



HM Government



# CUTTING RED TAPE

Review of childcare



December 2016

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# INTRODUCTION

This report is a summary of views and evidence submitted to the Cutting Red Tape review of the childcare sector. The purpose of the review was to identify regulatory burdens in the sector while determining whether legislation and its implementation can be simplified or improved to aid compliance and to reduce unnecessary burdens on business.

This is one of a series of Cutting Red Tape reviews that aim to address issues such as overlap and duplication between regulators, or to identify instances where the legislation, guidance or the approach to implementing regulations is unclear, confusing or unnecessarily burdensome.

The respondents to the review understand and support the importance of having a robust regulatory framework in place that ensures the essential protections are in place and that children get the best start. This review does not aim to remove or strip back existing regulatory protections, rather, to drive up quality, capacity and growth in the sector by removing unnecessary burdens on providers in order to allow them to devote more time to looking after the children in their care.

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# EXECUTIVE SUMMARY

The Cutting Red Tape (CRT) review into Childcare was commissioned by the Childcare Implementation Taskforce (CITF) in February 2016 and the call for evidence (CFE) was launched in April 2016.

The review's objective was to support the delivery of the manifesto commitment to introduce 30 weekly hours of free childcare for three and four year olds, by identifying regulatory burdens placed on the sector, allowing the sector to maximise its growth and capacity to support the delivery and take up of the offer of 30 weekly hours of free childcare for 3 and 4 year olds.

The review's call for evidence was open from 3 April to 20 May 2016. The review team contacted over 100 stakeholders across the childcare sector. The review received over 250 responses made through the Cutting Red Tape website and direct submissions to the Cutting Red Tape mailbox. Respondents ranged from individual child-minders and micro-businesses with fewer than 10 staff, to much larger, multinational businesses with numerous nurseries and day care centres employing thousands of staff.

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## Review Scope

The government sought evidence from early years childcare providers, and others in the sector, to understand regulatory burdens that impact the efficacy and efficiency of childcare provision businesses. Childcare providers may be negatively impacted by overly burdensome legislation or the way in which it is delivered or enforced. More specifically, the review sought evidence of burdens that: appear to act as a barrier to new entrants to the sector, prevent existing providers expanding their business, unnecessarily divert providers from spending the majority of their time caring for children or contribute to existing providers leaving the sector.

The review also sought evidence of overlaps, gaps and coordination between national and local government and other regulatory bodies from the perspective of the provider, and of the cost to the childcare provider of compliance.

## Figures Used in the Report

In addition to our 'call for evidence' we carried out a separate stakeholder survey between 25 May and 13 June 2016, which asked about the cost impacts of some of the themes and issues that had emerged from the review. The stakeholder survey results are based on 89 responses from stakeholders and members of industry groups. Results have been weighted to reflect the percentage of micro, small, medium and large businesses in the sector overall. All results are medians and should be considered indicative only.

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# HEADLINE FINDINGS

The findings from the review cover a wide range of themes that impact on the sector.

The headline findings were:

- **Inspections:** inconsistencies between inspections and inspectors regionally, uncertainty on what needs to be evidenced, a need for a balanced and targeted inspection regime where good performers are rewarded. Our stakeholder survey estimated that the current inspections regime places a cost on providers in the region of £8.2m per annum.
- **Paperwork:** increase in assessment paperwork, duplication/overlap in request for information in addition to an increasing administrative burden for accessing funding. Our stakeholder survey estimated that the current volume of paperwork places a cost on providers of around £17.6m per annum.
- **Guidance:** can be difficult to understand, changes frequently and needs to be more specific and targeted. Our separate stakeholder survey estimated that the staff hours devoted, per annum, to finding, reading and interpreting guidance places an estimated cost on providers in the region of £11.5m per annum.
- **Learning and development:** lack of clarity on what training is required by legislation and a dearth of recognised training and refresher courses. Our stakeholder survey results estimate that 3 days per member of staff per annum are needed to complete required training at an estimated cost of around £100m.
- **Workforce skills:** Providers with degrees in subjects other than Early Years Childcare, or those with degrees but without GCSE English and Mathematics, feel disadvantaged and are unable to progress to Level 3 without a relevant degree. There is a real need for greater recognition of functional skills.

The review findings are discussed in greater detail in the 'Findings' section of the report at [page 5](#). There is also a section that covers other findings from the review, in the 'Other Issues Raised' section at [page 17](#), which either fell outside the scope of the review or were not raised as often.

The government has committed to a range of measures that are aimed specifically at addressing the issues outlined in the review findings, which will aid in the delivery of the manifesto commitment to offer the 30 weekly hours of free childcare for three and four year olds. The government response to the findings can be found in the 'Response' section at [page 20](#).

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# REVIEW FINDINGS

## Inspections

Respondents to our call for evidence raised several issues related to inspections carried out by OFSTED, ranging from the frequency of inspections and reinspections to inconsistency in the way that inspections are carried out and the way that ratings are decided upon and awarded. The vast majority of providers we have spoken to or provided evidence for the review have told us that they strongly support the principles behind and the necessity of a robust inspection regime. A theme running through all the evidence we have received is that providers want to be able to have trust in an inspections system that is fair, impartial and objective.

The main issues were:

### **Inconsistency with inspections and between inspectors**

We were told that there are several inconsistencies with the current inspection regime and that this is particularly notable when providers who operate two or more sites report distinctly different approaches by inspectors, or differences are noted when local networks of nurseries and child-minders compare inspection experiences. We had several examples of where there is a wide variance between how different inspectors will interpret or apply the criteria for being awarded a rating by OFSTED, one provider told us about the costs involved in opening a new setting and how the difficulties preparing for the first inspection:

*“Who is to say what Ofsted grading outcome we would get? Because, at the end of the day, if we don’t have that one thing that particular inspector likes to see, we’re doomed before we start.”*

This theme of variance between inspectors and what they as individuals want to see and how this determines the rating given was most often linked to the costs impact that this rating has on providers. For example we were told by several respondents that as there is no way of knowing what a particular inspector will want to see, many err on the side of caution and as a result often spend time and money trying to pre-empt and find answers for questions and challenges they may not need to address or respond to.

