



# Childcare Act 2006

## 2006 CHAPTER 21

### PART 3

#### REGULATION OF PROVISION OF CHILDCARE IN ENGLAND

### CHAPTER 2

#### REGULATION OF EARLY YEARS PROVISION

#### *Requirements to be met by early years providers*

### 39 The Early Years Foundation Stage

- (1) For the purpose of promoting the well-being of young children for whom early years provision is provided by early years providers to whom section 40 applies, the Secretary of State must—
  - (a) by order specify in accordance with section 41 such requirements as he considers appropriate relating to learning by, and the development of, such children (“learning and development requirements”), and
  - (b) by regulations specify in accordance with section 43 such requirements as he considers appropriate governing the activities of early years providers to whom section 40 applies (“welfare requirements”).
- (2) The learning and development requirements and the welfare requirements are together to be known as “the Early Years Foundation Stage”.

#### Commencement Information

**II** S. 39 in force at 20.12.2006 by [S.I. 2006/3360](#), [art. 2\(c\)](#)

*Status: Point in time view as at 25/03/2020.*

*Changes to legislation: Childcare Act 2006, Cross Heading: Requirements to be met by early years providers is up to date with all changes known to be in force on or before 25 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)*

#### 40 Duty to implement Early Years Foundation Stage

- (1) This section applies to—
- (a) early years providers providing early years provision in respect of which they are registered under this Chapter, and
  - (b) early years providers providing early years provision in respect of which, but for section 34(2) (exemption for provision for children aged [<sup>F1</sup>2 ] or over at certain schools), they would be required to be registered under this Chapter.
- (2) An early years provider to whom this section applies—
- (a) must secure that the early years provision meets the learning and development requirements, and
  - (b) must comply with the welfare requirements.

##### Textual Amendments

- F1** Figure in s. 40(1)(b) substituted (26.5.2015) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), [ss. 75\(2\)](#), [164\(3\)\(e\)](#)

##### Commencement Information

- I2** S. 40 in force at 1.9.2008 by [S.I. 2008/2261](#), [art. 2](#) (with [Schs. 1, 2](#))

#### 41 The learning and development requirements

- (1) The learning and development requirements must cover the areas of learning and development specified in subsection (3).
- (2) The learning and development requirements may specify in relation to each of the areas of learning and development—
- (a) the knowledge, skills and understanding which young children of different abilities and maturities are expected to have before the 1st September next following the day on which they attain the age of five (“early learning goals”);
  - (b) the matters, skills and processes which are required to be taught to young children of different abilities and maturities (“educational programmes”), and
  - (c) the arrangements which are required for assessing children [<sup>F2</sup>for the specified purposes] (“assessment arrangements”).
- (3) The areas of learning and development are as follows—
- (a) personal, social and emotional development,
  - (b) communication, language and literacy,
  - (c) problem solving, reasoning and numeracy,
  - (d) knowledge and understanding of the world,
  - (e) physical development, and
  - (f) creative development.
- (4) The Secretary of State may by order amend subsection (3).
- [<sup>F3</sup>(4A) In subsection (2)(c) “the specified purposes ” means—
- (a) the purpose of ascertaining what children have achieved in relation to the early learning goals, and
  - (b) such other purposes as the Secretary of State may by order specify.]

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- (5) A learning and development order may not require—
  - (a) the allocation of any particular period or periods of time to the teaching of any educational programme or any matter, skill or process forming part of it, or
  - (b) the making in the timetables of any early years provider of provision of any particular kind for the periods to be allocated to such teaching.
- (6) In this section “a learning and development order” means an order under section 39(1)
  - (a).

**Textual Amendments**

- F2** Words in s. 41(2)(c) substituted (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\), s. 269\(4\), Sch. 12 para. 39\(2\)](#); S.I. 2010/1151, art. 2, Sch. 1
- F3** S. 41(4A) inserted (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\), s. 269\(4\), Sch. 12 para. 39\(3\)](#); S.I. 2010/1151, art. 2, Sch. 1

**Commencement Information**

- I3** S. 41 in force at 20.12.2006 by [S.I. 2006/3360, art. 2\(c\)](#)

