

# Briefing note for Magistrates and Magistrates' courts in England: the Early Years and Childcare Registers

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This note provides a brief explanation of the legal framework under which the Office for Standards in Education, Children's Services and Skills (Ofsted) regulates and inspects childminding and childcare providers in England.

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## Introduction

1. This note provides a brief explanation of the legal framework under which the Office for Standards in Education, Children's Services and Skills (Ofsted) regulates and inspects childminding and childcare providers in England.
2. The information is intended for Magistrates who are:
  - hearing an emergency application made under section 72 of the Childcare Act 2006
  - hearing a prosecution brought under the Childcare Act 2006 and regulations made under it.

## Background

3. Any person wishing to provide childminding or childcare that requires registration for children aged under eight **must** register with us, unless the childcare is exempt from registration. Childcare that must register includes:
  - childcare provision on domestic and non-domestic premises
  - childminding on domestic premises.
4. We process applications and register those who meet the requirements for registration. The law allows us to check that those we register continue to comply with these requirements.
5. Applicants are required to:
  - provide information about themselves and consent to our carrying out a range of checks including an enhanced Disclosure and Barring Service (DBS) disclosure
  - provide information about those aged 16 or over who live or work **on domestic premises** where the childminding or childcare takes place (including those who work with children) and obtain their consent to our carrying out a range of checks, including an enhanced DBS disclosure
  - ensure that those working with children in childcare provision on **non-domestic premises** are suitable to do so by having a robust recruitment and vetting process and by obtaining an enhanced DBS disclosure.
6. We register suitable applicants on:
  - the **Early Years Register** if they offer childminding or childcare for which registration is required for children in the early years age group (children aged from birth to 31 August following their fifth birthday)

- the **Childcare Register** – part A (the compulsory part) if they offer childminding or childcare for which registration is required for children aged from 1 September following their fifth birthday until their eighth birthday.
7. We also accept applications from providers who offer childminding or childcare that do not require registration, but who choose to register with us on the **Childcare Register** – part B (the voluntary part). This includes: providers offering childminding or childcare for children aged eight to 17; home childcarers, such as nannies, caring for children in the home of one of the children; and other providers who are not required to register, such as those providing sports activities.
  8. We can register childminders and childcare providers on either or both registers (and both parts of the Childcare Register) depending on the type of service(s) they offer and age range of the children for whom they provide care.
  9. Those we register must comply with:
    - any specific conditions applied to their registration; and
    - the requirements for each of the registers on which they are registered.
  10. Providers registered on the Early Years Register must comply with the *Statutory Framework for the Early Years Foundation Stage*<sup>1</sup> document and regulations made under the Children Act 2006. These regulations (as amended) include:
    - *The Childcare (Early Years Register) Regulations 2008*<sup>2</sup>
    - *The Early Years Foundation Stage (Welfare Requirements) Regulations 2012*<sup>3</sup>
    - *The Early Years Foundation Stage (Learning and Development Requirements) Order 2007*<sup>4</sup>
    - *The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008*<sup>5</sup>
    - *The Childcare (Disqualification) Regulations 2009*<sup>6</sup>.
  11. Those registered on part A or part B of the Childcare Register must comply with the requirements that are set out in Schedule 3 of *The Childcare (General Childcare Register) Regulations 2008* made under the Childcare Act 2006.

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<sup>1</sup> <http://www.education.gov.uk/aboutdfe/statutory/g00213120/eyfs-statutory-framework>

<sup>2</sup> <http://www.legislation.gov.uk/ukxi/2008/974/contents/made>

<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2012/938/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/ukxi/2007/1772/contents/made>

<sup>5</sup> <http://www.legislation.gov.uk/ukxi/2008/976/contents/made>

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2009/1547/contents/made>

12. In some cases, failure to comply with these regulatory requirements is an offence. Most offences are summary only with a fine as the maximum sentence; some offences, concerning persons disqualified from registration, may result in imprisonment (see Annex A).

