

# 3

## Regulation & regulatory bodies

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# 3 Regulation and regulatory bodies

## 3.1 The Childcare Act 2006, Ofsted registration and the Early Years Foundation Stage

The Childcare Act 2006 introduced new legislation which became law in September 2008. It imposed new statutory duties on local authorities and created a single quality framework. The framework is called the *Early Years Foundation Stage* (EYFS) and it covers children from birth to the end of the Early Years Foundation Stage, i.e. the end of the academic year in which a child has their fifth birthday.

**Local Authorities** have had their existing roles and responsibilities extended by the new legislation. They now:

- have a duty to improve the outcomes for all children under five, closing the gap between those with the poorest outcomes and their peers by ensuring early childhood services are *accessible, proactive and fully integrated*.
- have a duty to facilitate the local childcare market to ensure it meets the needs of working parents (including those in education or training for work), in particular those on low incomes and with disabled children (up to 14 years of age and 18 years for disabled children).
- have a duty to ensure parents have access to the full range of information they may need as a parent.

**The Childcare Act 2006 also introduced two new types of Ofsted register for childcare:**

- **The Ofsted Early Years Register** covers children from 0 to 5 years, in all settings that offer childcare for longer than two hours and up to the end of the Early Years Foundation Stage. This includes: pre-schools, playgroups, day nurseries, childminders and maintained and independent schools.
- **The Ofsted Childcare Register (OCR)** covers children over the age of five. It ensures that providers meet a set of common standards (e.g. minimum safety standards, suitably qualified staff, and adult: child ratios) but does not require the same quality standards as the Early Years Register. It is compulsory for settings providing for the under eights but is voluntary for those that provide childcare for the over eights (on the basis that they meet the required common standards).

It is possible to register with any or all combinations of these registers dependent on the ages of the children that your setting/group cares for.

The *Early Years Foundation Stage* brings together and replaces the previous curriculum, mandatory requirements (the law) and guidance. These were 'Birth to Three matters', 'the Foundation Stage' (curriculum) and the '14 National Standards' (the law and guidance).

The Childcare Act 2006 introduced a new legal framework for the regulation and inspection of early education and childcare which is laid out in *the Statutory Framework for the Early Years Foundation Stage*. Ofsted have changed their inspection criteria to encompass the new framework and practitioner guidance.

**The Statutory Framework for the Early Years Foundation Stage is broken down into four sections with two appendices and a glossary:**

- 1 **Introduction**
- 2 **Learning and Development Requirements**
- 3 **Welfare Requirements** ("*both the general and specific legal requirements have the force of regulations and therefore must be complied with by all early years providers*" 3.3 p19).
- 4 **Other Information** (including other legal duties, competency in English and exemptions)
  - **Appendix 1** (Assessment scales)
  - **Appendix 2** (Specific legal requirements for ratios of adults to children)
  - **Glossary**

The *Statutory Framework for the Early Years Foundation Stage* clarifies who the 'registered person' is:

*"a person who provides early years provision – this will include any person registered on the Early Years Register and Schools (maintained and independent) providing an early years provision. A company, committee or group may make up the registered person."* (glossary, p52)

**This definition makes clear that all the 'specific legal requirements' and the 'statutory guidance to which providers should have regard' is the responsibility of the registered person, be they a committee, a limited company, a sole trader or whatever legal form the childcare provider has adopted.**

**Section 1, the EYFS introduction summarises the purpose and aims of the EYFS and introduces the EYFS 'principles':**

- a unique child,
- positive relationships,
- enabling environments,
- learning and development

These together contribute to the overarching outcomes of *Every Child Matters* which are for children to be safe, be healthy, enjoy and achieve, make a positive contribution and prepare for economic well-being.

The EYFS overall aims are:

- setting the standards
- providing equality of opportunity
- creating a framework for partnership working
- improving quality and consistency and
- laying a secure foundation for future learning

### **Section 2 summarises the Learning and Development areas**

These have the same headings as the former Foundation Stage: Personal, Social and Emotional Development; Communication; Language and Literacy; Problem Solving; Reasoning and Numeracy; Knowledge and Understanding of the World; Physical Development and Creative Development. For each of these Learning and Development areas there is an Educational Programme and a set of Early Learning Goals. The aim is that when children reach the end of the EYFS (at the end of the academic year in which they had their 5th birthday) they will have achieved these goals. The EYFS acknowledges that children develop and achieve at different rates but the aim is that these early learning goals will support the monitoring of individual needs.

