



Department  
for Education

# Public Sector Equality Duty

**Equalities Impact Assessment for  
consultation on Updating Regulation in  
the Early Years Foundation Stage (EYFS)**

**May 2023**

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## Introduction

This document records the analysis undertaken by the Department for Education (DfE) to enable Ministers to fulfil the requirements placed on them by the Public Sector Equality Duty (PSED) as set out in section 149 of the Equality Act 2010. The PSED requires the Minister to have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act;
- advance equality of opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a protected characteristic and those who do not.

## Brief outline of policy

These aims are also known as the three limbs of the PSED.

DfE is launching a consultation on a package of policy changes to the EYFS framework. The consultation seeks views on proposals around regulatory reform on areas such as qualifications that are designed to offer providers increased flexibility. This is alongside the intention to implement a childminder and group-based provider versions of the EYFS. The consultation was announced as part of the Spring Budget on 15 March 2023 to support reform of the childcare market.

The EYFS sets the standards all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe. The early years are a crucial opportunity for children to develop a broad range of knowledge and skills which provide a strong foundation for good future progress in life.

But we know that there are challenges. We are also proposing to make changes to alleviate known burdens and offer providers more flexibility. The aim is to ensure providers can operate successfully and focus on delivering children in their care with a high-quality early education.

In addition, the current EYFS framework is a long document covering the whole of the early years sector, therefore some requirements within it vary by provider type. The proposals in this document set out how we plan to make the EYFS a more usable document.

The key themes in the Consultation are:

- a) Creating two streamlined, provider-specific versions of the EYFS framework: one for childminders and one for group and school-based providers to make the EYFS framework quicker and easier to navigate for different provider types.
- b) Introducing more flexibilities into qualification requirements, including removing the requirement for level 3 qualified practitioners to hold a level 2 maths

qualification and introducing a new experience-based route to achieving level 3 status. Both proposed changes will remove barriers to accessing the early years profession and alleviate pressures around recruitment and retention faced by providers.

- c) Reforms to staff: child ratios – percentage of level 2 qualified staff per ratio. This proposal considers further reforms to ratios to support recruitment and retention challenges, by enabling staff an additional flexibility to utilise staff who may be suitable to be utilised within ratio despite not holding a level 2 qualification (e.g. where they have strong experience and are determined by the setting manager that they are suitable to be placed within ratio). Anecdotally we have heard from the sector that this would be of benefit, and would mean settings can continue to recruit staff who may be suitable despite not holding a level 2 qualification.
- d) Removal of requirement for childminder applicants to complete pre-registration EYFS training. Applicants will continue to be assessed on their understanding of the EYFS through pre-registration checks undertaken by Ofsted or childminder agencies. This proposal recognises that some applicants may already have the required knowledge, such as from previous roles in other early years settings, and therefore may not need to dedicate resource or time to additional training before they can become a childminder.
- e) Removing “or another approved level 6 qualification” from the EYFS when referring to level 6 staff:child ratios in early years settings. This is to make it clearer to early years settings and staff who can count in the level 6 ratios and reduce the amount of correspondence to the department.

## **Equalities Impact Assessment for creating two simplified versions of the EYFS framework: one for childminders and one for group and school-based providers**

### **Proposal and rationale**

1. We want to make the EYFS framework easier to navigate for all types of providers. Following detailed stakeholder engagement we have identified where we can streamline the EYFS, as well as a range of opportunities to ease burdens on practitioners by making changes to some specific requirements.
2. It is therefore our intention to create two simplified versions of the EYFS framework which reflect these proposed changes and clarifications: one for childminders and one for group and school-based providers. In both versions, DfE intends to modify language, reorder sentences and paragraphs, change references to provider type where relevant, and remove elements not relevant to the provider type in both versions of the EYFS framework.

3. By producing streamlined, provider-specific versions of the EYFS it is our intention that the EYFS requirements become clearer and easier to navigate and the document becomes shorter, saving practitioners' time.

## Analysis of impacts

### Age – positive impact

4. The proposed changes are specifically focused on the EYFS statutory framework, which is for children aged 0-5. Evidence shows that early child development is crucial for children's later outcomes and life chances, and the continued strengthening of support for the sector implementing the framework should therefore have a positive impact on children aged 0-5, and their later outcomes.

### Disability – positive impact

5. It can be time consuming and frustrating for parents of disabled children to find the right support they need for childcare and early education. It's important that parents have a wide range of choices for early childcare and education, including of childminders. As we expect this programme of work to make it easier to become and work as a childminder, and for nurseries to ensure they have the staff they need, it may have an indirect positive impact on disability should it lead to a greater availability and wider choices of early years providers. Furthermore, creating streamlined versions of the EYFS may have an indirect positive impact on disability as the guidance and communications will be clearer, which will help providers and practitioners with disabilities understand and implement the EYFS.