## Ensuring compliance

13. When we receive any information about a provider registered on the Early Years Register and the Childcare Register (part A, part B or on both parts) that suggests they are not meeting the requirements of registration we normally carry out an inspection of the provider and publish an inspection report (for the Early Years register) or letter (for the Childcare Register). We make a decision at the end of the inspection about what, if any, action the childminder or childcare provider or we need to take to ensure that they continue to comply with the requirements of registration and remain suitable to be registered.
14. Sometimes we need to investigate very serious concerns ahead of an inspection. Our Compliance, Investigation and Enforcement team (CIE) deal with these serious concerns, which include possible child protection concerns or serious incidents and accidents. They liaise with other agencies that might be involved in these matters such as the police, child protection teams or the Health and Safety Executive. We share relevant information about safeguarding issues with the relevant police force or local authority children's services. When the liaison with other agencies and the investigation reaches an appropriate stage, we conduct an inspection and publish an inspection report or letter. We may take enforcement action (see paragraph 15) during our investigation and before we carry out an inspection.
15. We have a range of statutory enforcement powers to ensure that those we register comply with the requirements they must meet. We may:
  - cancel a registration (see 'cancellations' below)
  - impose, remove or vary conditions of registration
  - serve a welfare requirements notice on a provider who is registered on the Early Years Register. This notice sets out how the provider is failing to comply with the safeguarding and welfare requirements set out in the *Statutory Framework for the Early Years Foundation Stage*<sup>7</sup>, what they must do to comply and a timescale in which to do this. We cannot serve a welfare requirements notice on providers who are only registered on the Childcare Register
  - prosecute providers for specific offences (see 'prosecutions' below)

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<sup>7</sup> <http://www.education.gov.uk/aboutdfe/statutory/g00213120/eyfs-statutory-framework>

- obtain an emergency order to impose, remove or vary conditions of registration or to cancel a registration (see 'emergency orders' below).
- 16. When deciding on what enforcement measures we need to take, we base our decision on the welfare of children. We take action that is proportionate to the risk we identify.
- 17. Very occasionally, we decide to take immediate action to cancel a provider's registration on the Early Years Register and/or the Childcare Register. We do this if we judge it is proportionate action to take, for example because the provider has failed to take the necessary steps to comply with regulations.
- 18. In the case of those who **choose** to register on **Part B** (the voluntary part) of the **Childcare Register** it is unlikely that we will take enforcement measures unless we have serious concerns about a person's suitability as a registered childminder or childcare provider. This is because providers on this part of the Childcare Register do not need to register to provide their service, and can continue offering the same service outside of registration.

## Suspension

- 19. We may suspend the registration of a childminder or childcare provider if we have reason to believe that the continued provision of childcare exposes or may expose a child to the risk of harm. Suspension allows time for us to investigate the circumstances giving rise to a concern and/or for us or the provider to take steps to reduce or eliminate the risk of harm. Suspension does not automatically mean a childminder or childcare provider is unsuitable to provide care in the future or that we will cancel their registration. An initial period of suspension is for six weeks. However, we may extend this if necessary for a further six-week period and in some circumstances for longer, for example if there is a continuing on-going investigation by another agency. We lift the suspension at any time where the circumstances giving rise to our belief no longer apply.
- 20. For childminders or childcare providers on the Early Years Register or the compulsory part of the Childcare Register it is an offence to provide childminding or childcare for which they are registered while suspended. They can however, provide childminding or childcare that does not require registration while suspended.
- 21. Suspended childminders or childcare providers can appeal to the First-tier Tribunal (Health, Education and Social Care Chamber) (the Tribunal) against our decision to suspend their registration. The suspension remains in place while the Tribunal hears the appeal.

## Cancellations

22. Except for an emergency order, we cannot cancel a provider's registration without first notifying them of our intention to do so (see 'emergency orders' below). We do this through issuing the provider with a 'notice of intention' to cancel registration. The registered person has 14 days to object to the notice. After that, if we intend to carry on with the cancellation action, we must serve a notice of our decision. A notice of decision is subject to appeal to the Tribunal and does not take effect until the 28 days allowed for lodging an appeal has passed. If the childminder or childcare provider appeals within 28 days, then the cancellation of registration cannot take effect until the Tribunal has dismissed the appeal.
23. We **must** cancel a registration if it appears that a registered person is disqualified from registration.
24. We **can** cancel registration if we are of the opinion that a registered person:
  - no longer satisfies the prescribed requirements for registration
  - has failed to comply with a condition imposed on their registration
  - fails to pay a prescribed fee
  - has not looked after children for a period of more than three years during which they were registered to do so.
25. We can apply to a Magistrate for an emergency order to cancel a provider's registration with immediate effect where we believe that a child who is or may be cared for by that provider is suffering or is likely to suffer significant harm (see 'emergency orders' below).

