

Childcare Futures

Lead department	Department for Education
Summary of proposal	To reform the statutory minimum staff to child ratios in early years childcare to allow providers to utilise staff more efficiently. And to change the language of the Early Years Foundation Stage statutory framework to give clarity and additional flexibility to childminders. The proposal also plans to change the language in the framework to ensure the safety of children while eating.
Submission type	Impact assessment (IA) – 5 June 2023
Legislation type	Secondary legislation
Implementation date	September 2023
Policy stage	Final
RPC reference	RPC-DfE-5211(2)
Opinion type	Formal
Date of issue	12 th July

RPC opinion

Rating¹	RPC opinion
Fit for purpose	The department has correctly identified and monetised the direct impacts to business in the EANDCB, in line with RPC guidance for permissive legislation. Data from a survey and consultation responses are used to underpin the analysis. Considering the deregulatory nature of the proposal, the RPC considers the SaMBA to be sufficient. The RPC has identified areas for improvement for assessing the rationale for intervention and assessing the proposal's wider impacts.

Business impact target assessment

	Department assessment	RPC validated
Classification	Qualifying regulatory provision	Qualifying regulatory provision (OUT)

¹ The RPC opinion rating is based only on the robustness of the EANDCB and quality of the SaMBA, as set out in the [Better Regulation Framework](#). RPC ratings are fit for purpose or not fit for purpose.

Equivalent annual net direct cost to business (EANDCB)	-£179.5 million	-£179.5 million (2019 prices, 2020 pv)
Business impact target (BIT) score	-£900.0 million	-£897.5 million
Business net present value	£1,544.8 million	
Overall net present value	£1,544.8 million	

RPC summary

Category	Quality²	RPC comments
EANDCB	Green	The EANDCB calculation correctly identifies and monetises the direct impacts to business, in line with RPC guidance for permissive legislation. In this final stage IA, the value of estimated benefits has increased to £2bn from the consultation stage, reflecting the inclusion of the monetised benefits associated with the childminder's flexibility change (Option 1b) and the use of the NatGen survey data.
Small and micro business assessment (SaMBA)	Green	The IA uses survey data to demonstrate that most childcare providers are small or micro businesses, meaning it would not be possible to exempt them and achieve the policy objectives. As the proposal is mostly permissive and deregulatory, it is likely to be beneficial to business although there may be a slight negative impact on micro businesses, due to the increased competition to fill additional free spaces. The IA could be improved by including some indicative analysis for this impact.
Rationale and options	Weak	The IA sets out some of the arguments for intervention, outlining the market failures and the shortage of supply in relation to the demand for childcare. The IA would be strengthened by further contextualisation and analysis of the current labour supply and demand, detailing how the proposal will stop providers leaving the market, and the impact of the proposal on the staff in the industry. The IA should provide more detail on the causes of the market distortions and explain how the proposal directly addresses them. It is currently unclear how the policy will effectively and efficiently impact the market to achieve the policy objective. The IA's rationale is also weakened by the consultation responses, which largely rejected the proposal. The IA should address the consultation responses that disagree with Options 1a and 1b. The IA

² The RPC quality ratings are used to indicate the quality and robustness of the evidence used to support different analytical areas. The definitions of the RPC quality ratings can be accessed [here](#).

		considers non-regulatory options, however these are discounted for further appraisal.
Cost-benefit analysis	Satisfactory	The analysis in the IA utilises data from a bespoke survey and consultation responses to underpin critical modelling assumptions. The Department could provide a stronger explanation for some of the assumptions (e.g. approach to familiarisation) and should provide justification for some details of the methodology, such as exclusion of government funding to cover the entitlement provision. The IA should also provide clarity on some distinctions within the survey methodology, as it is currently unclear whether the responses take into account providers' ability to expand, and their responses to other questions. The IA also discusses several non-monetised benefits from clarifying children's eating supervision (such as avoided lawsuits) and could benefit from monetising these, as well as estimating further benefits, such as the avoided cost of loss of life.
Wider impacts	Weak	The IA considers some wider impacts of the proposal on price and quality competition but should provide a more detailed assessment of the impacts on competition in the market. The department assesses the impacts on equalities and families; however, should provide more discussion of the impact on parents, for example, the costs of searching for new providers, as well as the impacts on regions and the potential risks of any reduction in the quality of care.
Monitoring and evaluation plan	Satisfactory	The IA states that a post-implementation review (PIR) will be carried out and details how the SCEYP will be used to gather data on average staff-to-child ratios, and how Ofsted's official statistics will be used to evaluate the childcare quality impact. The RPC welcomes the commitment to the PIR. As a final stage IA, it could have included greater detail on how this PIR will be executed, identifying how the expected metrics would be collected and detailing how these metrics could be directly linked to the implementation of the proposal through establishing causality.