**The EYFS states that "all the areas must be delivered through planned, purposeful play, with a balance of adult-led and child-initiated activities."**

Section 2 then goes on to describe the EYFS assessment arrangements, both during the EYFS and at the end of the EYFS. It then makes clear what the exact 'requirements' are for these assessment arrangements e.g. "All providers must make arrangements for each child within the final year of the EYFS to be assessed throughout the year by a practitioner. Practitioners must use the 13 scales and have regard to the scale points as set out in Appendix 1 to complete the EYFS Profile as a record of achievement."

**Section 3 covers Welfare Requirements starting with the general legal requirements and then laying out, in grid form, 'Specific Legal Requirements' and 'Statutory guidance to which providers must have regard'.**

The EYFS states that "both the general and specific legal requirements have the force of regulations and therefore must be complied with by all early years providers." How the 'welfare requirements are met' is laid out in three sections, which have been broadly listed below. The initial headings are the general legal requirement, followed by the overarching statement and then, in brackets, the specific areas are listed. This gives an idea of what the areas encompass, not the actual specific requirements which are many. Ensure that you look carefully at the specific legal requirements in the EYFS framework, which can be ordered or downloaded from the Department for Children, Families and School website ([www.standards.dcsf.gov.uk](http://www.standards.dcsf.gov.uk)).

The following should give an initial overview.

### **Safeguarding and promoting children's welfare**

- The provider must take necessary steps to safeguard and promote the welfare of children (the specific areas are Safeguarding, Information and Complaints, Premises and Security, Outings and Equality of Opportunity).
- The provider must promote the good health of the children, take necessary steps to prevent the spread of infection, and take appropriate action when they are ill (Medicines, Illnesses and Injuries, Food and Drink and Smoking).
- Children's behaviour must be managed effectively and in a manner appropriate for their stage of development and particular individual needs (Behaviour management).

### **Suitable people**

- Providers must ensure that adults looking after children, or having unsupervised access to them, are suitable to do so (specific areas are; Safe Recruitment, Providers must notify Ofsted of and Alcohol/other substances).
- Adults looking after children must have appropriate qualifications, training, skills and knowledge.
- Staffing arrangements must be organised to ensure safety and to meet the needs of the children.

### Suitable premises, environment and equipment

- Outdoor and indoor spaces, furniture, equipment and toys, must be safe and suitable for their purpose (specific areas are Risk Assessment and Premises: “the premises and equipment must be organised in a way that meets the needs of children”).

### Organisation

- Providers must plan and organise their systems to ensure that every child receives an enjoyable and challenging learning and developing experience that is tailored to meet their individual needs.

### Documentation

- Providers must maintain records, policies and procedures required for the safe and efficient management of the settings and to meet the needs of the children (specific areas are Data and Providers Records).

Here is a more detailed example. In Safeguarding and Promoting Children’s Welfare the *specific legal requirements* for Food and Drink are;

- “Where children are provided with meals, snacks and drinks, these must be healthy, balanced and nutritious. Those responsible for the preparation and handling of food must be competent to do so.”
- “Fresh drinking water must be available at all times.”
- “Providers must notify Ofsted of any food poisoning affecting two or more children looked after on the premises. An Early Years provider, who, without reasonable excuse, fails to comply with this requirement, commits an offence.”

The statutory guidance follows the specific legal requirements in each case. The guidance is what the provider has to have ‘regard for’, which means that getting a good Ofsted inspection report will require evidence of regard for the guidance.

### Section 4 – lists other Information

It highlights that the specific EYFS requirements sit alongside other legal implications, such as employment law (look on Acas website [www.acas.org.uk](http://www.acas.org.uk)), anti-discrimination legislation ([www.equalities.gov.uk](http://www.equalities.gov.uk)), health and safety legislation ([www.hse.gov.uk](http://www.hse.gov.uk)), data collection regulations ([www.standards.dfes.gov.uk](http://www.standards.dfes.gov.uk) and [www.dataprotectionact.org/3html](http://www.dataprotectionact.org/3html)) and duty of care (there are several areas that this covers e.g. Safeguarding Vulnerable Groups Act 2006 and the Children’s Act 2004). This section then looks at

Competency in English, Exemptions, Inspection and Regulation, Local Authorities and where to go for help.

