

*These notes refer to the Childcare Act 2006(c.21)
which received Royal Assent on 11 July 2006*

CHILD CARE ACT

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Childcare Act 2006 which received Royal Assent on 11 July 2006. They have been prepared by the Department for Education and Skills in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or subsection does not seem to require any explanation or comment, none is given.

BACKGROUND

3. In relation to England, the Act is intended to assist in the implementation of the aims set out in *Choice for parents, the best start for children: a ten year strategy for childcare*, published on 2 December 2004, which set out the Government's plans for the future of childcare. In relation to Wales, it will assist the implementation of *Childcare is for Children*, published on 29 November 2005.

OVERVIEW

4. The Act is divided into 4 Parts.
5. Part 1 makes provision relating to new duties on local authorities in England.
6. Part 2 makes provision relating to new duties on local authorities in Wales.
7. Part 3 makes provision relating to the system of regulation and inspection of childcare in England.
8. Part 4 contains miscellaneous and general provisions.

SUMMARY

Part 1: General Functions of Local Authority: England

9. This Part sets out the duties placed upon local authorities in three main areas – improving the outcomes for young children, securing sufficient childcare and providing information to parents. These duties reflect the growing strategic role that local authorities have in planning, commissioning and delivering services for children and families. The duties in this Part will allow local authorities the flexibility to implement delivery in ways that best suit their particular circumstances, and will allow future development without the need to alter the underpinning legislation.

10. Part 1 requires local authorities in England to improve well-being for young children, and defines well-being according to the five outcomes identified in the Green Paper 'Every Child Matters' (September 2003): being healthy, staying safe, enjoying and achieving,

making a positive contribution and achieving economic well-being. It requires early childhood services (identified as early years provision, health services, social services and employment services) to be provided in an integrated manner. It provides for the NHS and Jobcentre Plus to work in partnership with the local authority to deliver these early childhood services in an accessible and integrated way.

11. Local authorities are also required to secure sufficient childcare for working parents and those making the transition to work. They have a duty to regularly assess demand for, and availability of, local childcare provision and to support local childcare providers with information, advice and training. Local authorities will generally be able to charge for childcare which they provide but they are required to secure that a prescribed amount of early years provision is provided free of charge for young children.

12. This Part also places a duty on local authorities to set up and run a service for parents and prospective parents, providing information on services, facilities and publications which may benefit them or children or young people and providing advice and assistance on childcare.

Part 2: General Functions of Local Authority: Wales

13. Part 2 requires local authorities in Wales to secure sufficient childcare for working parents and those making the transition to work. It enables regulations to be made requiring the local authority to regularly assess demand for, and availability of, local childcare provision.

14. This Part also places a duty on local authorities in Wales to set up and run a service for parents and prospective parents, providing information on services, facilities and publications which may benefit them or children or young people and providing advice and assistance on childcare.

Part 3: Regulation of Provision of Childcare in England

15. Part 3 of the Act puts in place legislative provisions to implement the proposals to reform regulation and inspection of childcare which were set out in the Ten Year Strategy. The Strategy set out the following proposals:

- To introduce a new legal framework for the integrated regulation and inspection of early education and childcare services.
- To create a single framework for high quality integrated education and care which underpins the learning and development of children from birth to five.
- To review the scope of regulation to make sure that different types of settings are subject to appropriate standards.

16. Chapters 2 - 5 of Part 3 cover the registration, inspection and regulation of the provision of childcare as defined by section 18. Chapter 2 covers the registration of, and requirements to be met by, early years providers. Early years provision is defined in section 20 as provision of childcare for a young child. A child is regarded as a young child until 1st September following his 5th birthday. Chapter 2 sets out who will be required to be registered as an early years childminder (that is, someone who operates on domestic premises) or other early years provider. Chapter 2 goes on to put in place measures for the registration, inspection and regulation of early years providers. It makes provision for the establishment of

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the Early Years Foundation Stage (EYFS) for the purpose of promoting the well-being of young children who are receiving early years provision (section 39).

17. Chapter 3 of Part 3 covers registration, inspection and regulation requirements for childcare for children from 1 September following their 5th birthday up to the age of eight.

18. Chapter 4 of Part 3 covers the process of voluntary registration and the regulation of those persons who register voluntarily. Voluntary registration is available to all those who are not required to be registered (other than certain providers based in schools) but who look after children below an age to be prescribed in regulations, providing that they meet the registration requirements. Providers who are exempted from compulsory registration by subordinate legislation are among those who may be able to register voluntarily.

19. Chapter 5 of Part 3 includes provisions which apply to all registered childcare providers. It includes provisions relating to cancellation and suspension of registration, disqualification from registration and removal from the registers. It also includes provisions dealing with inspectors' rights of entry and powers and duties in relation to provision of information about providers. Provision is made relating to offences and criminal proceedings. There are other miscellaneous provisions including provisions relating to fees for registration, co-operation between local authorities and the Chief Inspector, combining registration certificates, communication of notices, the definition of school and employees of childcare providers.

Part 4: Miscellaneous and General

20. Part 4 makes provision for the collection of information relating to certain children for whom childcare is provided. It also amends paragraph 4 of Schedule 9A to the Children Act 1989 which deals with disqualification for registration under that Act. It also makes general provision about subordinate legislation, interpretation and commencement.

TERRITORIAL APPLICATION

21. The Act applies to England only apart from Part 2 which applies to Wales only and certain provisions of Part 4 which apply to both England and Wales.

COMMENTARY ON SECTIONS AND SCHEDULES

PART 1: GENERAL FUNCTIONS OF LOCAL AUTHORITY: ENGLAND

Sections 1- 5: overview

22. Section 1 imposes a duty on local authorities in England to improve the well-being of young children in their area and to reduce inequalities between such children. Sections 2 to 5 are related to this duty. In particular, local authorities are required to make arrangements to secure that early childhood services are provided in an integrated manner. Local authorities are already involved in the provision of children's centres under the "Sure Start" scheme and it is expected that children's centres will play an important role in the provision of integrated childhood services. Children's centres are places where children under 5 years old and their families can access integrated services, information and help from multi-disciplinary teams of professionals. Typically the services include care and education, health, family support services, information for parents and employment services.

23. Under section 4, local authorities and their key partners in health and employment services will have a reciprocal duty to work together in delivering integrated childhood services to improve outcomes for young children and reduce inequalities between them. In carrying out their duties in relation to the provision of integrated childhood services, local authorities must also seek to involve providers from the private and voluntary sector and parents. They must also have regard to relevant information about the views of young children.

Section 1: General duties of local authority in relation to well-being of young children

24. Section 1 places a duty on local authorities to improve the well-being of all young children in their area and to reduce inequalities between those achieving the poorest outcomes and the rest. This will mean that, when improving the outcomes for all children, local authorities will need to improve the outcomes of the most disadvantaged at a faster rate.

25. A child is regarded as a young child until 1st September following his fifth birthday (section 19). Well-being is defined in a way which is related to the five ‘Every Child Matters’ outcomes of being healthy, staying safe, enjoying and achieving, making a positive contribution and achieving economic well-being. The section allows the Secretary of State to set targets for local authorities to improve these outcomes and narrow the gaps in achievement, and requires local authorities to have regard to guidance issued by the Secretary of State.

Section 2: Meaning of “early childhood services” for purposes of section 3

26. Section 2 defines “early childhood services” for the purposes of section 3. These are the services central to the improvement of outcomes for young children. They are:

- early years provision, i.e. integrated early education and childcare;
- social services relating to young children and their parents, for example, supervised contact and early intervention for families identified as needing support;
- health services relevant to young children and their parents, for example, health visitors, ante-natal and post-natal care;
- services provided under section 2 of the Employment and Training Act 1973, assisting or encouraging parents (and prospective parents) to obtain or retain employment, as delivered through Jobcentre Plus (such services are included because providing support for parents entering work is a key way of enhancing children’s economic well-being);
- information services for parents as described under section 12.

