



Department
for Education

Childcare Bill: policy statement

July 2015

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Status

The Childcare Bill was introduced to the House of Lords on 1 June 2015. It passed Second Reading on 16 June 2015.

The Childcare Bill is delivering the Government's election manifesto commitment to giving families where all parents are working an entitlement to 30 hours of free childcare for their three- and four-year olds. This policy statement sets out further details on the Government's intention behind the legislation to aid Peers in their scrutiny of the Bill ahead of Committee Stage.

This statement sets the extended free entitlement within a wider context but it does not seek to provide detailed information on all aspects of childcare policy.

This statement has been made available to all members of the House of Lords on 25 June 2015. It will be placed on the Department for Education website, found on gov.uk.

Introduction

1. The Government invests around £5 billion per annum to support parents with childcare. The Government wants to see childcare that is good for families, and also that is good for children. Childcare in the early years must be a caring and happy experience that supports children's development and gets children ready to thrive at school and in later life.
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2. Parents with young children use many different forms of childcare and it is important that the childcare market can be flexible in its response to parental choice. The Government has therefore developed a package of schemes that provide all families with access to childcare support:
 - 15 hours of free early education for all three- and four-year-olds and for around the 40% most disadvantaged two-year-olds, administered by local authorities;
 - the childcare element of working tax credit which currently allows parents to claim up to 70% of their childcare costs, this will increase to 85% under Universal Credit;
 - the Tax-Free Childcare Scheme, which will save up to 1.8 million working families up to £2,000 per child on their annual childcare bill; and
 - Working parents having the right to share pay and leave in the child's first year or following a child's placement for adoption and all employees have the right to request flexible working.
3. This package of childcare support:
 - Makes childcare affordable so that parents can make the work choices that they want to and need to, and raise their household income;
 - Provides valuable early education for all children; and
 - Helps to close the gap between children from disadvantaged backgrounds and their peers.
4. The new extended free childcare entitlement for working parents of three- and four-year-olds will build on this package by providing eligible parents with an additional 15 hours of free childcare per week, over 38 weeks or the equivalent number of hours divided across more weeks per year. It will help families by reducing the cost of childcare and supporting parents to work.

The Childcare Bill

Clauses 1-2: The entitlement to 30 hours of free childcare for working parents of three and four year old children

Policy intention

5. The Childcare Bill places a duty on the Secretary of State to secure the equivalent of 30 hours of free childcare per week in each of 38 weeks in any year to eligible working parents of three- and four-year-old children. This means a total of 1,140 hours of free childcare per year for eligible families; 570 through the existing early education entitlement for all three- and four-year-olds, and 570 through the new entitlement.
6. The Government recognises that many parents want to go back to work or work more hours, but find the costs of childcare unaffordable. The additional 570 hours for working parents of three- and four-year-olds will help families by reducing the cost of childcare and supporting parents to work. The quality of the childcare and its impact on a child's development is equally important. When Ofsted inspects an early years provider it does not just inspect a set of 'hours' funded by the government, it inspects the quality of the whole setting and the experience for all children. As the Ofsted Early Years Annual Report published in April 2014 says:¹ 'the most successful early years providers, whoever they are, are focused on helping children to learn.'
7. The Government has introduced the Childcare Bill in the first session of this Parliament to support working families to plan in the knowledge that they can expect this further support. The review of the cost of providing childcare and Government's commitment to increase the average rate paid to providers will give the childcare market the confidence to grow in anticipation.
8. This Bill is focused solely on establishing the framework for the effective delivery of the new entitlement to parents and children. It is not the Government's intention that this Bill will make changes to the wider system of support for childcare costs. The new entitlement will not impact on parents' ability to access the current 570 hours of free early education per year for all three- and four-year-olds.

Eligibility

9. The Government has already provided further clarity on eligibility for the additional 15 hours of free childcare. These conditions will be set out in regulations. The conditions for eligibility will include:
 - working parents with children aged three and four;
 - parents working part-time or full-time – each parent must be working the

¹ Ofsted Early Years Annual Report

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/386504/Ofsted_Early_Years_Annual_Report_201213.pdf

- equivalent of 8 hours per week at the national minimum wage;
- parents who are employed or who are self-employed; and lone parents who are working the equivalent of 8 hours per week at the national minimum wage to support their families.