**Appendix 1** lists the assessment scales of the EYFS Profile. The details to these scales are found in the EYFS Profile booklet produced for practitioners. Each Learning and Development area (e.g. Personal, Social and Emotional Development) has assessment scales (there are 13 in total) and each of these has 9 points: **1–3** describes a child who is progressing towards the early learning goals, **4–8** are drawn from the early learning goals and **9** describes a child who has developed beyond the early learning goals.

***It does make clear that children will not necessarily follow the pattern set by the early learning goals. The goals are there to enhance the understanding of where a child’s development is, so that their individual needs can be planned for and their learning enriched by appropriately extending their play activities.***

**Appendix 2** details the specific legal requirements for adult to children ratios. The numbers of children at certain ages, the numbers of staff required, at specific qualification levels (as defined by the Children’s Workforce Development Council) and the type of setting the children are attending (e.g. nursery classes in schools) are specified. A useful glossary follows which explains terms commonly used in childcare. This may be the best place to start if you are unfamiliar with childcare.

*The Statutory Framework for the Early Years Foundation Stage* with its lists of specific statutory requirements should be carefully gone through by a childcare committee as it defines the law and forms the basis of the Ofsted inspection process. You might give the task to one or two people to lend support and understanding to “what your children do” and how to support the staff to deliver the EYFS.

**If you are a new childcare organisation and need to register with Ofsted, contact the West Sussex Early Childhood Service via the Children’s/Family Information Service (01234 777807) for support and guidance.**

Contact Ofsted for their registration document and guidance notes. For any other information with regard to the Childcare Act 2006 or the Early Years Foundation Stage go to [www.dcsf.gov.uk](http://www.dcsf.gov.uk) and [www.surestart.gov.uk](http://www.surestart.gov.uk).

Also see **Section 6.2: The Early Years Foundation Stage** and Ofsted inspection and monitoring role.

### 3.2 The Criminal Records Bureau (CRB), disclosure and the Safeguarding Vulnerable Groups Act 2006

In order to reduce abuse the Criminal Records Bureau (CRB) was set up in 2002 to help organisations in the public, private and voluntary sector by identifying candidates who may be unsuitable to work with children or vulnerable adults. When, as a paid employee or a volunteer, you are going to come into contact with children or vulnerable adults then a CRB check will be required. This service is termed '**Disclosure**'. There are two types of disclosure **standard** and **enhanced**.

**In childcare an enhanced disclosure is always required.**

These disclosures cannot be obtained by individuals but are available to those people working for organisations or professions listed in the Exceptions Order to the Rehabilitation of Offenders Act 1974. Organisations can be registered with the CRB and, for example, Ofsted, these are known as 'umbrella bodies'. There is a fee to be paid for the CRB disclosure and most umbrella bodies will charge an administration fee. Volunteers receive their disclosure free, but may have to pay an administration fee.

Each group that registers with the CRB will countersign for applicants from certain types of organisations and/or geographical areas. These umbrella bodies may require an agreement with the chair or leader of a group (who will deal with the application forms and verify the evidence of identity that is required (i.e. passport, driving licence, birth certificate, P45 or P60 and marriage certificate) stating that they will abide by the *CRB Code of Practice* (please note that a new code of practice was adopted April 2009 [www.crb.gov.uk](http://www.crb.gov.uk)), which includes policies on the recruitment of ex-offenders and the use, storage and disposal of disclosure information. **Whoever does this must already have an enhanced disclosure. It is very important to read the applicant's Guide to Completing the CRB Application Form.**

**Disclosures provide information from the following sources:**

- any information held on the Police National Computer (convictions, cautions, warnings or reprimands)
- any relevant non-conviction information held by local police forces (enhanced disclosure only)
- the Government's Protection of Children Act list (POCA)
- the Government's Protection of Vulnerable Adults list (POVA)

- information from the Department for Children, Schools and Families under section 142 of the Education Act 2002 (formerly known as 'List 99').

All staff working in childcare settings are required to have an enhanced CRB disclosure. **It is the committee as the employer that need to apply for the disclosure as a required element of the safe recruitment of people working in childcare for the protection of children.**

At the time of writing, Ofsted will countersign the supervisor's/manager's and the Registered Person's application (usually the chair on behalf of the committee). All other staff and committee members (NB only those working or volunteering in an Ofsted registered setting) will need to go through one of three umbrella bodies that Ofsted have contracted to countersign applications for them. These are Nestor Primecare Services Ltd, TMG CRB and Capita Education Resourcing (CER). This service maintains a subsidy for childcare settings and began operating in October 2005.