### Marriage and Civil Partnership – positive impact

6. The overarching aim of this programme of work is to increase the availability of childminders and widen access to childcare for parents/carers, so more children and families can benefit. This may have indirect positive impact on single parents under the protected characteristic of marriage and civil partnership. Around one in four families in the UK are thought to be single parent families<sup>1</sup>. It can be more difficult for single parents to find suitable childcare, for example they may require more flexibility than offered by some providers, and this can be especially hard for parents who have limited support networks and can't turn to friends or relatives if

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<sup>1</sup> [One-in-four-a-profile-of-single-parents-in-the-UK.compressed.pdf \(gingerbread.org.uk\)](https://www.gingerbread.org.uk/resources/one-in-four-a-profile-of-single-parents-in-the-uk-compressed.pdf)

they need help. Childminders often can offer a more flexible form of childcare, which may suit some single parents better.

#### Pregnancy and maternity – positive impact

7. We expect our proposals to have an indirect positive effect on women who share the protected characteristic of pregnancy and maternity via the overarching aim of this programme of work being to increase the availability of childminders and wider access to childcare.

#### Race (including nationality) – negative impact

8. Overall we believe most of the changes have a neutral impact on race.
  - However, as part of this work, one area within the framework we wish to consult on is potentially amending the requirement for practitioners to provide an environment which supports children with English as an Additional Language in developing their home language. At present this requirement is a “must”. Our assessment is it being a “must” could be an unreasonable request of some providers, particularly childminders, if the practitioner(s) do not speak any language other than English, especially if multiple children at the setting had multiple different home languages. Therefore, we plan to ask within the consultation whether the sector feels this requirement should be a “must”, a “should”, or a “may”. If this requirement is changed to a “should” or a “may”, it could negatively impact some children with a home language which is not English, some of whom are likely to share the characteristic of race. However, it should be noted at the very least the requirement will remain as at least a “may” in the document to encourage settings to consider how they could support children with English as an Additional Language. If this was changed to a “may”, we believe some settings will continue to offer such opportunities to children who need them, even though the word “may” holds no legal power. If it is changed to a “should”, providers would be expected to meet the requirement unless they have good reason not to. As a result of these mitigations the impact of the change is deemed to be low.

#### Sex – positive impact

9. Easing and increasing access to childcare may have an indirect positive impact on women, who are more likely to be the primary caregivers in the early years. Similarly, childminders and employees throughout the early years sector are more likely to be women, so simplifying the EYFS framework is more likely to have an impact on them.

*Other characteristics (gender reassignment, religion or belief, and sexual orientation) – no impact*

## Mitigations

- To mitigate the potential negative impacts to the protected characteristic of race of changing the requirement for practitioners to provide an environment which supports children with English as an Additional Language in developing their home language, we are recommending at least retaining the recommendation within the EYFS that practitioners “may” wish to provide such an environment. We believe that thanks to this recommendation, some settings will continue to offer such opportunities to children who need them. However within the consultation we are asking whether the sector believes this requirement is best as a “must”, “should” or “may”, and the response may indicate a stronger requirement being preferred, which would have even lower negative impact (if any at all).

## Overview of assessment of impact for creating two shorter, streamlined, provider-specific versions of the EYFS framework: one for childminders and one for group and school-based providers

Protected characteristic	Positive	Negative	Neutral*	No impact
Disability	x	-	-	-
Pregnancy and maternity	x	-	-	-
Marriage or civil partnership	x	-	-	-
Race	-	x	-	-
Religion or belief	-	-	-	x
Sex	x	-	-	-
Sexual orientation	-	-	-	x
Gender reassignment	-	-	-	x
Age	x	-	-	-



# Equalities Impact Assessment for changes to early years qualification regulations

## Proposal and Rationale

11. The Department will consult on introducing several flexibilities in qualification requirements.
12. We propose removing the requirement for level 3 practitioners to hold a level 2 maths qualification. This change will open the level 3 ratios to those otherwise qualified and capable practitioners who are simply unable to reach that level of maths skills and knowledge. The requirement will instead be placed on nursery managers, who will be responsible for ensuring their staff have the right level of maths knowledge to effectively deliver the EYFS curriculum.
13. We propose introducing a new experience-based route to achieving level 3 status. This route will be available to anyone holding a qualification that meets *most* (more than 50%) of the level 3 early years educator criteria, and candidates will undertake a period of supervised practice in a nursery setting to demonstrate that they are meeting all missing criteria. This period will typically last 6 months, after which evidence will be submitted to the DfE for review. Following successful completion of this experience-based route, the candidate will be eligible to count within the level 3 staff: child ratios. Candidates may already be working in the early years sector, or they may be working in a different sector entirely.
14. We propose relaxing qualification requirements outside of peak hours, so that there is no longer a required number of Level 2 and Level 3 staff at the beginning and end of the day. This change would allow settings to delegate their qualified and unqualified staff with greater autonomy and with consideration of the different skills needs between peak and off-peak hours. This would relieve pressure on settings to meet their ratio requirements during quieter periods.
15. We propose allowing students on long term placements and apprentices to count in ratios below their level of study, if the provider is satisfied they are competent and responsible. For example, those working towards a Level 3 qualification could count within the Level 2 ratios, and those working towards a Level 6 qualification could count within the Level 3 ratios. This would ease pressure on settings to meet their ratio requirements.
16. These proposed changes will remove barriers to accessing the early years profession and alleviate pressures around recruitment and retention faced by nurseries.

## Analysis of impacts

### Age – positive impact

17. The proposed changes are focused on growing the early years workforce by removing qualification barriers. Evidence shows that a large and stable workforce

is important for high quality provision and good child outcomes. The removal of qualification barriers will therefore have a positive impact on children aged 0-5, and their later outcomes.