Summary of proposal

The government proposes to enable childcare providers to increase supply to align with additional demand and to increase provider flexibilities to address the long-term decline of childminders by introducing the following regulatory measures:

1. Increasing flexibilities given to providers by changing the statutory minimum staff:child ratios for 2-year-olds in group-based settings from 1:4 to 1:5.
2. Introducing greater flexibility within ratios for childminders by changing the language in the Early Years Foundation Stage statutory framework.
3. Providing greater clarity about what constitutes 'adequate supervision' of children while eating in early years settings by amending wording to make it explicit children have to be in sight and hearing of adults.

The department considers 4 options within the IA:

- Option 0 – Do nothing
- Option 1 (a, b and c) - Preferred option. This would align 2-year-old staff:child ratios with Scotland and provide greater flexibilities to providers on how they staff their settings and to childminders. This will also ensure safety of children in settings and increase awareness of choking prevention.
- Option 2- Amend staff:child ratios for children under 2 years old (not 2 year olds as in option 1).
- Option 3- Amend staff:child ratios for children aged over 2 years old (i.e. 3-4 year olds), with the aim of increasing flexibility and reducing cost of childcare.
- Option 4- Explore additional flexibilities for providers using findings from the childcare: regulatory changes consultation.
- Option 5 – Non regulatory options to support providers to be more flexible and financially sustainable. These are likely to be ineffective in achieving this policy objective.

Under the central scenario, the IA has modelled the proposal to have an EANDCB of -£200m, with a business net present value varying between £700m and £2.5bn with a central estimate of £1.5bn, (2019 prices and 2020 present value) . This business net present value largely consists of the additional revenue benefit for providers and childminders of £1,472m. The only costs are the familiarisation costs faced by providers and childminders, estimated to be £3.1m.

EANDCB

Identification of impacts

The EANDCB calculation is fit for purpose. The IA identifies the main groups and the relevant direct business impacts. These include familiarisation costs, offset by

reduced costs associated with reduced staffing requirements or additional revenue derived from additional places.

Familiarisation costs represent the amount of time taken for providers and childminders to understand the changes associated with the implementation of Options 1a, 1b and 1c.

The benefits of the proposal are driven by the possibility of two main responses from providers and childminders. Both responses are quantitatively evidenced by the results of the bespoke NatCen survey, conducted on behalf of the Department, which showed the likelihood of providers and childminders adopting the proposed changes and the degree to, and means by which, they will likely do so.

Firstly, the IA states that providers and childminders may choose to offer additional childcare places and therefore generate additional revenue from parents' fees. The IA deducts the food cost for the additional places from this revenue estimate, meaning the EANDCB correctly captures the profit received by business. However, the IA could be strengthened by further explaining why other significant variable costs, such as additional nappies and wipes, should not be deducted, although these are likely to be a relatively small. The IA notes that some of this increased revenue may be shared with parents in the form of reduced fees. This pass-through benefit has been correctly identified as an indirect impact and not included in the EANDCB calculation.

Separately, providers may choose to reduce their staffing numbers in line with the new ratios to generate cost savings. In order to take account of the counterfactual, the IA compares the estimated reduction in provider staff costs against the cost of delivery under their original staff ratios.

The RPC accepts that the Department's treatment of these impacts as direct is in line with RPC guidance³. Once childcare businesses respond to the measure, these costs and benefits will directly impact their business, broadly working within their existing business model.

SaMBA

The IA provides a sufficient SaMBA. As this is a permissive and deregulatory measure, the proposal is likely to be beneficial to small, micro and medium businesses.

In order to identify the number of SMBs that will be impacted, the IA uses the data gathered by the 2022 Survey of Childcare and Early Years Providers (SCEYP) on the number of staff by provider type. Based on the data, nearly all School-Based providers and Group-Based providers employ less than 50 employees.

Furthermore, the IA states that the majority of childminders do not employ assistants, and those that do may work with up to two people. Therefore, it would seem

³ <https://www.gov.uk/government/publications/rpc-case-histories-permissive-legislation-february-2020>

reasonable to assume that the majority of the intended policy objectives would not be met if these businesses were exempt.