Clause 3: Requiring Local Authorities to publish information about the childcare and other services in their area

10. In addition to increasing the available hours of free childcare, the Government recognises that it is crucial that parents are able to easily access information about childcare and other services in their area. The Government wants to ensure that parents are able to access such information through a range of sources and this is why, through the Childcare Bill, the Government will require local authorities to publish information which will support parents to make informed choices about childcare (Clause 3 of the Childcare Bill amends section 12 of the Childcare Act 2006).
11. Local authorities already have to collect a range of information about childcare provision and other services in their areas, and use this to support parents and prospective parents. The Government's intention is to strengthen the current position, meaning that local authorities will not only have to collect information but must publish the information as well. This will mean that parents will have improved access to the information they need.
12. Further detail will be set out in regulations. However the Government intends that the information required to be published will be very similar to the information that local authorities are already required by regulations to provide to parents and prospective parents as part of their Family Information Service. This includes: the name and details of childcare providers; the type of childcare provided; the time and duration of childcare provision; and the suitability of childcare for disabled children. Regulations will set out how data should be published and the frequency of publication.

Territorial Coverage of the Childcare Bill

13. The Bill, subject to the will of Parliament, will form part of the law of England and Wales as a single legal jurisdiction; Clauses 1 and 2 apply only to children in England, and Clause 3 applies only to English local authorities. This is normal in legislation relating to childcare, since it is a devolved matter and dealt with by the Welsh Government.

Delivering the extended free entitlement

Implementing the offer

14. The childcare sector is healthy, vibrant and growing. Latest figures show there are around 230,000 more childcare places than in 2009², a 12% increase and the number of providers offering places under the entitlement is increasing³. There has been a significant increase in the take up of childcare provision in low and middle income areas. The market has demonstrated that it is able to respond to an extension of a free entitlement, through the roll-out of the entitlement for disadvantaged two-year-olds introduced in the last Parliament, supported by changes that we made to reduce bureaucracy and make it easier for providers, for example childminders and schools, to provide places.
15. The extended entitlement must be delivered in a way that provides flexibility and quality for parents. There will still be a vibrant market for sessional providers and the new entitlement should generate opportunities for providers to expand or work creatively with other providers, such as childminders, to deliver a seamless offer for parents.
16. Currently around 600,000 families in England have three or four year old children with both parents in work. This precise number of families who meet the eligibility criteria will change over time according to demographic changes and employment choices. The number of working families who choose to take up the additional 15 hours and benefit from the new entitlement will depend upon the childcare choices of eligible parents and the proportion of four year olds who take up their place in a reception class.
17. The actual number of *new* childcare places that will be needed depends not only on how many eligible parents take up the new entitlement but also the extent to which they *already* pay for additional hours of childcare over and above the existing 15 funded hours. We know that 96% of three and four year olds (94% of three year olds and 99% of four year olds) access 15 hours of free early education⁴ and the Department for Education Parents Survey data⁵ tells us that 80% of working families with three- and four-year-olds use 15 or more hours of childcare. For these parents, the new entitlement will largely pay for a place that their child is already in, rather than create a new place. The rate at which new places need to be available also depends on how quickly eligible parents choose to make use of all of the additional 15 hours to

² Early Years and Childcare Provider Survey 2013

<https://www.gov.uk/government/statistics/childcare-and-early-years-providers-survey-2013>

³ Provision for children under 5 years of age: January 2015

<https://www.gov.uk/government/statistics/provision-for-children-under-5-years-of-age-january-2015>

⁴ Provision for children under 5 years of age: January 2015

<https://www.gov.uk/government/statistics/provision-for-children-under-5-years-of-age-january-2015>

⁵ Department for Education Childcare and Early Years Survey of Parents

<https://www.gov.uk/government/statistics/childcare-and-early-years-survey-of-parents-2012-to-2013>

which they would be entitled as well as the level of spare capacity in the system.

