and faith. Such needs are likely to vary within and between ethnic groups. Some communities may originate from cultures where informal childcare within the family is the norm and may consider some formal childcare provision as inappropriate. Based on the cultural and linguistic needs of these groups, local authorities should actively consider ways in which they can enable the development of appropriate and inclusive services which ensure minority ethnic families can access childcare locally that meets their needs.
- 5.36. Effective communication between parents and providers is vital to ensuring that a child's wellbeing is effectively promoted and their developmental needs are being met. Local authorities should consider the support they can give to childcare providers, particularly those working in areas with significant number of families who do not have English as a first language, to enable them to build relationships with the families of the children in their care. This could include assisting providers to get necessary information, such as policies on children who are unwell and payment procedures, translated into community languages and ensuring a qualified translator is available to facilitate discussions with parents surrounding complex and/or sensitive issues.

Providing Language Support

Portsmouth City Council

Portsmouth City Council, through its Ethnic Minority Achievement Service (EMAS) supports English as an Additional Language and has improved service access for families of young children, delivering improved attainment in schooling.

Two bilingual EMAS Community Cohesion Officers coordinate and provide a range of services and deliver various forms of outreach, assisted by bilingual assistants. Bilingual staff have introduced parents to the early years curriculum and shared the benefits of early learning, raising expectations.

They have also provided support where families are visiting speech therapists or educational psychologists, and they have supported practitioners and health visitors who have been observing and assessing young children who have English as an Additional Language.

<http://www.portsmouth.gov.uk/learning/1063.asp>

- 5.37. It is important that people working in childcare settings reflect the communities that they serve in order to promote confidence and understanding, particularly when families first begin to use services. Local authorities could usefully consult with minority ethnic communities about their perceptions of childcare as an appropriate employment sector and try to identify barriers to their participation. Local authorities might also consider encouraging parents from minority ethnic groups to gain childminding qualifications and supporting them in forming childminding networks.

⁴ BME communities include 'white' families, such as those from Eastern Europe.

- 5.38. Cost and lack of information can also be barriers to take-up of childcare provision for some families from black and minority ethnic communities. Local authorities may wish to engage in specific outreach activities, to ensure that families who may not generally use childcare are aware of its benefits, availability and the financial support for which they are eligible.

Accessibility

- 5.39. In rural areas the increased distances between communities may make access to childcare particularly challenging. More generally, physical barriers, such as a motorway or railway lines, may prevent access to provision which is physically close to parents' homes or workplaces. Although the duty to secure sufficient childcare does not entail a duty to provide transport to childcare, local authorities will need to ensure that childcare is accessible for parents in the local community. When doing this they should take into account access to private or public transport, general safety requirements, and specific barriers to access encountered by disabled parents and parents with disabled children.
- 5.40. In addition, parents often prefer to access childcare in familiar locations with shared understandings and may avoid taking up provision which they perceive to be outside their own cultural community. Larger families may also have specific needs for childcare provision that caters for different age groups in one location or locations which are close to each other. Local authorities should take account of these factors when planning provision and providing support, and seek to secure provision in locations that are accessible and convenient to parents as well as being, where possible, close to other related services.
- 5.41. Local authorities should also consider the knock-on effects of their actions on existing provision, to prevent unintended consequences which may exacerbate accessibility or sustainability issues. For example, a market town might be surrounded by a number of small villages, each with a small provider which is only just viable, but required by parents locally. If the local authority assisted a large provider to open in the town, which attracted a handful of children from each of the existing settings, that might lead to several of the existing providers being forced to close.
- 5.42. Local authorities should try to secure childcare that meets the needs of parents working shift patterns and atypical hours by:
- securing childcare that reflects location characteristics (for example, if there is an airport or hospital it is likely that many residents will be employed there and be required to work shift patterns); and
 - supporting and encouraging flexible care (for example, care provided in the early morning or overnight care in the parents' own house).

- 5.43. In addition, local authorities may find it helpful to engage in a dialogue with employers about how employer-provided childcare, encouragement of the take-up of tax credits, more flexible working patterns, and helping employees with the costs of childcare through allowances or vouchers could help with recruitment, retention and motivation of staff. (See the Sheffield example below.)

