

## Early Years Foundation Stage Regulation Changes

<b>Lead department</b>	Department for Education
<b>Summary of proposal</b>	The Department proposes to help early years (EY) providers better utilise their resources to increase the supply of childcare spaces available, to meet expected future demand, by providing more flexibility in sourcing and retaining staff.
<b>Submission type</b>	Impact assessment (IA) – 14 September 2023
<b>Legislation type</b>	Secondary legislation
<b>Implementation date</b>	January 2024
<b>Policy stage</b>	Final
<b>RPC reference</b>	RPC-DfE-5297(1)
<b>Opinion type</b>	Formal
<b>Date of issue</b>	06 December 2023

## RPC opinion

<b>Rating<sup>1</sup></b>	<b>RPC opinion</b>
<b>Fit for purpose</b>	The Department have identified a range of impacts arising due to the policy and have sought to quantify as many as possible, including the benefits to childcare providers. The IA sufficiently considers the impact on small and micro businesses (SMBs). The Department cites prior consultation with key affected stakeholders as part of the evidence for the rationale to legislate, as well as to maximise the effectiveness of prior policy changes. The evidence and assumptions underpinning the analysis are clearly set out. The Department has included an appropriate assessment of the wider impacts. The Department needs to provide more detail of the approach to evaluating the proposal.

<sup>1</sup> 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.

## Business impact target assessment

	<b>Department assessment</b>	<b>RPC validated</b>
<b>Classification</b>	Qualifying regulatory provision	Qualifying regulatory provision (OUT)
<b>Equivalent annual net direct cost to business (EANDCB)</b>	-£39.6 million (initial IA estimate) -£16.5 million (final IA estimate)	-£16.5 million <i>(2019 prices, 2020 pv)</i>
<b>Business impact target (BIT) score</b>	-£82.5 million	-£82.5 million
<b>Business net present value</b>	£142.4 million	
<b>Overall net present value</b>	£142.4 million	

## RPC summary

Category	Quality <sup>2</sup>	RPC comments
EANDCB	<b>Green</b>	The Department has identified a range of impacts affecting in-scope childcare providers. The IA accounts for the impact of other recent policies in the counterfactual and clearly explains why the benefits are direct.
Small and micro business assessment (SaMBA)	<b>Green</b>	The IA notes that early year's childcare settings typically only have a small number of employees, and therefore the assessment in general is of the impact upon smaller childcare care providers. With the measure being beneficial to affected businesses, there is no need to consider exemption.
Rationale and options	<b>Satisfactory</b>	The case for regulatory intervention is primarily made through stakeholder feedback, with the Department including the results from the consultation to support the measures being implemented through the preferred option. The IA would be strengthened by including a discussion of the market failures surrounding access to childcare.
Cost-benefit analysis	<b>Satisfactory</b>	The analysis informing the EANDCB is clearly set out and supported by evidence. The Department has included evidence and discussion to support key assumptions, while also using scenario modelling throughout to account for uncertainty.
Wider impacts	<b>Satisfactory</b>	The IA includes a consideration of the impact on competition (including the potential knock-on effects on price and quality of care), as well as referencing the equalities impact assessment that has been undertaken. The IA would benefit from the inclusion of a summary from the separate assessment.
Monitoring and evaluation plan	<b>Weak</b>	The Department commits to undertaking a post-implementation review (PIR), however, it does not provide sufficient detail of the monitoring and evaluation (M&E) necessary to support it, without this, it is doubtful whether the department will be able to properly undertake the PIR and so will not be able to ascertain whether the policy is delivering its planned objectives or not. The IA must include a clear M&E plan to assess both the implementation and effectiveness of the policy.

<sup>2</sup> 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](#).

## Response to initial review

As originally submitted, the IA was not fit for purpose as the RPC had concerns over the validity of the EANDCB being put forward for validation. The issues identified by the RPC included a lack of clarity over the public-to-private split amongst the childcare providers considered in the IA, the use of key assumptions that were not clearly supported by evidence, incorrect inclusion of lost revenue to training providers within the EANDCB, some inconsistencies in the approach to elements of the quantified analysis and not appropriately considering the effects of other recent policy interventions in the EYFS policy space in the baseline position. The Department has now added further clarity and evidence to support the analytical approach taken, as well as appropriately considering the impacts of prior EYFS policies to ensure that the IA does not count potential impacts already accounted for in prior assessments. As a result of the changes made by the Department, in response to the IRN, the EANDCB has changed from -£39.6 million to -£16.5 million.

