

Regulation of providers on the Early Years Register who hold exemptions from the learning and development requirements



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About this guidance

The aim of this guidance is to assist inspectors to carry out registrations and inspections of:

- applicants and providers who are seeking, or who have been granted, exemption from some or all the learning and development requirements
- registered settings in which a provider has exempted individual children from the learning and development requirements.

This guidance supplements the main inspection guidance documents for early years provision, which are: *The evaluation schedule for inspections of registered early years provision*, and *Conducting the early years inspection*.¹ It does not apply to independent schools that take pupils from three years upwards.²

Background

Regulations enable the Secretary of State for Education to grant registered providers exemptions from all or part of the learning and development requirements, which are set out in the Early Years Foundation Stage (EYFS).³ The exemptions may modify or disapply: the educational programmes; individual learning goals; and the assessment arrangements. The circumstances in which applicants or providers may apply for an exemption are where the established principles about learning and development for young children which govern their practice conflict with an element or elements of the EYFS learning and development requirements.

Providers must apply to the Secretary of State for Education for a 'direction' if they wish to claim an exemption, by contacting the Department for Education at Exemptions.EYFS@education.gov.uk.⁴

Independent schools may apply for a direction for exemption from all of the learning and development requirements. These exemptions are not covered by this guidance. Where independent schools have registered provision because they take children

¹ *Evaluation schedule for inspections of registered early years provision*, Ofsted, 2012; www.ofsted.gov.uk/resources/120086 and *Conducting early years inspections*, Ofsted, 2013; www.ofsted.gov.uk/resources/120087.

² Guidance for independent schools is available at: www.gov.uk/government/publications/the-early-years-foundation-stage-eyfs-learning-and-development-requirements-guidance-on-exemptions-for-early-years-providers.

³ The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008; <http://www.legislation.gov.uk/uksi/2008/1743/contents/made> and The Early Years Foundation Stage (Exemptions from Learning and Development Requirements) (Amendment) Regulations 2012; <http://www.legislation.gov.uk/uksi/2012/2463/contents/made>.

⁴ For more guidance, see: Early Years Foundation Stage (EYFS), Department for Education, 2013; www.education.gov.uk/schools/teachingandlearning/curriculum/a0068102/early-years-foundation-stage-eyfs.

aged under three years, they are not able to claim an exemption in respect of this part of the provision.

A parent may apply in writing to a registered provider for an exemption in respect of their child where they consider the learning and development requirements, or some element of them, are in conflict with their religious or philosophical convictions.⁵ If a provider decides to grant an exemption for an individual child, then it is for a maximum of 12 months.⁶

The Childcare Act 2006 does not allow exemptions to be granted from the safeguarding and welfare requirements of the EYFS, as these deal with fundamental issues of child safety.

Provider exemptions

Notification process

The Department for Education notifies Ofsted of any exemptions through the dedicated email box: ExemptionsEYFS@ofsted.gov.uk.

The National Business Unit updates the Regulatory Support Application (RSA) by:

- clicking on the update button on the 'Detail Registration' screen
- clicking the 'Learning and Development Exempt' flag
- completing the fields that allow them to record whether the exemption is 'full' or 'partial'; and the start date of the exemption
- inserting the learning and development exemption certificate number
- making a note of the information in the 'Registration Comments' box.

If the exemption has an end date, the National Business Unit (NBU) will remove the flag and insert the exemption end date.

⁵ The definition of 'parent' in this case includes someone with parental responsibility or someone who has 'care of a child'. This includes someone who lives with and looks after the child such as a foster parent or another relative, but not a childminder.

⁶ See footnote 4.

Registration

Exemption granted

If an applicant has had an exemption granted and the Department for Education has notified Ofsted of the outcome, this information should be sent to the inspector as part of the registration pack. In these cases, during the registration visit inspectors should:

- ask the applicant to demonstrate how they will deliver the learning and development requirements, other than the parts for which exemption has been granted
- make judgements on the basis of that evidence.

Where, rarely, an exemption is granted between the registration visit being organised and the visit undertaken, the inspector may note in their evidence the date of the Department for Education exemption certificate or letter and the extent of the exemption and proceed as above.

In these cases, after the registration visit, inspectors should refer the information to the EY-Childcare mailbox for updating of the RSA and master spreadsheet of exempt providers.

Exemption applied for

If an applicant has applied for but not been informed of the outcome of an exemption application by the time of the registration visit, the National Business Unit and/or the inspector should defer the visit until a decision has been made. If the applicant wishes to be registered ahead of any decision about exemption then the inspector must assess whether they meet the full learning and development requirements. Inspectors must not assume that the exemption will be granted.

Inspection

Exemption granted

The inspection pack will include information about whether any exemption has been granted. Inspectors must take the extent of the exemption into account when making judgements about the provider.

Where, rarely, an exemption is granted between the inspection being organised and the visit undertaken, the inspector may note in their evidence the date of the Department for Education exemption certificate or letter and the extent of the exemption and proceed as above.