27. Section 2 also defines a “parent” and a “prospective parent.”

Section 3: Specific duties of local authority in relation to early childhood services

28. Section 3 requires local authorities to deliver the improved outcomes set out in section 1 by ensuring that early childhood services (as defined in section 2) are delivered in an integrated way that facilitates access to services and maximises the benefits to children, parents and prospective parents.

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29. The local authority is also required to take steps to identify parents who are unlikely to take advantage of early childhood services that may benefit them, and to encourage them to take advantage of those services. In many cases, this will be inextricably tied to the duty to narrow the gaps between those achieving the poorest outcomes and their peers, and thereby reduce inequality.

30. Section 3 also requires local authorities to encourage the involvement of parents and prospective parents, providers of early years provision in the private and voluntary sectors and any others who contribute to the well-being of young children, when developing integrated services and deciding how they should be delivered. Local authorities must, in addition, have regard to available information about the views of young children where this information appears relevant to the development or delivery of integrated services.

31. In carrying out their duties under section 3, local authorities must have regard to statutory guidance issued by the Secretary of State.

Section 4: Duty of local authority and relevant partners to work together

32. Section 4 creates a reciprocal duty between the local authority and relevant partners in the NHS and Jobcentre Plus to work together in delivering integrated early childhood services to improve outcomes and reduce inequalities in achievement.

33. In order to deliver an integrated service for children and parents, the local authority and its partners must work with each other and may share their resources and pool budgets, allowing them to deliver fully integrated front-line services, for example where early years provision, social services support, health services and the employment service may all be found on one site. Local authorities and their health partners must have regard to statutory guidance issued by the Secretary of State. Jobcentre Plus officials (who work on behalf of the Secretary of State for the Department of Work and Pensions) will also be required by the Secretary of State to work in line with the guidance. It is intended that the statutory guidance will be issued jointly by all three Secretaries of State (DfES, DWP and DH).

34. This duty is consistent with section 10 of the Children Act 2004 under which children's trust arrangements have been made. The duty in section 4 puts the authority and their local partners in the NHS and Jobcentre Plus under a particular obligation to work together in improving outcomes for the youngest children in the local area. Guidance will set out how this co-operation can operate through the Government's preferred delivery model of children's centres.

Section 5: Power to amend sections 2 to 4

35. This section allows the Secretary of State to alter, by order, the definition of "early childhood services" and make any consequential changes to sections 2 or 4. This would, for example, enable other services to be included in the future. Such an order would be subject to the affirmative resolution procedure to ensure appropriate Parliamentary scrutiny (see section 105).

Sections 6-13: overview

36. Sections 6 to 13 all relate to the provision of childcare, creating new and replacing existing statutory duties. Section 6 places a duty on local authorities in England to secure, so far as is reasonably practicable, sufficient childcare (including early years provision) for working parents in their area and parents making the transition to work. The other sections

deal with a range of matters relating to the assessment and provision of childcare and the provision of information. Although the other sections are not limited to childcare for working parents, they confer powers and duties which are relevant to the discharge by local authorities of the duty imposed by section 6.

37. The intention is to bring section 11 (which relates to assessment of childcare provision) into force before the other sections in this group, so that local authorities would first have to assess the current state of childcare in their area, identifying any gaps in provision where parents' needs are not being met. Once the assessment has been undertaken, authorities would then consider what action they might need to take (using the provisions in sections 8, 9, 10 and 13) to fulfil the sufficiency duty in section 6. Section 8 gives local authorities powers to give assistance to childcare providers (including financial support) and to provide childcare themselves, subject to restrictions. Section 9 allows authorities to place conditions on any financial agreements they may make with childcare providers and to require repayment if providers fail to meet the conditions. Section 13, which replaces an existing duty, requires local authorities to provide information, advice and training to registered and school-based childcare providers, allows them also to do so for other providers, and permits them to make reasonable charges for this support.

38. Section 7 requires local authorities to secure free early years provision for young children within a particular age group. This replaces an existing duty.

39. The final part of the "childcare" package is section 12 which develops an existing duty by requiring local authorities to provide parents and prospective parents with information about childcare and other services for children and young people. In respect of childcare, they must go further and also provide advice and assistance to help parents find childcare that meets their particular needs.

Section 6: Duty to secure sufficient childcare for working parents

40. Section 6 places a duty on local authorities in England to secure, as far as is reasonably practicable, sufficient childcare to meet the requirements of parents in their area who require childcare in order to work or to undertake training or education to prepare for work. This applies to childcare for disabled children until they reach 18 and to childcare for other children until the 1st September after their 14th birthday.

41. The duty applies "so far as is reasonably practicable". This recognises that it may not be practicable for a local authority to secure childcare to meet the requirements of every parent in their area. In determining what is reasonably practicable, local authorities will need to take into account a number of factors, including the resources available to them. In discharging the duty, local authorities must have regard to guidance issued by the Secretary of State.

42. Section 6 provides that, in determining whether the provision of childcare is sufficient, local authorities must have regard to the needs of parents in their area for childcare eligible for the childcare element of the Working Tax Credit, and for childcare that is suitable for disabled children. Local authorities may also have regard to childcare outside their area when determining sufficiency. Section 6(4) enables the Secretary of State to amend, by order, the criteria to which local authorities must, or may, have regard in determining sufficiency and to make consequential amendments.

Section 7: Duty to secure prescribed early years provision free of charge

43. Section 7 replaces for English local authorities the duty to secure sufficient nursery education contained in section 118 of the School Standards and Framework Act 1998.

44. Section 7(1) places a duty on local authorities to ensure that certain early years provision is available free of charge for each young child in their area who has attained a prescribed age but is under compulsory school age. The section allows the Secretary of State to prescribe in regulations the type and amount of early years provision.

45. Section 7(2) requires a local authority to have regard to guidance issued by the Secretary of State when discharging their duty.

Section 8: Powers of local authority in relation to the provision of childcare

46. Section 8 provides that a local authority may make arrangements with childcare providers and provide support to them (including financial support). The section also allows local authorities to provide childcare themselves if there is no other provider willing to provide it or if the local authority considers, in all the circumstances, that it is appropriate to do so. *Subsection (4)* clarifies that this restriction does not affect the provision made by governing bodies of maintained schools (e.g. under their powers to provide community facilities under section 27 of the Education Act 2002). *Subsection (5)* provides that the restriction does not apply to provision made by the local authority for children in need under section 18(1) or (5) of the Children Act 1989.

47. In exercising any of the powers conferred by this section, local authorities must have regard to guidance issued by the Secretary of State.

Section 9: Arrangements between local authority and childcare providers

48. Section 9 requires local authorities to exercise their powers to ensure that any providers with whom they enter into a financial agreement in relation to childcare provision meet requirements imposed on them. It allows local authorities to require repayment of financial assistance if providers fail to meet the contractual conditions.

Section 10: Charges where local authority provide childcare

49. Section 10 provides that local authorities may enter into agreements which impose a charge for the provision of childcare by the authority. This does not apply where care is provided for children in need under section 18(1) or (5) of the Children Act 1989 as provision for charging in these circumstances is made by that Act.

Section 11: Duty to assess childcare provision

50. Section 11 places a duty on local authorities to assess, at least every 3 years, whether childcare provision in their area is sufficient, and to keep assessments under review. The section enables the Secretary of State to make regulations concerning the nature and the form of the assessment, whether and how it is published and which people must be consulted. Local authorities are also required to have regard to guidance issued by the Secretary of State in carrying out their assessment and review functions under this section.

Section 12: Duty to provide information, advice and assistance

51. Section 12 places a duty on local authorities to establish and maintain a service providing information, advice and assistance in accordance with the section. It requires local

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authorities to provide parents and prospective parents with prescribed information on the provision of childcare and on other services or facilities, or publications, that may benefit them or children or young people. The details of the information which must be provided will be dealt with in regulations.