**42 Further provisions about assessment arrangements**

- [<sup>F4</sup>(A1) Before making a learning and development order specifying assessment arrangements the Secretary of State—
  - (a) must consult the Office of Qualifications and Examinations Regulation, and
  - (b) may consult such other persons as the Secretary of State considers appropriate.]
- (1) A learning and development order specifying assessment arrangements may confer or impose on any of the persons mentioned in subsection (2) such functions as appear to the Secretary of State to be required.
- (2) Those persons are—
  - (a) an early years provider,
  - (b) the governing body or head teacher of a maintained school in England, <sup>F5</sup>...
  - (c) an English local authority.
  - <sup>F6</sup>(d) .....
  - [<sup>F7</sup>(e) any other person with whom the Secretary of State has made arrangements in connection with the development, implementation or monitoring of assessment arrangements.]
- (3) A learning and development order may specify such assessment arrangements as may for the time being be made by a person specified in the order.
- [<sup>F8</sup>(3A) A learning and development order which includes provision made by virtue of subsection (3) must provide that before making or revising the assessment arrangements the person specified in the order—
  - (a) must consult the Office of Qualifications and Examinations Regulation, and
  - (b) may consult such other persons as that person considers appropriate.]
- <sup>F9</sup>(4) .....

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- (5) <sup>F10</sup> The duties that may be imposed on a person mentioned in subsection (2)(a) to (c) by virtue of subsection (1) include, in relation to persons exercising any function in connection with the moderation or monitoring of assessment arrangements, the duty to permit them— ]
- (a) to enter premises on which the early years provision is provided,
  - (b) to observe implementation of the arrangements, <sup>F5</sup> ...
  - (c) to inspect, and take copies of, documents and other articles.
- <sup>F11</sup>(6) A learning and development order specifying assessment arrangements may authorise a person specified in the order to make delegated supplementary provisions in relation to such matters as may be specified in the order.
- (6A) In this section “ delegated supplementary provisions ” means such provisions (other than provisions conferring or imposing functions on persons mentioned in subsection (2)(a) to (c)) as appear to the authorised person to be expedient for giving full effect to, or otherwise supplementing, the provisions made by the order.
- <sup>F12</sup>(6AA) A learning and development order which authorises a person to make delegated supplementary provisions must provide that before making, amending or revoking any such provisions the person so authorised—
- (a) must consult the Office of Qualifications and Examinations Regulation, and
  - (b) may consult such other persons as that person considers appropriate.]
- (6B) A learning and development order authorising the making of delegated supplementary provisions may provide that such provisions may be made only with the approval of the Secretary of State.
- (6C) Any delegated supplementary provisions, on being published as specified in the order under which they are made, are to have effect for the purposes of this Chapter as if made by the order.]
- (7) In this section “a learning and development order” means an order under section 39(1)
- (a).

#### Textual Amendments

- F4** S. 42(A1) inserted (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. **160(2)**, 269(4); S.I. 2010/1151, art. 2, Sch. 1 (with arts. 5-20)
- F5** Word in s. 42(2)(b) repealed (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), Sch. 12 para. 40(2)(a), **Sch. 16 Pt. 4**; S.I. 2010/1151, art. 2, Sch. 1
- F6** S. 42(2)(d) omitted (1.4.2012) by virtue of Education Act 2011 (c. 21), s. 82(3), **Sch. 8 para. 17**; S.I. 2012/924, art. 2
- F7** S. 42(2)(d)(e) inserted (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 12 para. 40(2)(b)**; S.I. 2010/1151, art. 2, Sch. 1
- F8** S. 42(3A) inserted (1.4.2010 for specified purposes) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), ss. **160(3)**, 269(4); S.I. 2010/1151, art. 2, Sch. 1 (with arts. 5-20)
- F9** S. 42(4) repealed (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), Sch. 12 para. 40(3), **Sch. 16 Pt. 4**; S.I. 2010/1151, art. 2, Sch. 1
- F10** Words in s. 42(5) substituted (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 12 para. 40(4)**; S.I. 2010/1151, art. 2, Sch. 1
- F11** S. 42(6)-(6C) substituted for s. 42(6) (1.4.2010) by Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), s. 269(4), **Sch. 12 para. 40(5)**; S.I. 2010/1151, art. 2, Sch. 1

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**F12** S. 42(6AA) inserted (1.4.2010 for specified purposes) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), **ss. 160(4)**, 269(4); S.I. 2010/1151, **art. 2**, Sch. 1 (with arts. 5-20)

