

Changes to the legislation requiring schools to register their provision for two year olds

The requirement for schools to register their early years provision for two year olds separately with Ofsted, so long as it meets certain requirements¹ has now been removed by the introduction of the Small Business, Enterprise and Employment Act (2015).

This change came into force on 26th May 2015 (to be in-time for the new school term in September 2015). The Childcare Act 2006 already grants an exemption so that schools do not have to separately register their provision for three and four-year-olds.

In order for schools to be exempt from registering their provision separately, it must be delivered directly by the school (that is under the auspices of the governing body) and at least one child attending the early years provision must be a pupil of the school.

Ofsted have updated their guidance to reflect the changes, which is contained in the childcare factsheet; Registration not required (No. 080134)

Ofsted will be contacting schools that currently have a separate registration for their two year old provision and meet the requirement for exemption. Ofsted can be contacted if you feel this applies to your school on eyeschools@ofsted.gov.uk

What this means for schools considering taking two year olds?

Although there is no longer the requirement for schools to register early years provision for two year olds separately with Ofsted there may still be an implication related to altering the age range of pupils.

Maintained schools can run a nursery for children aged 2-4 years old, and can [lower their age ranges by up to two years](#) without having to follow a formal statutory process.²

An academy or free school will need to submit a fast-track request to [lower its age range by up to two years](#). This does not require a formal business case.

Once the decision has been taken to extend the school's age range, schools must update [Edubase](#).

In all these instances, the two year olds will be classed as 'pupils' (included on the school's register of pupils), which can have implications for staffing (see below).

If you would like to know more please contact early.years@essex.gov.uk

¹ The SBEE Act amends Clause 34 of the Childcare Act, 2006

² If a maintained school, academy or free school is changing its age range by more than two years (for example, moving from a 5-11 age range to a 2-11 range) a formal process still needs to be followed. Details can be found using the links above.

Staffing ratios and qualifications

In all instances where the two year olds are pupils of the school, the school must meet the EYFS statutory framework requirements on staff qualifications and ratios. If there is no QTS or nominated teacher present, the early years staff working with these children must be under direction and supervision of a suitable teacher, when carrying out certain specified work.

The qualification and ratio requirements set out in the EYFS statutory framework are that:

- there must be at least one member of staff for every four children;
- at least one member of staff must hold a full and relevant level 3 qualification; and
- at least half of all other staff must hold a full and relevant level 2 qualification.

([Paragraph 3.32 EYFS](#) of the Framework)

All these members of staff must be available to work directly with the children as laid out in the EYFS framework.

In a maintained school or non-maintained special school only, the [Education \(Specified Work\) \(England\) Regulations 2012](#) set out the types of 'specified work' which must normally be carried out by a Qualified Teacher (QTS) or a nominated teacher (broadly a trainee teacher or a specialist teacher). These are:

- a) planning and preparing lessons and courses for pupils;
- b) delivering lessons to pupils;
- c) assessing the development, progress and attainment of pupils; and
- d) reporting on the development, progress and attainment of pupils.

(Regulations 3 and 5)

Early years staff without QTS would not normally fall within the 'nominated teacher' category. Therefore, where a maintained school has lowered its age range to include two year olds, and when carrying out the work specified at (a)-(d) above those early years staff must be 'subject to the direction and supervision of a qualified teacher or nominated teacher' and the head teacher must be satisfied that those early years staff have the skills, expertise and experience needed to carry out the work (para 6 of the schedule to the Specified Work Regulations). It is for the head teacher to determine the appropriate level of direction and supervision.

Inspection of new provision

A school that extends the age range of its pupils into a new key stage is normally inspected, under Section 5, after one calendar year and within the second year after the change. The new provision is inspected as part of the overall inspection. However, as with all schools, HMCI can exercise his powers under section 8 to inspect a school at any time where there are concerns about the school.