52. *Subsection (3)* requires the Secretary of State, when prescribing in regulations the information which must be provided, to have regard to the needs of the parents of disabled children and young people for particular information, for example, information relating to the provision of childcare which is suitable for disabled children. *Subsection (4)* allows local authorities to provide additional information to parents and prospective parents and to provide information to other persons.

53. Section 12 also requires local authorities to provide advice and assistance to parents or prospective parents using or seeking childcare, and it requires them to ensure that the service is accessible to those who might benefit from it, in particular parents who might otherwise have difficulty accessing it.

54. When carrying out their functions under the section local authorities must have regard to guidance issued by the Secretary of State.

Section 13: Duty to provide information, advice and training to childcare providers

55. Section 13 replaces (for England) the duty on local authorities under section 79V of the Children Act 1989 which requires local authorities to provide information and advice on day care and childminding. Under *subsection (1)* of section 13, local authorities are placed under a duty to provide information, advice and training to childcare providers who are registered under the new system, persons who provide childcare in certain schools (whether registered or not) and those who assist in the provision of registered care or care in schools or who intend to provide such care. Local authorities must discharge this duty in accordance with regulations.

56. The section also gives local authorities power to provide other information, advice and training to such providers and to provide information, advice and training to other persons who do not fall within the categories specified in subsection (1) but who provide or intend to provide childcare.

57. Local authorities are able to levy reasonable charges for providing support under this section. In carrying out their functions under the section, local authorities must have regard to any guidance issued by the Secretary of State.

Sections 14 and 15: Inspection and powers of Secretary of State to secure proper performance etc.

58. Sections 14 and 15 ensure that a local authority's functions under Part 1 (to improve outcomes, to secure sufficient childcare and to provide information) are subject to inspection by Her Majesty's Chief Inspector of Schools and subject to the powers of the Secretary of State to secure proper performance through sections 496, 497, 497A, 497AA and 497B of the Education Act 1996.

Section 16: Amendments of Children Act 2004

59. Section 16 makes two amendments to the Children Act 2004.

60. The first deals with accountability in relation to functions under Part 1 of the Act. It amends section 18 of the 2004 Act, which provides for the appointment by English local authorities of a director of children's services for the purpose of functions specified in that section. The amendment adds functions under Part 1 of the Act to the list of specified functions and thereby brings them within the responsibility of the director of children's services. The amendment also brings functions under Part 1 of the Act within the remit of the lead member for children's services designated by the local authority under section 19 of the 2004 Act.

61. The second amendment means that functions of English local authorities under Part 1 of the Act are children's services for the purposes of sections 20 to 22 of the 2004 Act. This means that they may be subject to a joint area review under section 20 of the 2004 Act.

Section 17: Charges for early years provision at maintained school

62. Section 17 amends section 451 of the Education Act 1996 which prohibits charges for the provision of education for registered pupils at maintained schools. The changes allow for regulations to prescribe circumstances where the prohibition on charging for education does not apply in respect of early years provision. The regulations may not lift the prohibition in respect of children of compulsory school age or in respect of provision that is secured under section 7 (which deals with the duty to secure free early years provision).

Sections 18 to 21: Meaning of childcare and other terms

63. Section 18 defines childcare as any form of care for a child including education and any supervised activity but excluding education (or any other supervised activity) provided in school hours for a registered pupil at a school who is not a young child. The definition also excludes health care, care provided by certain individuals (for example, a parent or a relative of a child), care provided in a hospital, care home or family centre and care provided for children detained in young offender institutions or secure training centres.

64. Sections 19 and 20 define young child and early years provision. Early years provision is the provision of childcare for a young child and a child is regarded as a young child until the 1st September following the date on which he attains the age of 5.

PART 2 - GENERAL FUNCTIONS OF LOCAL AUTHORITY: WALES

Section 22: Duty to secure sufficient childcare for working parents

65. Section 22 places a duty on local authorities in Wales to secure, as far as is reasonably practicable, sufficient childcare to meet the requirements of parents in their area who require childcare in order to work or to undertake training or education to prepare for work. This applies to childcare for disabled children until they reach 18 and to childcare for other children until the 1st September after their 14th birthday.

66. The duty applies "so far as reasonably practicable". This recognises that it may not be practicable for a local authority to secure childcare to meet the requirements of every parent in their area. In determining what is reasonably practicable, local authorities will need to take into account a number of factors, including the resources available to them. In discharging the duty, local authorities must have regard to guidance issued by the National Assembly for Wales.

67. Section 22 specifies that, in determining whether the provision of childcare is sufficient, local authorities must have regard to the needs of parents in their area for childcare eligible for the childcare element of the Working Tax Credit, for childcare that is suitable for disabled children, and for childcare delivered through the medium of the Welsh Language. Section 22(4) enables the Assembly to amend, by order, the criteria to which local authorities must, or may, have regard in determining sufficiency and to make consequential amendments.

Section 23: Powers of local authority in relation to the provision of childcare

68. Section 23 provides that a Welsh local authority may make arrangements with childcare providers and provide support to them (including financial support). The section also allows local authorities to provide childcare themselves. In exercising these powers, Welsh local authorities must have regard to any guidance issued by the Welsh Assembly.

Section 24: Arrangements between local authority and childcare providers

69. Section 24 requires local authorities in Wales to exercise their powers to ensure that any providers with whom they enter into a financial agreement in relation to childcare provision meet any conditions imposed on them by local authorities. It allows local authorities to require repayment of financial assistance if providers fail to meet such conditions.

Section 25: Charges where local authority provide childcare

70. Section 25 provides that Welsh local authorities may enter into agreements which impose a charge for the provision of childcare by the authority. This does not apply where care is provided for children under section 18 of the Children Act 1989 as provision for charging in these circumstances is made in section 29 of that Act.

Section 26: Power to require local authority to assess childcare provision

71. Section 26 provides the Welsh Assembly with a power to make regulations placing a duty on local authorities in Wales to assess whether childcare provision in their area is sufficient. The regulations may prescribe the interval between assessments and require a review of the assessment. They may define arrangements for consultation and require Welsh local authorities to have regard to guidance issued by the Welsh Assembly in respect of the assessment and review.

Section 27: Duty to provide information, advice and assistance

72. Section 27 places a duty on Welsh local authorities to establish and maintain a service providing information, advice and assistance to parents and prospective parents in accordance with the section. *Subsection (2)* requires local authorities to provide parents and prospective parents with prescribed information on the provision of childcare and on other services or facilities, or publications, that may benefit them or children or young people. The details of the information which must be provided will be dealt with in regulations.

73. *Subsection (3)* requires the Welsh Assembly, when prescribing in regulations the information which must be provided, to have regard to the needs of the parents of disabled children and young people. *Subsection (4)* allows local authorities in Wales to provide additional information to parents and prospective parents and to provide information to other persons.

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74. The section requires local authorities to provide advice and assistance to parents or prospective parents using or seeking childcare and to ensure that the information service is accessible to those who might benefit from it, in particular parents who might otherwise have difficulty accessing it.

75. *Subsection (7)* requires local authorities to take account of guidance issued by the Welsh Assembly when carrying out their functions.

76. *Subsection (8)* defines what is meant by a disabled child or young person for the purposes of section 27.

Sections 28 and 29: Inspection and Powers of Assembly to secure proper performance etc.

77. Sections 28 and 29 ensure that a Welsh local authority's functions under Part 2 (to secure sufficient childcare and to provide information) are inspected by Her Majesty's Chief Inspector of Education and Training in Wales and are subject to the powers of the Assembly to secure proper performance through sections 496, 497, 497A, 497AA and 497B of the Education Act 1996.

Section 30: Interpretation of Part 2

78. Section 30 defines childcare for the purposes of Part 2 as being care which is required to be registered by the Welsh Assembly under Part 10A of the Children Act 1989 or care approved through a scheme made by the Welsh Assembly under section 12(5) of the Tax Credits Act 2002.