As nearly all childcare providers are small or micro businesses, the proposals will benefit these businesses.

The SaMBA could be improved by including analysis of competition issues and the limitations faced by SMBs when competing to fill the new spaces after expanding their businesses. As all providers will be able to offer additional spaces, there may be some additional competition to fill the spaces, driving down costs. The IA would benefit from providing some indicative analysis to estimate the impact of this on SMBs who may not be able to reduce costs and may face a decline in business.

Medium-sized business consideration

Medium-sized businesses are estimated to make up 1 per cent of group-based providers. Those that are in scope would likely benefit, due to the deregulatory nature of the proposal. The IA could still benefit from discussing any potential mitigations for the impact on SMBs or Medium-sized businesses, such as an extended transition period and providing guidance to assist SMBs.

Rationale and options

Rationale

The IA outlines the market failures that currently persist in childcare provision, such as information asymmetries, and states that there is a shortage of supply in relation to the demand for childcare due to a decline in childminders. The IA should provide more detail on the causes of these market distortions, and the drivers of this decline (perhaps relating them to other developing labour market shortages) and further explain how the proposal directly addresses them. It is not currently clear whether changing the two-year-old ratios and increasing flexibility for childminders will stop providers leaving the market to solve for the policy objective and it is also not currently clear what the impact will be on staff exiting the industry. The IA would therefore be strengthened by further contextualisation and analysis of the current supply and demand in the market for childcare places and associated evidence.

The IA's rationale at this stage is also weakened by the DfE consultation responses, which largely rejected the proposal. Evidence from the department's consultation showed that the vast majority of respondents disagreed with Option 1a and Option 1b of the proposal. This feedback from relevant stakeholders and customers suggests there is a risk that the proposal will not fully achieve its objective. The IA should address these negative responses in the rationale.

The IA outlines the rationale for intervention behind Option 1c – adequate supervision whilst eating, referencing the language that is currently in the requirement, and the risk to life that it poses. The IA refers to engagement with

stakeholders, such as Ofsted and Local Authorities but could be improved by providing more detail on this stakeholder engagement, how it was conducted and its key findings. The IA could also include any evidence from childminders who have experience in the field of eating supervision.

Options

The IA considers five options against a do-nothing option. This includes non-regulatory options; however, these are discounted for further appraisal as the department concludes that it would not meet the policy objectives. The IA could have given more consideration to the non-regulatory option, as this may align with existing regulatory options (such as codes of conduct and information disclosure agreements). Taking into account the existing market forces may help to further understand, and alleviate some of the current distortions in the market, such as the shortage of supply. For adequate supervision whilst eating, the preferred regulatory option will be implemented in combination with the existing non-regulatory tools.

Cost-benefit analysis

Evidence and data

The IA has gathered data through the bespoke NatCen survey and consultation responses. These datasets allow the Department to update the critical modelling assumptions and set out the steps of the expected benefit realisation, which includes the estimated uptake of the proposal by childcare providers and the number of children in scope. However, both datasets show a low uptake of the proposal, and the IA should reflect this when using this data.

However, the robustness of the survey could be doubted, and the IA could benefit from clarifying the methodology behind the bespoke NatCen survey data. For example, it is not clear how the survey results have estimated a median 33% increase in the number of 2-year-olds per provider. The analysis could benefit from further explaining the survey question that underpins this result, and if this question accounted for the number of 2-year-olds being shared amongst all providers looking to increase their spaces at the same time, or just gathered individual answers unrelated to the answers of other providers. It is also unclear if the proportion of providers who answered as being likely to reduce staffing by the survey, are counted separately to the proportion who would answer as being likely to increase spaces, and more clarity could be provided on this distinction within the survey methodology. In general, the IA could also benefit from assessing whether the current market, and demand and supply trends support the estimated expansion of childcare spaces from the survey. The IA could also benefit from referencing research undertaken on the long term benefits of quality early years education and care (for example, leading to better outcomes in the first years of school) and how the proposed measure of changing ratios impacts this.

The department estimates the current number of providers with two-year-olds and multiplies this by the 17% estimated to increase spaces, and the 33% median increase in two-year-olds per provider. It could be beneficial for the IA to outline the data behind these calculation steps, as it is not currently possible to see how large the 33% increase is relative to the current number of two-year-old places.

