

# Legislation updates for 09.2023

- Guidance for childminders -

A free Information Guide

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## Legislation updates for September 2023

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In this quick guidance document, we will unpick:

\*\*Updates to the EYFS from 2021 to 2023.

\*\*Updates to the Ofsted early years inspection handbook.

\*\*Updates to Keeping Children Safe in Education (KCSIE).

\*\*What next – your update checklist.

\*\*References to documents noted in the guidance.

## Updates to the EYFS 2023

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The statutory framework in England is the Early Years Foundation Stage (EYFS). The EYFS was updated on Sept 4th, 2023, with minor wording changes from the 2021 version.

All early years providers - childminders, nurseries, pre-schools etc - must comply with all parts of the EYFS unless they have applied for and gained an exemption. The EYFS sets out the minimum standards for early years childcare in 3 sections:

\*\*The learning and development requirements.

\*\*The assessment requirements.

\*\*The safeguarding and welfare requirements.

Note that there are separate statutory frameworks for Scotland and Wales - this information is for providers in England.

The changes to the EYFS are as follows:

\*\*The wording for the sections on variations has been updated to clarify that childminders can make exceptions for our own child – it used to say ‘baby’.

\*\*The section on providing adequate supervision whilst eating has been expanded to state that it means children must be in sight and hearing of a member of staff while eating.

\*\*There have been a lot of questions from colleagues about changes to staff qualifications, but this is not for childminders – note footnote 35: ‘These qualification requirements do not apply to out-of-school provision for reception aged children (see paragraph 3.41), and/or childminders.’

\*\*Ratios for 2-year-olds in nurseries have changed from 1:4 to 1:5 – this does not apply to childminders.

The learning and development requirements state that all early years providers must support children's learning and development. Providers must plan for children's learning using the 7 educational programmes set out in the EYFS to deliver quality learning experiences and have the highest expectations for every child. Ofsted inspect this under the ‘quality of education’ judgement in the early years inspection handbook – we will look at the ‘good’ grade descriptors for quality of education in a moment.

## Updates to the Ofsted early years inspection handbook

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The Ofsted early years inspection handbook has been revised for use from Sept 2023. These are the main changes highlighted by Ofsted in their summary document, for all types of providers including childminders. I have added the point / paragraph numbers for ease of reading –

**\*\*Expectations for inspector conduct during inspections (points 5 – 7).**

**\*\*Quite a lot of new wording to the section about how Ofsted judge safeguarding including a definition of what they mean by a ‘positive culture of safeguarding’ (points 57 - 60) – I will unpick this in a moment.**

**\*\*The section on what inspectors should consider when deciding if a provider has the capacity to improve has been expanded (point 128).**

**\*\*Clarification of who the inspection outcome may be shared with (point 150).**

**\*\*An amendment in the quality of education judgement to refer to how providers use assessment to plan suitable activities – ‘This includes planning suitable activities, providing opportunities for children to practise and responding to specific needs’ (point 185).**

**\*\*Clearer information about the link between your curriculum and the behaviours and attitudes of the children at the setting (point 186).**

First, we will look at the activity update in more detail: the inspection handbook states that Ofsted have made, ‘An amendment in the quality of education judgement to refer to how providers use assessment to plan suitable activities – this includes planning suitable activities, providing opportunities for children to practise and responding to specific needs’ (point 185).

**Point 185** in the Ofsted early years inspection handbook covers the grade descriptors for ‘good’ in quality of education. The requirements cover:

**\*\*Curriculum** – ambitious for all children... to include knowledge and cultural capital. The expectations is that we take what the children already know and can do and build on it in the early years setting, regularly liaising with parents to support home learning and find out what the child is learning at home, so we can complement it in the setting.

**\*\*Curriculum** – well planned and sequenced... to deliver knowledge and skills for future learning. Ofsted talk about curriculum a lot in their ‘best start in life’ review because the quality of the early years curriculum provides them with the foundations for later learning. They believe that their ‘best start in life’ review includes good tips for curriculum and pedagogy (teaching).

**\*\*Curriculum** – ambitious for all... to meet the needs of all children, including children with special educational needs and / or disabilities (SEND). The Ofsted early years inspection handbook is clear that they want to see a curriculum that is ambitious for all children, including children with SEND. This means, instead of having low expectations for a child because they have SEND, the aim should be to teach all children the same curriculum and adapt it for each child's needs.