Creating More Balance (CMB) – South Yorkshire

Sheffield City Council

The CMB project is managed by the Children's Information Service, funded by the European Social Fund and supported by Sheffield City Council. It aims to provide information, guidance and implementation mechanisms for employers to engage in a range of work-life balance options, including flexible working and childcare.

One of the key areas of work for the CMB project has been encouraging employers to promote employer supported childcare to make it more affordable. This has worked along side tax credits to provide a childcare subsidy for working parents.

A range of products have been developed and are distributed to employers at workshops, including:

- information packs on maternity and paternity leave;
- work-life balance implementation tool kits on interactive CD ROM; and
- tool kits on direct payments for employers to contract with childcare providers and implement the scheme.

<http://www.cmb.org.uk/>

Chapter 6: Who should provide childcare?

- 6.1. The best childcare market is a diverse one which offers parents real choice about the type of childcare they can access. Section 8 (3) of the 2006 Act accordingly places a restriction on local authorities providing childcare where there are alternative and appropriate means of delivery available in the market. A local authority must determine, before providing childcare itself, whether another provider is willing to provide it and whether, in all the circumstances, it is appropriate for the local authority to provide the childcare itself. (This restriction does not affect the provision of childcare by the governing body of a maintained school or under section 18 (1) or (5) of the Children Act 1989.)
- 6.2. It is a condition of General Sure Start Grant funding that local authorities must consult, and consider using, private, voluntary and community sector providers in their area when planning the development of new children's centres. Similarly, schools are strongly encouraged to make use of the private and voluntary sector as providers of the 8 a.m. – 6 p.m. childcare which is a key part of the extended schools 'core offer'.
- 6.3. The restriction in section 8 of the 2006 Act relates only to new or expanding local authority childcare. There is no requirement for local authorities to close down their existing provision or change it when section 8 comes into force. In cases where local authorities already offer their own provision, section 8 does not apply unless that setting expands. If a local authority wishes to expand existing childcare in terms of the number of places or the hours offered, or it wishes to open new provision, the requirements of section 8 (3) will need to be met.
- 6.4. Local authorities should ensure that all the criteria, processes and decisions involved in determining whether to provide childcare themselves are published and transparent. They should, in particular, ensure that there is a process in place to re-consider decisions that are challenged by parents, providers or other members of the public.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Considering other forms of provision

- 6.5. When a local authority decides that there is a need for new or additional provision, it should establish the willingness and ability of alternative organisations to provide the service independently or under contract (see paragraph 4.16). The childcare sufficiency assessment should assist the local authority in establishing the local pool of potential providers of new or extended services.
- 6.6. The factors influencing the likelihood of alternative providers being available include:
- prior investment in, support for, and commissioning activity with, private and third sector agencies;
 - any requirement for specialist skills, resources or premises; and
 - the likelihood of economically sustainable provision, given the length and value of the contract.

Charging for local authority childcare

- 6.7. If no alternative providers are available or if, after carrying out an appropriate tendering process, it is considered appropriate, the local authority may decide to provide childcare directly. Section 10 of the 2006 Act gives local authorities the power to charge for childcare which they provide, except where it forms part of the free offer, or where it is delivered to children in need under section 18 of the Children Act 1989 and is accordingly covered by the charging restrictions in Section 29 of that Act.

Chapter 7: Workforce and Market Development

The duty to provide information, advice and training to childcare providers

7.1. Section 13 of the 2006 Act places a duty on local authorities to secure the provision of information, advice and training to:

- providers registered on either the Early Years Register or the Ofsted Childcare Register;
- people who intend to provide childcare which will need to be registered;
- people in schools providing childcare;
- people intending to provide childcare in a school; and
- people employed by, or who intend to be employed at or by, any of the above.

Local authorities may also provide information, advice and training to other childcare providers, prospective providers (i.e. those who are not yet registered) and childcare workers and prospective childcare workers. This duty is in addition to the requirement on local authorities to establish a clear and well signposted mechanism for routine consultation between themselves and local childcare providers (paragraph 1.14).