## Prosecutions

26. We are the prosecuting authority for specific offences set out under the Childcare Act. (See *Annex A: Prosecutions that can be brought under the Childcare Act 2006* and regulations made under that Act).
27. Our policy is to consider prosecuting only when the matter is serious, taking the particular circumstances into account, and when it is in the public interest to do so. We always first consider whether a more proportionate action will achieve the required outcome.
28. We do not cancel a provider's registration automatically if we are successful in prosecuting the provider.

## Emergency orders

29. We can take steps to protect children in situations where we believe that a child is, or children are, at significant risk of harm. We can apply to a Magistrate for



an emergency order under section 72 of the Childcare Act 2006 to vary, remove or impose conditions of registration or to cancel a registration. If the Magistrate grants the order then the order takes effect immediately.

30. Section 72 states:

1. In relation to a person registered under Chapter 2, 3 or 4, the Chief Inspector may apply to a justice of the peace for an order –
    - a. cancelling the person’s registration;
    - b. varying or removing a condition to which his registration is subject;
    - c. imposing a new condition on his registration.
  2. If it appears to the justice that a child for whom early years provision or later years provision is being or may be provided by that person is suffering or is likely to suffer significant harm, the justice may make the order.
  3. An application under subsection 1 may be made without notice.
  4. An order under subsection 2 –
    - a. must be made in writing, and
    - b. has effect from the time when it is made.
31. When making an application for an emergency order, we approach a Magistrates’ court. We usually make the application to a Magistrate in the area where the childminder or childcare provider operate, or in the area of the childcare provider’s head office. This enables the childminder or childcare provider to appear and/or be represented at the application (inter-parte) and gives them the opportunity to make their case against our application. An inter-parte application also allows us to serve the order by hand, and as soon as possible after if a Magistrate grants it. We only make an ex-parte application for an emergency order where it is necessary to protect the safety and welfare of children.
32. We may apply to a Magistrate for an emergency order at any time of the day or night. We only make an application outside office hours in exceptional circumstances where we believe that it is necessary to protect the safety and welfare of children.
33. The registered person has a right of appeal against the emergency order to the Tribunal. The Tribunal can confirm, vary or set aside an order. However, the order will remain effective until the Tribunal reaches a decision.

## **Additional information and supporting notes**

- A. Sections 33 and 34, and sections 52 and 53 of the Childcare Act 2006 set out the requirements for registration. You can find out more about the requirements for

registration in the *Framework for the regulation of provision on the Early Years Register* and the *Framework for the regulation of provision on the Childcare Register*.<sup>8</sup>

- B. Chapter 4 of the Childcare Act 2006 sets out the legal basis for joining the voluntary part of the Childcare Register including the requirements for registration.
- C. The Early Years Foundation Stage (EYFS) is a comprehensive framework that sets the standards for learning, development and care for children aged from birth to 31 August following their fifth birthday.
- D. We cannot vary, remove or impose conditions on a registration without first serving a notice of our intention and then notice of our decision (unless by emergency order). The provider can object to our notice of intention and appeal to the Tribunal against our decision.

## List of legislation relevant to this document:

- Childcare Act 2006<sup>9</sup>
- The Childcare (Disqualification) Regulations 2009<sup>10</sup>
- The Childcare (General Childcare Register) Regulations 2008<sup>11</sup>
- The Childcare (Early Years and General Childcare Registers) (Common Provisions) Regulations 2008<sup>12</sup>
- the Childcare (Exemptions from Registration) Order 2008<sup>13</sup>
- the Childcare (Early Years Register) Regulations 2008<sup>14</sup>
- the Early Years Foundation Stage (Welfare Requirements) Regulations 2012<sup>15</sup>
- the Early Years Foundation Stage (Learning and Development Requirements) Order 2007<sup>16</sup>

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<sup>8</sup> *Framework for the regulation of provision on the Early Years Register*, Ofsted, 2012; [www.ofsted.gov.uk/resources/120288](http://www.ofsted.gov.uk/resources/120288) and *Framework for the regulation of provision on the Childcare Register*, Ofsted, 2013; [www.ofsted.gov.uk/resources/120338](http://www.ofsted.gov.uk/resources/120338).