PART 3 – REGULATION OF PROVISION OF CHILDCARE IN ENGLAND

Chapter 1: General Functions of Chief Inspector

Section 31: General functions of the Chief Inspector

79. Section 31 sets out the general functions of the Her Majesty's Chief Inspector of Schools (subsequently referred to as the Chief Inspector) which include keeping the Secretary of State informed about the quality and standards of registered early years provision and unregistered early years provision in schools and its contribution to the well-being of children, and advising the Secretary of State on matters relating to early and later years provision.

Section 32: Maintenance of the two childcare registers

80. Section 32 requires the Chief Inspector to maintain two registers:

- an early years register in which everyone who is required to be registered as an early years provider (and has been registered) is listed; and
- a general childcare register which is to be split into two Parts:
 - a) Part A which lists all childcare providers who are required to be registered on the general register (and who have been registered) i.e. those caring for children over 5 but under 8;
 - b) Part B which lists all childcare providers who have been registered voluntarily.

Chapter 2: Regulation of Early Years Provision

Section 33: Requirement to register: early years childminders

81. Section 33 prohibits a person from providing early years childminding unless he is registered in the early years register. Early years childminding is early years provision provided on domestic premises for reward where there are no more than three people providing the care or assisting with its provision (see section 96(4) and (5)).

82. *Subsection (2)* allows the Secretary of State to exempt certain persons from the requirement to be registered. This power may be used to exempt, for example, nannies and babysitters.

83. *Subsection (4)* sets out what happens where a person who should be registered as an early years childminder under subsection (1) fails to register. In such cases the Chief Inspector may serve an enforcement notice on that person and that person may then be prosecuted if they continue to childmind without being registered (see *subsection (7)*). The notice will stay in effect until revoked by the Chief Inspector.

Section 34: Requirement to register: other early years providers

84. Section 34 sets out the requirement for early years providers, other than childminders, to be registered. Such early years providers must register in respect of particular premises.

85. *Subsection (2)* exempts from this requirement early years provision made for children aged 3 and over at a maintained school, non-maintained special school or independent school where that provision is made by the school and one or more pupils attend it. *Subsection (3)* makes provision for the Secretary of State to exempt by order certain providers from the requirement to be registered.

86. It is an offence to provide non-exempt early years provision without being registered (see *subsection (5)*).

Section 35: Applications for registration: early years childminders

87. Section 35 deals with applications for registration by early years childminders who are required to be registered.

88. *Subsection (3)* requires the Chief Inspector to grant an application for registration as an early years childminder if the applicant is not disqualified from registration and the requirements for registration set out in regulations are satisfied and are likely to continue to be satisfied. (*Subsection (5)* sets out some of the areas which the regulations may deal with and these include (but are not limited to) the premises on which the childminding is to be provided and any person who may be caring for the child.)

89. *Subsection (4)* requires the Chief Inspector to refuse an application where the applicant is disqualified and/or where the requirements set out in regulations are not satisfied.

Section 36: Applications for registration: other early years providers

90. Section 36 makes similar provision to section 35 for applications by other early years providers. It differs from the provision for childminders in that applications are required to be made in respect of particular premises.

Section 37: Entry on the register and certificates

91. Section 37 places an obligation on the Chief Inspector to place successful applicants in the early years register and to issue them with certificates of registration. This section makes a distinction between early years childminders and early years providers who are not childminders. This is because, when a childminder is registered, the registration is not linked to any particular premises. In the case of other early years providers, however, the registration is in respect of particular premises. This means that early years providers (other than childminders) may have separate entries in the register in respect of different premises (where they provide childcare at more than one location).

92. Section 37 also requires the certificate of registration to set out particular information, as prescribed through regulations. Provision is made for amendment of registration certificates. *Subsection (5)* requires the Chief Inspector to provide a copy of a lost or destroyed registration certificate when paid a fee as required by regulations.

Section 38: Conditions on registration

93. Section 38 deals with conditions on registration for compulsorily registered early years providers. It allows the Chief Inspector to impose any conditions he thinks fit at any time and to vary or remove any conditions at any time. Conditions may include (but are not limited to) conditions to ensure that providers comply with regulations. It is an offence for a person not to comply with conditions on his registration.

Section 39: The Early Years Foundation Stage

94. This section places a duty on the Secretary of State to specify certain requirements for the purpose of promoting the well-being (as defined by section 1(2) of the Act) of young children who are receiving early years provision. These requirements relate to learning by and the development of young children (the ‘learning and development requirements’) which the Secretary of State must specify by order and to the welfare of young children and the organisation and staffing of early years settings (the ‘welfare requirements’), which the Secretary of State must prescribe by regulations. These requirements are together to be known as the Early Years Foundation Stage (EYFS).

Section 40: Duty to implement the Early Years Foundation Stage

95. Section 40 sets out which providers are required to implement the EYFS. This includes all early years providers who are required to be registered under sections 33 and 34 of the Act, as well as early years providers who are exempted by section 34(2) from the requirement to be registered (i.e. provision made on school premises by schools for children aged 3 and over).

96. *Subsection (2)* places these providers under a duty to implement the EYFS.

Section 41: The learning and development requirements

97. This section sets out what may and may not be covered by a learning and development order made by the Secretary of State under section 39(1)(a). The ‘learning and development requirements’ must cover six areas of learning and development, which are listed in *subsection (2)*. In relation to these six areas, the ‘learning and development requirements’ may specify:

- early learning goals, setting out what most young children are expected to achieve before 1st September following their 5th birthday;
- educational programmes, setting out what should be taught to young children attending early years provision, although the order may not require providers to allocate any particular periods of time to the delivery of such a programme;
- arrangements for assessing the learning and development of young children attending early years provision.

Section 42: Further provisions about assessment arrangements

98. This section enables the Secretary of State, when making a learning and development order under section 39(1)(a) specifying assessment arrangements, to confer or impose functions on the persons listed under *subsection (2)*. The order may specify, for example, when, how and by whom young children are to be assessed, as well as the purpose of any such arrangements. Provision must be made for ascertaining whether the purpose of the assessment arrangements is being achieved, and to facilitate this providers may be required to allow anyone on whom the order has conferred functions relating to the monitoring of assessment arrangements to enter premises and monitor those arrangements.

99. *Subsection (6)* allows a learning and development order to provide that details of assessment arrangements may be published in a separate document. The provision made by the separate document has effect as if it had been made in the learning and development order.

Section 43: Welfare requirements

100. Section 43 sets out the matters that may be covered by regulations made by the Secretary of State under section 39(1)(b) (the ‘welfare requirements’). They relate to measures for securing young children’s safety and welfare when they are receiving early years provision and the effective organisation of an early years setting, as well as procedures for dealing with complaints and the provision of information.

101. The regulations may also provide that a person is guilty of an offence if they fail to comply with a requirement, and that they are liable to pay a fine if they commit such an offence.

Section 44: Instruments specifying learning and development or welfare requirements

102. Section 44 refers to a “relevant instrument”. *Subsection (5)* explains that a “relevant instrument” means a learning and development order (made under section 39(1)(a)) or regulations prescribing welfare requirements (made under section 39(1)(b)). A relevant instrument may, instead of setting out all the provisions to be made, give effect to provisions set out in a separate document.

103. Under *subsections (2) and (3)*, a relevant instrument may also confer powers and impose duties on the Chief Inspector in the exercise of his functions under Part 3. In particular it may require the Chief Inspector, in exercising these functions, to have regard to factors, standards and other matters prescribed by or referred to in the instrument.

104. *Subsection (4)* provides that where a relevant instrument requires a person other than the Chief Inspector to have regard to or meet factors, standards and other matters, it may also allow for any allegation that the person has failed to do so to be taken into account by the

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Chief Inspector in the exercise of his functions under Part 3 or in any proceedings under that Part.