**\*\*Curriculum** – meaningful learning linked to the EYFS 7 areas of learning as a starting point... DfE call the 7 areas of learning the 'educational programmes' and they are statutory. Ofsted state that the curriculum should 'put the meat on the bones' of the educational programmes. DfE has provided the non-statutory 'Development Matters 2021 as a starting point, but providers will need to develop this to suit children's learning needs.

**\*\*Curriculum** – staff understand what they are teaching and leaders provide them with support. This is linked to the requirement in the EYFS to support staff with regular supervisions, observations and professional development / training opportunities. Ofsted refer in training to the evidence that a better trained early years workforce makes a difference and wants to see staff who are motivated to improve.

**\*\*Teaching** – clear and well communicated to the children... Ofsted talk about 'checking children understanding, identifying misconceptions and providing clear explanations to 'improve learning'. Ofsted provide a definition of teaching in the early years inspection handbook and state that they do not expect to see a preferred style of teaching. For example, you can explain that you use a certain – or blended – approach and they will look at how effective it is in raising outcomes for the children.

**\*\*Teaching** – adaptive... tailored so each child can access all areas of the curriculum. We know practitioners / experts such as Education Endowment Foundation are talking about 'adaptive teaching'. Differentiation has fallen out of favour, possibly because of the amount of paperwork it generates as teachers attempt to show they are differentiating the curriculum for each child. There is also a risk with differentiation that expectations will be lower for some children than others.

I think it is how most childminders work already. We recognise that some children will benefit from, for example, visual timetables, a different set of toys and games or more one-to-one time with a staff member and provide it automatically.

**\*\*Teaching** – clear and well delivered... in English, to support vocabulary and language acquisition, including reading books to 'excite and engage'. Ofsted have stated that they want to see practitioners reading to and singing songs and rhymes with children. Book language especially provides different vocabulary and structures than conversation which are seen as beneficial to life-long learning.

**\*\*Teaching** – to help children remember more... to integrate new knowledge. Ofsted have a focus on children learning and remembering more, sometimes to the detriment of skills acquisition – in the early years we must not forget the importance of children learning new skills that will help them to, for example, develop their gross and fine motor skills so they can eventually learn to write.

**\*\*Assessment** – to find out what children know and can do... to inform teaching, without unnecessary paperwork burdens. The statutory written / typed assessment required by the EYFS is the progress check at 2; we note that Ofsted talk about children making progress from their starting points, so we know that it's important to ask parents about starting points; we also know that children make the best progress when relationships are secure so we need to focus on the EYFS requirement to provide them with a named key person and the expectation that staff work closely with parents and other settings / agencies if appropriate.

**\*\*Assessment** – to allow staff to plan activities so children can practice and staff can respond to children's 'specific needs'. It is interesting to note the comment in the Dr Julian Grenier guidance to the curriculum guide 'Development Matters' where he says that we might need some paperwork for some children some of the time – for example, to help us support them and share information with other settings / agencies.

**\*\*Environment** – the EYFS includes enabling environments as part of the underpinning requirements... and Ofsted further state that it should be resourced with toys, games, books, activities etc so children can focus on learning. However, we also note that Ofsted talk about 'activities are not enough' and how every activity should be tracked back to children's prior learning and what we want them to learn next. Inspectors will ask 'what is the purpose of this activity?' and expect providers to talk about children's next steps.

**\*\*Partnership** – with parents to support home learning... and to encourage a love of reading. Partnership working is a key requirement in the EYFS and Ofsted expand it further to cover their focus on reading, so staff are expected to support children's reading at home. Practitioners do this in various different ways including by loaning books, suggesting families join and use the library, involving children in reading challenges, taking children to the bookshop for reading sessions and sharing what they are doing with parents etc.

**\*\*Knowledge and skills** – children learn well... there is a focus on vocabulary and language acquisition across the curriculum. Note the focus on books across the curriculum including communication and language, literacy and understanding the world.

**\*\*Moving on** – children are ready to move on... with the knowledge and skills they need for the next stage of their education – for example, when they go to school. The focus on 'school readiness' has not changed but the wording is now on 'moving on' and 'the next stage'.

The **learning and development requirements** in the EYFS state that all early years providers must support children's learning and development. Providers must plan for children's learning using the 7 educational programmes set out in the EYFS to deliver quality learning experiences and have the highest expectations for every child.