7.2. This duty will replace the existing local authority duty to support providers of childminding and daycare under section 79V of the Children Act 1989. It will first apply to anyone registering under the provisions for voluntary registration under the Act and will apply to compulsory registrations once they come into effect in September 2008. This guidance should be read in conjunction with the regulations which support the section 13 duty.

The aims of the Section 13 duty

7.3. The section 13 duty is intended to ensure that childcare providers have a range of information, advice and training available to them, provided by the local authority or by other organisations, to help them develop their staff and business and meet their regulatory requirements. It is also intended to support those in – or looking to move into – jobs within the sector.

7.4. The overall aim is a sustainable childcare market where providers obtain information, advice and training to develop their own capabilities, staff and childcare, as well as their ability to work within the wider children's services system on issues such as child protection.

7.5. Where providers are facing issues of sustainability or poor quality, local authorities should take reasonable steps to support them in addressing those issues. This can sometimes require the provision of one-off subsidies and greater use of public resources in the short term; but local authorities should aim to help these providers towards a position of sustainability so that they are able to pay for their own advice or training.

Securing Information, Advice and Training

- 7.6. Local authorities should secure the provision of information, advice and training, whether delivered by themselves or by others, that is tailored to meet local needs and to support the sufficiency of childcare. A range of mechanisms should be used to make it as accessible as possible to local childcare providers and their staff – for example, through distance learning; support in non-working hours; work based training and advice; provision of internet access, and resource banks and libraries . Local authorities should ensure that the availability of these services is well publicised to childcare providers, their staff and those seeking to work in childcare. Local authorities should also consider providing support to cover staff absences due to training.
- 7.7. Local authorities should have in place transparent mechanisms for reviewing the quality, appropriateness and effectiveness of the information, advice and training made available to childcare providers and workers. (See paragraph 7.32 for further details.) They should act upon any feedback received on their service to ensure that what is delivered meets the needs of providers in their area.
- 7.8. Local authorities should seek to secure information, advice and training through a variety of partners, including their own Information Services. In many cases, local authorities will fulfil the duty by distributing information provided by, or by signposting advice or training provided by, other organisations.
- 7.9. Local authorities also have the power to secure information, advice and training of a type not specified in regulations, or to persons not specified in section 13, as they see fit to meet local needs.
- 7.10. Section 13 (4) enables local authorities to make reasonable charges for information, advice and training. Local authorities will want to consider providers' circumstances; the need to secure sufficient childcare; and the principles and guidelines set out in the earlier chapters of this guidance when deciding whether and how much to charge for information, advice and training they provide. These factors should also be taken into account when deciding whether to provide financial or other support to providers to enable them to access training (whether or not it is provided by the local authority directly).

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



The Content of Information, Advice and Training

Support for market entry and registration

7.11. Local authorities must secure the provision of information, advice and training for existing and prospective childcare providers in their area to support them in entering the childcare market and in meeting the registration and regulatory requirements as they will be after implementation of Part 3 of the 2006 Act, which is expected to come into force in stages from April 2007.

This will include:

- training and support for childcare providers and prospective childcare providers on registration procedures and the prescribed requirements of registration; and
- information on the significance of registration.

Any person remaining registered under the Children Act will be covered by section 79V and the accompanying Day Care and Child Minding (Functions of Local Authorities: Information, Advice and Training) (England) Regulations 2001.

7.12. The information, advice and training provision secured should specifically include information, advice and training for childminders and prospective childminders on registration procedures and requirements.

Sustainability Issues

- 7.13. The local authority must secure information, advice and training to support the economic sustainability of providers, including business planning, financial management and marketing.
- 7.14. Local authorities should, so far as is practicable, ensure that information, advice and training address the needs of the sector from pre-start up phase through to business maturity. When businesses become self reliant and able to determine their own business development activities, local authorities should review the need to secure continuing training but ensure that ongoing information and general advice is available.
- 7.15. When securing information, advice and training to support sustainability, the local authority may take into account whether the provider is providing childcare required in order for the local authority to meet its section 6 duty to secure sufficient childcare. In such cases, the local authority may wish to make available additional support (such as that detailed in Chapters 4 and 5 of this guidance).

