

**The NSPCC response to the consultation on exemption from the Ofsted
Childcare Register (Department for Education and Skills 2007)**

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April 2007

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Introduction

The National Society for the Prevention of Cruelty to Children (NSPCC) is the UK's leading charity specialising in child protection and the prevention of cruelty to children. The NSPCC aims to end cruelty to children by seeking to influence legislation, policy, practice, attitudes and behaviours for the benefit of children and young people. This is achieved through a combination of service provision, lobbying, campaigning and public education.

The NSPCC believes that, given the will, all cruelty can be prevented. In order to achieve this, it is vital that all children, whatever their needs, have a range of services that are flexible and offer them support and protection. The NSPCC has more than 180 services in the UK and the Channel Islands. These services aim to:

- Prevent children being abused by working with parents and carers in vulnerable families to improve their knowledge and skills in safeguarding, and giving children and young people someone to turn to through the provision of our Listening Services.
- Protect vulnerable children and young people from abuse by providing direct services in a number of settings, including schools and young people's centres. We also protect them by providing Listening Services for adults to ensure they have someone to turn to with their concerns; by ensuring that abused children and young people are identified and effective action is taken to protect them, and by working with young people and adults who pose a risk to children and young people to reduce the risk of abuse.
- Help children and young people who have been abused overcome the effects of abuse and achieve their potential.

In preparing this consultation response we have drawn on the experience of members of the NSPCC's Inspection Unit. The role of the Inspection Unit is to contribute to the achievement of the highest professional standards and the continual improvement of the quality of services delivered. It does this by involving children and young people and providing an independent inspection service to the NSPCC's Chief Executive and Board of Trustees.

We have also drawn on the experience of human resources specialists working on safeguarding issues, who have specific responsibility within our Human Resources Function to look at all areas of safeguarding within the NSPCC. Their task is to ensure that as an organisation, we are doing all we can to safeguard children and young people.

General comments

The NSPCC strongly supports reforms to the regulation and inspection regime for childcare which will help to ensure that registered childcare is safe and suitable for children. Regulation and inspection play an important role in improving experiences and outcomes for children and focusing on their needs; they are important and powerful levers in driving up safeguarding standards in childcare and providing the assurance and confidence that is needed on service standards and quality. Inspection and regulation can also provide an assurance that the necessary safeguards are in place to protect the most vulnerable children and young people.

A strong and robust regulation and inspection regime is particularly important given ongoing concerns about how best to protect children. These include public concern about the suitability of adults working with children and young people in education settings, the growth and expansion of the childcare sector and extended school activities, and the implementation of the Safeguarding Vulnerable Groups Act 2006.

However, we have a number of very serious concerns about the proposals for exemptions to the Ofsted Childcare Register as set out in the consultation document, specifically:

1. The guidance fails to ensure the paramountcy of children's best interests and their right to protection. By extending and amending the current exemptions to the Ofsted Childcare Register, different levels of protection will be afforded to different children based on their age and the length of time they spend in certain types of childcare arrangements. For example, the consultation document proposes to exempt from the requirement to be registered by Ofsted all provision where individual children are routinely looked after for two hours or less. This would, for example, exempt drop-in crèche facilities in supermarkets where staff provide childcare throughout the day, but may not provide care for an individual child for more than two hours.

This is a clear contravention of the United Nations Convention on the Rights of the Child (UNCRC). It is crucial that all children are protected from all forms of violence, abuse, neglect and exploitation, to be able to protect themselves and to expect that people will protect and help them as set out in Article 19 of the UNCRC.

2. We do not agree that there should be a distinction between any childcare providers as currently set out in the consultation document, and recommend that they should all be registered on a compulsory, not a voluntary, basis. For example, under the current proposals nannies will be exempt from compulsory registration, whereas childminders providing care outside a child's home will be required to compulsorily register. This is a false distinction between childcare providers and gives children in different settings different levels of protection.

3. We do not agree with proposals contained in the consultation document that providers of childcare will be required to compulsorily join the register on a compulsory basis according to the age of the children for whom care is provided and/or the length of time they spend in that care. All children must be afforded the same level of protection and safeguards, regardless of their age, the time they spend in childcare and by whom the childcare is provided. The underlying assumption made in the consultation document that the period of time a child spends in childcare is proportionately linked to lower risk of harm is misguided.
4. We are also concerned about the strong emphasis and weight of expectation placed on measures contained in the consultation document related to the Safeguarding Vulnerable Groups Act 2006, which is presented as a panacea for improved protection of children. We welcome improved procedures for vetting adults working with children but these form only one part of measures to safeguard children. Safeguarding children requires broader action. Alongside robust regulatory and inspection regimes and CRB checks, childcare settings must maintain a culture of vigilance about risks to children and clear understanding about appropriate interaction with children, challenging unacceptable behaviour, providing examples of good conduct and ensuring children and young people know where to turn to if they have problems or are being abused. Registration would help ensure that this happens.

The Safeguarding Vulnerable Groups Act 2006 includes very few exemptions in terms of vetting procedures. Bringing into line both the vetting and barring system and the regulatory and inspection framework would avoid confusion for parents about which childcare providers are required to register with the Ofsted Childcare Register and the suitability of adults working with their children. Substituting the requirement to register with the Ofsted Childcare Register with the requirements set out in the Act would be undermining the recommendations of the Bichard Inquiry Report¹ where stricter vetting processes were proposed for those who work with children and vulnerable adults.

The creation of multiple layers and requirements for childcare provider registration will continue to perpetuate confusion amongst parents when choosing appropriate childcare provision for their children.