18. We believe there is existing, spare capacity in the system to help deliver the new entitlement, and we are currently talking to local authorities to increase our understanding and evidence. We also recognise that while there is natural growth in the childcare system we can and should encourage new providers to enter the childcare market or existing providers to expand. Increased flexibility for providers is an important element of this and that is why, for example, under the Small Business, Enterprise and Employment Act childminders will be able to provide childcare in non-domestic premises. The funding rate that is paid to providers to deliver the entitlement is clearly also important and this is why we have committed to increase the average funding rate (see below for more information).
19. A full economic impact assessment will be published when draft regulations are published for public consultation in due course.

Review of the Cost of Providing Childcare

20. To support delivery of the extension to 30 hours of free childcare for working parents of three and four year olds, the Government is reviewing the cost of providing childcare and has committed to increase the average funding rate paid to providers. It is essential that the rate we pay is fair for providers, value for money for taxpayers, and consistent with the Government's fiscal plans.
21. On 15 June the Government published a 'call for evidence' as part of the review. The Government hopes that primary schools, children centres, maintained nursery schools, independent nursery schools, childminders, private/voluntary providers of day care, childcare or early years organisations, parents and carers, local authorities and representative bodies will all contribute.

Next steps

22. The Government is currently looking at the lessons that can be drawn from the existing delivery model for the free early education entitlement and considering the simplest and most efficient way to deliver the additional 15 hours of free childcare to working families.
23. The extended entitlement must be delivered in a way that is flexible for parents and providers, and funded through an efficient mechanism. Quality childcare must be provided. The 30 hour entitlement will sit coherently within Government's overall package of childcare support for families.
24. Between now and September 2015 the Government will be considering the simplest and most efficient way to deliver the additional 15 hours of free childcare to working families. This process will be led by the Minister for Childcare and Education and the Government Taskforce on Childcare (see page 7). The Government will provide a full update on this at Report Stage in the House of Lords, setting out how the regulation making powers will be used.
25. Building on this, the Government wants to engage with parents, providers and employers about how they currently access/deliver childcare. This will begin in the

summer.

26. We want to hear what is important to parents in choosing a childcare provider and their views on how the extended entitlement will best meet their childcare needs. We will make the best use of the consultation channels available, including social media and online forums and we are keen to work with employers who have a shared interest in this agenda to hear the views of their busy, working parents. Many voluntary and community sector organisations have already offered to host events for parents and providers, including groups representing and supporting disabled children and their parents and we will be working with them to plan these events. We are also hoping to work closer with employer organisations such as the CBI who have welcomed the extension of the free childcare entitlement.
27. The feedback from parents, providers and employers, alongside the outcome of the review of the cost of providing childcare will feed into the development of draft regulations and draft guidance. These will be subject to public consultation in 2016. The Government hopes that members of the House of Lords Committee on Affordable Childcare will be able to provide comment on the draft regulations.
28. The final regulations and guidance will be revised as necessary in response to the consultation and will be laid before parliament ahead of implementation from September 2017.
29. The Government welcomes the work of the House of Lords Affordable Childcare Select Committee and the thorough report it produced. As a new Government, we want to consider the report in full as we develop our own childcare proposals. The Government will respond to the Committee's report in the autumn.

Early implementation

30. The Government has made clear its intention to roll out the extended free childcare entitlement in certain areas from September 2016 in advance of full implementation from 2017.
31. We are currently considering where early implementation of the extended entitlement should take place, including the number of areas and the locations to ensure geographic balance. The areas will test out the important operational details for delivering the extended entitlement and provide a source of intelligence to support the Government in refining the systems to deliver the entitlement. We will announce further details early in the autumn.

The Childcare Implementation Taskforce

32. The Government has established a Childcare Implementation Taskforce, chaired by Minister of State for Employment, the Rt. Hon. Priti Patel MP. The Taskforce has cross-Government representation including the Department for Education, the Department for Work and Pensions, HM Treasury, the Department for Business, Innovation and Skills and the Cabinet Office.
33. The Taskforce will work to drive forward the delivery of key government policies including: the doubling of free childcare for working parents of three- and four-year

olds; the delivery of Tax-Free Childcare to support parents back into work; and further improvements in the supply of childcare.