<sup>9</sup> <http://www.legislation.gov.uk/ukpga/2006/21/contents>.

<sup>10</sup> <http://www.legislation.gov.uk/uksi/2009/1547/contents/made>.

<sup>11</sup> <http://www.legislation.gov.uk/uksi/2009/1545/contents/made>.

<sup>12</sup> <http://www.legislation.gov.uk/uksi/2008/976/contents/made>.

<sup>13</sup> <http://www.legislation.gov.uk/uksi/2008/979/contents/made>.

<sup>14</sup> <http://www.legislation.gov.uk/uksi/2008/974/contents/made>.

<sup>15</sup> <http://www.legislation.gov.uk/uksi/2012/938/contents/made>.

<sup>16</sup> <http://www.legislation.gov.uk/uksi/2007/1772/contents/made>.

## Annex A: Prosecutions that can be brought under the Childcare Act 2006 and under regulations made under that Act

Key to abbreviations in the order in which they appear:

- EYR: the Early Years Register (Part 3, Chapter 2 of the Childcare Act 2006)
- CCR: the compulsory part of the Childcare Register (Part 3, Chapter 3 of the Childcare Act 2006)
- VCR: the compulsory part of the Childcare Register (Part 3, Chapter 4 of the Childcare Act 2006)
- CM: Childminder
- OP: Other childcare provision (formally termed as nursery schools, day care, etc.)
- s. relevant section of the Childcare Act 2006

| Offence concerning:    |   | Providers registered on the: |    |     |    |     |    |
|------------------------|---|------------------------------|----|-----|----|-----|----|
| Unregistered childcare |   | EYR                          |    | CCR |    | VCR |    |
|                        |   | CM                           | OP | CM  | OP | CM  | OP |
| s.33(7)                | It is an offence for a person to provide early years childminding at any time when an enforcement notice has effect in relation to him and without reasonable excuse, in contravention of subsection 33(1). | ✓                            |    |     |    |     |    |
| s.34(5)                | It is an offence for a person to provide early years provision without reasonable excuse, in contravention of subsection 34(1).   |                              | ✓  |     |    |     |    |
| s.52(7)                | It is an offence for a person to provide later years childminding at any time when an enforcement notice has effect in relation to him and without reasonable excuse, in contravention of subsection 52(1). |                              |    | ✓   |    |     |    |
| s.53(5)                | It is an offence for a person to provide later years provision without reasonable excuse, in contravention of subsection 53(1).   |                              |    |     | ✓  |     |    |

| Failing to complying with conditions of registration |  | EYR |    | CCR |    | VCR |    |
|--|--|-----|----|-----|----|-----|----|
|  |  | CM  | OP | CM  | OP | CM  | OP |
| s.38(5)  | It is an offence for an early years provider, registered under Chapter 2, without reasonable excuse to fail to comply with any condition imposed under subsection 38(1). | ✓   | ✓  |     |    |     |    |
| s.58(5)  | It is an offence for a later years provider, registered under Chapter 3, without reasonable excuse to fail to comply with any condition imposed under subsection 58(1).  |     |    | ✓   | ✓  |     |    |
| s.66(5)  | It is an offence for a later years provider, registered under Chapter 4, without reasonable excuse to fail to comply with any condition imposed under subsection 66(1).  |     |    |     |    | ✓   | ✓  |

| Suspension of registration |   | EYR |    | CCR |    | VCR |    |
|----------------------------|---|-----|----|-----|----|-----|----|
|                            |   | CM  | OP | CM  | OP | CM  | OP |
| s.69(3)                    | It is an offence for a person registered under Chapter 2 to provide early years childminding in England at any time when his registration is suspended in accordance with regulations under this section.   | ✓   |    |     |    |     |    |
| s.69(4)                    | It is an offence for a person registered under Chapter 3 to provide later years childminding in England at any time when his registration is suspended in accordance with regulations under this section.   |     |    | ✓   |    |     |    |
| s.69(6)                    | It is an offence for a person (other than an early years childminder) registered under Chapter 2 to provide early years provision in England at any time when his registration is suspended in accordance with regulations under this section.  |     | ✓  |     |    |     |    |
| s.69(7)                    | It is an offence for a person (other than a later years childminder) registered under Chapter 3 to provide early years provision in England for a child who has not attained the age of eight at any time when his registration is suspended in accordance with regulations under this section. |     |    |     | ✓  |     |    |