#### **Commencement Information**

**I4** S. 42 in force at 20.12.2006 by [S.I. 2006/3360](#), **art. 2(c)**

### **43 Welfare requirements**

- (1) The matters that may be dealt with by welfare regulations include—
  - (a) the welfare of the children concerned;
  - (b) the arrangements for safeguarding the children concerned;
  - (c) suitability of persons to care for, or be in regular contact with, the children concerned;
  - (d) qualifications and training;
  - (e) the suitability of premises and equipment;
  - (f) the manner in which the early years provision is organised;
  - (g) procedures for dealing with complaints;
  - (h) the keeping of records;
  - (i) the provision of information.
- (2) Before making welfare regulations, the Secretary of State must consult the Chief Inspector and any other persons he considers appropriate.
- (3) Welfare regulations may provide—
  - (a) that a person who without reasonable excuse fails to comply with any requirement of the regulations is guilty of an offence, and
  - (b) that a person guilty of the offence is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) In this section “welfare regulations” means regulations under section 39(1)(b).

#### **Commencement Information**

**I5** S. 43 in force at 20.12.2006 by [S.I. 2006/3360](#), **art. 2(c)**

### **44 Instruments specifying learning and development or welfare requirements**

- (1) A relevant instrument may, instead of containing the provisions to be made, refer to provisions in a document [<sup>F13</sup>published by a person, and in the manner, specified] in the instrument and direct that those provisions are to have effect or, as the case may be, are to have effect as specified in the instrument.
- (2) The power to make a relevant instrument may be exercised so as to confer powers or impose duties on the Chief Inspector [<sup>F14</sup>or early years childminder agencies] in the exercise of <sup>F15</sup>... functions under this Part.
- (3) In particular, that power may be exercised so as to require or authorise the Chief Inspector [<sup>F16</sup>or early years childminder agencies], in exercising those functions, to have regard to factors, standards and other matters prescribed by or referred to in the instrument.

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- (4) If a relevant instrument requires any person (other than the Chief Inspector) to have regard to or meet factors, standards and other matters prescribed by or referred to in the instrument, the instrument may also provide for any allegation that the person has failed to do so to be taken into account—
- (a) by the Chief Inspector in the exercise of his functions under this Part,
  - [<sup>F17</sup>(aa) by early years childminder agencies in the exercise of functions under this Part,] or
  - (b) in any proceedings under this Part.
- (5) In this section “a relevant instrument” means an order under subsection (1)(a) of section 39 or regulations under subsection (1)(b) of that section.

#### Textual Amendments

- F13** Words in s. 44(1) substituted (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 12 para. 41](#); S.I. 2010/1151, art. 2, Sch. 1
- F14** Words in s. 44(2) inserted (1.4.2014 for specified purposes, 1.9.2014 in so far as not already in force) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 4 para. 11\(2\)\(a\)](#); S.I. 2014/889, arts. 3(m), 7(e)
- F15** Word in s. 44(2) omitted (1.4.2014 for specified purposes, 1.9.2014 in so far as not already in force) by virtue of [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 4 para. 11\(2\)\(b\)](#); S.I. 2014/889, arts. 3(m), 7(e)
- F16** Words in s. 44(3) inserted (1.4.2014 for specified purposes, 1.9.2014 in so far as not already in force) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 4 para. 11\(3\)](#); S.I. 2014/889, arts. 3(m), 7(e)
- F17** S. 44(4)(aa) inserted (1.4.2014 for specified purposes, 1.9.2014 in so far as not already in force) by [Children and Families Act 2014 \(c. 6\)](#), s. 139(6), [Sch. 4 para. 11\(4\)](#); S.I. 2014/889, arts. 3(m), 7(e)

#### Commencement Information

- I6** S. 44 in force at 20.12.2006 by [S.I. 2006/3360](#), [art. 2\(c\)](#)

## 45 Procedure for making certain orders

- (1) This section applies where the Secretary of State proposes to make an order under section 39(1)(a) specifying early learning goals or educational programmes.
- (2) The Secretary of State must give notice of the proposal—
- (a) to such bodies representing the interests of early years providers as the Secretary of State considers appropriate, and
  - (b) to any other persons with whom consultation appears to the Secretary of State to be desirable,
- and must give them a reasonable opportunity of submitting evidence and representations as to the issues arising.
- (3) When the Secretary of State has considered any evidence and representations submitted to him in pursuance of subsection (2), he must publish in such manner as, in his opinion, is likely to bring them to the notice of persons having a special interest in early years provision—
- (a) a draft of the proposed order and any associated document, and
  - (b) a summary of the views expressed during the consultation.