#### Disability – positive impact

18. It can be time consuming and frustrating for parents of disabled children to find the right support they need for childcare and early education. It's important that parents have a wide range of choices for early childcare and education. As we expect these changes to make it easier to achieve and work at Level 3 early years practitioner status, it may have an indirect positive impact on disability should it lead to a greater availability and wider choices of early years providers. More Level 3 approved staff may also positively impact the quality and availability of support for SEND children within early years settings.

#### Marriage and Civil Partnership (only the first limb applies) – positive impact

19. Around one in four families in the UK are thought to be single parent families. It can be more difficult for single parents to find suitable childcare, for example they may require more flexibility than offered by some providers, and this can be especially hard for parents who have limited support networks and can't turn to friends or relatives if they need help. The overarching aim of these changes is to increase the availability of L3 early years practitioner status and to unlock the ratios for skilled and experienced staff, which in turn may increase the quality of provision and availability of childcare. This may have an indirect positive impact on single parents under the protected characteristic of marriage and civil partnership.

#### Pregnancy and maternity – positive impact

20. We expect our proposals to have an indirect positive effect on women who share the protected characteristic of pregnancy and maternity as the overarching aim of these changes is to increase the availability of L3 early years practitioner status, which in turn may increase the quality of provision and availability of childcare.

#### Race (which includes nationality) – positive impact

21. Children that require support with English as an Additional Language, some of whom are likely to share the protected characteristic of race, may be positively impacted by an increase in the availability of L3 early years status staff. An increase in the availability of better trained staff which may improve the availability and quality of childcare available. This may allow practitioners to focus more time on producing an environment that supports children with English as an Additional Language. However, it should be noted that, as set out above, we are consulting

on whether to change the requirement for practitioners to support children with English as an Additional Language’s home language from a “must” to a “may” or a “should”, so if this change goes ahead, the setting or practitioner may have more say in if they wish to do this.

#### Sex – positive impact

22. Easing and increasing access to childcare may have a more positive impact on women, who tend to be the primary caregiver for children aged 0 to 5. Similarly, the early years workforce is made up of 98% women, so removing barriers to L3 early years practitioner status is likely to have a positive impact on them by allowing them to develop their professional skills.

*Other characteristics (gender reassignment, religion or belief, and sexual orientation) – no impact*

## Overview of assessment of impact for changes to early years qualification regulations

Protected characteristic	Positive	Negative	Neutral*	No impact
Disability	x	-	-	-
Pregnancy and maternity	x	-	-	-
Marriage or civil partnership	x	-	-	-
Race	x	-	-	-
Religion or belief	-	-	-	x
Sex	x	-	-	-
Sexual orientation	-	-	-	x
Gender reassignment	-	-	-	x
Age	x	-	-	-

## **Equalities Impact Assessment: Staff: child ratios – percentage of level 2 qualified staff per ratio (applicable paragraphs as per current version of EYFS: 3.32, 3.33, 3.35 and 3.37)**

### **Proposal and rationale**

1. Staff:child ratios are set out in the EYFS statutory framework as the number of children per staff member. The minimum ratio requirements vary according to the age of the child and the qualification level of staff. They apply to the total number of staff available to work directly with children. The EYFS states that ‘exceptionally, and where the quality of care and safety and security of all children is maintained, changes to the ratios may be made’.
2. Staffing ratios have existed largely unchanged since the 1970s, and in the later 1980s were codified based on common practice at the time. Whilst the department keeps EYFS requirements under internal review on a regular basis, the last formal review of staff:child ratios was in 2013; no changes were made following the review.
3. In July 2022, the Department launched a new consultation as the first step in a longer-term plan to review regulation of childcare to make sure that it is proportionate, effective and is not driving unnecessary burdens or costs on childcare providers. This is to enable a competitive and thriving childcare market that delivers high quality and safe provision across the country. This consultation looked at the following proposals, which were agreed to as part of the 15 March 2023 Spring Budget and are due to come into force in September 2023:
  - a. Ratios:
    - i. changing 2-year-old ratios from 1:4 to 1:5 to mirror the Scottish model
    - ii. making the EYFS explicit that childminders can care for more than the specified maximum of three children under the age of 5 if they are caring for siblings of children they already care for, or if the childminder is caring for their own baby or child.
  - b. Adequate supervision: making the EYFS explicit that “adequate supervision” while children are eating means that children must be in sight *and* hearing of an adult.
4. We are now proposing to consult again on the EYFS requirements in May 2023, with these changes coming into force in Early 2024.

