

## DRAFT NOTE

### LEGAL POWER TO CLOSE WALDORF STEINER SCHOOLS FAILING TO MEET EYFS

#### **Do Steiner Waldorf Kindergartens have a legal duty to implement the EYFS?**

1. Section 40(1)(b) of the Childcare Act 2006 (the “Act”) provides that the duty to implement EYFS applies to ... *“early years providers providing early years provision in respect of which, but for section 34(2) (exemption for provision for children aged 3 or over at certain schools) they would be required to be registered under this Chapter.”*
2. Section 20 of the Act provides that “early years provision” means *“the provision of childcare for a young child.”*
3. Section 18(2)(b) of the Act provides that “childcare” means *“any form of care for a child ... and includes education for a child, and any other supervised activity for a child.”*
4. Section 18(3)(a) of the Act provides that “childcare” does not include *“education (or any other supervised activity) provided by a school during school hours for a registered pupil who is not a young child ...”*
5. Section 19 of the Act provides that a child is no longer a young child on 1<sup>st</sup> September following the date on which he attains the age of five.
6. There is therefore no duty to implement the EYFS in relation to children in Kindergarten who are no longer defined by the Act as “young children”.
7. The exemption in section 34(2) provides that the requirement to register under the Act does not apply to early years provision for children who have attained the age of three if the provision is made at an independent school as part of the school’s activities; the provision is made by the proprietor of the school or a person employed to work at the school, and the child is a registered pupil at the school.
8. However, it is clear that the duty to implement the EYFS still applies to “early years providers” (as defined) that are not required to “register” under the Act (see Section 40(1)(b)).
9. So, in summary, there is a clear legal obligation upon Steiner Waldorf Kindergartens in England to implement the EYFS.

#### **What is the relevance of the amendments made to the Education Act 2002 by the Act?**

10. Section 47 of the Act inserts the EYFS as a new “independent schools standards” under Section 157 of the Education Act 2002.
11. The Education Act 2002 no longer applies to early years provision for children under 3 (in independent schools). The Act applies to this provision (section 47 of the Act).

**What are the relevant powers of inspection derived from the Education Act 2002 (as amended by the Education Act 2005)?**

12. Section 160(3) of the Education Act 2002 (as amended by Schedule 8 of the Education Act 2005) provides that “*the Chief Inspector shall inspect the school and report to the registration authority on the extent to which the independent school standards (i.e. the EYFS) are met and continue to be met, in relation to the school*”.
13. Section 165 of the Education Act 2002 (as amended by the Education Act 2005) covers the “*failure to meet standards*”. By Section 165(3)(b), the Chief Inspector has the power to require the school to produce an “*action plan specifying the steps that will be taken to meet a standard or standards*”. By Section 165(6) of the Education Act 2002 if an action plan is ... rejected ... the registration authority may close any part of the school’s operation.
14. Part 8 of the Education and Inspections Act 2006 sets out the general powers of the Chief Inspector.
15. OFSTED incorporates these standards into its document entitled “The Framework for inspecting independent schools”. However, the latest version published in October 2007 does not yet take account of the EYFS as one of the required “independent school standards.” No doubt this will be updated in due course.