### **Support, guidance and appeals process**

We were also told that the current Ofsted appeals process for early years providers means there is no effective way to challenge decisions that are made other than via a Judicial Review which is prohibitively expensive for the vast majority of providers. Whilst the introduction of a Small Business Appeals Champion via the Small Business, Enterprise

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and Employment Act 2015 has been welcomed, as the powers of the Champion remain limited to reviewing the complaints and appeals process they do not offer an alternative route for providers to overturn or challenge what, in their opinion, are flawed regulatory decisions.

### **Other issues**

As well as what we have set out above, respondents to the review also raised the following issues:

- Frequency of inspections – both on the basis of having too many inspections and having to wait too long for re-inspections when given a ‘satisfactory’ rating and the negative impact this has on a provider’s ability to attract new clients. A common theme from all those who responded was the perceived lack of consistency from OFSTED.
- Risk based approach – OFSTED inspections are not risk-based and do not take account of previous good performance (the ‘earned recognition’ principle) meaning that inspections are not focussed on poor performers.

### **Results of the stakeholder survey**

As set out in the introduction, in conjunction with our ‘call for evidence’ we carried out a separate stakeholder survey which asked about the cost impacts of some of the themes that had emerged from the review. One of these themes was inspections – our separate stakeholder survey estimated that<sup>1</sup>:

- Complying with inspections require between 7.5 staff hours for microbusinesses (i.e. those with fewer than 10 employees) and 50 staff hours for large businesses (i.e. those with over 250 employees) per year.
- Additional costs of complying with inspections, beyond the cost of staff time, range from £250 for micro-businesses to £50k for large businesses per year.
- The overall monetised cost to providers, including the staff hours and additional costs required per year preparing for and being inspected, is estimated at approximately £8m per annum.

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<sup>1</sup> All estimates are the medians of the relevant responses.

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## Local authority: planning and support

Local authorities and their role in childcare was raised as an issue by numerous respondents and in several different contexts – from funding through to duplicating requirements already set out by OFSTED. There was a general consensus that the current relationship between private, voluntary and independent childcare providers and their local authorities is inconsistent across the country and often incongruous with OFSTED’s regulatory regime. The main issues were;

### Applying for planning permission

An issue that was raised by providers was the difficulties and contradictions when applying for planning permission to either build new, or extend existing, premises, or change the official use ‘status’ with the local authority. One provider told us:

*“Even though there is demand for what we offer, we run an ethical business and do not cause a nuisance, there has never been any objections from our neighbours, and we work within the EYFS space and ratio requirements, we cannot grow our business anymore because our planning permission restricts the numbers of children and the number of staff we have working here. Our local planning department has made it very clear that they do not really approve nor really want childcare businesses growing bigger than a few children in residential areas. This does not, however, make for sustainable business and either running a childcare business from home (as long as you adhere to the EYFS space and ratio requirements) should be [considered a] permitted development, or local planning departments should be educated in the desperate need for high quality home-based provision in residential areas.”*

What providers want to see is a genuine cross-local authority response to planning requests or change-of-use requests that take into account the need for additional childcare places as well as the other factors in the area (e.g. access to the site).

### Support that was previously offered by LAs

Several respondents also raised the reduced or changed role of their local authority in childcare in terms of inspections, training, funding and general support. Although there was no clear consensus on which organisation was better placed to offer support and guidance or undertake inspections, it was agreed that this support should be offered from somewhere: the reduction in local authority resources has been, largely, placed on providers some of whom are already struggling to break even. For example one provider told us:

*“As a registered charity we do not aim to make any profit, but still have to rely heavily on fund raising to stay afloat. We have also lost a lot of support from the local authority over the last couple of years, since Ofsted became the sole arbiter of quality and this has resulted in a larger work load for staff. I do not feel that our setting would be able to offer*

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*30 hours funding – partly because we operate in a Church centre which is used by other groups so we cannot extend our hours, but I also feel that if we were to offer 30 hours funding it would mean we could only take half the amount of children we currently take. I imagine this would be the same for many settings and would therefore have an overall impact on the number of childcare places available across the country.”*

## Workforce skills

Issues regarding the recruitment and retention of skilled staff were raised by a number of respondents to our call for evidence. While the majority of childcare providers understand the need for a qualified and highly skilled workforce, there is a view that the current qualifications requirements restrict the career progression of capable staff and make the recruitment and retention of staff more difficult. The issues that were raised most often were:

### Recruitment challenges

Alongside wider skills and other types of degrees not being recognised, we have heard from several providers and their representative associations that a number of practitioners are unable to recruit staff with the right qualifications. Providers told us that this is because of recent changes to qualification requirements, where GCSE's in Maths and English are now needed if staff wish to progress to a Level 3 qualification. This has caused difficulty for those who have been practising for a number of years with experience and functional skills or GCSE equivalents (for example O Levels) to progress unless they also study for and achieve the required GCSEs. A childcare qualifications awarding organisation, CACHE, has reported that the number of registrations for Level 3 courses has dropped by 44% year-on-year for 2014-15. This was supported by one of the representative bodies in the sector who told us that:

*“There has been a drop in take-up of early years apprenticeships since the GCSE requirements came into force, with 43% of nurseries saying they are unable to find apprentices with the right level of qualifications.”*

### Lack of recognition for other degree disciplines and inclusion within ratio

We were told that many individuals who work in the sector with degrees in subjects other than a BA in Early Years Childhood study were unable to be included in level 3 EYFS staff-to-child ratios, without an additional Level 3 qualification. For example, one provider stated that:

*“EYT are excellent qualifications, however they can be from many degree bases that may not be relevant – the Mathematical, Science and English levels are holding many excellent practitioners back from EYT and the BA Hons in Early Childhood study should be valued highly and seen as the ability to study at a higher dedicated level.”*

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All the respondents to the review who raised the issue of ratios were supportive of and understood the rationale behind the need for child-to-adult ratios in child care settings. However the rigid application of the ratios and – depending on qualifications – who, and who isn't able to be counted within the ratios is having a negative impact on the potential growth and flexibility in the sector.