## Summary of proposal

The proposal will allow EY providers greater flexibility in how they are able to source and retain their workforce, to better meet the ongoing and future childcare needs. As such, the Department recently consulted upon range of policy proposals looking to amend the Early Years Foundation Stage (EYFS) framework, to provide said flexibility to EY providers. The IA discusses four options:

1. Proceed with implementing the majority of proposals<sup>3</sup> consulted on in January 2024. Implement a further two proposals<sup>4</sup>, also consulted on, at a later date (preferred option);
2. Implement all the proposals consulted on in January 2024 and include a further two policies<sup>5</sup> not covered by option 1;
3. Do-nothing; and
4. Non-regulatory options.

The main costs identified and quantified by the Department are the familiarisation costs for EY providers, as well as the additional wage costs they would incur from staff moving to different levels (from taking advantage of the freedom afforded by the

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<sup>3</sup> These include the creation of childminder EYFS and group and school-based provider EYFS frameworks, the introduction of a new Statutory Document on Qualification Criteria, the removal of the requirement for L3 practitioners to hold a L2 maths qualification to count within staff:child ratios and instead place this requirement on managers (for group and school-based providers only), the change of wording on English as an Additional Language (EAL) requirement, from “must” to “may”, to allow students and apprentices to count in ratios (for group and school-based providers only), the removal of requirement for childminders to complete EYFS training before registration (for childminders only), to allow childminder assistants to hold the role of key person (for childminders only), and to allow ‘kitchens’ to be considered within floor space requirements (for childminders only).

<sup>4</sup> The introduction of an experience-based route (EBR) to working in ratios and to clarify that practitioners can only operate in L6 staff:child ratios if they hold Qualified Teacher Status (QTS), Early Years Teacher Status (EYTS) or Early Years Professional Status (EYPS).

<sup>5</sup> Reducing the percentage of L2 qualified staff required per ratio from ‘at least half’ to 40% of all other staff (group and school-based providers only), and changing qualification requirements outside of peak hours (group and school-based providers only).

policy). Meanwhile the benefits that have been quantified include the additional income generated due to new childcare capacity and the retained training costs for practitioners. The Department has estimated the EANDCB of the preferred option to be -£16.5 million, with a net present social value (NPSV) of £142.4 million.

## EANDCB

### Identification of impacts

The Department identify a range of impacts, including those upon childcare providers and the increase in childcare spaces provided. The IA considers the foregone income no longer received by training providers and now correctly identifies this as falling into the category of *'resources used in complying with the legislation'* as set out in RPC guidance<sup>6</sup>.

### Direct and indirect impacts

All of the impacts presented and quantified in the IA have been classified as direct impacts. The Department does well, and cites relevant RPC guidance on permissive impacts<sup>7</sup>, to support the position that the benefits arising from new childcare spaces created should be classified as direct.

The IA would benefit from stating explicitly that none of the impacts identified fall under the "*acting on behalf of a public authority*" exclusion, as they do not relate to a duty on local authorities to secure early years provision free of charge.

### Counterfactual/baseline

The IA now clearly establishes that the impacts attributed to this intervention, most notably the increase and utilisation of childcare spaces, take into consideration other recent policy interventions in EYFS area. Therefore, the department has taken the appropriate steps to establish the baseline position as the successful outcome of previous interventions (which also intended to create additional capacity), rather than simply using the most recently published figures on childcare spaces. This ensures that the Department has not double-counted any additional childcare spaces and therefore monetised benefit.

## SaMBA

### Scope of SMB impact

The IA clearly explains that all EYFS settings are classed as SMBs and therefore the assessment of impacts of the measure as a whole, reflects that upon SMBs. This, coupled with the de-regulatory nature of the policy, means that a consideration of exemption is not necessary. While SMBs are not going to be disproportionately impacted by the measures, the Department could discuss what measures are being

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<sup>6</sup> <https://www.gov.uk/government/publications/rpc-case-histories-other-bit-methodology-issues-march-2019>

<sup>7</sup> <https://www.gov.uk/government/publications/rpc-case-histories-permissive-legislation-february-2020>

put in place to ensure that EYFS providers will be able to best utilise the reduced regulatory requirements upon them (e.g., through information campaigns or updated guidance).