5. We are proposing to change the % of qualified level 2 qualified members of staff per ratio (for all applicable paragraphs in the current EYFS 3.32, 3.33, 3.35 and 3.37) to remove the requirement for 'at least half of all other staff [per ratio] to be level 2 qualified' and amend this to either 30% or 40%, depending on the outcome of the consultation.
6. This could encourage a new pool of candidates to join the workforce, as there is less of a barrier for the workforce having reduced the L2% per ratio. It could also support more rural settings which may have limited access to qualified staff members. Anecdotally we have heard from the sector that this would be of benefit, and would mean settings can continue to recruit staff who may be suitable despite not holding a L2 qualification. This proposed additional flexibility would support setting managers to utilise existing staff and new staff to be within ratio despite not holding a level 2 qualification (e.g. where they have strong experience and are determined by the setting manager that they are suitable to be placed within ratio). It may also enable setting managers to recruit staff who otherwise they would not have done due to a lack of qualification despite being considered suitable to be counted within ratio (e.g. if they have suitable experience).
7. Staff costs account for 74% of the cost of running a childcare setting for group-based providers<sup>2</sup>, and we know that regulations on minimum ratios drive key decisions about staffing.<sup>3</sup> Current, and proposed, ratios are minimum requirements – we know that childminders and managers of early years setting know their children best, so it is right that we give them the flexibility they need to staff their settings based on their knowledge of the care and education their children require at any time.
8. Beyond the changes agreed on 15 March Spring Budget moving ratios for 2 year olds from 1:4 to 1:5 to bring them more in line with Scotland, we are not proposing further changes to the staff:child ratio requirements in terms of the number of children per staff member at any age group. Current ratio requirements (and the 1:5 ratio for 2-year-olds coming into force in September 2023) as set out in the EYFS will apply to any changes that may be made to qualification requirements and ratios as part of this consultation. If implemented, these proposed changes to

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<sup>2</sup> [Childcare and early years providers survey: 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>3</sup> [Childcare: Regulatory Changes - July 2022 consultation \(education.gov.uk\)](https://www.education.gov.uk) p.13.

the number of L2 qualified staff per ratio would amend the existing statutory minimum requirements, however providers will continue to be free to staff above these minimum requirements if that is their preference.

9. These proposed changes would hand greater autonomy to settings and childminders to:
- expand their reach so that as many families as possible can benefit from affordable, flexible childcare;
  - exercise greater professional judgement in deciding the makeup of the groups of children they care for and/or the way in which they staff their settings, according to the needs of their children.

Technical detail of our proposal

10. The proposal to amend the percentage of level 2 staff per ratio would require a change to paragraph 3.32, 3.33, 3.35 and 3.37 of the EYFS via amendments to the EYFS (Welfare Requirements) Regulations 2012.

Current wording	Proposed wording
<p>3.32. For children aged under two:</p> <ul style="list-style-type: none"> <li>• <i>at least one member of staff must hold an approved level 3 qualification, and must be suitably experienced in working with children under two</i></li> <li>• <i>at least <b>half</b> of all other staff must hold an approved level 2 qualification</i></li> <li>• <i>at least half of all staff must have received training that specifically addresses the care of babies</i></li> <li>• <i>where there is a room for under two-year-olds, the member of staff in charge of that room must, in the judgement of the provider, have suitable experience of working with under twos</i></li> </ul>	<p>Proposed wording for children aged under two:</p> <ul style="list-style-type: none"> <li>• <i>at least one member of staff must hold an approved level 3 qualification, and must be suitably experienced in working with children under two</i></li> <li>• <i>at least <b>30/40%</b> of all other staff must hold an approved level 2 qualification</i></li> <li>• <i>at least half of all staff must have received training that specifically addresses the care of babies</i></li> <li>• <i>where there is a room for under two-year-olds, the member of staff in charge of that room must, in the judgement of the provider, have suitable experience of working with under twos</i></li> </ul>

Current wording	Proposed wording
<p>3.33. For children aged two:</p> <ul style="list-style-type: none"> <li>• <i>there must be at least one member of staff for every five children [as of Sept 2023].</i></li> <li>• <i>at least one member of staff must hold an approved level 3 qualification.</i></li> <li>• <i>at least <b>half</b> of all other staff must hold an approved level 2 qualification.</i></li> </ul>	<p>Proposed wording for children aged two years:</p> <ul style="list-style-type: none"> <li>• <i>there must be at least one member of staff for every five children.</i></li> <li>• <i>at least one member of staff must hold an approved level 3 qualification.</i></li> <li>• <i>at least <b>30/40%</b> of all other staff must hold an approved level 2 qualification.</i></li> </ul>
<p>3.35. For children aged three and over at any time in registered early years provision when a person with Qualified Teacher Status, Early Years Professional Status, Early Years Teacher Status or another approved level 6 qualification is not working directly with the children:</p> <ul style="list-style-type: none"> <li>• <i>there must be at least one member of staff for every eight children</i></li> <li>• <i>at least one member of staff must hold an approved level 3 qualification</i></li> <li>• <i>at least <b>half</b> of all other staff must hold an approved level 2 qualification</i></li> </ul>	<p>Proposed wording for children aged three and over at any time in registered early years provision when a person with Qualified Teacher Status, Early Years Professional Status, Early Years Teacher Status or another approved level 6 qualification is not working directly with the children:</p> <ul style="list-style-type: none"> <li>• <i>there must be at least one member of staff for every eight children</i></li> <li>• <i>at least one member of staff must hold an approved level 3 qualification</i></li> <li>• <i>at least <b>30/40%</b> of all other staff must hold an approved level 2 qualification</i></li> </ul>

## Analysis of impacts

### Sex – Positive and Negative

11. Women are overrepresented in the early years workforce. Group-based and school-based providers report that 97% of their paid staff are female, whilst 99%

of childminders are female.<sup>4</sup> The proposed changes to staff:child ratios are likely to have multiple impacts on the workforce and therefore may have a disproportionate effect on women. The primary aim of the policy change is to support providers utilise staff more effectively whilst widening the pool of staff that can be used within ratio. We would expect this to have a positive financial impact on the workforce in general, as it may enable more women to become employed in the sector and/or stay in the sector. This may have a positive economic impact on women, with regard to the first and second limbs of the PSED.