**When safeguarding children it is very important to make sure you have the latest information. Please telephone Ofsted on 08456 404040 to make sure you have the most recent information.**

So you wanted me to make the arrangements for the new chair... well, I've sent all of its details to OFSTED and the Criminal Records Bureau, but I haven't heard back from them yet...



I'm not too sure how to explain all this to you, Gus...



*John*

The **Bichard Enquiry Report 2004** identified systematic failures in the current vetting practices, following the conviction of Ian Huntley for the murders of Jessica Chapman and Holly Wells. In his Recommendation 19 Bichard called for a new arrangement whereby those who wish to work with children and vulnerable adults are registered, confirming that there is no known reason for them not to work with such vulnerable client groups.

#### The present system is considered flawed because:

- CRB information is only certain to be accurate on the day of issue
- there is no follow up should new information come to light after the disclosure
- inconsistent decisions are being made by employers on the basis of CRB disclosure information
- there are inconsistencies between the former list 99, the POCA list and the POVA list (see above, these are sources of information used in disclosure applications)
- there are inconsistencies between police authorities in the disclosure of police information

#### Other problems are:

- repeated costs of updating employees' CRB disclosures
- time lost while waiting for a prospective new employee to be checked and
- lack of 'portability' of the disclosure from job to job or voluntary post to voluntary post.

**If you have allowed a new member of staff to start work at your childcare setting before their CRB disclosure arrives (this is NOT recommended) then that person must not be allowed to work alone with children.** Not all employees working with children are eligible for an enhanced disclosure, e.g. nannies employed by parents. Also there is confusion over the distinction between 'normal' and 'regular' contact with children with regard to eligibility for a Standard or Enhanced Disclosure which Bichard condemned.

The **Safeguarding Vulnerable Groups Act 2006** set out a legal framework, yet to be fully implemented (at time of publication, June 2008), for a new vetting and barring scheme and an Independent Barring Board (the statutory body), now known as the **Independent Safeguarding Authority (ISA)**. The idea is that this one body will have all the appropriate information to ascertain whether an individual is to be barred from working with children and or vulnerable adults. The Act states that certain activities in relation to vulnerable groups are '**regulated**' and some are '**controlled**'.

**Regulated activities** define who must belong to the vetting scheme. The activities covered are:

- any activity which involves contact with children or vulnerable adults and is of a specified nature (e.g. teaching, training, care, advice, transport and supervision), frequently, intensively or overnight
- any activity allowing contact with children or vulnerable adults in a specified place e.g. schools, frequently or intensively
- fostering and childcare
- certain defined positions of responsibility e.g. school governors, director of social services, trustees of certain charities (*childcare will certainly fall under this category*).

#### Duties and responsibilities under regulated activity:

- barred individuals must not undertake regulated activities
- to undertake a regulated activity an individual must be a member of the **vetting and barring** scheme.
- an employer must not engage "in regulated activity" a barred person or a person who is not a member of the vetting and barring scheme. **It will be an offence for any barred person to work in regulated activities, and for any employer to employ someone he or she knows to be barred.**
- an employer must check that a prospective employee who is in regulated activity is a member of the scheme.
- there is no distinction made between paid and unpaid work.
- personal and family relationships are not covered.

**Controlled activity:**

It will be mandatory to check individuals in a controlled activity. A barred person can be employed in a controlled activity, providing safeguards have been put in place:

- ancillary support work in general health, NHS, adult social care and FE settings (e.g. cleaner, caretaker, shop worker, catering staff, car park attendant or receptionist),
- those working for specified organisations (e.g. a Local Authority) with frequent access to sensitive records about children and vulnerable adults.

**Employer duty to refer:**

- **employers, professional and regulatory bodies, and child/adult protection teams in Local Authorities** have a **duty to refer** relevant information.
- all other employers of those working with children and/or vulnerable adults may also refer.
- parents/private employers should go to a statutory agency who can investigate and refer if appropriate (e.g. social services or the police).
- the Independent Safeguarding Authority will inform professional and regulatory bodies when it bars someone, so that their professional registration can also be reviewed.