Section 45: Procedure for making certain orders specifying learning and development requirements

105. This section sets out the consultation procedure required when the Secretary of State proposes to make an order under section 39(1)(a) to specify the early learning goals or educational programmes for the Early Years Foundation Stage. It requires that the Secretary of State consult relevant bodies in the early years sector about any proposals for the order.

106. The draft order will then be published, along with a summary of views expressed during the consultation, to enable all with a special interest in early years provision to provide any further representations within a period allowed by the Secretary of State (which must not be less than a month). The Secretary of State may then make the order with or without modifications.

Section 46: Power to enable exemptions to be conferred

107. Section 46 enables the Secretary of State to confer exemptions from the learning and development requirements in certain prescribed circumstances. Regulations may provide that the learning and development requirements should not apply, or should apply with specified modifications, to a particular early years provider or to a group of early years providers. Regulations may also enable an early years provider to determine that the learning and development requirements do not apply, or apply with modifications, in respect of a particular child.

Section 47: Independent Schools

108. *Subsection (1)* of this section amends section 157 of the Education Act 2002 so that the independent school standards prescribed by regulations made under that section do not apply in relation to early years provision for pupils of independent schools who have not attained the age of 3. Independent schools providing early years provision for children under 3 are required to be registered under Part 3 of this Act and to implement the Early Years Foundation Stage.

109. *Subsection (2)* amends section 157 of the Education Act 2002 so that, for early years provision for pupils of independent schools who have attained the age of 3, the independent school standards include the Early Years Foundation Stage

Section 48 and Schedule 1: Amendments relating to curriculum

110. This section gives effect to Schedule 1. As a consequence of the provisions of Chapter 2 of Part 3, Schedule 1 amends section 23 of the Education Act 1997, which sets out the functions of the Qualifications and Curriculum Authority (QCA), in order to remove references to funded nursery education. It also inserts a power for the Secretary of State to provide by order that the QCA shall have functions relating to children who are receiving early years provision from early years providers who are under a duty to implement the Early Years Foundation Stage. The Secretary of State is required to consult the QCA before conferring such functions.

111. Schedule 1 also makes amendments to Part 6 of the Education Act 2002 as a consequence of the provisions of Chapter 2 of Part 3. Part 6 of the Education Act 2002 makes

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provision for the National Curriculum for England including the foundation stage (which currently covers children from the age of 3 to the end of the school year in which they turn 5). As the Early Years Foundation Stage will cover all such children, provisions relating to the foundation stage are being removed from Part 6 of the Education Act 2002.

Section 49: Inspections

112. Section 49 relates to inspection of early years provision and requires the Chief Inspector to inspect early years provision at intervals (to be prescribed in regulations) and on request from the Secretary of State. It also allows the Chief Inspector to inspect early years provision at any other time when he considers it appropriate.

113. *Subsection (3)* allows regulations to be made setting out circumstances in which the Chief Inspector will not be required to carry out an inspection when it falls due. Regulations could, for example, provide that an inspection is not required where the provider does not have any children on the roll.

114. *Subsection (4)* allows regulations to be made providing that the Chief Inspector is not required to carry out an inspection at an independent school where the early years provision would be inspected by a body approved by the Secretary of State.

115. *Subsection (6)* provides for regulations to require the registered person to notify particular people of an inspection.

Section 50: Report of inspections

116. This section sets out requirements for the Chief Inspector to report in writing on any early years provision which he inspects and makes provision for the distribution of copies of the report. *Subsection (4)* applies subsections (2) to (4) of section 11 of the Education Act 2005. This provision allows the Chief Inspector to publish the report by electronic means and provides for reports to be privileged for the purposes of defamation unless they have been made with malice.

Section 51: Interpretation of Chapter 2

117. This section defines the meanings of terms used in Chapter 2 of Part 3.

Chapter 3: Regulation of Later Years Provision for children under 8

Section 52: Requirement to register: later years childminders for children under eight

118. This section prohibits persons from providing later years childminding for children up to the age of 8 unless they are registered in Part A of the general childcare register as childminders. There is provision for the Secretary of State to exempt providers by order from the requirement to be registered.

119. *Subsection (4)* sets out what happens where a person who should be registered as a later years childminder under subsection (1) fails to do so. In such cases the Chief Inspector may serve an enforcement notice on that person and that person may then be prosecuted if they continue to care for children without being registered (see *subsection (7)*). The notice will stay in effect until revoked by the Chief Inspector.

Section 53: Requirement to register: other later years providers for children under eight

120. This section sets out the requirement for registration for later years providers (other than childminders) providing childcare for children up to the age of 8. Such later years providers must be registered in respect of particular premises.

121. *Subsection (2)* specifically exempts from this requirement later years provision made at a maintained school, non-maintained special school or independent school where that provision is made by the school and one or more pupils attends it. *Subsection (3)* makes provision for the Secretary of State to exempt providers by order from the requirement to be registered. It is an offence to provide non-exempted later years provision without registration.

Section 54: Applications for registration: later years childminders

122. This section deals with applications for registration as a later years childminder for children under 8. It requires applicants to give certain information to the Chief Inspector and pay any prescribed fee. The Chief Inspector must register the person if they are not disqualified from registration and any requirements for registration are satisfied and are likely to continue to be satisfied. A person may be disqualified from registration by regulations made under section 75. These may be used to disqualify, for example, persons on the list kept under section 1 of the Protection of Children Act 1999 (c.14). Registration requirements may include requirements relating to the premises on which the provision is to be provided.

Section 55: Applications for registration: other later years providers

123. This section deals with applications for registration by other later years providers (who are not childminders) for children under 8. Applicants are required to give certain information to the Chief Inspector and pay any prescribed fee. As with applications for childminding, the Chief Inspector must register the person if they are not disqualified from registration and any requirements for registration are satisfied and are likely to continue to be satisfied.

Section 56: Entry on the register and certificates

124. This section requires the Chief Inspector to enter successful applicants in Part A of the general childcare register and give them a registration certificate. Should changes in circumstance mean that the certificate needs to be changed then the Chief Inspector must give the registered person an amended certificate. The Chief Inspector must also provide a copy of lost or destroyed certificates on payment of a prescribed fee.

Section 57: Special procedure for registered early years providers

125. Section 57 requires the Chief Inspector, on request, to register a person in Part A of the general childcare register if he is already registered as an early years provider in the early years register.

126. For providers other than childminders this applies only where the care for over 5s is being provided on the same set of premises as the care in respect of which the provider is registered in the early years register.

127. The usual rules about amendment and loss of certificates apply to certificates granted under this special procedure (see *subsection (3)*).

Section 58: Conditions on registration

128. This section deals with conditions on registration for compulsorily registered later years providers. It allows the Chief Inspector to impose any conditions he thinks fit at any time and to vary or remove any conditions at any time. Conditions may include (but are not limited to) conditions to ensure that providers comply with regulations. It is an offence for a person not to comply with conditions on his registration.

Section 59: Regulations governing activities

129. This section allows the Secretary of State to make regulations governing the activities of compulsorily registered later years providers. These may cover issues such as the welfare of children, suitable persons and premises, complaints procedures and the provision of information. The regulations may provide for the Chief Inspector to take into account a failure to meet requirements imposed by the regulations. Regulations may also be made making breach of requirements imposed by the regulations an offence.

Section 60: Inspections

130. Section 60 requires the Chief Inspector to inspect compulsorily registered later years provision at any time when the Secretary of State requires it. Such a requirement may relate to later years provision at particular premises or to later years provision at a particular class of premises. The section also gives the Chief Inspector power to inspect when he considers it appropriate to do so.

Section 61: Report of inspections

131. Section 60 provides that, after an inspection of compulsory registered later years provision, the Chief Inspector may if he decides that it is appropriate to do so write a report. The report may cover matters such as the quality and standards of the later years provision and its contribution to the well-being of the children being looked after. *Subsections (2) and (3)* deal with publication of the report.