In these cases, after the inspection, inspectors should refer the information to the EY-Childcare mailbox for updating of the RSA and master spreadsheet of exempt providers.

Exemption applied for

If an applicant has applied for, but not been informed of, the outcome of an exemption application by the time of the inspection, the inspector should defer the visit until a decision has been made. Inspectors must not assume that the exemption will be granted.

Gathering evidence and making judgements

Inspectors should gather evidence of how well the provider helps the children learn and develop, excluding those aspects for which exemption has been applied or granted. Judgements should be made on the basis of that evidence. For example, if the exemption is for the educational programme for literacy, the provider will not be required to provide any activities or resources to support children's progress through age-related bands. If it is for the early learning goal only, then the provider will be expected to deliver activities across the age-related bands up to the goal.

Writing the early years report

Inspectors should complete the early years inspection report as usual. At the end of the section 'Information about the setting', inspectors should add the following:

'At the time of this inspection, the provider has been granted exemption by the Secretary of State from <insert exemption details> of the learning and development requirements of the Early Years Foundation Stage. These parts were excluded from this inspection.'

Intention to apply for a provider-level exemption

If a provider says that they intend to apply for an exemption, inspectors should explain that, without proof of exemption, they must carry out a full EYFS registration or inspection. In other words, intention is not good enough.

At inspection, if the provider clearly does not intend to deliver elements of learning and development requirements, but has not yet applied for exemption, then inspectors should carry out a full EYFS inspection. When making judgements, inspectors should consider whether the extent of the non-compliance is sufficient to result in one or more of the judgements being inadequate. Inspectors should raise actions in respect of the elements the provider is not delivering.

Inspectors should explain at feedback that the provider will receive a notice to improve with the inspection report. The provider should respond to the actions set out in this and, where appropriate, enclose a copy of any completed exemption application she or he subsequently submits to the Department for Education.

Exemptions in respect of an individual child

Registration

A parent can only apply for an exemption for an individual child to a provider who is already registered on the Early Years Register.

Inspection

Exemption granted

A provider may decide to exempt a specific child or children from some or all of the EYFS following a written application from the child's parent(s). Inspectors need to check that the provider has followed the proper process in doing this and has not just simply agreed to do so.⁷ In summary, the provider must have evidence of:

- the application from the parent(s) made in writing, including a list of the learning and development requirements (each educational programme, early learning goal, and/or assessment requirement) for which modification or exemption is being sought; the reason why each of these conflicts with their philosophical or religious convictions; and whether they are seeking a modification or exemption
- the provider's notification to the local authority as well as the local authority view on whether the exemption should be granted and any funding implication for the free entitlement
- the decision made by the provider that exempts the child, stating the date on which the exemption began, the length of time for which the exemption has been granted, up to a maximum of 12 months, and which early learning goals and/or areas of learning and development have been exempted/modified
- communication of the decision to the parent(s) including any impact on the free early education place
- retention of all paperwork associated with the application, and a process to review and, if required, repeat the process every 12 months.

Inspectors should note in their inspection evidence:

- the number and ages of the children for whom individual exemption has been granted
- for each exempted child, the date on which the exemption began, the length of time for which the exemption has been granted and which early learning goals and or areas of learning and development have been exempted/modified.

⁷ See footnote 4.

Inspectors must not record the names of the children.

If inspectors consider that the process for obtaining an exemption for an individual child has not been followed correctly, they should raise an action to address the failure to follow the process. They must also consider whether it is indicative of weaknesses in leadership and management and whether the provider delivers the learning and development requirements of the EYFS appropriately.

Gathering evidence and making judgements

Inspectors should expect a provider to demonstrate that they can deliver all the learning and development requirements of the EYFS regardless of any learning and development exemptions that are in place in respect of particular children.

Inspectors should gather evidence of how well the provider delivers all the learning and development requirements of the EYFS in the normal way.

Inspectors should not support their judgements on the provision as a whole with evidence drawn only from the elements of learning and development requirements delivered to an individual child who is exempt from some or all of them.

This is particularly important in settings where the few children who attend are exempt: for example where the childminder has granted exemption to two siblings who are the only children on roll. In these circumstances, inspectors should establish, through discussions, how well the provider may deliver all the learning and development requirements of the EYFS for any future children who are not exempt. The provider's self-evaluation should help form the basis of these discussions.

Actions

Inspectors should raise an action where the process for granting individual exemptions has not been properly followed. Inspectors should also consider whether this failure is indicative of greater weaknesses in leadership and management; and whether the provider understands and can deliver all the learning and development requirements of the EYFS.

Writing the early years report

Inspectors should complete the early years inspection report as normal. Where the process for granting exemptions has not been properly followed, inspectors should report on this in the leadership and management section of the report.

On the rare occasions when all children who attend are individually exempt, the inspector should add the following at the end of the section 'Information about the setting':

'At the time of this inspection all children on roll are exempt from all/parts [delete as appropriate] of the learning and development requirements of the Early Years Foundation Stage.'