Obtaining appropriate qualifications

- 7.16. Local authorities must secure information, advice and training for childcare providers, prospective childcare providers, childcare workers and persons who intend to work in childcare to assist them in meeting certain requirements. These will include:
- training and support in meeting the requirements of the Early Years Foundation Stage (EYFS); and
 - training and support in meeting the requirements of the Early Years Register (EYR) and the Ofsted Childcare Register (OCR).

The training and support that local authorities provide should reflect the specific needs of providers in their area, as expressed to the local authority by providers themselves and/or as reported in providers' Ofsted inspection reports. In some cases, it may be necessary for support to focus on specific areas of the EYFS requirements, for example, maintaining records, assessing risk, managing behaviour, securing inclusion etc. Local authorities should be aware that in many cases the training and information requirements of childminders will be different from other childcare providers.

Inclusion

- 7.17. To ensure that childcare meets the needs of disabled children and their families and children at risk of exclusion (such as children with special educational needs, children from black and minority ethnic groups, looked after children, children with single teenaged parents, gypsies' and travellers' children and asylum seekers) it is important that local authorities support providers in ensuring that childcare is inclusive and accessible to all.
- 7.18. As a minimum, they must secure information, advice and training to assist providers in meeting the requirements of the Disability Discrimination Act (DDA) 1995; Sex Discrimination Act 1975; Race Relations Act 1976; the Employment Equality (Sexual Orientation) Regulations 2003; the Employment Equality (Religion or Belief) Regulations 2003; Part 2 of the Equality Act 2006; and Regulations under Part 3 of the Equality Act 2006 to ensure that services promote equality of opportunity for all children.

7.19. However, in relation to the sufficiency duty, local authorities are also expected to secure information, advice and training in the following areas to enable childcare providers to meet the needs of disabled children and children with special educational needs:

- disability equality, attitudinal barriers and the importance of developing positive attitudes to meeting the needs of disabled children and children with disabled parents;
- the SEN Code of Practice and the role of the early years Special Educational Needs Co-ordinator (SENCO);
- Early Support approaches to working with disabled children and their parents, and with other agencies, including the use of key workers, to ensure effective, flexible, joined-up services that put children and their families at the centre;
- supporting continuity and transition at key stages for disabled children, through joining-up services and through the appropriate deployment of professionals; and
- specific conditions that children may face – for example, autistic spectrum disorders, cerebral palsy, sensory impairments, or speech and language difficulties.

These actions will complement local authorities' existing duty under the DDA 1995, as amended by the DDA 2005, to promote equality of opportunity for disabled people.

7.20. In addition, in relation to the sufficiency duty local authorities should assist childcare providers in meeting the needs of children at risk of social exclusion and in engaging effectively with parents not currently accessing childcare by securing information, advice and training in the following areas:

- the specific needs of looked after children and their carers, including directing providers to national and local sources of effective practice;
- the free entitlement to early learning and care for three and four year olds;
- the eligibility requirements for the childcare element of the Working Tax Credit and the procedures related to claiming it;
- other financial assistance that may be available locally to help parents with the cost of childcare; and
- the specific needs of other groups of children at risk of social exclusion, such as those mentioned in paragraph 2.20.

7.21. Local authorities should also:

- build links with specialist local voluntary services that work with disabled children and minority ethnic and other groups at risk of exclusion to encourage the sharing of good practice;
- build links with, and enable links between, settings and schools, health services, ethnic minority achievement services, providers of English as an Additional Language and English for Speakers of Other Languages, and social care services, in order to encourage sharing of specialist knowledge and good practice;
- work with local portage/home visiting services and parent partnership services to promote effective work with the parents of disabled children; and
- work with, and build links between, providers and other relevant partners to increase understanding of, and assist providers in meeting, the needs of looked after children.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Additional Support for Providers

7.22. As well as supporting providers in meeting registration and other requirements, local authorities must secure information, advice and training:

- to support providers in meeting the requirements of the Early Years Foundation Stage (EYFS) statutory assessment;
- to all childcare providers which have been deemed inadequate by Ofsted; and
- to those providers which have been granted an exemption for a specific period of time to give them an opportunity to develop their provision before meeting the learning and development requirements of the EYFS.