Chapter 4 – Voluntary registration

Section 62: Applications for registration on the general register: childminders

132. Section 62 deals with applications for voluntary registration by childminders. This applies to childminders who are not required to be registered because, for example, they care only for children aged 8 and over or because they are exempt from registration by virtue of an order made by the Secretary of State under section 33(2) (which deals with early years childminders) or section 52(2) (which deals with later years childminders). Such childminders are able to make an application to be registered in Part B of the general childcare register. The prescribed registration requirements (which may, for example, relate to the applicant and the premises) must be satisfied, and applicants must pay a prescribed fee. The Chief Inspector must grant registration as long as the applicant is not disqualified under section 75, and the Chief Inspector is satisfied that registration requirements are met and will continue to be met.

Section 63: Applications for registration on the general register: other childcare providers

133. This section makes provision for the voluntary registration of childcare providers (other than childminders) who are not required to be registered. Such providers are able to make an application to be registered in Part B of the general childcare register. This does not

apply to provision made by schools for children who are 3 or over, where at least one child is a registered pupil at the school. The provision made by section 63 is similar to the provision made by section 62 for childminders but applications must be made in respect of particular premises.

Section 64: Entry on the register and certificates

134. Section 64 requires the Chief Inspector to register successful applicants on Part B of the general childcare register, and to give them a registration certificate containing information about prescribed matters. If there is a change in circumstances which requires an amendment to the certificate, the Chief Inspector must issue an amended certificate. If the Chief Inspector is satisfied that a certificate has been lost or destroyed he must provide a copy for the registered person, on payment of a prescribed fee.

Section 65: Special procedure for persons already registered

135. Section 65 requires the Chief Inspector to register on Part B of the general childcare register any person who is already registered either as an early years provider on the early years register or as a later years provider on Part A of the general childcare register, if that person so requests. For providers who are not childminders, this applies only where the care which is not required to be registered is being provided on the same set of premises as the care which is registered.

Section 66: Conditions on registration

136. Section 66 allows the Chief Inspector to place conditions on the registration of voluntarily registered providers and to vary or remove such conditions. Failure to comply with a condition is an offence.

Section 67: Regulations governing activities

137. This section allows the Secretary of State, after consulting the Chief Inspector, to make regulations governing the activities of voluntarily registered providers. Under *subsections (4) and (5)*, this power may be exercised to confer powers and impose duties on the Chief Inspector in the exercise of his functions under Part 3. In particular it may be exercised so as to require the Chief Inspector, in exercising these functions, to have regard to factors, standards and other matters prescribed by or referred to in the regulations.

138. *Subsection (6)* provides that where the regulations require a person other than the Chief Inspector to have regard to or meet factors, standards and other matters, they may also allow for any allegation that the person has failed to do so to be taken into account by the Chief Inspector in the exercise of his functions under Part 3 or in any proceedings under that Part.

139. It is not an offence to breach such regulations, but registration may be cancelled if requirements are not met.

Chapter 5 – Common Provisions

Section 68: Cancellation of registration

140. Section 68 deals with cancellation of the registration of a provider registered on the early years register or either part of the general childcare register. It requires the Chief Inspector to cancel registration if a person becomes disqualified from registration and allows

him to cancel registration where requirements are not met, conditions are not complied with or fees are not paid. *Subsections (3) to (5)* allow the Chief Inspector to cancel a childminder's registration if they appear not to have provided any relevant childminding for more than 3 years of their registration.

Section 69: Suspension of registration

141. Section 69 allows the Secretary of State to make regulations to allow a person's registration to be suspended in certain circumstances. Where a person who is required to be registered has their registration suspended, they may not during that time provide care for children in respect of which they are required to be registered and a person who does so commits an offence.

Section 70: Voluntary removal from register

142. Section 70 allows registered providers to give notice to the Chief Inspector when they wish to be removed from either of the registers. The Chief Inspector is generally required to remove from the register anyone who has given notice. However, the Chief Inspector may not remove the person if the Chief Inspector has already sent notice of his intention to cancel registration and he has not yet decided against that step or if he has already sent notice of a decision to cancel registration and the time for appeal is still running. These restrictions on removal do not apply to providers who wish to be removed from Part B of the general childcare register (which contains the names of those who have registered voluntarily).

Section 71: Termination of voluntary registration on expiry of prescribed period

143. Section 71 allows the Secretary of State to make regulations specifying a period of time after which voluntary registration will expire. Providers who wished to continue to be registered would be required to reapply for registration on expiry of this period.

Section 72: Protection of children in an emergency

144. Section 72 allows the Chief Inspector to apply to a Justice of the Peace for an order cancelling registration, varying or removing a condition on registration or imposing a condition. This application may be made without giving notice to the registered person. The Justice of the Peace has the power to make the order if it appears that a child for whom care is being provided by that person is suffering or is likely to suffer harm. Harm and significant harm are defined by reference to the Children Act 1989 under which harm is defined as ill treatment or impairment of physical or mental health or physical, intellectual, emotional, social or behavioural development, including impairment which may be suffered from seeing or hearing another person being ill-treated. "Significant harm" is defined by reference to the child's health or development as compared to what could reasonably be expected of another child.

Section 73 - Procedure for taking certain steps

145. Section 73 sets out the procedure for taking certain steps such as refusing an application for registration, imposing, varying, removing or refusing to remove conditions on registration and cancelling registration. *Subsection (4)* requires the Chief Inspector to give 14 days notice before taking such a step and the person concerned must be given an opportunity to make an objection if he so wishes. However, the Chief Inspector may take such a step before the 14 days is up if the applicant indicates he will not be objecting.

146. The taking of certain steps does not have effect until the time for appealing has expired or, if an appeal is brought, until the appeal is determined. There is an exception to this where the person affected has notified the Chief Inspector that he does not intend to appeal (see *subsections (8) and (9)*).

Section 74: Appeals

147. Section 74 sets out the procedure for appeals and replicates the existing position in the Children Act 1989. The section allows the applicant or registered person to appeal to the Tribunal set up under the Protection of Children Act 1999 (and commonly known as the Care Standards Tribunal) against the taking of the steps specified in *subsection (1)*. *Subsection (2)* also allows appeals to the Tribunal against any other determinations made by the Chief Inspector which are prescribed in regulations. *Subsection (3)* makes provision for appeals against orders under section 72 (which deals with protection of children in an emergency).

148. *Subsection (4)* requires the Tribunal to either confirm the step or determination or direct that it shall not have effect. In some circumstances, the Tribunal may also impose conditions or vary or remove conditions imposed on registration.

Section 75: Disqualification from registration

149. Section 75 sets out the provisions for disqualification from registration. This is largely based on existing provisions in paragraph 4 of Schedule 9A to the Children Act 1989. It provides for the Secretary of State to make regulations setting out when a person may be disqualified from registration. *Subsection (3)* sets out particular circumstances in which the regulations may provide for a person to be disqualified. *Subsection (4)* allows regulations to provide for a person to be disqualified if he lives in the same household as someone who is disqualified or if he lives in a household in which any such person is employed. *Subsection (5)* makes provision for the regulations to allow the Chief Inspector to waive disqualification in certain circumstances.

Section 76: Consequences of disqualification

150. Section 76 sets out the consequences of disqualification. These are that a disqualified person may not provide any provision in respect of which he is required to be registered (or only exempt from registration by virtue of the provision being made at certain schools). *Subsection (3)* provides that no one may employ a disqualified person in connection with provision that is required to be registered (or exempt school provision).

151. Contravention of these prohibitions is an offence (see *subsection (4)*). However there are defences to the offence. Under *subsection (5)* a person who is disqualified by virtue of living in a household in which a disqualified person lives or works does not commit an offence if he does not know and has no reasonable grounds for believing that a person who lives or works in his household is disqualified. A person who employs someone who is disqualified does not commit an offence if he does not know and has no reasonable grounds for believing that the employee was disqualified.