Overall, our engagement with a range of childcare providers suggests that there are cases where skilled individuals who have degree level qualifications, or have demonstrated ability to care and educate children over a number of years, are unable to progress their careers. Given the government commitment to increase the free childcare entitlement, it is more important than ever to increase capacity in the sector. Therefore, finding the balance between a high quality and skilled workforce and enough capacity in the sector is crucial to the successful delivery of this commitment.

## Learning and development

The childcare providers who responded to our call for evidence support and understand the necessity of ensuring the training and skills of practitioners are high quality, up-to-date and relevant. However there was a view that statutory training posed significant financial and time burdens on providers. The burdens identified were, for example, the lack of refresher courses, leading to an obligation to attend the similar courses many times and local authorities no longer offering funding for statutory training.

### Refresher courses

Several providers we spoke to stated that obligations to attend very similar training courses frequently put burdens on their business, as additional to funding the course, there were further costs associated with travelling and providing staff cover. This burden is compounded by the fact that there are no refresher courses for courses where the material has not changed significantly.

We were told:

*“We're required to do various training [courses] regularly which again, means giving up family time as we have no other staff to cover for us. An example would be Paediatric First Aid – I've now been doing a course every 3 years since I was 18! I am now 46!! Surely by now I could just do a refresher course rather than the full 12 hours which pretty much repeats everything that I did the last time”*

### Unrecognised courses

The removal of funding for statutory training by local authorities has opened up the market for courses to be provided by third party organisations (e.g. private or charitable training providers). This has caused some confusion in the sector about which courses are

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necessary and which training providers are recognised. The providers who responded to our call for evidence told us that there were cases where having taken certain courses, they were then notified by their local authority that only local authority endorsed courses – that on the most part required a fee, alongside additional costs such as travel expense – would be valid. For example, we were told:

*“The local authority has also told us that training done on-line, such as the Educare courses offered by the Pre-school Learning Alliance, are not recognised by them. This means that we have to do local courses run by the authority, which we have to pay for, travel to attend, and find staff cover to attend, rather than do the equivalent free course from Educare (e.g. Food Hygiene, Basic Safeguarding at a convenient time)”.*

Providers also told us that they think there are two main causes for the confusion regarding statutory training; the lack of flexibility on training requirements, for example the obligation to attend seemingly unnecessary courses; and the increased and unchecked market of third party course providers that may not be recognised that have arisen due to a real or perceived diminished local authority responsibility and support for childcare providers.

## **Results of the stakeholder survey**

As set out in the introduction, in conjunction with our ‘call for evidence’ we carried out a separate stakeholder survey which asked about the cost impacts of some of the themes that had emerged from the review. One of these themes was around qualifications and training requirements. The survey estimated that<sup>2</sup>:

- On average the amount of time spent by staff in the sector on attending compulsory or required training was 21 hours (or 3 days) per year, per member of staff across the sector.
- Additional costs, beyond the cost of staff time, including for example, the cost of the training course itself – range from £250 for micro-businesses to £50,000 for large businesses.0345 835 3844
- The overall cost, including staff hours and additional costs, to the sector from required training courses is estimated to be approximately £100m per annum.

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<sup>2</sup> All estimates are the medians of the relevant responses.

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## Paperwork

The amount of paperwork and the time taken to complete it was the issue that was raised most often by respondents to the review in several different contexts, for example the duplication of requests and the lack of clarity around why paperwork is required when assessing a child's progress to numerous forms required for accessing funding.

Respondents to the call for evidence told us that they believe the sheer volume of paperwork places additional and unnecessary burdens on providers and means that they either have less time to spend with the children in their care, or have to work numerous unpaid hours at evenings and weekends to catch up. As with all the findings in the review, providers understand the need for some paperwork and why it is important, but believe that more coherent and less burdensome approach can deliver the same protections and reassurances for parents, carers, local authorities and OFSTED.

### Assessment/development

We heard from providers that how, when and why a child is assessed and the purpose is unclear and can be duplicative. There is also a belief that some assessments or evidence of assessments are required by the regulator even though they are not statutory requirements. For example one provider told us:

*“Not only do we complete learning journeys on every child and plan weekly for each child, in addition there is an array of paperwork, most not statutory, but a setting would be crucified by OFSTED if you didn't. [There is also] cohort analysis for different groups, then action plans for the different cohorts (although you are already planning every week for each individual child)”*

### Changes to requirements

Several providers told us that the regular and seemingly continual changes to regulation and legislation have a detrimental knock-on impact as this results in either having to complete additional paperwork or repeat information and/ or data that have already been submitted. This does not appear to be an efficient or sustainable approach. One child-minder told us:

*“I have been child-minding for 32 years now and I do very little different from when I started with the children, but my paperwork load is more. I don't object to doing paperwork as I feel both I and the parents/carers are able to clearly see how their child is developing, but I do worry about the constant changes or new frameworks that are appearing that are so very similar to what we were doing originally but we are having to alter all of our paper work to fit the new plans. This surely cannot be cost effective for the government to plan, evaluate and change every 2-3 years?”*