7.23. Local authorities are not required to provide unlimited support but will have to work with inadequate providers until they judge that they have received reasonable advice and training and have either met the required standard or would require a disproportionate level of advice and training to improve sufficiently.

Safeguarding and Additional Needs

- 7.24. It is important that information, advice and training on child protection issues is made available to providers by the local authority (whether or not it is provided by them). Local authorities must support childcare providers in complying with statutory requirements and national guidance on child protection (as set out in *Working Together to Safeguard Children* (2006)), and should also help them to comply with child protection procedures approved by the Local Safeguarding Children Board (LSCB), which in turn reflect this national guidance. This may involve signposting and/or providing training in safeguarding and promoting the welfare of children – it is a responsibility of the LSCB to ensure this is in place in each area to meet local needs. In addition, local authorities must secure information, advice and training for providers in order to enable them to use the Common Assessment Framework checklist to identify children who need extra support.
- 7.25. More generally, local authorities should do what is necessary to ensure that childcare providers are sufficiently able and informed to deal with child protection issues. The EYFS and the OCR will require providers to have child protection policies in place in line with local procedures, so local authorities will need to ensure that training provided is appropriate to the local area.
- 7.26. All training in safeguarding and promoting the welfare of children should create an ethos which values working collaboratively with others, respects diversity (including culture, race and disability), promotes equality, is child centred and promotes the participation of children and families in safeguarding processes.
- 7.27. In particular, local authorities should support providers in meeting the Common Core of Skills and Knowledge for the Children's Workforce which can be accessed on-line at <http://www.everychildmatters.gov.uk>. There are a number of other training resources which are suitable for child protection training. These include materials to support the implementation of *What to Do If You're Worried a Child is Being Abused. Safeguarding Children – a shared responsibility* (2005) is a multi-media training resource. Both the guidance document and training resource are available at <http://www.everychildmatters.gov.uk>.
- 7.28. The Common Assessment Framework (CAF) sets out a national approach to identifying and meeting the needs of children through common assessment. In securing information, advice and training for childcare providers, local authorities should have regard to the Common Assessment Framework for Children & Young People Managers' Guide, published in April 2006 and available at <http://www.everychildmatters.gov.uk>. They should secure information, advice and training to enable providers to:
- understand the outcomes desired for all children, for example, by using the CAF checklist to identify children who need extra support to fulfil their potential; and
 - know about the CAF and when and how to have a common assessment completed.
- 7.29. Local authorities should help providers to understand how to use information sharing indexes as a tool to share information and work together better to meet children's needs in a holistic way, addressing problems at an early stage.

First Aid and Health and Safety Requirements

- 7.30. Local authorities should secure the provision of information, advice and training on first aid and health requirements more generally to assist childcare providers in meeting registration requirements. Training should include the principles of undertaking robust health and safety risk assessments and paediatric first aid.
- 7.31. Local authorities should support providers in putting risk assessments and risk management policies in place and ensuring that measures for managing risk are clearly understood by all staff. Amongst other issues, a risk assessment should cover intimate and personal care, invasive care, moving and handling children, physical interventions for challenging behaviour, behaviour management, administration of medicines, and therapeutic procedures.

Ensuring the quality, appropriateness and effectiveness of training

- 7.32. All training to support inclusion, child protection and health requirements should:
- be delivered by trainers who are knowledgeable about inclusion, safeguarding and promoting the welfare of children. When delivering training on complex cases, trainers should have the relevant specialist knowledge and skills;
 - be informed by current research evidence, lessons from serious case reviews, and local and national developments;
 - reflect understanding of the rights of the child and be informed by an active respect for diversity and the experience of service users, and a commitment to ensuring equality of opportunity; and
 - be regularly reviewed to ensure that it meets the agreed learning outcomes.
- 7.33. Local authorities should also ensure that all training provision, from continuing professional development to training that leads to a qualification, meets the needs of providers. To do so, they should work closely with local training providers and others, including Ofsted, the Children's Workforce Development Council and other relevant sector skills bodies and the Learning and Skills Council. Local authorities should take the necessary steps to satisfy themselves that training provision, whether accredited or not, is of a sufficient quality to enable providers to meet regulatory requirements and to develop themselves, their staff and the childcare they provide.