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- (4) The Secretary of State must allow a period of not less than one month beginning with the publication of the draft of the proposed order for the submission of any further evidence and representations as to the issues arising.
- (5) When the period so allowed has expired, the Secretary of State may make the order, with or without modifications.

#### Commencement Information

**I7** S. 45 in force at 20.12.2006 by [S.I. 2006/3360, art. 2\(c\)](#)

## 46 Power to enable exemptions to be conferred

- (1) Regulations may enable the Secretary of State, in prescribed circumstances, to direct in respect of a particular early years provider or a particular description of early years providers, that to such extent as may be prescribed the learning and development requirements—
  - (a) do not apply, or
  - (b) apply with such modifications as may be specified in the direction.

<sup>F18</sup>(1A) Regulations under subsection (1) may make provision about the conditions which may be imposed by the Secretary of State on making a direction.

(1B) If required by the Secretary of State to do so <sup>F19</sup>a person designated by the Secretary of State for the purposes of this subsection ] must keep under review the effect of a direction given under regulations made under subsection (1).

<sup>F20</sup>(1C) . . . . .

(1D) A designation under <sup>F21</sup>subsection (1B) ] may make different provision for different purposes.]

- (2) Regulations may enable an early years provider, in prescribed circumstances, to determine in respect of a particular young child that to such extent as may be prescribed the learning and development requirements—
  - (a) do not apply, or
  - (b) apply with such modifications as may be specified in the determination.

#### Textual Amendments

- F18** S. 46(1A)-(1D) inserted (1.4.2010) by [Apprenticeships, Skills, Children and Learning Act 2009 \(c. 22\)](#), s. 269(4), [Sch. 12 para. 42](#); [S.I. 2010/1151](#), art. 2, Sch. 1
- F19** Words in s. 46(1B) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 8 para. 18\(2\)](#); [S.I. 2012/924](#), art. 2
- F20** S. 46(1C) omitted (1.4.2012) by virtue of [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 8 para. 18\(3\)](#); [S.I. 2012/924](#), art. 2
- F21** Words in s. 46(1D) substituted (1.4.2012) by [Education Act 2011 \(c. 21\)](#), s. 82(3), [Sch. 8 para. 18\(4\)](#); [S.I. 2012/924](#), art. 2

#### Commencement Information

**I8** S. 46 in force at 20.12.2006 by [S.I. 2006/3360, art. 2\(c\)](#)

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## 47 Independent schools

(1) In section 157 of the Education Act 2002 (c. 32) (independent school standards) after subsection (1) insert—

“(1A) In relation to England, the standards do not apply to early years provision for pupils who have not attained the age of three (separate requirements as to such provision being imposed by or under Part 3 of the Childcare Act 2006).”

(2) For subsection (2) of that section substitute—

“(2) In this Chapter “independent school standards” means—

- (a) the standards for the time being prescribed under this section, and
- (b) in relation to early years provision in England for pupils who have attained the age of three, the Early Years Foundation Stage.”

(3) In section 171 of that Act (interpretation of Chapter 1 of Part 10), after the definition of “Chief Inspector” insert—

““early years provision”, in relation to England, has the meaning given by section 96(2) of the Childcare Act 2006;”.

### Commencement Information

**19** S. 47 in force at 1.9.2008 by [S.I. 2008/2261](#), [art. 2](#) (with [Schs. 1, 2](#))

## 48 Amendments relating to curriculum

Schedule 1 (which contains amendments relating to the preceding provisions of this Chapter, including amendments excluding or modifying the application to early years provision of provisions of Part 6 of the Education Act 2002 (c. 32)) has effect.

### Commencement Information

**110** S. 48 in force at 1.10.2007 for specified purposes by [S.I. 2007/2717](#), [art. 2\(d\)](#)

**111** S. 48 in force at 1.9.2008 for specified purposes by [S.I. 2008/2261](#), [art. 2](#) (with [Schs. 1, 2](#))



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