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Our ref: EYFE/RM
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Dear Colleague

GUIDANCE TO EARLY YEARS SETTINGS: REQUIREMENTS WITH RESPECT TO “FAIR PROCESSING” UNDER THE DATA PROTECTION ACT 1998

The Department for Children, Schools and Families (DCSF) has now issued guidance in connection with “Fair Processing” which is detailed in this communication. The following action is required by private, voluntary, independent providers and accredited childminders (PVI Providers) who deliver the free entitlement.

- issue the Fair Processing Notice to the parents (or the person(s) with parental responsibility) of all current children who receive the free entitlement as soon as possible;
- issue the same notice to the parents (or the person(s) with parental responsibility) of children new to the setting, ideally as part of the enrolment process;
- note that this notice covers processing carried out by PVI Providers, Schools, Local Authorities (LAs), the Secretary of State for Children, Schools and Families through the Department for Children, Schools and Families (DCSF), the Qualifications and Curriculum Authority (QCA), Her Majesty’s Chief Inspector of Education, Children’s Services and Skills through Ofsted, and the National Assessment Agency (NAA). This combined notification saves these organisations sending separate notices, which would be logistically very difficult and confusing for parents/carers.

Background

The DCSF has changed the way in which data for children accessing their free entitlement is collected by Local Authorities. From January 2008, data in the DCSF Early Years Census will be collected at child level (rather than the aggregate arrangement used in January 2007). The individual child level data collection is a statutory requirement on PVI providers and Local Authorities under the Education (Provision of Information About Young Children) (England) Regulations 2007, SI 2007 No.712, under the Education Act 1996 and the Childcare Act 2006, from January 2008. By putting the Early Years Census on a statutory basis:

- PVI Providers do not need to obtain consent for the provision of information from parents of individual children. They must, however, meet their obligations to Data Subjects under the Data Protection Act, 1998;
- PVI Providers and Local Authorities are protected from any legal challenge that they are breaching a duty of confidence; and
- It will ensure that returns are completed by PVI Providers.

With the introduction of the Dedicated Schools Grant, through which the DCSF directly funds Local Authorities for the provision of education, there is a need to demonstrate proper accountability for the expenditure in this area. Individual child level data will give better quality data, thereby increasing confidence that expenditure is being targeted properly, as well as improving the evidence base for formulation and delivery of other policies. Much of the data is already held by Local Authorities from data collected to fund PVI Providers to deliver the free entitlement but other statutory information will have to be collected from PVI Providers.

PVI Providers, Schools, Local Authorities, the Secretary of State for Children, Schools and Families through the DCSF, the QCA, Her Majesty's Chief Inspector of Education, Children's Services and Skills through Ofsted, and the NAA, are all "data controllers" under the Data Protection Act 1998. In this capacity they determine the purpose(s) for which "personal data" (i.e. data about living individuals from which they can be identified) is processed and the way in which that processing is done.

Data controllers have to provide "data subjects" (individuals who are the subject of personal data) with details of who they are, the purposes for which they process the personal data, and any other information that is necessary to make the processing of the personal data fair, including any third parties to whom the data may be passed on. This is referred to as a "fair processing notice".

The fair processing obligations on the data controller may appropriately be met by providing a fair processing notice to the parent (or the person(s) with parental responsibility).

Further information about fair processing requirements, and guidance on the Data Protection Act 1998 generally, can be obtained from the Information Commissioner's website: <http://www.ico.gov.uk/>

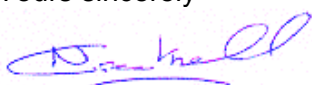
As well as issuing the notice directly to parents/carers, PVI Providers may also include this notice in other communications with parents/carers (e.g. the Early Years prospectus, any annual report issued, the individual child report, or any annual data checking sheet that might be in use), and/or display the text on their website or in a prominent location in the setting. These are not however requirements, nor are they a substitute for the arrangements indicated above.

Attached to this letter is the suggested text for the Fair Processing Notice. Please note that if you use this suggested text, you will need to insert your setting's address on the relevant page. This text is available as a Word document for you to download from the Kent Trust Website should you wish to do so <http://www.kenttrustweb.org.uk/Finance-Assessment/earlyyears.cfm>

If you have any queries please contact one of the following Management Information Assistants:

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Yours sincerely



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