| Disqualification |   | EYR |    | CCR |    | VCR |    |
|------------------|---|-----|----|-----|----|-----|----|
|                  |   | CM  | OP | CM  | OP | CM  | OP |
| s.76(4)          | It is an offence, subject to section 76(5), for a person who is disqualified from registration by regulations under section 75 to provide early years or later years provision to which section 76 applies  | ✓   | ✓  | ✓   | ✓  |     |    |
| s.76(4)          | It is an offence, subject to section 76(5), for a person who is disqualified from registration by regulations under section 75 to be directly concerned in the management of early years or later years provision to which section 76 applies.              | ✓   | ✓  | ✓   | ✓  |     |    |
| s.76(4)          | It is an offence, subject to section 76(6), for a person to employ, in connection with the provision of early years or later years provision to which this section applies, a person who is disqualified from registration by regulations under section 75. | ✓   | ✓  | ✓   | ✓  |     |    |

| Obstruction |   | EYR |    | CCR |    | VCR |    |
|-------------|---|-----|----|-----|----|-----|----|
|             |   | CM  | OP | CM  | OP | CM  | OP |
| s.77(8)     | It is an offence to intentionally obstruct a person authorised from exercising any power under section 77 | ✓   | ✓  | ✓   | ✓  |     |    |

| False or misleading statements |  | EYR |    | CCR |    | VCR |    |
|--------------------------------|--|-----|----|-----|----|-----|----|
|                                |  | CM  | OP | CM  | OP | CM  | OP |
| s.85(1)                        | It is an offence for a person if, in an application for registration under any of Chapters 2 to 4, he knowingly makes a statement which is false or misleading in a material particular. | ✓   | ✓  | ✓   | ✓  | ✓   | ✓  |

| The Early Years Foundation Stage<br>(Welfare Requirements) Regulations 2012 |  | EYR |    | CCR |    | VCR |    |
|---|--|-----|----|-----|----|-----|----|
|   |  | CM  | OP | CM  | OP | CM  | OP |
| Regulation 11   | It is an offence for an early years provider who, without reasonable excuse, fails to comply with the requirements of regulation 7(1), 8 or 9(2). These regulations state:   | ✓   | ✓  |     |    |     |    |
|   | 7.(1) An early years provider must not use corporal punishment on a child for whom he provides early years provision and, so far as is reasonably practicable, must ensure that corporal punishment is not used on any such child by—<br><br>(a) any person who cares for, or is in regular contact with, children; or<br><br>(b) any person living or working on the premises on which the early years provision is provided. |     |    |     |    |     |    |
|   | 8 An early years provider must notify the Chief Inspector of the occurrence of any of the events set out in the Schedule to these Regulations and must at the same time provide her with the information specified in that Schedule in respect of that event.  |     |    |     |    |     |    |
|   | 10.(2) The early years provider must comply with the terms of a welfare requirement notice (see reg 10.1) to within the period specified in that notice.   |     |    |     |    |     |    |

| The Childcare (General Childcare Register) Regulations 2008 |   | EYR |    | CCR |    | VCR |    |
|---|---|-----|----|-----|----|-----|----|
|   |   | CM  | OP | CM  | OP | CM  | OP |
| Regulation 9  | Offence relating to corporal punishment<br><br>A later years provider who is registered in Part A of the general childcare register commits an offence if, without reasonable excuse, that provider fails to comply with the requirements in paragraph 5 of Schedule 3.<br><br>Paragraph 5 of Schedule 3 states:<br><br>(1) The later years provider does not give, and ensures that no person who cares for the children gives, corporal punishment to a child for whom the later years provision is being provided.<br><br>(2) The later years provider ensures, so far as is reasonably practicable, that no person living or working on the relevant premises gives corporal punishment to a child for whom the later years provision is being provided.<br><br>(3) In this paragraph "corporal punishment" means anything done for the purpose of punishing a child (whether or not there are other reasons for doing it) which, absent any justification, would constitute battery. |     |    | ✓   | ✓  |     |    |