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## Duplication/overlap

*The theme of duplication has been raised several times in the response to the call for evidence in several contexts. It has been raised most often in relation to paperwork and the submission of data and, significantly, in the context of a lack of clarity or proper delineation between the roles of OFSTED and local authorities. One of the leading representative bodies in the sector told us:*

*“... there remains a lack of clarity between the role of Ofsted and that of local authorities, and areas of duplication with regard to paperwork issued by the respective bodies: for example, the overlap of Ofsted Self-Evaluation Forms (SEF) and Local Authority Quality Framework. Practitioners have also cited conflicting advice from Ofsted and local authorities as a source of concern – for example, requirements with regard to carrying out checks on staff from overseas”.*

This provides another example of where the sector understands the need for paperwork/ data to be completed and submitted as it is necessary to ensure effective monitoring, but providers are frustrated at being asked to provide the same information again and again.

## Registration / registration with Ofsted

The issue of registering as a child-care provider with OFSTED and/or the local authority was one of the most often raised issues in responses to the call for evidence. Most of the references to the registration process refer to the length of time to become registered and the complexity of the process to become registered. A lead representative body for the sector that strongly support of the broad principles of the registration regime told us:

*“Initial registration with Ofsted can sometimes take an unreasonably long time, which in turn leads to delays in providers establishing or altering their childcare business. Providers in a number of areas have alerted us to very long (six months onwards) waiting periods for DBS checks. A childcare provider cannot register with Ofsted until all the required DBS checks have been passed. In one part of inner London, a number of childminders have been forced to wait between 18 months and two years.”*

Whilst the system should never be lax or so simple as to attract or allow child care providers who do not or cannot prove that they are suitable to look after children, the system shouldn't be so onerous as to put off and dissuade genuine new entrants to the sector.

## Evidence required for inspections

Respondents also told us that the requirements to produce evidence for inspections is increasing the amount of paperwork they have to produce, for example, improvement plans, CPD plans, staff targets, SEF forms, progress charts, tracking groups of children and so on. We were told by providers that they cannot understand why so many different

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forms were needed as evidence for inspections, or whether inspectors would require the evidence when the actual inspection takes place. One provider told us:

*“For staff to be able to assess, track and record every child’s development against the statements, they require time to do this out of ratio, meaning another staff member is required to work overtime to cover the ratio, costing the business thousands of pounds in overtime each year”*

We were also told by several providers that Ofsted [Ofsted inspectors] continue to make requests for more and more written evidence and this is impinging on the ability for providers to be available to the children they are looking after. We were told that it takes a large amount of time to produce an evidenced learning journey for each child, time which providers feel would be far better spent working with the children.

### **Education, Health and Care Plans**

Education, Health and Care Plans (EHCPs) are for children with complex health and care needs. Providers have told us that the new EHCP’s are one of the most time consuming documents that they have had to engage with and complete, and that the assessment process [of which the EHCP is part] is flawed as the entire EHCP process is now made the responsibility of the providers. For example, one provider told us:

*“We, as the provider, have to present an assessment (our own assessment) of a child’s development to contribute to the overall needs assessment for an EHCP to be put in place. The ‘assessment’ which the LAs have presented to us is a very complex, in-depth 24 page form. We have completed one and have had to inform the LA we cannot complete another because it took us too long to complete as staff had to leave and be replaced in the ratios, which is difficult to manage around annual leave and sickness. It also cost us around £300 in overtime before taxes, purely to have the EHCP ‘assessment’ form completed for one child.”*

### **Results of the stakeholder survey**

Our separate stakeholder survey estimated that the staff hours required per year to deal with paperwork places an estimated cost on providers somewhere in the region of £18m per annum. The three largest sources of paperwork and the percentage of the total burden of paperwork they generate were cited by respondents as Ofsted – 55%, local authorities – 13% and DfE – 11%.

## **Guidance**

The providers who responded to our call for evidence acknowledged that there have been improvements made to streamline the amount of guidance available to providers since the Focus on Enforcement review on the childcare sector in 2014. However, this was an issue raised several times in numerous contexts by providers: the main themes being that

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guidance was still unclear, difficult to access and subject to constant changes, with little indication of what has changed making it difficult to understand.

### **Specific and targeted**

Many providers said that what they want from guidance is for it to be specific and targeted at different providers within the sector. Understanding how the regulatory regime applies to child-minders, for example, as opposed to nurseries or other nondomestic settings, could prevent providers from over interpreting or over complying with regulations which may not apply to them or apply to them differently. One provider told us:

*“The guidance documents are overwhelming for providers, especially small providers and parents who are trying to have their in-home provider comply with legislation concerning the use of Childcare Vouchers and the upcoming Tax Free Childcare scheme. The regulators need to produce simple, guidance documents which are separated out for each provider type – they did this in 2003 but have since gone back to combining all registration criteria in the same document (Early Years Childcare and Registration Handbook – 150150).”*

### **Constant changes**

Another frequently raised point was that constant changes are made to guidance with little or no indication of what changes have been made and what additional requirements are being placed on providers. This creates an additional burden for providers as resource needs to be spent on understanding what the changes are and how this affects their business. We were told by one of the main representative bodies in the sector that:

*“Guidance changes regularly... this process however creates an extra burden for childcare providers, as changes in what can be long, complex documents are not highlighted in the revised guidance. A simple solution would be for Ofsted to issue a log of amendments or present guidance with changes highlighted. This would save a vast amount of time and support prompt compliance with updated guidance.”*

Another provider told us:

*“Although we are small, the amount of red tape involved is just as much as for a larger school. Ofsted, the Local Authority, Safeguarding, Health & Safety, you name it, they are constantly changing or adding to policies and procedures. I seem to spend a large part of my time just reading on-line documents, which often change again before I have had time to digest them. The information gleaned then has to be passed on to our staff for implementation.”*

Overall, respondents to our call for evidence believed that the constant changes to guidance, lack of clarity on how regulations relate to a specific setting put additional financial and time burdens on staff to ensure compliance.