Section 77: Powers of entry

152. Section 77 gives a person authorised by the Chief Inspector powers of entry at any reasonable time on premises if he has reasonable cause to believe that a person is providing early years or later years provision on the premises without being registered as required by

the Act (*subsection (1)*). It also gives a power of entry on the premises of any registered providers at any reasonable time (*subsection (2)*).

153. *Subsection (7)* provides that the person requesting entry under this power must show an authenticated document showing their authority to enter if requested. Under *subsection (8)* it is an offence intentionally to obstruct a person exercising powers under this section (which include powers to inspect premises and interview in private the person caring for the children). *Subsection (9)* specifies the penalty for the offence, a fine not exceeding level 4 on the standard scale.

Section 78: Requirement for consent to entry

154. There are circumstances in which a power of entry conferred by the Act is exercisable on domestic premises. In particular, many children are looked after in the homes of their childminders.

155. In other cases, children may be looked after in the home of a friend or relative of the childminder or in their own home. In such cases, section 78 generally requires the consent of an adult occupying the property before a power of entry under the Act may be exercised (see *subsection (2)*). This requirement does not apply to entry under section 77(1) (which covers rights of entry where a person authorised by the Chief Inspector has reasonable cause to believe that that a person is providing early years or later years provision without being registered as required by the Act).

156. *Subsection (3)* clarifies that the Chief Inspector may impose a condition on registration requiring a provider who operates on premises which are not his own to obtain the necessary consent to entry.

Section 79: Power of constable to assist in exercise of powers of entry

157. Section 79 is based on existing powers in section 102 of the Children Act 1989 allowing a constable to assist in the exercise of powers of entry.

158. *Subsection (1)* enables a person authorised for the purposes of section 77(1) or (2) to apply for a warrant authorising a police constable to assist him in the exercise of a power conferred by that section.

159. *Subsection (2)* provides that the court may issue such a warrant if it appears that the authorised person has attempted to exercise a power conferred by section 77 but has been prevented from doing so or that the authorised person is likely to be prevented from exercising any such power. The warrant authorises the use of reasonable force by the constable providing assistance, if this is necessary.

160. *Subsection (3)* provides that the warrant must be both addressed to and executed by a constable.

161. *Subsection (4)* provides that Schedule 11 to the Children Act 1989 applies for the purposes of determining jurisdiction in relation to proceedings for the issue of a warrant under this section.

162. *Subsection (5)* defines what is meant by “court” for the purposes of the section. This is subject to any provision made by or under Schedule 11 of the Children Act 1989 (c.41) determining which court has jurisdiction. The effect of subsections (4) and (5) is that proceedings may be brought in the High Court, county court or magistrates’ court but this is

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subject to any provision, made by or under Schedule 11 of the Children Act 1989, which has the effect of determining that proceedings must be brought in a particular court.

Section 80: Combined reports

163. Section 80 allows for the Chief Inspector to combine reports (if he considers it appropriate) in certain cases. For example, he may combine reports where he carries out inspections of compulsorily registered early years provision and compulsorily registered later years provision. This power may be useful where a childminder cares for both young children and older children.

Section 81: Information to be included in annual reports

164. This section requires the Chief Inspector to include an account of the exercise of his functions relating to early years and later years provision in his annual report to the Secretary of State under section 3(a) of the Education Act 2005.

Section 82: Supply of information to Chief Inspector

165. This section allows the Chief Inspector to require from a registered person information about their activities as an early years or later years provider. The information is limited to that which the Chief Inspector considers it is necessary to have for the purpose of his functions under Part 3.

Section 83: Supply of Information to HMRC and local authorities

166. This section requires the Chief Inspector to give HMRC (Her Majesty's Revenue and Customs) and the relevant local authority information (to be prescribed in regulations) when he takes certain steps under Part 3, such as adding or removing a name from a register. The information which may be prescribed is, in the case of HMRC, information relevant to their functions relating to tax credits and, in the case of local authorities, information which would assist them in the running of the information service which they are required to establish under section 12 of the Act.

Section 84: Disclosure of information for certain purposes

167. Section 84 allows the Chief Inspector to make prescribed information about registered persons available (to such persons and in such manner as he feels appropriate) for the purpose of (a) assisting parents in choosing a childcare provider or (b) protecting children from harm and neglect. *Subsection (3)* allows the Secretary of State to make regulations requiring the Chief Inspector to provide prescribed information about registered persons to prescribed people for either of those purposes. This could include, for example, passing information to the police or other child protection agencies for the purpose of protecting children from harm.

Section 85: Offence of making false or misleading statement

168. Section 85 makes it an offence for any person applying for registration (whether compulsory or voluntary) to knowingly make a false or misleading statement in their application.

Section 86: Time limit for proceedings

169. Section 86 has the effect that where a person commits an offence proceedings may be brought up to six months after a prosecutor decides there is enough evidence. No proceedings

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may be brought in respect of an offence after three years have passed since the date of the alleged offence.

Sections 87 and 88: Offences by bodies corporate and unincorporated associations

170. Section 87 applies where an offence under the Act is committed by a body corporate and makes provision for the liability of directors, managers or other officers of the company.

171. Section 88 makes provision for how childcare providers who are unincorporated associations are to be treated for the purposes of proceedings for offences relating to registration. Proceedings must be brought against the organisation using its name rather than the name of individual members. In this and other matters relating to the proceedings, including liability for payment of any fine, the unincorporated association is to be treated as if it were a body corporate. *Subsection (5)* ensures that where an individual officer or member of the governing body of the association has consented or connived in the committing of an offence, or where an offence is attributable to that person's neglect, they may be held liable as well as the association.

Section 89: Fees

172. Section 89 allows the Secretary of State to prescribe in regulations the amounts of fees to be paid to the Chief Inspector and the timing of payment. Regulations may also make provision allowing fees payable to be waived or varied in accordance with the regulations.

Section 90: Cases where consent to disclosure withheld

173. For the purpose of making decisions about registration, it may be necessary for the Chief Inspector to obtain information from third parties which relates to an applicant for registration or a registered person (or to other persons who may be caring for the children concerned). Section 90 enables the Secretary of State to make regulations allowing the Chief Inspector to refuse or to cancel registration if consent to the disclosure of information by third parties is withheld or consent is withdrawn. This section replaces (for England) the provision made by section 79B(5A) of the Children Act 1989.

Section 91: Co-operation between authorities

174. Section 91 sets out the requirements relating to co-operation by the local authority with the Chief Inspector and replaces (for England) similar provision made by paragraph 8 of Schedule 9A to the Children Act 1989.

Section 92: Combined certificates of registration

175. Section 92 allows for the Chief Inspector (where he considers it appropriate and is required to issue more than one certificate of registration to a person) to combine any two or more certificates in a single document.

Section 93: Notices

176. Section 93 provides for the methods by which the Chief Inspector may give certain notices to registered providers or applicants, for instance in respect of decisions to refuse registration, impose conditions or cancel registration. It also applies to certain notices which may be given by applicants and registered persons – for example, when giving notice that they wish to be registered on another register or part of a register, wish to be removed from a

register or do not intend to object to the taking of a step by the Chief Inspector under section 73.

177. A notice to which section 93 applies may be given by delivering it to the Chief Inspector, sending it by post, or by email. The Chief Inspector may only send notices by email where the applicant or registered person has indicated to the Chief Inspector his willingness to receive information electronically and he has provided an address (which must be used). Email notices to the Chief Inspector must be transmitted in accordance with the Chief Inspector's requirements.

Section 94: Power to amend Part 3: applications in respect of multiple premises

178. Section 94 enables the Secretary of State to make an order amending Part 3 to allow applications for registration by persons other than childminders to be made in respect of more than one set of premises. The order may make changes to Part 3 that may be necessary as a consequence of this amendment.

Section 95: Certain institutions not to be regarded as schools

179. Section 95 amends section 4 of the Education Act 1996 to provide that institutions that only provide early years provision and are not maintained nursery schools are not be regarded as schools.

