

ANGUS COUNCIL

ITEM No. 1 5

SOCIAL WORK COMMITTEE
EDUCATION COMMITTEE15 AUGUST 2000
22 AUGUST 2000

REGULATION OF EARLY EDUCATION AND CHILDCARE

JOINT REPORT BY THE DIRECTORS OF
SOCIAL WORK AND EDUCATION**ABSTRACT****This report:**

- Informs elected members of the publication by the Scottish Executive of a consultation paper "Regulation of Early Education and Childcare : The Way Ahead" (copies of which are available for perusal in the Members' Lounge) containing proposals to bring together regulations governing Early Education and Childcare.
- Seeks committee approval of the officer response to the consultation document. The response has been produced prior to committee consideration as the consultation period fell outwith the committee cycle.

1. RECOMMENDATIONS

It is recommended that Social Work and Education Committees, for their respective interests:-

- (i) note the contents of this report;
- (ii) approve the response (attached as an Appendix) which has been produced by officers of the Social Work and Education Departments.

2. INTRODUCTION

4.1 The paper sets out the Scottish Executive's plans for the future regulation of early education and childcare and reflects two other previous consultation processes which were carried out simultaneously:

a) The White Paper 'Aiming for Excellence' which set out the intention to create the Scottish Commission for the Regulation of Care with the responsibility for the regulation of daycare for children. A pre-legislative consultation paper has since looked at more detailed issues concerning the operation of the Commission.

b) The earlier consultation paper on 'Regulation of Early Education and Childcare' took account of the Commission's proposals but focussed on whether other improvements or changes to the regulatory system were necessary or desirable.

4.2 This document "Regulation of Early Education and Childcare : The Way Ahead", is the second consultation paper on the specific subject of early education and childcare and the latest in a series of consultation papers issued by the Scottish Executive with a direct bearing on the education and care of children aged 0-14. There are some issues which appear in more than one of the current range of consultation papers eg the qualification levels of staff working in pre-school centres and it would have been helpful if greater attention had been given to this issue of duplication of data collection by the Scottish Executive. In particular, it would have been helpful to be aware of the outcome of the consultation exercise on the Schools (Scotland)

Code 1956 as several references are made to this initiative in the body of the document.

- 4.3 The paper is welcomed and, in particular, the government's commitment to the development of the concept of a "level playing field" for service providers is to be applauded as the present arrangements for regulation have led to a number of difficulties in practice with the anomaly of different standards being required by different regulatory bodies. It would be better, however, if the playing field were to be "levelled up" to improve standards generally rather than levelled down in the areas of adult:child ratios and levels of staff qualification. In this regard it is clear that representations made by private providers have influenced government thinking.
- 4.4 There should also be recognition of the fact that in many cases it is working parents who are providers/carers, particularly in respect of out of school care arrangements. Without their commitment and support there would be difficulty in achieving targets described in the Childcare Strategy.
- 4.5 References to the Children (Scotland) Act 1995 are lacking in this consultation document. This is a surprising omission as councils are required to ensure that children are involved in a manner, appropriate to their age, to determine their views, opinions and ideas on service provision.
- 4.6 Although it is clear that the Scottish Executive wishes to repeal those elements of the Children Act 1989 which apply in Scotland it remains unclear as to how the legislative grounding for new regulations will be developed. As suggested by many in previous consultation exercises this matter should have been incorporated in the Children (Scotland) Act 1995 to encourage a more integrated approach for all children's services. Any new legislation which is framed to replace Part X of the Children Act 1989, must be explicit regarding the processes which are to be governed. Specifically, arrangements for registration and variation of registration, as well as those for inspection and enforcement, must be clear, efficient, effective and timely. They must also lead to regulatory practices which promote the key aims of the Childcare Strategy.
- 4.7 In terms of future regulation greater emphasis is to be placed on "outcomes" with "input requirements" being seen principally as safeguards. The sound reasons for this approach are acknowledged. However, there is a need to be wary of assessing daycare facilities and the young children in these facilities simply in terms of "required" outcomes. A child's progress cannot be summed up merely as a series of outcomes. Further work will be necessary to ensure that sound qualitative assessment mechanisms are developed.
- 4.8 The elements of the paper on which views are sought are: "The Way Ahead", "What Childcare to Regulate", "How to Regulate" and "Standards".
- 4.9 Any new standards to be prescribed should also take account of those requirements made by other regulatory agencies such as local authority planning departments. The introduction of new regulations provides an excellent opportunity to unify a number of related pieces of legislation.
- 4.10 The central focus of this document is upon children in the age group 3-8 with very little recognition of the very different needs of young children (0-3) or older school-aged children. However, the removal of the somewhat arbitrary watershed of eight years of age is welcomed.
- 4.11 The increasing burden of registration on voluntary committees must be acknowledged. Burgeoning legislative and regulatory requirements including those associated with the Childcare Partnership and Partner Providers' service level agreements with Education Departments are making parents increasingly wary of taking on the roles of committee members. The time involved is seen as being prohibitive and the legal liabilities which rest on committee members are often described as daunting. There are clear signs that it is becoming more difficult to recruit the committee members without whom the facilities cannot function. It is distinctly possible that individual voluntary groups may cease to exist leaving the council to fill the gap in provision.