34. The Taskforce will be considering the options for delivering the extended entitlement and further information will be provided to the House of Lords ahead of Report Stage.

The extended free entitlement through the Childcare Bill

Delegated Powers

35. On 12 June 2015 the Government provided a memorandum to the Delegated Powers and Regulatory Reform Committee. This memorandum identifies the provisions in the Childcare Bill that confer powers on the Secretary of State to make delegated legislation and explains in relation to each power: what the power does, why the power has been taken; and the nature of, and reason for the procedure for Parliamentary scrutiny that has been selected.
36. The Government has set out its intention to consult with parents and the childcare sector on the implementation of the additional entitlement. The desire to consult widely before finalising the operational details requires the primary legislation to take a range of regulation making powers so that these can be set out in secondary legislation in due course.
37. The Government is awaiting a response from the Delegated Powers and Regulatory Reform Committee. As per convention in the House of Lords the Government will consider the recommendations of the Committee and set out the Government's response at the next appropriate stage of the Bill.
38. In order to enable the Secretary of State to discharge the duty in clause 1, clause 1(4) in confers a general regulation making power, so that the operational details of the delivery of this duty may be set out in regulations. Clause 1(5) sets out examples of what such regulations may cover:
- Clause 1(5)(a) and (b) would enable the Secretary of State to require or authorise arrangements to be made for persons to make available or arrange for other persons to make available, specified descriptions of childcare; and to make provision about the terms of those arrangements.
 - Clause 1(5)(c) provides that the times and periods over which the new entitlement will be made available may be set out in regulations. This provision is necessary in order to clarify the extent of the entitlement, for example the number of hours of additional free childcare and the weeks of the year when it is available. The 2014 regulations enable parents to take the current 15 hours of free childcare a week over 38 weeks of the year, which is broadly in line with schools' term time, whilst not preventing parents from taking fewer hours per week of free childcare over more weeks of the year.
 - Clause 1(5)(d) enables regulations to specify rates payable to providers or arrangers of childcare and subsection (5)(e) stipulates that regulations may set out that payments may be made to parents or other persons. This power is similar to the power set out in section 45A of the School Standards and Framework Act 1998, which was used to **set out the eligibility criteria and rates payable for the early years pupil premium.**
 - Clause 1(5)(f) enables regulations to impose obligations or confer powers on any public body, for example a local authority as per the current entitlement delivered

under section 7 of the Childcare Act 2006. This links to clause 1(5)(g) which would enable the Secretary of State by regulations to establish a body to carry out the functions relating to the new childcare entitlement. Such a body might take an operational function such as overseeing the funding of the entitlement.

- Clause 1(5)(h) provides for regulations to reproduce any provision of the Childcare Payments Act 2014 (with or without modification), enabling the Secretary of State to make a similar scheme to the Tax-Free Childcare Scheme for the purposes of implementing this entitlement should it be desired.
- Clause 1(5)(i) would enable regulations to specify information or documents to be provided to the Secretary of State or specified persons, and clause 1(5)(j) would allow regulations to make provision for data sharing, including disclosure of information held by a Minister of the Crown, Her Majesty's Commissioners for Revenues and Customs (HMRC), or any other person in order to check eligibility of a child to the entitlement. For example the information under clause 1(5)(i) may include the number of hours of free childcare each eligible child takes up, which will support the calculation of funding and monitoring take up rates. Providers who deliver the current 15 hours of free of charge early education for two, three and four year olds are required to provide this information under section 99 of the 2006 Act.
- Clause 1(9) enables regulations to specify whether a child qualifies for the entitlement, by virtue of being in England, or not. Whilst it is clearly a requirement of clause 1(2) that a child is "in England", and it will generally be clear that this is the case, regulations can be used to clarify the position for example, for a child who lives in Scotland but receives childcare in England.