**The Safeguarding Vulnerable Groups Act 2006 provides for the following improvements:**

- integration of lists: POCA, POVA, List 99 and Disqualification Orders
- pre-employment vetting: barring decisions made prior to employment
- consistent decisions by experts: the Independent Safeguarding Authority
- continuous updating: notification if a person's status in the Scheme changes
- wider workforce coverage: POVA applies to regulated social care settings only
- reduction in cost and delay of repeat checks: online checks
- wide range of sources: to include referrals from employers, inspectorates and professional regulators
- empowering parents, carers and individuals: giving them the ability to check status

The Independent Safeguarding Authority will maintain the barred lists and decide to include individuals on the barred lists. They will consider representations and comprise a balance of different expertise.

**The Criminal Records Bureau will:**

- be the body that **receives** and **organises the applications** for registration to the vetting and barring scheme,
- **gather** and **monitor information** for the Independent Safeguarding Authority,
- **administer** automatic inclusions on the list and cases where there is no information,
- **provide** the facility for **online checks** and continuous updates.

**Scheme operation**

- the status of individuals is continuously updated on receipt of new information, such as new convictions or referrals from employers,
- employers are notified, **where they have registered an interest**, if the status of their employee changes,
- scheme membership is fully portable.

At the time of writing a consultation period is in process, defining operational aspects of the legislation so for more information and to register for updates go to [www.isa-gov.org.uk](http://www.isa-gov.org.uk) (the Independent Safeguarding Authority website) and [www.crb.gov.uk](http://www.crb.gov.uk) (Criminal Records Bureau website). The committee/trustees of a charitable childcare group act as an employer and are also required to register as members of a 'regulated activity' themselves; so there will be a dual aspect to following this new legislation.

### 3.3 The Charity Commission and the Charities Act 2006

The Charity Commission is the statutory body that regulates all the registered and unregistered charities in England and Wales. The requirement to register relates to a charity's gross annual income and under the Charities Act 2006 the threshold has been raised from more than £1,000 to £5,000. It is possible for charities with incomes of less than £5,000 to register voluntarily. The Commission have streamlined their registration form which can be obtained from their website ([www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)) where you can now register online. To find 'how to register' guidance, go to frequently asked questions (FAQs) on their website and follow the links. Each FAQ has a list of other related questions; these are a valuable resource. Another useful resource is a booklet *Charities Act 2006 What trustees need to know*, from the Cabinet Office, Office of the Third Sector downloadable from the Charity Commission's website. Excerpts from it can be found below.

The new Act confirms and preserves the Charity Commission's independence from government ministers and government departments. The Commission must hold an AGM that is open to the public and it has five new objectives that it is to pursue: **public confidence, public benefit, compliance, promotion of good use of charitable resources and accountability.**

#### The aims of the act are:

- to make life simpler for trustees
- to provide new safeguards to uphold public trust.

There are new provisions for transferring assets, winding up, changing objects and merging charities.

In order to gain the benefits of incorporation without dual registration, regulation and obligations, a new legal structure has been introduced: the Charitable Incorporated Organisation (CIO) – all CIOs must register with the Charity Commission.

The Act also modernises the definition of 'charitable purposes' (the charitable purpose of childcare settings comes under 'the Advancement of Education').

All charities, both new and established, will have to demonstrate how their purposes benefit the public. There is a new list of charitable purposes, and any charitable purpose not on the list can be included thereby allowing for future flexibility.

The Charity Commission is charged with raising awareness of the ways in which charities deliver public benefit.

The Act strengthens the charity sector's need for transparency and accountability.

It should be cheaper and easier to challenge the Charity Commission's decisions through the Charity Tribunal – helping charity law to develop flexibly and improve the Charity Commission's accountability.

#### The thresholds for requiring an audit and examination of charity accounts have changed

(annual returns, accounts and reports must be submitted to the Charity Commission within ten months after the end of the charity's financial year):

- charities with annual incomes of less than £500,000 do not need professional accounting,
- all charities with an annual income of more than £10,000 must submit to the Charity Commission an annual return, the charity's accounts and an annual report (This can be done online now).

Unincorporated Charities annual income:

- accounts of more than £10,000 must be examined by an independent examiner,
- if the accounts are greater than £250,000 then the independent examiner must be a member of a professional body named in the Act,
- charities who have an income of less than £10,000 must have accounts prepared and ready to send to the Charity Commission on request.

Charitable Companies' annual income

- less than £90,000 – no professional audit required or accountants report unless assets of over £2.8 million.