Section 96: Meaning of early years and later years provision etc.

180. Section 96 defines certain terms used in Part 3. Early years provision means the provision of childcare for a young child (a young child being a child aged from birth up to the 1st September following his fifth birthday). Later years provision means the provision of childcare for a child older than this. An early years provider is someone who provides early years provision, and later years provider someone who provides later years provision. An early or later years childminder is someone who provides early or later years provision on domestic premises for reward with no more than two other people.

Section 97: Employees not regarded as providing childcare

181. The effect of section 97 is that where an early years or later years provider employs an individual to care for a child the employee cannot be registered (because the employee is not regarded as providing early years or later years provision for the purposes of Part 3). The employer (as the early years or later years provider) will be under an obligation to ensure that the early years or later years provision meets any legal requirements (for example, an early years provider registered under Chapter 2 of Part 3 will be required to secure that the early years provision meets the learning and development requirements). The employer will also be under an obligation to ensure that they do not employ anyone who is disqualified in connection with early or later years provision (see section 76(3)).

Section 98: Interpretation

182. Section 98 defines terms used in Part 3 (regulation and provision of childcare) such as the use of 'the Chief Inspector' to mean Her Majesty's Chief Inspector of Schools in England.

PART 4 – MISCELLANEOUS AND GENERAL

Section 99: Provision of information about young children: England

183. Section 99(1) allows regulations to make provision requiring all registered early years providers, and school-based providers who are exempted from registration requirements by section 34(2), to provide individual child information to the Secretary of State or any prescribed person. The intention is to prescribe local authorities.

184. The section also makes provision for the disclosure of individual child information by the Secretary of State, an information collator and other persons holding individual child information. An information collator is an organisation collating data on behalf of the Secretary of State.

185. The section prohibits the publishing of any information received by or under it in any form which includes the name of the child or children to whom it relates.

186. The section is based on section 537A of the Education Act 1996 which provides for data to be collected in relation to children educated in schools.

Section 100: Provision of information about young children: transitory provision

187. Section 100 makes provision for data collection prior to the commencement of section 7. (It is proposed to commence the early years registration requirements in Chapter 2 of Part 3 of the Act at the same time as section 7). It provides for the collection of data relating to children who are receiving funded nursery education in pursuance of section 118 of the School Standards and Frameworks Act 1998.

Section 101: Provision of information about children: Wales

188. Section 101(1) allows regulations to make provision, in relation to Wales, requiring childminders and providers of day care registered under Part 10A of the Children Act 1989, and providers of funded nursery education, to provide individual child information to the Assembly or any prescribed person.

189. The section also makes provision for the disclosure of individual child information by the Assembly, an information collator and other persons holding individual child information. An information collator is an organisation collating data on behalf of the Assembly.

190. The section prohibits the publishing of any information received by or under it in any form which includes the name of the child or children to whom it relates.

191. The section is based on section 537A of the Education Act 1996 which provides for data to be collected in relation to children educated in schools.

Section 102: Disqualification for registration under Children Act 1989

192. Section 102 amends paragraph 4 of Schedule 9A to the Children Act 1989 which allows for regulations to be made disqualifying certain people from registration for day care or childminding and sets out a list of particular areas that such regulations may cover. Section 102(2)(a) amends the list so that persons may be disqualified by regulations on the basis that they are subject to a direction under section 142 of the Education Act 2002 on grounds relating to health. (Currently the legislation refers only to persons who are subject to such a direction on grounds that they are unsuitable to work with children.) Section 102(2)(b) further amends the list so that persons may be disqualified by regulations where they have

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been given a caution for a prescribed offence. Section 102(3) makes a further amendment to provide that, for this purpose, 'caution' includes a reprimand or warning within the meaning of section 65 of the Crime and Disorder Act 1998.

Section 103: Minor and consequential amendments and repeals

193. Section 103 gives effect to Schedule 2, which makes minor and consequential amendments to a number of enactments, in particular, the Children Act 1989, the Education Act 1996 and the School Standards and Framework Act 1998.

194. The amendment at *paragraph 1* of Schedule 2 is a minor amendment which is not directly related to the other provisions of the Act. Most of the adoption functions of local authorities under the Adoption Act 1976 were repealed by the Adoption and Children Act 2002 (which conferred new functions relating to adoption on local authorities). However, some functions under the 1976 Act continue to be exercisable by virtue of transitional or saving provisions made by or under the 2002 Act. The amendment made by paragraph 1 ensures that such functions will be treated as social services functions for the purpose of the Local Authority Social Services Act 1970.

195. The amendments to Part 10A of the Children Act 1989 confine its application to Wales as it is superseded for England by Part 3 of the Act (see *paragraphs 4 to 18* of Schedule 2 to the Act).

196. A number of the amendments in Schedule 2 are consequential on the replacement (for England) of section 118 of the School Standards and Framework Act 1998 by the new duty in section 7 to secure prescribed early years provision free of charge (see *paragraphs 21 to 24, 27 and 34*).

197. The repeal (made by *paragraph 31* of Schedule 2) of section 118A of the School Standards and Framework Act 1998 removes local authorities' duties under that Act to assess the sufficiency of childcare and to establish an information service for the public about the provision of childcare and related services, as these duties have been superseded by the provisions of Parts 1 and 2 of this Act.

198. Section 103 also provides for the enactments specified in Schedule 3 to be repealed to the extent specified.

Sections 104 and 105: Subordinate legislation

199. Sections 104 and 105 make general provisions in relation to subordinate legislation. Section 104 allows the Secretary of State or the Welsh Assembly to make regulations and orders which apply generally or in relation to specific cases and to make different provision for different areas or cases.

200. Section 105 sets out the appropriate level of parliamentary scrutiny. It provides that orders relating to commencement are not subject to parliamentary procedure. An order under section 5 (to amend the definition of early childhood services) or section 41(4) (to amend the areas of learning and development in the Early Years Foundation Stage) or section 94 (to allow for registration in respect of multiple premises) is subject to the affirmative procedure. All other subordinate legislation is subject to the negative procedure.

Sections 108: Isles of Scilly

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201. Section 108 makes provision for the Isles of Scilly. It allows the Secretary of State to make orders to adapt, modify or except provisions within Part 1 and Part 3 so that they are appropriate for the Isles of Scilly.

Sections 109 and 110: Commencement

202. Sections 109 and 110 deal with commencement.

203. Certain general provisions, and the amendment made by paragraph 1 of Schedule 2, come into force on Royal Assent (see section 109(1)).

204. Most of the other provisions of the Act will come into force in accordance with orders made by the Secretary of State. Part 2 and section 101 come into force in accordance with provision made by the National Assembly for Wales. Certain of the amendments and repeals made by Schedules 2 and 3 (and sections 102 and 103 so far as relating to those provisions) also come into force, in relation to Wales, in accordance with provision made by the Assembly.

Section 111: Short title and extent

205. Section 111 provides that the Act extends to England and Wales only, except that any amendment or repeal made by the Act has the same extent as the provision amended or repealed.

HANSARD REFERENCES

206. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

Stage	Date	Hansard reference
House of Commons		
Introduction	8 November 2005	Vol. 439 Col.180
Second Reading	28 November 2005	Vol. 440 Cols. 24-103
Committee	6, 8, 13, 15 and 20 December 2005	Hansard Standing Committee B
Report and Third Reading	9 March 2006	Vol. 443 Cols. 971-1038
House of Lords		
Introduction	9 March 2006	Vol. 679 Col. 969
Second Reading	21 March 2006	Vol. 680 Cols. 152-97
Grand Committee	19 April 2006	Vol. 680 Cols. 475-540GC
	26 April 2006	Vol. 681 Cols. 101-58GC
	4 May 2006	Vol. 681 Cols. 283-350GC
Report	12 June 2006	Vol. 683 Cols. 14-86
Third reading	26 June 2006	Vol. 683 Cols. 1010-34

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