Provision for any criminal offences

39. Clause 1(5) (k) enables regulations to make provision for any criminal offences in connection with the provision and disclosure of documents mentioned in paragraphs (5) (i) and (j) only. The Government's intention is that any new offences should align with existing offences for schemes involving information sharing and self-declaration. Clause 1(7) provides for a cap on the penalty that may be imposed on indictment, namely a maximum term of imprisonment of two years, with or without a fine. This is an appropriate safeguard, to set a maximum level of penalty, whilst retaining the option of imposing lesser penalties. Such a power is analogous to the power in section 85A of the 2006 Act which provides for the creation of a criminal offence by regulations.

Quality childcare for all children

Providing valuable early education for all children

40. The first few years of a child's life are critical to shaping their future development. The evidence on the educational and developmental benefits of early education is compelling. The Department for Education has commissioned a new longitudinal Study of Early Education and Development (SEED) to update this evidence, and more specifically examine the impact of providing funded early years education to two year olds from lower income families.
41. The 'Effective pre-school, primary and secondary education' project (EPPSE) provided highly influential evidence on the benefits of the high quality early years education, and explored pre-school as a predictor of outcomes over time for children aged three and four. EPPSE showed that attending pre-school had a positive and long term impact on children's attainment, progress and social-behavioural development. That is why the current entitlement ensures that all three- and four-year-olds can access 15 hours a week of quality, early education free of charge to prepare them for school, improving their life chances. The new extended entitlement will not impact on parents' ability to access the current 570 hours of free early education per year for all three- and four-year-olds.
42. The extended free entitlement for working parents will help families by reducing the cost of childcare and supporting parents to work. This childcare must be delivered in safe, secure, and welcoming way to contribute to child development.
43. Government is committed to ensuring that early education hours are high quality. The quality of providers continues to improve – 85% of providers are now judged 'good' or outstanding compared to less than 69% in 2009. Recent statistics show that for the first time more than 1,000,000 three and four year olds are in good or outstanding settings.⁶
44. Ofsted have recently announced a new Common Inspection Framework for commencement in September 2015, which will bring more consistency to inspection approaches (for example across early years providers and schools), and increase the focus on children' outcomes and the quality of teaching and learning in the early years.
45. The main driver of quality in a setting is its workforce. By improving the quality of those entering the workforce, parents can have confidence in the people supporting the learning of our youngest children.
46. Following Professor Nutbrown's report the Government has:
- Improved Early Years qualifications and encouraged high quality entrants to the profession. The recent DfE Childcare and Early Years Providers Survey shows that between 2008 and 2013, the proportion of full day care staff with at least a

⁶ Provision for children under 5 years of age: January 2015
<https://www.gov.uk/government/statistics/provision-for-children-under-5-years-of-age-january-2015>

- level 3 qualification grew from 75 to 87%;
- Introduced Early Years Educator qualifications, which are equivalent to A level standard. Entrants are required to have at least a C in GCSE English and Maths before they gain their qualification; and
- Introduced Early Years Teachers who are expected to meet the same entry and qualifications requirements as teachers of older children. They must pass the same skills tests and also meet a robust set of Early Years Teachers Standards.

47. Early Years Teachers are specialists in early child development, and their specialist status reflects the role they have in working with babies and children from birth to five years old. 15,422 individuals have achieved Early Years Professional Status and Early Years Teacher Status and 780 are currently in training. The National Day Nursery Association's recent Workforce Survey showed that 88% of providers surveyed were employing a trained graduate.

48. The Government is supporting the development of an early years focus within a self-improving system, working with Teaching Schools and sector organisations to encourage mutual support and improvement in practice between providers. In particular, through a £5m grant, the Government is enabling the early years sector to make improvements in the quality of its provision, by encouraging partnerships between schools and private nurseries. The projects which are benefiting from this grant are focused on professional development of the workforce, and aim to improve children's readiness for school, with communication and language development one of the key areas of work.

Closing the gap

Children from disadvantaged backgrounds

49. The Government recognises that experiencing high-quality early education is essential for disadvantaged children and there are three key policies to achieve this:

- 15 hours free early education for all children aged three and four;
- 15 hours free early education for around the 40% most disadvantaged two-year-olds; and
- The Early Years Pupil Premium.