### **Medium-sized business (MSB) impact**

The IA would benefit from explicitly saying why an exemption for MSBs<sup>8</sup> is not relevant and would not in any case be appropriate in this instance.

## **Rationale and options**

### **Rationale**

The Department clearly set out the responses received during the recent consultation, for the various elements that constitute the preferred option, with this evidence forming the basis of the case for intervention. While this largely shows broad support for the legislation being introduced, the IA would benefit from including discussion about the inefficiencies and failures in the childcare market that the preferred option will correct. For example, the IA could discuss how limited access to childcare can prevent some parents' participation in the labour market and the economic effects of that.

### **Options**

In the IA, the Department has presented the preferred option to legislate as option 1, with the do-nothing option being presented as option 3. The Department should consider whether this is the best way to present the options contained in the IA, as it may suggest that legislation is a foregone conclusion, as well as potentially leading to some confusion in relation to the baseline position.

## **Cost-benefit analysis**

### **Evidence and data**

The IA draws upon evidence from not only the prior consultation but also a separately commissioned survey, as well as other robust data sources covering the industry. As previously noted, the IA also makes use of analysis undertaken for previous EYFS policies to inform the baseline position and the impact of the policy.

### **Methodology**

The IA clearly sets out the approach to the analysis undertaken, as well as presenting the results of calculations when discussed. The Department has appropriately uplifted hourly wages to account for non-wage costs for some impacts (such as familiarisation costs and the additional time cost for monitoring and appraising staff), as well as to the wage differentials (e.g., between L2 and L3 hourly rates) used when estimating other impacts.

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<sup>8</sup> <https://www.gov.uk/government/publications/better-regulation-framework/medium-sized-business-regulatory-exemption-assessment-supplementary-guidance>

### **Assumptions, risk and uncertainty**

The analysis to support is underpinned by a number of key assumptions. The Department has included appropriate justification of the usage of these assumptions, citing both prior evidence and information gathered through the consultation process to support this justification. While not explicitly undertaking sensitivity analysis, the IA does include high and low estimates for quantified impacts throughout.

## **Wider impacts**

### **Competition**

The Department does well to include a consideration of the impact upon competition in the childcare sector, as well as the effect this may have on the price of childcare and the quality of care provided. The discussion focusses on the competition to fill childcare spaces but the IA would benefit from also considering the competition for staff, in particular experienced staff who can now qualify within the staff:child ratios.

### **Innovation**

As previously mentioned, the IA would be strengthened by considering the policy allowing for greater participation in the labour market. By extension, the IA should consider the impact of greater participation on wage and productivity.

### **Distributional impacts**

The Department has undertaken a separate equalities impact assessment in accordance with the public sector equalities duty (PSED) and note how this identified concerns relating to the requirement for practitioners to support children with English as an 'Additional language' to help develop their home language as a priority. The IA would benefit from drawing out further findings from the equalities impact assessment carried out.

In addition, the IA would be further strengthened from discussing how the impacts of the policy are expected to differ geographically. For example, whether the policy is expected to be more beneficial in urban (where demand for places is likely to be high) or more rural (where supply and alternative options for parents is likely to be more limited) areas.

## **Monitoring and evaluation plan**

The Department commits to producing a PIR for the policy but does not provide a detailed description of the M&E that will be undertaken to support it. While the IA notes that the Department intends to use surveys that are already part of the Department's business-as-usual activities to monitor changes, it is not clearly communicated what within these surveys will be assessed. The IA needs to clearly set out what metrics and information gathered through this survey activity will be used, as well as any supporting information that may need to be gathered, to assess

the effectiveness of the measure and how it has delivered upon the intended objectives. Furthermore, the Department needs to provide an indication of what they would expect to see in these metrics or evidence, to enable them to determine if the policy was successful in delivering its objectives.

## **Regulatory Policy Committee**

For further information, please contact [regulatoryenquiries@rpc.gov.uk](mailto:regulatoryenquiries@rpc.gov.uk). Follow us on Twitter [@RPC\\_Gov\\_UK](https://twitter.com/RPC_Gov_UK), [LinkedIn](#) or consult our website [www.gov.uk/rpc](http://www.gov.uk/rpc). To keep informed and hear our views on live regulatory issues, subscribe to our [blog](#).