3. FINANCIAL IMPLICATIONS

There are no financial implications arising directly from this report. However, when any new regulations are introduced further reports will be prepared for consideration by elected members.

4. CONSULTATION

The Chief Executive, the Director of Law and Administration and the Director of Finance have been consulted in the preparation of this report.

W B Robertson
Director of Social Work

J Anderson
Director of Education

NOTE: No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

REGULATION OF EARLY EDUCATION AND CHILDCARE**THE WAY AHEAD****CONSULTATION RESPONSE FROM ANGUS COUNCIL****SECTION 1:****INTRODUCTION – THE WAY AHEAD**

- 4.1 The need to unify the present unrelated regulatory systems is recognised and endorsed. The anomalies of the different regimes has long been a source of concern for council service departments and for providers of voluntary or private pre-school provision. At present, where a playgroup and nursery class co-exist in a primary school setting different standards are applied in terms of the premises, staff qualification and adult:pupil ratio.
- 4.2 Further clarification of the respective roles of the commission staff and HM Inspectors of schools (HMI) will be required. The proposals within the consultation document represent a very significant change for pre-school educational provision which is provided in schools. School provision will now be subject to two different forms of inspection – one for care arrangements on an annual basis and one for educational provision every six to seven years. Such regulation is considered unnecessary at any other stage in the educational system and may well lead to complaints from school staff who have never been subject to inspection in this aspect of provision.
- 4.3 Reference to achieving an effective and balanced system of regulation is welcome as undue emphasis on safety alone could easily result in a system which denies children the necessary challenges and excitement of childhood and growing up.

SECTION 2:**WHAT CHILDCARE TO REGULATE**

- 4.1 The intention to regulate local authority childcare provision in the same way as private and voluntary sector provision is accepted as sensible and overdue. However, the concept of a level playing field between local authority, private and voluntary providers offers scope for a diminution of existing provision in local authority pre-school centres. Children in their ante-pre-school and pre-school years are apparently considered to have similar if not identical needs and the adult:pupil ratio has been set at 1:10. During the course of the current school session every attempt has been made in Angus to keep the ante-pre-school year ratio of 1 adult:8 children. If Scottish Executive funding is based on the higher ratio this may well lead to a diminution of the present quality of service being offered. Furthermore, the issue of staff qualifications and the employment of staff without qualifications, which would be permitted in the short term at least, is arguably a retrograde step in terms of council provision and has the potential for under-valuing the importance of this key stage in a child's development.
- 4.2 It will be very important to ensure that parents are clear about the different applications of regulation within each set of premises. Limiting regulation for children over primary school age to "fit person checks" and not including: a check on the qualifications of staff, an assessment of the premises and the quality of the experience offered is a cause for concern. Without these areas of regulatory function it is hard to see how a poor facility can be required to improve. To say that this older age group of children will vote with their feet if the provision is unattractive is simplistic and does not support the needs of working parents in rural areas where there may be little choice in out of school care provision.
- 4.3 The voluntary code of practice for nanny agencies is welcomed.
- 4.4 It is important that there is clarity about the responsibility for the enforcement of the Employment Regulations in Scotland. It is of particular importance that any regulations drafted in Westminster cohere with the terms of the Children (Scotland) Act 1995 and the Childcare

Strategy for Scotland. There may be a possibility for confusion for parents in the proposed system given that this current consultation document is seeking views on the replacement of the Children Act 1989 which is UK legislation. Part X which pertains to Scotland is likely to be repealed.

- 4.5 It is unclear what is meant by use of the term "other safeguards" in para 23 and greater clarification of this statement is sought.
- 4.6 The government's commitment to establish a statutory index of persons deemed unsuitable to work with children in paid or unpaid capacities is welcomed but the management of this index remains unclear. Is it to be managed through the Commission for Care? How does this proposal sit with the rights of individuals as described in Human Rights Legislation?
- 4.7 Any new legislation must be linked to the Children (Scotland) Act 1995 and to existing Education Law.