An independent examiner is defined as a "*person independent of the trustees who is responsibly believed to have the necessary ability and practical experience to make a competent and impartial examination of the Charity's accounts.*"

Under the new Act it is much easier to amend the charity's governing documents (your constitution or trust deed for unincorporated charities) and your 'purposes' (although they will need to be very similar). The act gives older charities greater freedom to update their purposes.

### Is the role of a trustee still a voluntary one?

#### YES

However trustees can now be paid for providing goods or services (e.g. legal work, plumbing or electrical services) to the charity, provided that:

- terms are set out in a written agreement
- the amount paid is reasonable given the services provided
- the trustees agree that it is in the best interests of the charity i.e. it saves money or provides a better service
- the benefiting trustees are in the minority
- the governing document of the charity does not prohibit the relevant person receiving payment
- the trustees who benefit cannot take part in any decisions about the agreement
- there is a duty to have regard for the Charity Commission's Guidance
- there is a duty of care (Trustees Act 2000)

So you cannot earn money from being a trustee of a charity by doing committee work but these changes mean that under the above conditions it is possible to charge the charity for specific goods or services. With childcare groups this could mean working in the setting, accountancy, legal work or other appropriate services. In most cases the childcare charity will need to amend its constitution (it is included in the Pre-school Alliance 2008 model constitution) but this change will give greater flexibility. It must also be remembered that the childcare charity must be able to afford any fees or charges.

### 3.4 Trustee/committee liability

It is rare for a trustee to suffer actual financial loss. The threat of liability should keep minds focussed on maintaining the group's sustainability, however a creditor also is required to sue the trustee. As suing involves recourse to the law with its inherent costs some creditors don't pursue this option. Much depends on who the creditor is and how much they are owed.

The new Act grants the Charity Commission fresh powers to relieve trustees from personal liability for breach of trust or duty where they have acted honestly and reasonably and ought to be fairly excused. Many charities previously needed to get permission from the Charity Commission to spend charity money on trustee indemnity insurance. They no longer need permission, but such insurance generally excludes costs and fines from trustees acting in bad faith.

#### Trustee indemnity insurance commonly covers:

- fraud or dishonesty by staff, agents or volunteers
- fines for PAYE or National Insurance calculations
- awards for wrongful dismissal
- loss for bad investment decisions
- libel or negligence
- loss of documents

#### Common exclusions

- liabilities under a contractual arrangement
- failure to effect proper insurances
- intentional losses
- indemnity against professional advice
- pension trusts

Information on trustee liability can be found in various Charity Commission booklets. These are very helpful in particular:

**CC3 *The Essential Trustee – what you need to know*,  
CC8 *Internal Financial Controls for Charities*,  
CC12 *Managing Financial Difficulties and Insolvency*,  
CC60 *The Hallmarks of an Effective Charity* and  
CC37 *Charities and Contracts*.**

The following extracts included here are to give a brief overview of the legal aspects of trustee liability and **are taken directly from CC12 *Managing Financial Difficulties and Insolvency*** (the numbers refer not to the pages but to the points as marked in the booklet):

- **8** – “Unincorporated charities are not ‘legal persons’ and cannot technically incur liabilities, which are instead incurred by their trustees, acting on their behalf. Unincorporated charities cannot, therefore, technically become insolvent. However, a charity may reach the financial state where the value of the assets in the trust which are available to the trustees to settle their liabilities are insufficient. In the context of unincorporated charities “insolvency” is used to describe this situation, and the tests referred to in paragraph 6 may be relevant when deciding whether an unincorporated charity has reached it.”
- **9** – “As long as the decision to incur a liability on behalf of the charity was properly made (e.g. at a meeting of which full notice had been given to all of the trustees), then each and every trustee shares responsibility for that liability, unless the terms of the agreement incurring the liability specify otherwise. Trustees normally have a right of recourse to the trust assets for reimbursement of liabilities properly incurred. In most circumstances both the responsibility and the right of recourse remain even

after an individual has retired as a trustee (but note that this is not the case when the liability stems from a contract of employment – any claims against the trustees under that contract are against the trustee body as it stands at the time). The concern for trustees is that, unless the debts and liabilities have been incurred on the basis that they will only have to be met if there are sufficient funds in the trust to do so, the trustees may have to meet the debts and liabilities personally if there are in fact insufficient funds in the trust.”