5. We are also concerned about the case made against requiring more childcare providers to register based on the financial impact on the sector. Registering with the Childcare register should be about safeguarding children and young people rather than costs and financial efficiency. Children's safety should never be compromised for these reasons.

¹ The Bichard Inquiry Report (2004) Stationery Office, London

For this reason, we are strongly of the view that all childcare providers who have entered into formal arrangements with parents and carers, including babysitting and nanny agencies, should join the Early Years Register or Ofsted Childcare Register, with no exemptions.

Response to specific questions

1 Do you agree that these current exemptions provide a sound basis for exemptions under the new system of Ofsted registration?

Yes

No

Not Sure

Comments:

We do not agree with the proposal set out in the consultation document that new definitions of the current exemptions should be included in the new registration arrangements. In addition we do not agree that the existing definitions should be modified to exempt more short-term and occasional crèche facilities and open access schemes. Instead we would recommend all childcare providers who have formal arrangements with parents and carers, including babysitting and nanny agencies, should join the Early Years Register or Ofsted Childcare Register, with no exemptions.

Safeguards as stipulated in the Ofsted Childcare register must be in place for all children, regardless of whether they are cared for by childminders, childcare providers, nannies, agency-registered babysitters and short-term occasional care. We do not agree that there should be a distinction between any of these childcare providers as currently set out in the consultation document, and recommend that they should all be registered without exemption on a compulsory basis.

Following the case of Eunice Spry from Tewkesbury in Gloucestershire, who home-educated children she fostered and was recently sentenced to prison for 14 years for a range of offences against children, spanning 19 years, including unlawful wounding, cruelty to a person under 16, assault occasioning actual bodily harm, perverting the course of justice and witness intimidation, we recommend urgent consideration should be given to how education provided at home by either parents or carers should be regulated and inspected.

If the scheme does proceed with the current proposals to amend existing arrangements to include new definitions of current exemptions and widening the existing list of short-term and occasional childcare facilities, we recommend that positive messages about the benefit of the scheme should be developed and widely disseminated to all childcare providers to encourage them to join on a voluntary basis.

Parents and carers should also be informed of the exemptions so that they are clear about which providers are and are not registered. This would also make it simpler for parents and carers to find appropriate and registered providers on a central childcare register.

2 Do you agree that our approach in considering the age of children and the length of time they may attend the provision is sensible?

Yes

No

Not Sure

Comments:

We do not agree with proposals contained in the consultation document that providers of childcare will not be required to compulsorily join the register based on the age of the children for whom care is provided. All children should be afforded the same level of protection, whatever their age, the amount of time they spend in childcare and the type of childcare provision they are in.

We also disagree with the proposal that childcare providers should be required to register on the Ofsted Childcare Register based on the length of time a child will spend in their care. The underlying assumption made in the consultation document that the period of time a child spends in childcare is proportionately linked to lower risk of harm from physical, emotional, sexual abuse and neglect is dangerously misguided.

Children in childcare settings for less than two hours are at the same risk of abuse as children who are in full-time day care. It is for this reason that we do not agree with the approach set out in the consultation document. Instead, as we have stated in response to question 1, all childcare providers, regardless of the age of the children or the length of time they spend in their care, should be registered with the Ofsted Childcare Register and subject to the same regulatory and inspection framework.

3 Do you agree that our proposals achieve the right level of state involvement in regulating the childcare sector?

Yes

No

Not Sure

Comments:

We do not agree that the proposals put forward in the consultation document achieve the correct level of state involvement in regulating the childcare sector for the reasons set out in response to question 1.

We welcome the strengthening of safeguards for all children's services with the introduction of improved vetting procedures under the Safeguarding Vulnerable Groups Act 2006. However, we are particularly concerned that the current proposals place a strong emphasis on measures contained in the Act. Strengthened procedures for vetting adults working with children are welcome but these are only one element of measures to safeguard children. Safeguarding children requires broader action. Alongside CRB checks, childcare settings must maintain a culture of vigilance about risks to children and clear understanding about appropriate interaction with children, challenging unacceptable behaviour, providing examples of good conduct and ensuring children and young people know where to turn to if they have problems or are being abused. Registration would help ensure that this happens.

We do not agree with the proposal that the scheme will be a sufficient mechanism for domestic employers such as parents to check the status of those they employ to work with their children, such as nannies and babysitters employed through agencies.

In fact, it is currently unclear whether domestic employers such as parents will be able to check the status of groups of workers such as nannies. The NSPCC's understanding, based on discussion with officials leading on the implementation of the Act at the DfES, is that it is unlikely that domestic employers be able to ascertain the status of [potential] employees themselves, and will instead have to check through an 'umbrella agency'. We strongly recommend that this is clarified before any decisions are taken on exemptions to the Ofsted Childcare Register as set out in the consultation document.

4 Do you agree that the costs and benefits are appropriately assessed and that option 2 represents the best way forward?

Yes

No

Not Sure

Comments:

We are not convinced that the Partial Regulatory Impact Assessment presents completely balanced arguments about costs and benefits, and are dismayed to see statements that suggest the proposal for a more proportionate approach in regulation are based on financial costs to the childcare sector rather than on what is in the best interests of children and their protection.

We recommend that further consultation should take place with childcare providers about the level at which the registration fee is set so that different providers, such as nannies and babysitting agencies, pay a fee which is proportionate to their size. We are strongly of the view that registering with the Childcare register should be about safeguarding children and young people rather than costs and financial efficiency. Children's safety should never be compromised for these reasons.

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