12. 42% of working mothers reported that factors which helped them go out to work included having reliable childcare.<sup>5</sup> By expanding the number of people eligible to work within ratio, this could support the recruitment and retention of the workforce, and subsequently could support more children access reliable childcare. This could have a disproportionately positive impact on mothers and/or fathers looking to move back into the workplace, as the creation of additional spaces could support parents find reliable childcare as a result of the qualification requirement change within certain ratios for group-based providers.

13. On the other hand, analysis of the 2-year-old ratios consultation by Cooper Gibson Research found evidence to suggest that if ratios were increased, women might consider the safety or quality of care to be compromised and would therefore leave work to care for their children. If such proposals were enacted, such concerns could have an adverse impact on the labour market, women's career development and the gender pay gap.<sup>6</sup> Although this 2-year-old ratio change differs to the new proposal around % of qualified level 2 staff members, a similar argument could be applicable here as fewer qualified staff could impact on the safety and quality of education and care provided.

14. There is also a risk that the proposed changes exacerbate existing workforce pressures, with staff in settings expected to look after more children with fewer qualified members. The 2022 Provider Survey found that staff turnover rates in 2022 were twice as high in group-based providers (18 per cent) as school-based providers (9 per cent).<sup>7</sup> These changes could put pressure on existing L2 and L3 staff (particularly in the 2-year-old group ratio whereby ratios are due to increase

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<sup>4</sup> [Main summary: survey of childcare and early years providers 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

<sup>5</sup> [Childcare and early years survey of parents, Reporting Year 2021 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)

<sup>6</sup> Cooper Gibson Research, p.46

<sup>7</sup> [Childcare and early years provider survey, Reporting year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)



from 1:4 to 1:5 in September 2023). This may have a negative impact on workplace wellbeing, stress and burnout, and given the make-up of the early years workforce, would therefore have a disproportionate impact on women.

### *Pregnancy and Maternity – Negative*

15. Drawing on similar recent analysis of the impact on changing ratios by Cooper Gibson Research found that there could be a negative impact on pregnant staff if the ratios proposal of moving from 1:4 to 1:5 two-year-olds came into effect. There were some strong views that any decisions on the change of ratios would have a disproportionate effect on female staff as these made up the majority of the workforce. This included the impact on pregnant staff in becoming tired through caring for more children with a higher ratio. There was a view that women should be supported to fulfil work roles in the early years sector and that flexible working practices should form part of this.<sup>8</sup> Again, this could be applicable for the change in % of L2 staff per ratio, as it may put more pressure on those higher qualified staff if pregnant.

### *Race (including ethnicity) – Neutral and negative*

16. In terms of workforce, the early years workforce is reasonably representative of the wider population in terms of race. Group-based providers reported that 82% of their paid staff were White British, 6% reported Asian, 5% reported White Other, and 4% reported Black<sup>9</sup>. In the 2021 Census data, 81% of people in England were reported to be White, 9.6% Asian and 4.2% Black.<sup>10</sup> As such, we have no evidence to suggest that the potential impacts of this policy change on the workforce will have a disproportionate effect on people based on their race.

17. In terms of the impact on children, findings from the 2-year-old consultation analysed by Cooper Gibson found that concerns were raised over the impact for children from ethnic minority backgrounds with respondents stating that this group were more likely to be socially and economically disadvantaged. Reference was also made to research which showed children from ethnic minority backgrounds were disproportionately likely to have missed out on formal early learning during the pandemic. These concerns can also be assumed for further ratio changes with the requirement to have fewer qualified L2 staff members per ratio, as utilising less

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<sup>8</sup> Cooper Gibson Research, p.46

<sup>9</sup> [Childcare and early years providers survey: 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/childcare-and-early-years-providers-survey-2021)

<sup>10</sup> [Childcare and early years provider survey, Reporting year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk/)

qualified staff could result in less staff time supporting children's development.<sup>11</sup> This could result in a negative disproportionate effect on children from ethnic minority backgrounds.