- **64** – “Where a liability has been properly incurred by the trustees of an unincorporated charity, but the charity does not have sufficient assets to meet the liability, those trustees may have to meet the shortfall personally. How this deficit is to be shared between the trustees can depend on the terms of the agreement which gave rise to the liability, but normally the creditor will be able to sue any of the trustees for the whole liability. A trustee who has to pay more than his or her share may claim a fair contribution from the other trustees. This means in effect that any deficit will be shared equally between those of the trustees who can be found, and who have the means to pay, unless they agree otherwise among themselves.”

The above-mentioned booklets can be downloaded from the Charity Commission website:

[www.charity-commission.gov.uk](http://www.charity-commission.gov.uk)

It is very important for committee members to check on the appropriateness of their insurance and what it covers them for. Insurance companies can also be a good source of risk assessment and legal advice. For further advice about insurance see **Section 4.5**.

### 3.5 Health check

Yes / No Action to take

Are you aware that the law governing childcare is the *Statutory Framework for the Early Years Foundation Stage*? Have you got a copy and read the specific legal requirements?

For an initial overview, please see **Section 3.1** of this support pack. Contact the Department for Children, Schools and Families [www.standards.dcsf.gov.uk/eyfs](http://www.standards.dcsf.gov.uk/eyfs) to download a copy, or call 0845 6055560 to order a copy.

Are you aware that as a provider there are other legal duties including: employment laws, anti-discriminatory legislation, health and safety legislation, data collection regulations and duty of care?

See **Section 2.4: *Getting it right legally*** for a general list of the Acts and Statutory Instruments you might need to be aware of. Useful information about these other legal duties, the relevant legislation and guides to the legislation can be found from the following web addresses:  
[www.dcsf.gov.uk](http://www.dcsf.gov.uk) (Department for Children, Schools and Families)  
[www.opsi.gov.uk/acts](http://www.opsi.gov.uk/acts) (Office of the Public Sector Information)  
[www.hmso.gov.uk](http://www.hmso.gov.uk) (Her Majesty's Stationery Office)  
[www.berr.gov.uk](http://www.berr.gov.uk) (Department for Business, Enterprise and Regulatory Reform)  
[www.acas.org.uk](http://www.acas.org.uk) (Advisory, Conciliation and Arbitration Service)  
[www.hse.gov.uk](http://www.hse.gov.uk) (Health and Safety Executive)  
[www.ico.gov.uk](http://www.ico.gov.uk) (Information Commissioners Office)  
[www.direct.gov.uk](http://www.direct.gov.uk) (Public Services information website)

Do all staff and committee members have an enhanced CRB disclosure? Are you aware of the Independent Safeguarding Authority? How will safeguarding arrangements change with the introduction of the legislation brought about by the Safeguarding Vulnerable Groups Act 2006? Are you aware of the differences between a regulated activity and a controlled activity? What are your responsibilities as an employer with regard to safeguarding?

Check that you have a record of staff and committee members' CRB enhanced disclosures – you need to keep the name, job title, date and unique number (do not keep the actual form for longer than six months). See the CRB code of practice. Further information can be found at [www.crb.gov.uk](http://www.crb.gov.uk)  
Please see **Section 3.2** for an overview of what changes the Act makes to safeguarding (including a regulated activity and a controlled activity), why the changes have been made and how it will affect employers.  
For more information and updates go to [www.isa-gov.org.uk](http://www.isa-gov.org.uk) (the Independent Safeguarding Authority website). Please note that a new safeguarding unit for the Third Sector (Charities and Voluntary Organisations), is being funded by the DCSF working with the NSPCC and Children England (formerly NCVCCO). The new unit will support and challenge the third sector to meet effective safeguarding standards.

Is your childcare group a registered charity? How much do you need to turn over to be required by law to register? Can you earn money from the charity if you are a trustee?

If your group earns more than £5,000 per year you are required to register as a charity. See **Section 3.3** for an overview of the Charities Act 2006. You cannot earn money from being a trustee of a charity, but the Act has made some changes that mean that under certain conditions it is possible to charge the charity for work done (but **not** committee work). E.g. it is now possible to amend your constitution to include the possibility of a minority of committee members working in the childcare setting or being offered remuneration for goods or services at a reasonable rate. Refer to the booklet *What Trustees Need to Know* [www.charity-commission.gov.uk](http://www.charity-commission.gov.uk) or [www.communities.gov.uk](http://www.communities.gov.uk)

Are you concerned about your personal liability as a member of the committee?

See **Section 3.4** and **Section 1.5: *Health check***.  
Booklet CC12 from the Charity Commission deals with insolvency issues in charities and clearly defines trustee liability.

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