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## Results of stakeholder survey

As set out in the introduction, in conjunction with our ‘call for evidence’ we carried out a separate stakeholder survey which asked about the cost impacts of some of the themes that had emerged from the review. One of these themes was around guidance and the availability and accessibility of guidance. Our survey estimated that<sup>3</sup>:

- On average the amount of time spent by staff on finding, reading and interpreting guidance ranged from 42 hours [per year] in microbusinesses (those with fewer than 10 staff) to 234 hours [per year] for large businesses (those with over 250 staff).
- The total cost, including additional costs, of finding, reading and interpreting guidance ranges from £640 for micro-businesses to £31,000 for large businesses, and our survey estimates that the total cost on the sector is of the order of £12m per annum.

## Impact of legislative changes

The providers we have spoken to and submitted to the review also raised the issue of legislative changes on the sector. The difficulty in keeping up-to-date with and tracking the changes to legislation and regulation is mentioned above in the section under guidance. However we have also been told that they feel that the impact of changes to legislation on the child care sector – for example the introduction of the National Living Wage – is not properly assessed or considered. The effect of this is that providers are considering whether they can continue to remain open or the sort of and number of staff that they can employ. One provider told us;

“Whilst [the introduction of the National Living Wage is] welcomed in our industry, this has been expensive to implement, this is because of the high staff to child ratios. We do not want to decrease ratios but it does mean that NLW in the Childcare sector is causing hardship.”

Another example is the inconsistency of how and when and to whom the legislation is applied. In the case of independent schools they are not required to follow the national curriculum, but the Early Years Foundation Stage (EYFS) statutory framework is applied to the independent sector. Independent schools affiliated to and therefore inspected by the Independent Schools Council are able to apply for an exemption from the learning and development requirements of the EYFS if they are able to demonstrate the quality of provision through inspection. Providers feel that this is unnecessarily bureaucratic, and still leaves schools having to comply with the EYFS welfare requirements, when they are

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<sup>3</sup> All estimates are the medians of the relevant responses.

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already subject to the welfare, health and safety requirements of the Independent School Standards Regulations.

## Other Issues Raised

As well as the issues and themes set out above, there were several other issues raised by providers in response to our call for evidence. These were either issues that weren't raised as often, or were outside the scope of the review. However these are genuine issues which are impacting on the sector and it is important that they are reflected in this report. These are listed below.

### Funding

The amounts and levels of funding are not within scope of this review and are being addressed by the Department for Education via the EYNFF. Respondents to the review appreciated and understood that local authorities have been subjected to funding constraints in the same way as all public bodies have over the last few years. However, there are a number of issues that have been raised by providers around how the funding is handled by and how it is accessed from local authorities. For example, some smaller providers in the sector who could or want to offer places for children with Special Educational Needs are put off from doing so because of the difficulties of accessing funding and having to cover the costs in the interim. Another issue around funding is the disparity of funding amounts between local authorities and how much of the funding from central government is used by different local authorities to administer funding.

Overall, respondents to our call for evidence felt that the current regime of funding via local authorities is unsustainable as there is wide variation in amounts paid by different LAs and providers are, in some areas, either just about breaking even or running at a loss.

### Multiple and complex 'policy' requirements

Providers raised the issue of the multiple and sometimes complex requirements on them to meet different policies. For example a small day care setting having to register as a 'food' business, or providers having to have in place numerous policies on, for example, Health and Safety to meet the requirements of the local Authority and/ or OFSTED.

### Regulations applied to different settings

We were told by providers that after-school and holiday clubs are currently subject to the full regulatory regime and have to incur the costs associated, despite most regulations and communications concerning education, procedures in either childminders' homes or nurseries etc. There was a view that regulations should be adjusted to recognise settings with different purposes, such as afterschool and holiday clubs.

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## **Business rates**

Business rates were frequently raised by providers as a barrier to their ability to run a sustainable business. This isn't an issue that is specific to childcare providers as all non-domestic business will have business rates set by their local authority, however some providers told us there is an apparent contradiction between government advising on the need for greater floor space for childcare premises, and the local authority mandating that a larger premise will require providers to make a greater business rate payment.

The National Day Nurseries Association's most recent national nursery survey showed that the average business rates for nurseries were £14,000, with average rateable values of £21,000. This means that the majority of nurseries are unable to benefit from the existing small business rate relief (which is given on properties with a rateable value of up to £12,000). As many childcare providers we have spoken to work on low profit margins so their ability to continue to run sustainable and growing businesses is impacted by this.

Although in the past ministers have written to local authorities to encourage them to provide relief to childcare providers, we have been told that to date no action has been taken by any of the 150 Authorities that were written to.

## **Zero or reduced VAT ratings**

This is also an issue that is not specific to the childcare sector. However this is an issue that highlights the difference with how private and independent child care providers are treated compared to those public funded and voluntary childcare providers. Currently private and independent sector providers have to pay the full 20% VAT rate on goods and services purchased, although schools and the voluntary sector do not, and this has significant impact on private and independent providers' ability to run a sustainable business. Respondents stated that this partial treatment for certain parts of the childcare sector undermines measures being taken by the government to increase capacity. To provide context, the Office of National Statistics (ONS) figures (for 2014) for child day care activities showed that the sector spent over £1bn on goods, materials and services.

## **Disclosure Barring Service (DBS) and other background checks**

Nobody questions the need and the importance of having thorough checks on people who are looking after or applying to look after children. However the issue of the cost, complication and length of time to complete the DBS process has been raised numerous times by respondents. The majority of providers in the sector are micro or small businesses and the costs and delays involved with the DBS process, for example in employing new staff, are impacting on the ability of those providers to grow and increase the numbers of places they can offer.