## Disability – Negative

18. The 2021 Provider's Survey shows that the majority of group-based providers (75%) and school-based providers (77%) and 13% of childminders reported that they had at least one child with SEND registered with their provision, which includes children with and without formal support in place and those not yet formally diagnosed. Group-based providers had an average (mean) of three children registered with SEND; private group-based providers had an average of three and voluntary group-based providers had an average of four. School-based providers had an average (mean) of four children registered with SEND, with 100% of responding maintained nursery schools reporting at least one registered child with SEND in their setting, and the average number being 18. School-based providers offering nursery provision had an average of three registered children with SEND in their setting.<sup>12</sup>

19. Evidence raised through the consultation showed that across all respondents there was strong concern that increased ratios (moving from 1:4 to 1:5 for 2-year-olds) would have a negative impact on children with additional needs/SEND, including those with ECHPs. Around two-fifths of respondents commented on this. Respondents felt that these groups need additional support which will prove more difficult to provide if staff are caring for greater numbers of children. We could assume that similar arguments would be evidenced via a future consultation on changing the % of L2 qualified staff per ratio – ie. if less qualified staff are asked more frequently to look after a group of children who previously would have been managed by a more qualified staff group.<sup>13</sup>

20. Additionally, Ofsted reported during the pandemic that of providers making referrals to external agencies, such as SEND or safeguarding teams, nearly 60% reported a similar number of children being referred to external agencies compared with the previous year. However, 31% of these providers reported that more children needed help from external agencies compared with last year. Providers in the most deprived areas were more likely to have referred children to

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<sup>11</sup> Cooper Gibson Research, Consultation report, p.45.

<sup>12</sup> [Main summary: survey of childcare and early years providers 2021 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) p.18.

<sup>13</sup> Cooper Gibson Research, Consultation report, p.43.

external agencies during this period. This shows that more children since the pandemic have been referred to an external agency, of which a proportion had SEND. Potential changes to ratios could have a disproportionate negative impact on those children with SEND, as there may be less support available for them in (i.e. fewer qualified staff).

21. Consultation responses analysed by Cooper Gibson Research found that several respondents commented that there are increasing numbers of children with unidentified SEND which is stretching the system already. Such needs are further compounded by COVID-19 effects on children's development. An increase in ratios was viewed as only serving to exacerbate such challenges with the effect that these children's needs will not be adequately met, increasing the achievement gap, and/or their safety being compromised. Reference was made to this group of children being especially evident in areas of high deprivation. In one case, evidence was cited of reduction in care hours for children with SEND to enable staff to manage their needs as well as those of their peers without SEND. It is likely that similar concerns would be raised as part of a future consultation on further ratio changes regarding changing the number of L2 qualified staff in settings, and so this could further exacerbate concerns reported as part of the previous ratios consultation on 2-year-old ratios.

22. Allied to this, if increased ratios resulted in staff having less time with individual children and being more pressured in their role, there could be a detrimental impact on their ability to identify emerging SEND. Again, these concerns may be reflected by a future consultation on further changes, and could be applicable for amending any requirements to have a lower qualified workforce for certain ratios. Additional concerns included:

- a. adapting the environment to meet individual needs could be more difficult with higher numbers of children
- b. local authority inclusion funding for accessing good quality places being more in demand and stretching budgets further
- c. lack of staff time for professional development that could support effective working with children with SEND
- d. lack of staff time to meet with parents/carers of children with SEND<sup>14</sup>

Age – Neutral

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<sup>14</sup> Cooper Gibson Research, Consultation report, p.44.

23. Part 3 of the 2010 Act, which applies to the Secretary of State's decision making and which includes the Public Sector Equality Duty in section 149 (set out above), does not apply to the protected characteristic of age in relation to people under 18.
24. The early years workforce has a reasonably even spread across the working ages. Twenty-two percent of paid staff employed by group-based providers were under 25 compared with just seven percent of paid staff employed by school-based providers. At the other end of the age distribution, 15% of staff in group-based providers and 24% in school-based providers were 50 or older<sup>15</sup>. This policy would apply equally to both school and group-based providers, although is likely to impact a higher number of group-based providers given staff in school-based settings are likely to have a higher qualified workforce and subsequently work to a different set of ratio requirements<sup>16</sup>.
25. The impact of this policy change is dependent on providers changing their behaviour in response to the legislative change and we will use responses from any call for evidence and/or consultation to make an assessment of how practitioners could respond to hypothetical changes. We could assess the impact of proposed changes (if implemented) via data gathered as part of the yearly provider's survey, to determine whether any changes to age occurred. We have no evidence to suggest that this policy will disproportionately impact individuals of different ages.
26. Although the public sector equality duty doesn't apply to children under 18, it is still important to reflect on the potential impact to children. Depending on the change in provider behaviour, the impact on children of early years age groups could be positive and/or negative. Evidence shows that children benefit from high quality early education. If proposed changes support the workforce enabling more settings to remain open and offer childcare places to increase the number of children who are able to attend early education and childcare provision, these changes could support a positive impact on children. However, if these changes go ahead and decrease the quality of provision on offer for children attending early years provision, it could have a detrimental impact to their development resulting in a negative impact. This will depend on the uptake of the new proposal and should be monitored to understand the impact on children's long-term learning and development.

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<sup>15</sup> [Childcare and early years providers survey: 2021 - GOV.UK \(www.gov.uk\)](https://www.gov.uk)

<sup>16</sup> [Childcare and early years provider survey, Reporting year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)

## Religion and Belief, Sexual Orientation, Gender Reassignment, Marriage and civil partnership – Neutral

27. We have no evidence to suggest that this policy will disproportionately impact individuals sharing the protected characteristics of religion and belief, sexual orientation, gender reassignment or marriage as compared with those who do not. Should any arise we would expect early years and childcare settings to consider and manage these locally, working with staff, parents and carers as they normally do.