The 7 educational programmes cover how providers must support learning and development in children's:

**\*\*Communication and language** - including supporting listening, attention, understanding and speaking.

**\*\*Personal, social and emotional development** - including developing children's awareness of their emotions, sense of self, health and safety and supporting positive relationships.

**\*\*Physical development** - including gross and fine motor skills.

**\*\*Literacy** - including pre-reading and pre-writing skills.

**\*\*Mathematics** - including numbers, patterns and spatial connections.

**\*\*Understanding the world** - including teaching children about the world around them through multi-sensory experiences.

**\*\*Expressive arts and design** - including imaginative play, music and movement and arts and crafts.

DfE provides support for providers on their 'help for early years providers' website.

Curriculum focus areas in the early years inspection handbook include:

**\*\*Communication and language | literacy** – children enjoy, listen and respond with understanding to stories, songs and rhymes. We know that Ofsted are refocusing curricula on language and communication, partly because of the ongoing impact of Covid-19. For example, NASEN reported that more children than ever before need speech and language support when they start school as a result of lockdowns. NASEN report that there is a backlog of more than 65,000 children on the NHS waiting list to see a speech and language therapist, many waiting for longer than a year.

**\*\*Maths** – children understand early maths concepts... they can build on their understanding at school.

**\*\*PSED** – linked through children's knowledge and understanding, speech and language, conversations with friends. This is partly as a result of the longer-term impact of the pandemic and inspectors are looking for staff who create more opportunities for interactions between children and children and staff, to help develop children's social skills.

**\*\*Physical development** – children are active with good control and coordination... focus on both gross and fine motor skills as well as core strength and stability in the DfE 'help for early years providers' guidance.

I thought it might also be useful to unpick the **safeguarding section** of the inspection handbook (points 57 – 60) because this the only guidance we have now that Ofsted have removed their useful safeguarding guidance handbook.

Why have they removed the guidance document? Well, I asked Ofsted and they say it was just a re-write of the statutory guidance 'Keeping Children Safe in Education' (KCSIE). In relation to KCSIE, the EYFS states that it is for schools and, 'Other childcare providers may also find it helpful to refer to this guidance.

We will look in more detail at the underpinning requirements of KCSIE and the updates DfE have made to KCSIE for 2023 in a moment.

The new safeguarding section in the early years inspection handbook covers points 57 – 60.

**Point 57.** This section sets out our approach to inspecting safeguarding and should be read alongside the safeguarding and welfare requirements section of the EYFS.

The EYFS 2023 is statutory and Ofsted use their inspection handbook to explain how they will inspect providers on the EYFS.

**Point 58.** Inspectors will always look at how well children are helped and protected so that they are kept safe. Although inspectors will not provide a separate grade for this crucial aspect of a provider's work, they will always make a written judgement in the report about whether the arrangements for safeguarding children are effective.

If you read inspection reports, you will notice that there is a section at the end with information about safeguarding, which states whether it is effective or not. This is written after the inspector has asked the provider questions to check their safeguarding and child protection knowledge.

**Point 59.** All early years providers should have an open and positive culture around safeguarding that puts children's interests first. This means they:

- Protect children from serious harm, both online and offline.
- Are vigilant, maintaining an attitude of 'it could happen here'.
- Are open and transparent, sharing information with others and actively seeking expert advice, when required.
- Ensure that all those who work with children are trained well so that they understand their responsibilities and the systems and processes that the provision operates and are empowered to 'speak out' where there may be concerns.
- Actively seek and listen to the views and experiences of children, staff and parents, taking prompt but proportionate action to address any concerns, where needed.



- Have appropriate child protection arrangements, which:
  - Identify children who may need early help, and who are at risk of harm or have been harmed. This can include, but is not limited to, neglect, abuse, grooming, exploitation, sexual abuse and online harm.
  - Secure the help that children need and, if required, refer children in a timely way to those who have the expertise to help.
  - Manage safe recruitment and allegations about adults who may be a risk to children.
  - Are receptive to challenge and reflective of their own practices to ensure that safeguarding policies, systems and processes are kept under continuous review.

This is the section you need to focus on when accessing professional development opportunities, because it gives you lots of information about the sort of questions Ofsted will ask during inspection. Here are some sample questions and answers but please bear in mind they are very general because it's impossible to cover everything an inspector might ask you and all inspections flow differently, depending on what the inspector has spotted during their time with you –

**\*\*Do children feel safe here – how do you know?**

For example, you might say that you involve children in regular discussions about safety and you monitor their wellbeing and involvement during their time with you.