Methodology

The department also calculates the benefit to parents from the proposal. Due to the implementation of Option 1a, providers will be able to offer additional childcare places, and may be able to pass on the financial gain to parents, in the form of reduced fees. The expected parental benefit from this pass-through is modelled in the IA. Although it is correct to exclude this pass-through benefit from the EANDCB calculation, the department should count this parental benefit separately to the business benefit in the net present social value calculation in the IA. The overall NPSV will remain unchanged, but it should reflect the positive parental benefit at the expense of the reduced business benefit.

Other societal benefits are not modelled or monetised. The IA does not monetise any of the benefits associated with clarifying adequate eating supervision, such as the prevention of unnecessary deaths and lawsuits. The IA could benefit from providing some additional discussion on these and perhaps a more indicative assessment of these benefits.

The IA would be improved by including more detail of the steps taken to reach the monetised estimates that have been made. Considering the low proportion of childminders and providers who indicated they would take on the changes from the proposal in the survey, the department estimates a large volume of total benefits. Therefore, the IA should detail how these are achieved.

It is also not clear why government funding to cover the entitlement provision free childcare has not been included in the estimated revenue increases for childminders and providers, as some of the new spaces may be funded through the government entitlement.

Risks and assumptions

The department makes use of several assumptions throughout the IA. However, the IA would be strengthened by better explaining the source, and appropriateness of the familiarisation assumptions made in the IA. For example, the department should explain the origin of the assumptions on the number of people required to familiarise and time taken to do so for Options 1a, 1b and 1c, beyond stating that these assumptions derive from DfE estimates.

The department acknowledges the degree of uncertainty surrounding some of their assumptions and evidence. To account for this uncertainty, the department has included some sensitivity analysis, however this appears to be arbitrary +/- percentage adjustments using value judgements. The IA would be improved if the

department were able to include some better-informed sensitivity analysis.

Wider impacts

The IA considers some wider impacts of the proposal on price and quality of provision. The department should consider the implications of providers offering more childcare places and deepen its discussion on how this will affect competition by providing further evidence on the impact on demand and how it aligns with the supply side possibilities discussed. Analysis could be conducted to estimate how the demand and supply mechanisms will interact in a competitive market equilibrium, and how this will affect all economic agents involved (for example, through shortages, increased female labour force participation and working from home patterns)). The supply of labour to the childcare sector is not perfectly competitive, and parents may have preferences for different types of labour. Any analysis of supply and demand should also consider the link between funding rates and pay for staff, as a key element in the retention and recruitment of childcare staff. Childcare places are funded but providers often cross-subsidise from paying places to try. The department conducts an equality test for both elements of Option 1a, 1b and 1c, noting potential negative impacts along disability and sex dimensions for Option 1a and 1b. The IA should expand the analysis of possible distributional impacts with respect to these protected characteristics as well as any regional disparities.

A family test indicates no adverse effect on families. The department indicates that the policy change could result in more childcare choice available to parents. However, due to the nature of the policy, the IA should consider any positive or negative impacts of the change in childcare supply or quality as well as the potential market failures arising from demand-side barriers such as parents' or guardians' search and switching costs or asymmetric information. The implementation of Options 1a and 1b will impact providers and childminder's ability to cover for sickness and turnover, which may have an effect on parents and families. The IA should also consider the value parents place on both continuity and flexibility in their childcare choices, and whether Option 1b reflects this.

The IA should also consider the regional impacts or disparities and risks of the marginal safety reduction and possible reduction in the quality of care, educational attention per child or spillovers on child preparedness for school.

Monitoring and evaluation plan

The IA states that a PIR will take place and outlines that the annual survey of childcare and early years providers (SCEYP), other provider surveys and Ofsted statistics will monitor the response and impact of the proposal. In particular, the IA states that the SCEYP will be used to identify the average staff-to-child ratios

providers implement and monitor their behavioural response. Ofsted's official statistics will be used to evaluate the childcare quality impact from the proposal.

The IA could benefit from including further detail on the nature of this qualitative and quantitative data and how it will be gathered. This could include identifying the metrics and key research questions that will be used in the survey as well as how and when it will be rolled out. The IA could also benefit from identifying how the causality between the proposed measure and survey data will be established, as it is not clear how it will be possible to directly associate the expected data above with the proposal. This will allow the department to accurately evaluate the effectiveness of the proposal and measure the success of the objectives.

Regulatory Policy Committee

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