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## **Application of ratios**

As well as the ratio issue mentioned in the section on workforce skills ([page 9](#)), we also heard from several respondents how the rigid application of ratio requirement is negatively impacting on their ability to provide additional places – for example a child-minder’s own children are included within ratio and they cannot claim funding for that child or a provider wanting to offer another place to one other child but not being able to afford to employ another qualified member of staff based on the additional income this provides.

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# GOVERNMENT RESPONSE

## What we will do

The government welcomes the findings of this review. These will form part of our ongoing discussions and engagement with the childcare sector and our existing work to monitor and review regulations. As the report notes, the government has made, and continues to make, changes to regulations and how they are enforced to ensure that these are as effective and efficient as possible.

The findings of this report indicate that there are areas that can be improved. The government will introduce further improvements to the regulatory process in response to the points raised in this report and as part of the introduction of the 30- hour childcare offer. This report highlights a number of areas where we believe that further action could be taken in the short, medium and long term to reduce unnecessary burdens and deliver substantial benefits and cost savings to the sector.

## Response to the headline findings

### Inspection

We acknowledge the finding and the difficulties providers can face. We also know that it is sometimes difficult to find guidance material on government websites and we will continue to simplify access to and availability of the correct guidance and advice wherever possible.

Documentation kept by childcare providers should only be what is required in legislation and the government will do more to make it clear that Ofsted's inspection process does not require providers to have any policy or documentation outside this. If there are instances where inspectors are asking for additional documentation, the details of this should be reported to Ofsted via its complaints process (see below).

We fully recognise and understand the impact that the outcome of an inspection can have. This is why inspectors are expected to explain their findings and judgements before leaving a setting. Inspectors must highlight the options available to a provider if they remain dissatisfied following a visit. This can involve the use of Ofsted's complaints procedure to raise specific complaints about the outcome of an inspection.

This review is a welcome reminder that any complaints and appeals process should be constantly under review to ensure that the bodies that are regulated have trust in a system that holds the regulating body and the government to account in an open, transparent and independent way that drives improvement. To this end, Ofsted has recently set up regional

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scrutiny panels which include sector representatives to resolve complaints at a more local level and reduce level of paperwork involved.

However, we understand that some providers may feel they have to go beyond what is required in order to provide additional information, especially if they feel that this will help to secure a desired positive rating from Ofsted; and this report brings out a clear need for further clarification of the evidence required, to make sure that essential paperwork is always kept to a minimum. It may be helpful for the department to lead on the preparation of a separate document to clarify, in one place, the essential legal requirements on providers.

We acknowledge that some of the feedback considers that inspections on the current 4-yearly cycle are too frequent. Clearly we need to balance the overall administrative burden against the assurance that quality and safeguarding standards are being met.

We understand and accept that some providers want inspections to be assessed on risk. Ofsted's existing system for inspections (in non-Early-Years settings) is based on a risk assessment approach and there are opportunities to extend this further into inspections for early years providers.

In addition to the responses to the review, we know that some providers have expressed concerns about offering extended provision, including Saturday opening, in case an inspection found that a child's key worker was not present. While inspections do cover key worker arrangements, there is no statutory requirement for the key worker to be present at all times and this should not inhibit anyone from offering more flexible provision.

We will:

- Develop a 'myth-buster' document to communicate and clarify the essential requirements for inspections; publicise and share this with early years stakeholder organisations and providers by April 2017. This will include reference to the key documents and information that providers must make available to address and dispel misconceptions about the process and more clarity on extended provision.
- Include within this document, a clear description of the regulatory and non-regulatory appeals process, so that it differentiates between the process for statutory decisions such as suspension, cancellation etc. and complaints or challenges to decisions such as inspection judgements.
- Review processes and develop proposals for 'earned recognition' with regard to inspection of group based provision and smaller settings by April 2017.
- Re-visit joint discussions on the issue of 'paid-for re-inspection' to better understand the risk and opportunities by September 2017.

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## Local authority: planning and support

We acknowledge the points made about disconnect between local authority departments and will investigate further to determine the extent to which this applies. In particular, we would seek to address any potential conflict between local planning rules and the local authority childcare sufficiency duty. Our assessment of local authority sufficiency and capacity, leading up to implementation of the 30-hour childcare offer in September 2017, will take account of linkages between local authority departments and the inter-relationships between local policies.

We understand the calls for support and, based on previous consultation responses and announced in the government publication 'More affordable childcare', have developed guidance to focus local authority support on new and poorly performing providers. Our aim has consistently been to reduce the level of duplication between local authorities and Ofsted, and also the associated paperwork and preparation for visits, and this is reflected in statutory guidance.

Each local authority currently develops its own agreement with childcare providers in its area, and arrangements vary depending on local circumstances and provider characteristics. In some local areas, agreements can create administrative burdens for providers, particularly for those that work across more than one local authority area.

As part of the 30-hour free childcare implementation, we intend to establish a new model agreement with more standard provisions to make activities and processes simpler, quicker and more consistent for local authorities and providers.

We would like to see local authorities working in closer partnership with providers to achieve the flexible, high-quality provision that is responsive to children's needs, including those with disabilities or special educational needs. Additionally, we want to enable and support sustainability amongst existing providers as well as attracting new providers into the market. A more standardised and transparent approach is likely to make the local authority-provider relationship more effective.

We will:

- Revise the current statutory guidance to clarify the regulatory requirements upon local authorities, including what additional conditionality can and cannot be included in provider agreements, by March 2017.
- Introduce a new national funding formula from April 2017. This will include new methods of allocating funding for SEND children and allocation of funding by local authorities with a recommended upper limit to the level of top-slicing.