**\*\*How do you keep children safe online – in the setting and at home?**

For example, you might say that you have parental controls on all devices and children are always supervised; you talk to children (even little ones) about staying safe online and you share information and books (for example, the Childnet series) with parents.

**\*\*Which children might be at risk from radicalisation, exposure to extremism, bullying, domestic abuse / violence or female genital mutilation?**

For example, you might say that all children are at risk and you monitor all children's wellbeing equally.

**\*\*Explain the 4 main types of abuse – what would you look out for?**

This information should be part of your safeguarding policy and covers physical, emotional and sexual abuse and neglect (PENS). Note that some trainers include domestic abuse / violence in this list (changing the mnemonic from PENS to SPEND) but as the EYFS has not been updated to include this, I have not added it here. Ofsted has said that inspection is not a memory test and you can refer to documentation if you are unsure.

**\*\*Who would you approach in your local authority in relation to child protection – where is the information held and how can it be accessed by you / staff?**

For example, you might point out your safeguarding poster which is displayed on your noticeboard. Note that if you have staff, they should not have to ask you for access to the safeguarding policy or the local safeguarding partners / Ofsted contact information.

**\*\*When did you last attend / do child protection training to update your knowledge?**

Your local authority might have rules about how often you do training, but Ofsted do not. What they want to check is that you are keeping yourself updated with regular training and professional development opportunities and you can answer their questions confidently.

**\*\*How do you train staff (if you have them) on safeguarding / child protection and keep them updated?**

For example, you might say that your induction procedures include safeguarding / child protection information and then you ensure they attend training (online and in-house) and keep them updated. Your staff will be asked safeguarding questions which they must be able to answer confidently.

Note that you will find a useful safeguarding glossary from [Childcare.co.uk](https://www.childcare.co.uk) here if you want to check any of the terms used - <https://www.childcare.co.uk/childminderpaperwork>

**\*\*How do you involve parents, children and staff (if appropriate) in reviewing your aims and objectives for the future of your setting?**

For example, you might say that you regularly review how you are getting on, involving parents and children in the process by using questionnaires / verbal questions and make changes based on their suggestions where appropriate. You can then give an example of something you have consulted on / changed recently.

**\*\*Can you show me your complaints policy – how is it shared with parents?**

This is a statutory policy and must be in writing and given to parents to comply with the Childcare Register. For example, you might say that you give parents a copy during induction and update them annually and if something changes.

**\*\*Can you show me your safeguarding policy – how is it shared with parents?**

This is a statutory policy and must be in writing and given to parents to comply with the Childcare Register. For example, you might say that you give parents a copy during induction and update them annually and if something changes.

**\*\*How do you identify children who need early help?**

For example, you might talk about recent training you have attended which has provided you with the information you need to help you identify children at risk. You can then show how you have updated your safeguarding policy as a result of the training and shared a new copy with parents.

**\*\*If you have staff, you will need to talk to your inspector about safer recruitment procedures, show the staff file/s and discuss where you store LADO (local authority designated officer) reporting details.**

Your Local Authority might have a model policy for you to adapt and adopt or, if you are a Childcare.co.uk gold member, you will find information in the model policy here

- <https://www.childcare.co.uk/childminderpolicies/safeguarding>

**Point 60.** It is essential that inspectors are familiar with and take into account the statutory guidance in relation to safeguarding, 'Working together to safeguard children'

You will notice that point 60 in the handbook refers inspectors to the statutory guidance 'Working together to safeguard children'. The EYFS states that 'Providers must have regard to the government's statutory guidance 'Working Together to Safeguard Children' and "having regard" to these provisions means that early years providers must take them into account when providing early years provision and should not depart from them unless there is good reason for doing so.

Before buying a copy of 'Working together to safeguard children' bear in mind it is 116 pages long, regularly updated and can be accessed online. Similar advice applies to KCSIE and the Ofsted early years inspection handbook – they are all available online and can be easily searched from any device.

Note that Childcare.co.uk supports professional development by offering regular safeguarding webinar updates which are free on the night they are presented and recorded for Childcare.co.uk gold members to watch again - <https://www.childcare.co.uk/webinars>

You should also keep updated locally - for example, looking at your Local Safeguarding Partners website will tell you about the latest safeguarding 'trends' / focus areas in your local area, which you can then use as a starting point for professional development updates.