Chapter 8: Monitoring Performance

- 8.1. Local authorities are required by section 11 of the 2006 Act to keep their assessments of childcare provision under review and to conduct new ones at least every three years. As successive assessments are completed, local authorities will be able to monitor their own progress in securing sufficient childcare and, in particular, their success in closing gaps in provision. These findings should then be fed back into the CYPP review framework to serve as a base or model for future action. In this way, Government Offices for the Regions will also be able to monitor and manage local authority progress through the Children's Services Improvement Cycle.
- 8.2. Local authorities will receive feedback from a range of sources (including parents, employers, and childcare providers) in the consultation exercises which form part of the section 11 assessments. In addition, they should make use of other forms of 'citizen intelligence', such as feedback from a local authority's brokerage service (in relation to section 12 of the 2006 Act), in the periods between assessments to gather views from parents as to why childcare may not meet their needs and establish how well they are perceived as doing in fulfilling the childcare sufficiency duty.
- 8.3. The brokerage service will act as a link between the local authority's duty to secure sufficient childcare and its duty to provide information, advice and assistance under section 12 of the 2006 Act. Should the brokerage service fail to identify suitable childcare, the local authority's information service should collate information on parents not able to access childcare and feed it to the people responsible for managing the duties to assess and secure sufficient childcare.
- 8.4. In the short term, existing arrangements for inspecting local authority children's services (the Annual Performance Assessment and Joint Area Reviews) will apply to the new duties covered by this guidance. However, *Strong and Prosperous Communities: The Local Government White Paper, 2006* sets out a new performance framework for local authorities. In line with the contents of the White Paper, the Department for Children, Schools and Families will be looking to develop a range of ways of monitoring local authority performance which are flexible and not burdensome. These might include research to evaluate the extent to which supply matches demand and will also be informed by the annual risk assessment in each area envisaged in the Local Government White Paper. A local authority's performance in securing sufficient childcare will be an important stepping stone to increasing take-up and improving outcomes at age five. This will therefore feed through to national indicators on improving outcomes and narrowing the gap between the children who are performing least well at age five and the rest.

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



Addressing concerns

- 8.5. There are a number of ways in which concerns could be raised in relation to the activities of local authorities. These include well-established routes like petitions, or seeking help from local councillors, as well as newer ideas, like – in due course – the Community Call for Action (CCfA) described in Chapter 2 of the Local Government White Paper. As the White Paper describes, the Local Government Ombudsman will have a continuing role, providing an opportunity to seek redress for people who believe they have been victims of maladministration by local authorities.
- 8.6. Local authorities are not expected to set up an additional complaints system in relation to the duties covered in this guidance over and above their existing procedures. They should, however, as part of their overall complaints procedure, provide parents with a well signposted, dedicated pathway in relation to childcare issues so that they can lodge complaints if their childcare needs are not met. This should be a straightforward and easily identifiable process for parents. In addition, it would be possible to apply to the High Court for judicial review of local authority actions.
- 8.7. All complaints from a parent or provider about an authority's failure to exercise the duties or powers covered by this document, including specific complaints about the sufficiency of available childcare, should be made available to Ofsted to consider as part of the Joint Area Review. Ofsted will be able to identify unusually high levels, or unusual types, of complaint; and this will affect consideration of how well a local authority has fulfilled its legal duties.
- 8.8. Any complaints received by the local authority that relate to whether providers are meeting their Ofsted registration requirements should be passed to Ofsted for investigation, just as it would pass to the relevant authority complaints about other issues, for example health and safety.