SECTION 3: HOW TO REGULATE

- 4.1 The opportunity for the total integration of inspection regimes for care and education should not be missed. Wherever possible inspections should be undertaken on a joint basis thereby reinforcing the message of joint working. It is accepted that good quality care includes attention to learning opportunities and good quality education includes attention to social, emotional and care needs. Care will be required to ensure that the inspection process is balanced with adequate attention being paid to education.
- 4.2 Although the publication of "The Child at the Centre" is widely regarded as providing a sound basis for self-evaluation based on one set of performance indicators for all centres providing care and attention for three year olds there is an inherent tension between this document and minimum standards required under existing Registration and Inspection regulatory regimes. This issue must be addressed. It must also be noted that the very significant burden of self assessment is much more difficult for already busy parent committees to manage.
- 4.3 The importance of educational development is recognised by the council but there is some concern about an undue reliance upon educational attainment particularly for very young children. More emphasis should be given to learning and development through play and to the fact that children need time simply to be "children". The "Child at the Centre" cannot be applied to services for children aged 0-3 and is not appropriate for after school and holiday care.
- 4.4 Attention given to multi-disciplinary training for HM Inspectorate and Commission staff is welcome but greater opportunities for integration should be promoted. For instance, it remains unclear as to why HM Inspectorate and the Commission should not inspect at the same time in any given year.
- 4.5 The goals articulated in paragraph 12 are not fully addressed throughout the document and the particular emphasis on education is not considered appropriate for all provision. This emphasis does not in fact sit easily with the aim of the Childcare Strategy. Also, the focus on early years continues with little detailed description of the needs of older children and how these might be met by childcare provision.
- 4.6 Although "The Child at the Centre" is acknowledged as being a very useful core set of performance indicators it is considered that the issue of standards around care within a range of childcare settings including childminding and after school care needs further exemplification. It is recognised that work is currently underway in this area and publication of the new material is awaited with interest.
- 4.7 The extension of regulation to include all providers of pre-school education is welcomed.
- 4.8 The suggestion that local authorities will incur costs as a result of Registration and Inspection by the Commission is seen to be wholly inappropriate. No such charge is made of any

education authority following an inspection of a school by Her Majesty's Inspectorate. It is considered that this imposition of charges is an unfair burden to be placed upon the authority.

SECTION 4: STANDARDS

- 4.1 It is agreed that in future minimum input requirements should be the same for all providers delivering a similar service regardless of whether it is in the public, private or voluntary sector. However, there is a very real possibility, that unless adequate funding is available, this will lead to a position where few teachers work in the pre-school setting and that staff employed in that sector have qualifications of a lower level. Unless there is to be significant teacher involvement in pre-school settings it is difficult to see how staff will be able to respond to the challenges of "The Child at the Centre".
- 4.2 Reference is made throughout the document about the need to recognise the respective elements of care and education and, in that context, it will be important to clarify requirements for the regulation of the workforce. Will teachers who are already registered with the General Teaching Council also be required to register with the Scottish Social Services Council?
- 4.3 It is also hoped that a reasonable timescale will be allowed for providers to meet new requirements as, in particular, out of school care groups currently have huge funding and sustainability issues even though they are heavily supported through letting schemes and other subsidy/grant arrangements by the council.
- 4.4 The intention to move to a system of guidance which will recommend teacher involvement in pre-school education for all centres (local authority and the private and voluntary sector) is particularly welcome but greater clarification of this proposal is required as a matter of urgency. In particular, the question of funding for this proposal will require attention as will definition of the purpose and frequency of teacher contact in the pre-school setting.
- 4.5 It is disappointing to note that out of school care receives little attention in the document notwithstanding the fact that the development of this facility has been described as an imperative by the government.
- 4.6 Paragraph 19 describes adult:pupil ratios but it is unclear as to whether these are to be set in statute or guidance. The apparent response to pressure from the private sector is disappointing to note. Staffing ratios are very important for the safety of children and the lowering of the "level playing field" raises concerns for the safeguarding of children. The diminution of the staff:child ratios is a retrograde step. Ratios for outings should be more specific and include consideration of the number of children that any one childminder can supervise safely on an outing. Also, the proportion of skillseekers to be employed at any one time should be specified to reduce the likelihood of a facility having a staff team with half its members being very young and inexperienced workers.
- 4.7 Further guidance over ratios applying to younger children (under 2) would be helpful given that childminders are almost invariably working in isolation.
- 4.8 Standards should be set for the overall capping of numbers within any one care facility. Otherwise, this might allow the development of large services where children may feel lost. Other considerations should be taken into account when considering the appropriateness of premises including:
- The minimum space standards required in a single area. This will influence the maximum number of children who can be accommodated to ensure that opportunities are available for socialising.
 - Sleeping areas should be completely separate from living areas and not be included in living space measurements.
 - Nappy changing areas should be separate from sleeping areas and living areas and located in a separate dedicated room or in a designated area of the cloakroom.
 - Every child under 18 months should have a cot.
 - At least half the floor in baby rooms should be covered by suitable carpeting.

- Consideration should be given to the use of specified space requirements to be applied to childminders' homes.