## Updates to Keeping Children Safe in Education

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The EYFS stays we must 'have regard' to this statutory guidance. It is mostly for schools but Ofsted state that they based their recently removed early years safeguarding inspection handbook on it, so it's guidance early years providers need to know about. Some of the underpinning statements in KCSIE include:

- \*\*A child means everyone under the age of 18 years.
- \*\*Children need the right help at the right time to keep them safe from harm.
- \*\*Where safeguarding is concerned, staff are reminded to remember, 'It could happen here'.
- \*\*Everyone is responsible for children's welfare and keeping the environment safe.

To ensure you comply with the statutory guidance, you must:

- \*\*Always act in the best interests of the child.
- \*\*Know how to identify children who might need early help or intervention.
- \*\*Know the different types of abuse so you can identify children who might need help.
- \*\*Know the name of the designated safeguarding lead (DSL) and how to contact them.
- \*\*Know how to respond to a child's disclosure or allegation.
- \*\*Monitor staff behaviour, to keep children safe and be ready to 'blow the whistle' if you are concerned about a child.

KCSIE is updated annually in September by the DfE after a consultation on the intended changes.

Changes for 2023 which you need to be aware of include:

- \*\*Point 42 – stronger focus on responding to concerns about children who do not realise they are being exploited and 'may believe they are in a genuine romantic relationship'.
- \*\*Point 142 - reference to keeping children safe when using technology – what DfE call 'filtering and monitoring'. There is a DfE page on the subject and there are some webinars from the UK safer internet centre if you want to read more.
- \*\*Point 150 – a link to the Ofsted news YouTube channel which is currently being populated with short, informative inspection guidance videos for both schools and early years providers.
- \*\*Page 144 - changes to the wording around children missing from education to include children who are 'absent' because that might be an indication of wider safeguarding concerns about sexual abuse, sexual exploitation or child criminal exploitation.
- \*\*Part 3 – additional information about online pre-recruitment checks for shortlisted candidates. These should be used cautiously – for example, you need to be mindful about how online searches on potential staff members might impact if you refuse the contract based on the online search and the candidate challenges your choices.

## What next?

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The following steps will help you to ensure you remain updated:

- Download copies of the revised EYFS, Ofsted early years inspection handbook, KCSIE and Working together to safeguard children so you have the latest versions on your device (links to follow).
- Read through the new requirements in the EYFS and ensure you remain compliant.
- Read the Ofsted early year inspection handbook updates and make changes if necessary.
- Update yourself by reading at least part 1 of the Keeping Children Safe in Education guidance.

If you have any questions, the community on the Independent Childminders Facebook group is there to help and share good practice advice.

**You can use this space for notes:**

## References

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The documents referenced in this guide include:

The EYFS 2023 (DfE) –

<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

Exemption guidance from DfE - <https://www.gov.uk/government/publications/the-early-years-foundation-stage-eyfs-learning-and-development-requirements-guidance-on-exemptions-for-early-years-providers>

Ofsted early years inspection handbook 2023 (Ofsted) –

<https://www.gov.uk/government/publications/early-years-inspection-handbook-eif>

Help for early years providers website (DfE) – <https://help-for-early-years-providers.education.gov.uk/>

Blog setting out Ofsted's priorities for 2023 –

<https://earlyyears.blog.gov.uk/2023/02/02/ofsteds-2023-priorities-for-early-years/>

Speech and language post-pandemic report (NASEN) –

<https://nasen.org.uk/news/more-early-speech-and-language-support-needed-result-lockdowns>

Best start in life review 1 (Ofsted) –

<https://www.gov.uk/government/publications/best-start-in-life-a-research-review-for-early-years/best-start-in-life-part-1-setting-the-scene>

Working together to safeguard children –

<https://www.gov.uk/government/publications/working-together-to-safeguard-children--2>

Keeping children safe in education (KCSIE) (DfE) –

<https://www.gov.uk/government/publications/keeping-children-safe-in-education--2>

Part 1 of the KCSIE 2023 statutory guidance (recommended reading) (DfE) –

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1181962/Keeping\\_children\\_safe\\_in\\_education\\_2023\\_-\\_part\\_one.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1181962/Keeping_children_safe_in_education_2023_-_part_one.pdf)

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