### *Other – disadvantage gap and regional disparities*

28. Although not a protected characteristic, it is also important to consider the impact that ratio change could have on the disadvantage gap. Ratio changes would be at the discretion of the provider – proposed changes would be a statutory minimum, but providers may choose to staff more generously than the statutory minimum if they wish. Government does not require providers to operate at the current ratio requirements. We know from polling data that as household income increases, so too does the proportion of parents likely to rate “staff or childcare providers qualified to degree level/equivalent” as an important factor in choosing a childcare provider (13% of families with a household income of less than £10K vs 16% of those with income of £30K-44,999)<sup>17</sup> Broadly, evidence supports that having fewer children per staff, and higher qualified staff, leads to better children’s outcomes as it provides the opportunity for more individualised attention and it leads to better teacher and child behaviour, and : highly qualified staff are key to high-quality provision.<sup>18</sup> This could lead to a two-tier system, where settings used by more affluent parents could afford to maintain higher qualified staff within ratios, thus providing those children with higher quality provision. This may widen the gap in the quality of childcare / early education provision between most and least affluent families, and by association, geographical areas (and therefore the outcomes gap between more disadvantaged children and their peers), as well as making childcare more expensive for some parents in some areas. However, this does dip back down to 13% for families with a household income of £45K+, and so it is also possible that this change could have a minimal impact.

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<sup>17</sup> [ipsos-dfe-covid-19-parents-childcare-survey\\_0.pdf](#)

<sup>18</sup> [Early-years-structural-quality-review\\_EPI.pdf](#) p.20 and 26.

29. Evidence shows that people experiencing employment deprivation are very likely to also experience income deprivation.<sup>19</sup> This ratio proposal covers children aged 2 using childcare. 57% of all 2-year-olds use formal childcare<sup>20</sup>, but 72% of eligible 2-year-olds are registered for the 15 hours entitlement for disadvantaged children<sup>21</sup>. This suggests that where the % of qualified staff are reduced for children aged 2, these disadvantaged children are proportionally more likely to use formal childcare than average, and therefore changing ratios will more likely affect disadvantaged children at this age group.

Entitlement Places	Parent-paid Places	Overall Places
125,000	217,000	342,000

## Decision making

30. We are considering the equality implications of these developing options and will keep the PSED closely under review. We have used findings from the consultation to inform this EIA for decision making.

*\*A decision which maintains a positive impact and/or doesn't introduce a negative impact*

## Mitigations

31. To mitigate the potential negative impacts to the protected characteristics of disability and race, by amending the requirement for at least half of all remaining staff in ratio to hold a level 2 qualification, we are retaining the recommendation within the EYFS that staffing arrangements must meet the needs of all children and ensure their safety. Providers must also ensure that children are adequately supervised, including whilst eating, and decide how to deploy staff to ensure children's needs are met. Given the Department is making no changes to this

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<sup>19</sup> [The English Indices of Deprivation 2019 \(publishing.service.gov.uk\)](https://publishing.service.gov.uk) p.17.

<sup>20</sup> [Childcare and early years survey of parents, Reporting Year 2021 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)

<sup>21</sup> [Education provision: children under 5 years of age, Reporting Year 2022 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://explore-education-statistics.service.gov.uk)

wording in the EYFS, settings will continue to staff appropriately to meet the needs of their children.

32. To mitigate the potential negative impacts to the protected characteristics of sex, pregnancy and maternity, and to avoid additional stress and pressure on the workforce that could lead to a potential negative impact on female and pregnant staff, the Department will continue to ensure that the ratios within the EYFS remain statutory minimums. Providers can staff their settings to meet the needs of the staff and children in that setting, and they can continue to staff with higher qualified or higher numbers of staff than the statutory requirements. Other element of this proposed consultation may also alleviate some workforce pressures, which may allow settings to utilise staff more flexibility to meet their needs and to enable them to deliver quality childcare and early education provision.

## Overview of Assessment of impact for changing % qualified staff within ratios

Protected characteristic	Positive	Negative	Neutral
Disability	-	x	-
Pregnancy and maternity	-	x	-
Marriage or civil partnership	-	-	x
Race	-	x	x
Religion or belief	-	-	x
Sex	x	x	-
Sexual orientation	-	-	x
Gender reassignment	-	-	x
Age	x	x	x

### Conclusion

33. The evidence suggests that for changes to the % of qualified level 2 staff per applicable ratio could have both positive and negative impacts across race and sex have both positive and negative, or positive, negative and neutral impacts.

Changes proposed for those with disabilities, and pregnancy and maternity, will have a negative impact. For the remaining characteristics there are neutral impacts.

## **Equalities Impact Assessment for removal of requirement for childminder applicants to complete pre-registration EYFS training**

### **Proposal and rationale**

34. As per paragraph 3.24 of the Early Years Foundation Stage (EYFS), childminder applicants currently have to undergo training that helps them to understand and implement the EYFS prior to registration. We propose that this requirement is removed, but that applicants will continue to be assessed on their understanding of the EYFS through pre-registration checks undertaken by Ofsted or childminder agencies. This proposal recognises that some applicants may already have the required knowledge, such as from previous careers in other early years settings, and therefore may not need to dedicate resource to additional training. This proposal will allow individual applicants to determine the best way to gain an adequate understanding of the EYFS.
35. We are not proposing changing requirements for applicants to have undertaken Paediatric First Aid or child protection training.