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- Seek further advice from individual local authorities about the impact of planning processes on childcare businesses to determine whether this has an adverse impact on the local authority sufficiency duty by April 2017.
  - Investigate what information is available about planning applications for childcare businesses and what discrepancies exist between different areas by April 2017.
  - Develop a new model agreement between providers and local authorities with standard clauses to simplify requirements and processes and make these more consistent across the country by January 2017.

### **Workforce skills**

We acknowledge the issues raised by the sector in the review and we understand and accept the views presented in the review about the problems caused by the qualifications requirement for staff. This reflects ongoing discussions we have had with the sector. Clearly, we want children to benefit from a highly qualified workforce, but there has been consistent feedback that the current requirements have caused difficulties for some providers.

The GCSE requirement was introduced following Professor Cathy Nutbrown's independent review of early years qualifications in 2012, which highlighted the importance of early years staff having appropriate numeracy and literacy knowledge and skills to help them support the early learning of young children and enable them to progress to further study. The government's response to the Nutbrown review recommendation was to introduce a requirement for staff to hold GCSEs, but subsequent communications from employers and training providers, and the feedback in this report, indicate that the requirement is acting as a barrier to recruiting and retaining staff.

We have therefore published a consultation, on 5 November 2016, to invite further views to help us better understand the potential impact of the current GCSE requirement on the early years workforce and quality of provision.

We will:

- Use responses received to our consultation to inform a decision whether to adjust the current requirements, publishing a response by February 2017.
- Use the 'myth buster' document above to ensure that the current qualification requirements as stated in the EYFS are accurately communicated by April 2017.

### **Learning and development**

We understand and accept that providers can be frustrated and unclear about what statutory training requirements there are. The government has always intended that statutory training requirements for qualified staff should be kept to a minimum and limited

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to those absolutely necessary to ensure the safety and wellbeing of children, for example the requirement that at least one member of staff on the premises must have a current paediatric first aid (PFA) certificate. This will be extended, as described in bullet 3 below, when we publish an updated EYFS.

The only other specific mandatory training requirements relate to undertaking child protection training, and training for all staff on the provider's own written statement of procedures to be followed to safeguard children from abuse or neglect. There is also a more general requirement that all staff should have sufficient command of the English language to ensure safety.

In 2013, the government introduced reforms which were intended to allow providers to source their own training where this would better meet their needs, while retaining a statutory role for local authorities in supporting providers rated as 'Requires Improvement' or 'inadequate' by Ofsted. This reflected consultation feedback from providers who wanted more freedom to choose training from a wider marketplace.

We accept, however, that the range of choices on offer can present a complicated picture and there is scope to highlight the statutory training requirements more prominently. We fully understand that providers are likely to prefer training either at flexible hours or online, and we should do more, not just to encourage them, but to make relevant products available more widely.

To help facilitate this, we need to seek further evidence of what additional training requirements may have been specified at local level as the scope for mandating additional requirement is limited by statutory guidance. In particular, local authorities cannot require a provider to undertake any training or quality improvement programme, unless the training or quality improvement programme has been identified as necessary to address concerns raised in the Ofsted inspection report and the provider has been judged less than 'Good' by Ofsted.

We will:

- Provide more clarity on the statutory training requirements, possibly as part of the proposed myth-buster document by April 2017.
- Review the extent and rationale for full refresher training by April 2017.
- Seek further advice from sector organisations to determine what local differences they have experienced in training requirements and recognition of courses, and what further clarification may be required, by April 2017.

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- Develop an on-line package of business support tools and advice, through gov.uk aimed particularly at smaller providers who may have less access to established training programmes.

## **Paperwork**

We welcome this feedback which closely reflects a range of discussions we have carried out with the sector, and has highlighted a very clear mismatch between what paperwork is required and what providers feel they need to do to provide sufficient evidence.

We acknowledge that paperwork requirement for special needs, including EHC plans can be extensive. This reflects similar feedback we have received with regard to Early Years Pupil Premium. The challenge is always to achieve an appropriate balance between robust registration policy and practice that meets regulatory requirements and making the registration as straightforward as possible to encourage new providers into the system.

Ofsted has recently undertaken an internal review of its registration policies and is currently considering a number of changes. Where any form of duplication in processes has been identified, Ofsted will put measures in place to address and rectify these.

We will:

- Include clearer guidance on supporting paperwork within the proposed mythbuster document to firmly align this with EYFS requirements by April 2017.
- Strengthen the emphasis on paperwork requirements for inspection once the inspection workforce has been moved fully in-house after April 2017.
- Investigate further with businesses across the sector by September 2017 to identify possible duplication at local level. This would address particularly any misconceptions about local authorities having a role in the registration process; and any additional data needs local authorities might be asking for over and above existing registration details which are already supplied by Ofsted. The result of this study will be published by September 2017.

## **Guidance**

We acknowledge the points raised in the review and agree that guidance should be clear, concise and user-friendly.

We understand the concerns about highlighting changes to guidance and how different types of provider may benefit from more tailored guidance.

Similarly, we could do more give the sector better advance warning of changes and give providers more time to prepare. Ofsted already apply the practice of leaving guidance unchanged for one year, subject to changes in legislation, or clarification requirements

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arising from significant events which lead to a legal challenge or serious case review. The department applies an internal protocol for changes to accountability, curriculum and qualifications in schools. This commits, wherever possible, to give notice of changes, and provide specifications materials etc., at least one term in advance wherever possible. In practice, the department aims to limit changes in schools so that guidance changes take effect only once per year, usually upon commencement of the September term. We believe that it would be a positive step to extend this to include early years.