50. The current entitlement to 15 hours free early education for all three and four year olds is accessed by the vast majority of eligible families - 96 per cent of three and four year olds take up their free entitlement place. The providers that deliver the current 15 hours of early education are required to deliver the Early Years Foundation Stage, ensuring that all children are prepared for school. This is beneficial for all children, but in particular can improve the life chances of those from the most disadvantaged homes.

- In addition, in September 2013 around the 20% most disadvantaged **two year olds** became entitled to 15 hours free early education per week and from 2014 this was

made available to around the 40% most disadvantaged. This is designed to help close the achievement gap between the poorest children and their wealthier peers and currently more than 157,000 two-year-olds are benefitting from a free early education place. This has helped to improve the quality of provision in disadvantaged areas and in January 2015, 85% of two-year-olds who were accessing a place were in a 'good' or 'outstanding' setting that had a valid Ofsted judgement

51. Building on the success of the Pupil Premium in schools, the **Early Years Pupil Premium** was introduced in April 2015 providing £50 million over 2015-16 for the early education of disadvantaged three- and four year-olds. The aim of the Early Years Pupil Premium is to close the gap between children from disadvantaged backgrounds and their peers by providing additional funding to early years providers to help them raise the quality of their provision. The Early Years Pupil Premium pays early years providers an additional £300 per year for each eligible child that take up the full funded entitlement of 570 hours with them. Funding is paid on a pro rata basis for children accessing fewer than the maximum entitlement.
52. As set out later in this policy statement, parents will be eligible for the additional 15 hours of free childcare secured by the Childcare Bill if both parents (or a lone parent) are working the equivalent of 8 hours per week at national minimum wage. It is important to recognise that we already know that around half of the families who are entitled to a place for their two-year-old under the existing entitlement are working and many will be eligible for the full 30 hours when their child is aged three or four. These families are working hard to support their children and this Government is on their side in reducing their childcare costs and giving them a real choice about returning to work or taking up more hours.

Disabled Children

53. The Government is absolutely committed to helping families with disabled children and is clear that parents with disabled children must have the same opportunities as other parents to access the entitlement. Where parents of disabled children would like to go out to work we want to make it easier for them to do so. We want this new entitlement to be available to all eligible parents that want to take it up.
54. In addition to the 15 hours of early education per week for all three- and four-year olds, parents are entitled to 15 hours per week of free early education for their two-year-old if they have a current statement of Special Educational Need or an Education, Health and Care plan; and/or they are in receipt of Disability Living Allowance.
55. Under the Children and Families Act 2014, the Government has:
- introduced new Education Health and Care Plans for children from birth to age 25;
 - provided £30m for families to access independent supporters; and,
 - given more rights to parent carers of disabled children so that they have the same assessment rights as other carers.
56. All early years childcare providers must have in place arrangements to support children with special education needs or disabilities under the accountability

framework they are assessed against. The current Early Years Teacher Standards require that all new early year teachers have a clear understanding of the needs of children with special educational needs and disabilities and are able to use and evaluate distinctive approaches to engage and support them.

57. The 0-25 SEN and Disability Code of Practice sets out clear expectations on educational institutions for identifying and supporting children and young people with SEN. It sets out a graduated approach which involves seeking specialist advice and intervention where appropriate. Details of the provision local authorities expect to be available in education institutions in their area must be published in their local offer.

58. Early years providers are required to follow the standards set out in the Early Years Foundation Stage framework, which includes supporting children with SEND. Under the recent SEND reforms maintained nurseries and schools that provide early years provision are required to :

- use their best endeavours to make sure that a child with SEN gets the support they need; and
- adopt the new SEN Support approach, working in partnership with parents/carers to develop a plan of support;
- admit a child, where the nursery is named in an EHC plan; and
- co-operate with the local authority in developing the local offer.

Conclusion

The measures in the Childcare Bill will have a significant, beneficial impact on the lives of hundreds of thousands of children and families in England. The Government would welcome further discussions with Peers during the passage of the Bill and through the consultation on draft regulations, in order to help ensure that we arrive at the simplest and most efficient way to deliver the additional 15 hours of free childcare to working families.



Department
for Education

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