### **Analysis of impacts**

#### Age – neutral

36. Evidence shows that early child development is crucial for children's later outcomes and life chances. There is some risk that, without the baseline of a training course, childminders are less equipped to deliver the EYFS and therefore young children could be negatively impacted. This will be mitigated through Ofsted / CMAs continuing to rigorously test knowledge before registering.

#### Disability – positive/neutral

37. Childminder applicants with disabilities that impact their ability to digest information in certain formats, such as dyspraxia, may benefit from being given more freedom to decide how they gain knowledge of the EYFS. Other types of disability are unlikely to be impacted.



## Pregnancy / maternity – positive

38. We expect this proposal to have an indirect positive effect on women who share the protected characteristic of pregnancy and maternity via the overarching aim of this programme of work being to increase the availability of childminders and wider access to childcare.

## Sex – positive

39. These measures ultimately seek to make it easier to register as a childminder and therefore may increase employment opportunities for women, who make up 97% of the childminder workforce.

*Other Characteristics: Gender reassignment, marriage, race, religion / belief, sexual orientation – no impact.*

## Overview of assessment of impact on removal of requirement for childminder applicants to complete EYFS training

Protected characteristic	Positive	Negative	Neutral*	No impact
Disability	x	-	-	-
Pregnancy and maternity	x	-	-	-
Marriage or civil partnership	-	-	-	x
Race	-	-	-	x
Religion or belief	-	-	-	x
Sex	x	-	-	-
Sexual orientation	-	-	-	x
Gender reassignment	-	-	-	x
Age	-	-	x	-

# Equalities Impact Assessment for removing “or another approved level 6 qualification” from the EYFS when referring to level 6 staff:child ratios in early years settings

## Proposal and Rationale

40. In the current EYFS we specify that those with Qualified Teacher Status (QTS), Early Years Professional Status (EYPS) and Early Years Teacher Status (EYTS) *or another approved level 6 qualification can count in level 6 staff:child ratios*. DfE policy is that only those with QTS, EYPS and EYTS statuses can count in level 6 staff:child ratios. This line generates lots of correspondence to the department from both Early Years settings and individual practitioners asking whether degree level qualifications count towards level 6 staff:child ratios – so this is clearly confusing to the sector.

41. We are consulting to remove the wording “or another approved level 6 qualification” from paragraphs 3.45, 3.46, 3.47 and 3.48 in the group and school-based providers EYFS, which refer to the level 6 staff:child ratios. This is to make it clearer to early years settings and staff who can count in the level 6 ratios and reduce the amount of correspondence to the department.

42. The removal of the wording “or another approved level 6 qualification” from the current EYFS will not indirectly disadvantage people based on their protected characteristics. The change is intended to make it easier for people to understand the requirements to count in level 6 staff:child ratios.

## Analysis of Impacts

Age – neutral impact

43. There is no age imbalance that would affect this policy. The majority of staff (46%) are aged between 25 and 39, with equal percentages of older and younger staff (19% of staff under 25, 16% aged 40-49 and 13% aged 50+1.)

Disability – positive impact on members of staff as information is simpler.

44. It can be time consuming and frustrating for neurodivergent members of early years staff to identify whether their qualifications allow them to count in level 6 ratios. As we expect this change to make it easier to identify whether Level 6 qualifications allow you to count in Level 6 staff:child ratios, it may have an indirect positive impact on disability as the guidance and communications will be clearer.

Race (including nationality) – neutral impact

45. This change will not affect practitioners who share this protected characteristic looking for a job in early years, as someone can access all early years qualifications regardless of their race or nationality. There are clear guidelines online for what to do if you have an overseas qualification in early years and how to get this recognised in England.

46. The change that we are planning to make will not have any impact on children of a particular ethnic group or nationality, as the person who is working with the children will not work in any particular way that excludes children who share the protected characteristic of race.

Sex – neutral impact

47. Clarifying who is able to operate in Level 6 staff:child ratios may have a more positive impact on women as they make up the highest proportion of the workforce.

*Other characteristics (age, marriage and civil partnership, gender reassignment, religion or belief, sex and sexual orientation) – neutral impact*

## Overview of assessment of impact removing “or another approved level 6 qualification” from the EYFS when referring to level 6 staff:child ratios in early years settings

Protected characteristic	Positive	Negative	Neutral*	No impact
Disability	x	-	-	-
Pregnancy and maternity	-	-	x	-
Marriage or civil partnership	-	-	x	-
Race	-	-	x	-
Religion or belief	-	-	x	-
Sex	-	-	x	-
Sexual orientation	-	-	x	-
Gender reassignment	-	-	x	-
Age	-	-	x	-

## **Decision making**

48. We are considering the equality implications of these developing options and will keep the PSED closely under review. We will be using findings from the consultation to inform a full EIA which we will share with you in due course. We will proceed as planned with our proposal, with the Consultation launching 31<sup>st</sup> May.

## **Monitoring and evaluation**

49. There are areas within our proposals where we do not currently hold enough evidence to carry out a full assessment of impacts on certain protected characteristics. We will continue to seek to build our evidence base to ensure that all impacts on protected characteristics are thoroughly analysed.



Department  
for Education

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