We will:

- Engage further with businesses to clarify and understand specific issues around complexity of guidance by July 2017.
- Commit immediately to providing better emphasis on changes in departmental guidance, by highlighting changes and identifying relevance to particular types of child carer where appropriate, possibly as a table or summary. This could follow the example already set in Ofsted's Registration Handbook.
- Immediately reaffirm and extend DfE's commitment improving the notice period for updating guidance for early years in line with schools and providing at least a least a term's notice of change, aspiring to one year's notice as the standard by September 2018.

## **Other issues raised**

### **Funding**

Although out of scope of this review, we have an ongoing dialogue with the sector about funding rates and fully acknowledge how crucial this is across the sector. We understand and appreciate the concerns raised, particularly how these relate to children with Special Educational Needs, and differences between by local authorities in terms of the amount of funding retained centrally. We have developed a revised national formula for funding allocation in order to distribute funding in a fairer way so that some of the disparities reported by providers will be removed, and we propose to create a 'universal base rate' under which all providers, regardless of type, will receive the same base rate per child. This should help address concerns raised by providers about disparities in funding rates at local level.

### **Impact of legislative changes**

We accept that the sector can be affected by many changes which apply to all businesses and welcome the inclusion of wider issues in the report. It is, of course, standard practice to consider the impact of wide scale policies across all affected government departments.

Some changes, such as the National Minimum Wage, apply across all business and there is no rationale for exempting any particular sector, but we have previously sought to

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influence voluntary limits where possible, for example with business rates and we aim to facilitate further discussion with other government departments over the effect of legislative requirements on the sector.

### Multiple and complex policy documents

We understand that having to deal with multiple regulators requesting the same or similar information can be frustrating, costly and time consuming. This is why we have kept statutory requirements of the EYFS to a minimum as described above. Ofsted inspections are based against the requirements of the EYFS and add no additional statutory burden.

We have also taken steps to remove the need for providers to be inspected against both Ofsted and local authority quality criteria, and have restricted additional requirements that local authorities can put into funding agreements. There are a number of national requirements that apply to all businesses, for example, food standards requirements, or health and safety standards. Whilst we could not relax these for a particular sector we can seek to vary requirements on the sector, where it would be practical and reasonable to do so.

### Regulations applied to different settings

We fully accept that some regulations, such as those covering safety and wellbeing, are applied across all settings and believe that there are very strong reasons for doing so. We have relaxed regulations on after-school and holiday clubs to exempt them from the education and learning elements of the EYFS, exempted two year olds in schools from separate registration, and exempted childminders from the requirement to have written policies.

### Business rates

We know that business rates are due for revaluation. This usually happens every 5 years. The most recent revaluation came into effect in England and Wales on 1 April 2010, based on rateable values from 1 April 2008.

As part of a revaluation the government adjusts the value of business rates to reflect changes in the property market. This means all properties are given a new rateable value and rate multipliers are revised.

We know that childcare settings usually have a greater area of floor space than other comparable small businesses, and therefore may have a higher rateable value. Clearly we cannot predict the precise impact of revaluation on all businesses, but we know that many smaller childcare settings, with a rateable value up to £12,000, already benefit from 100% relief on business rates. From April 2017, additional tapered relief will be available to all businesses with a rateable value up to £15,000, and many more properties will be subject to the small business rate multiplier rather than the standard rate multiplier. Childcare providers can obtain an estimate of their business rate costs using an on-line tool.

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There are also a number of further exemptions and reliefs which, while not exclusive to the childcare industry, cover a range of circumstances which can apply to childcare providers.

- Businesses setting up in Enterprise Zones, designated areas across England that provide tax breaks and Government support, can claim a discount of up to 100% on the business rate, worth up to £275,000 per business over a 5-year period. A list of enterprise zones is available [here](#).
- Registered charities can apply for charitable rate relief which enables them to reclaim up to 80% of business rates.
- Rural rate relief is primarily intended to support businesses such as village shops, post offices or petrol stations where these are the only resource in rural areas with a population below 3,000. However local authorities have discretion give relief of up to 100% to other rural businesses for properties with a rateable value under £16,500.

#### Zero or reduced VAT ratings

We accept that there are a number of provisions which apply differently depending upon whether an organisation is profit making or non-profit making. This covers not just VAT but also certain types of licensing arrangements. In these cases, it may not be justifiable to make exemptions for one particular sector, but wherever possible we will engage with other regulatory bodies to identify any scope there may be for clarification and flexibility.

#### Disclosure Barring Service and other background checks

We also understand the frustration caused by delays in DBS checking, particularly to new providers who are setting up. DBS checks are, of course an essential safeguarding requirement and an essential safeguarding measure. In many cases, delays are linked to specific local issues and those checks subject to undue delays are prioritised and escalated. Facilities exist for individuals and employers to track progress with DBS applications on [gov.uk](#).

#### Application of ratios

We understand that it is essential to strike an appropriate balance between deregulation and safeguarding. Previous proposals on staff: child ratios were discontinued following very clear feedback from the sector and we would not propose to re-visit these. We agree, however, that there may be some scope to operate more effectively within existing legal ratios and that providers should be supported to do so.

We will:

- Engage with other government departments and professional bodies to clarify a number of legislative requirements which have been raised by the sector as part of this review – for example the rules regarding music and mini-bus licensing, and determine what scope there is for change by July 2017.

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- Review further any overlaps between the EYFS and the Independent School Standards to ensure that safety and wellbeing requirements are consistent by July 2017.
  - Engage further with businesses to clarify and understand the specific concerns and gather examples of multiple regulation requirements by July 2017.
  - Examine and communicate what flexibilities exist within the EYFS for flexibility in ratios within the current legal framework by April 2017.
  - Develop an on-line diagnostic tool to help providers model staffing levels, in line with ratio requirements, for different levels of occupancy by April 2017.