Chapter 9: Further Information and Resources

Policy Background

Every Child Matters: Change for Children – www.everychildmatters.gov.uk/

Childcare Act 2006 – <http://www.opsi.gov.uk/acts/acts2006/20060021.htm>

Education and Inspections Act 2006 – <http://www.opsi.gov.uk/acts/acts2006/20060040.htm>

Disability Discrimination Act 2005 – <http://www.opsi.gov.uk/acts/acts2005/20050013.htm>

Children Act 2004 – <http://www.opsi.gov.uk/acts/acts2004/20040031.htm>

School Standards and Framework Act 1998 – <http://www.opsi.gov.uk/acts/acts1998/19980031.htm>

Children Act 1989 – http://www.opsi.gov.uk/acts/acts1989/Ukpga_19890041_en_1.htm

Ten Year Strategy – <http://www.everychildmatters.gov.uk/resources-and-practice/search/IG00058/>

Needs Assessments –

www.everychildmatters.gov.uk/strategy/planningandcommissioning/needsassessment

Children's and Young People's Plans –

<http://www.everychildmatters.gov.uk/strategy/planningandcommissioning/cypp/>

Code of Practice on the Provision of Free Nursery Education Places –

<http://www.surestart.gov.uk/publications/index.cfm?document=1747>

Information on the Free Entitlement Pathfinder Authorities –

<http://www.everychildmatters.gov.uk/earlyyears/flexibleentitlement/>

Note on how funding for the free entitlement is delivered through the Dedicated Schools Grant –

<http://www.everychildmatters.gov.uk/resources-and-practice/IG00178/>

Sure Start Children's Centres –

<http://www.surestart.gov.uk/improvingquality/guidance/practiceguidance/>

Extended schools – <http://www.teachernet.gov.uk/wholeschool/extendedschools/>

Planning and Commissioning

Overarching guidance on joint planning and commissioning of children and young people's and maternity services is available at www.everychildmatters.gov.uk/strategy/planningandcommissioning

Participation, co-operation and inter-agency working

Statutory guidance on the duties placed on local authorities and other key partners to co-operate in order to improve the wellbeing of children and young people –

<http://www.everychildmatters.gov.uk/resources-and-practice/search/IG00012/>

“Working with Voluntary and Community Organisations to Deliver Change for Children and Young People” and “Engaging the Voluntary and Community Sectors in Children’s Trusts” are available from www.everychildmatters.gov.uk/strategy/voluntaryandcommunity

Building a Culture of Participation – www.everychildmatters.gov.uk/participation/buildingaculture

Inclusion

DfES and Disability Rights Commission joint publication on ‘Implementing the Disability Discrimination Act in schools and early years settings’, 2006

<http://www.teachernet.gov.uk/wholeschool/sen/disabilityandthedda/ddapart0/>

“Every child is unique: Childminding disabled children” is available from – www.ncma.org.uk

Childcare Implementation Project

The Childcare Implementation Project was a collaborative project involving Department for Education and Skills, the Local Government Association, the Improvement and Development Agency and 12 local authorities focusing on the implementation and delivery of the new duties provided for in the Childcare Act. <http://www.everychildmatters.gov.uk/earlyyears/implementation/>

For examples of good practice relating to making and shaping the childcare market go to – <http://www.everychildmatters.gov.uk/earlyyears/implementation/market/>

PHOTO REDACTED DUE TO THIRD PARTY RIGHTS OR OTHER LEGAL ISSUES



You can download this publication or order copies online at **www.everychildmatters.gov.uk**

Search using the ref: 00356-2007BKT-EN

Copies of this publication can also be obtained from:

DCSF Publications

PO Box 5050

Sherwood Park

Annesley

Nottingham NG15 0DJ

Tel: 0845 60 222 60

Fax: 0845 60 333 60

Textphone: 0845 60 555 60

Please quote ref: 00600-2007BKT-EN

ISBN: 978-1-84775-013-6

PPBEL/D10/0507/23

© Crown Copyright 2007

Extracts from this document may be reproduced for non-commercial research, education or training purposes on the condition that the source is acknowledged. For any other use please contact HMSOlicensing@cabinet-office.x.gsi.gov.uk

75% recycled

This leaflet is printed
on 75% recycled paper



When you have finished with
this leaflet please recycle it