



Department  
for Education

# **Exemptions from the Early Years Foundation Stage (EYFS): Learning and Development Requirements - Consultation Report & Government Response**

**1<sup>st</sup> October 2012**

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## Introduction

1. The Early Years Foundation Stage (EYFS) framework sets the standards for the learning, development and care of children from birth to age five. In 2011, Dame Clare Tickell carried out a review of the EYFS in order to assess whether it had achieved its aim of improving the quality of early years provision. Her review was published in March 2011 and found that, overall the EYFS had had a positive impact. The Government has consulted on a slimmed-down and revised framework, which has been widely welcomed. The new framework was published in March 2012 and came into force on 1 September 2012.
2. The Government also considered the recommendations of Dame Clare Tickell's review in relation to exemptions from the learning and development of the EYFS. These were, in summary:
  - a) That the Government consider whether the learning and development exemptions process could be widened to allow professional organisations representing groups of independent schools to seek exemptions, on behalf of the schools they represent, from the EYFS learning and development requirements.
  - b) That the Government extend the exemptions from certain early learning goals to all settings within the Steiner-Waldorf Foundation.
  - c) That the Government consider simplifying the procedure for exemption applications for providers meeting the existing stringent criteria by replacing the requirement to consult local authorities with a requirement to inform them.
3. Currently, Early Years providers can apply to be exempt from the learning and development requirements of the EYFS if the provision is governed by 'established principles' which cannot be reconciled with those requirements, or if they are temporarily unable to deliver them.

## Summary of responses

4. Between May and June 2012 the Government consulted on proposals to extend the scope of EYFS exemptions and simplify the process. In summary, our proposals were to:
  - i. allow exemptions from the learning and development requirements of the EYFS for provision for pupils aged 3 and over<sup>1</sup> in independent schools<sup>2</sup> which reach the required quality threshold;
  - ii. retain the current exemptions route based on 'established principles' which cannot be reconciled with the EYFS framework;

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<sup>1</sup> This proposal only applied to children aged 3 and above because the Independent Schools Standards, which provide an alternative framework by which early years learning and development can be judged in independent schools, applies only to children of 3 years and above. Provision for younger children would continue to meet the EYFS requirements.

<sup>2</sup> Independent schools for this purpose does not include academies and free schools.

- iii. minimise administrative burdens by creating a 'block' exemptions process for independent schools; and
  - iv. simplify the exemptions process to reduce administrative burdens.
5. The consultation had 205 responses, including 18 from parents. It was supplemented by discussions with practitioners, local authorities, parents and sector representatives.
6. This report provides an analysis of responses. It focuses on the new route for exemption for independent schools, including a proposed introduction of a quality threshold and block procedure, the interaction between exemptions and the entitlement to free early education, maintenance of the 'established principle' route to exemptions and proposed simplifications to the exemptions process. Responses to the consultation were generally positive:
- The majority of respondents (66%) agreed with the proposal to extend the possibility of exemptions to children aged 3 and over in independent schools which met the quality threshold set by the Secretary of State. However, opinions varied between different groups – for example, 88% of independent schools agreed with this proposal compared to only 44% of other respondents, including most local authorities and early years organisations. The majority of parents with children at independent schools agreed that independent schools should be offered the proposed exemptions arrangements and most said they would support such an exemption in the school their child attended.
  - The majority of respondents (63%) were content with setting the quality threshold for these schools at 'good or better', although some felt it should be 'outstanding' and others believed no quality threshold should be set.
  - The overwhelming majority of respondents agreed with proposals to simplify the exemptions procedure. 80% agreed that no renewals should be required and 85% supported the proposals aimed at simplifying arrangements for consulting parents. However, a small minority felt we should not be encouraging exemptions by making the process easier.
  - 80% of people agreed that we should maintain the existing route to exemptions based on 'established principles'.
  - Most respondents (70%) agreed with creating a block procedure for independent schools seeking exemptions.
  - 72% of respondents commented on the interaction between exemptions and the free entitlement. Some agreed that this should be left to local authority discretion. However, two other views were clearly expressed: a) that exempt providers should receive funding in the same way as non-exempt providers (this was mostly the independent schools and their representatives) and, contrary to this, b) that schools receiving full exemptions from the EYFS learning and development requirements should not be in receipt of government funding (mostly local authorities and teacher unions, although not all local authorities agreed).
7. Having considered carefully the views expressed on the proposed new exemptions arrangements for independent schools and plans to make the overall exemptions process simpler, the Government has decided to proceed with the exemptions

proposals set out in the consultation.

However, in response to views expressed from the consultation we have taken the following measures:

- We have strengthened the quality threshold set for independent schools. In addition to requiring a 'good' or better judgement, the school must also meet the new proposed standard for children who are below compulsory school age in the Independent Schools Standards<sup>3</sup>.
- Revised statutory guidance on free entitlement funding, which came into effect this month (September 2012), gives local authorities broader discretion to determine whether to fund early education places in provision that is exempt from all the EYFS learning and development requirements.
- In addition to the Department checking inspection reports and liaising with inspectorates, schools will be required to notify the Department and their local authority when they no longer meet conditions for exemption. This addresses concerns that the new block process would not adequately detect individual school performance.
- We will make clear in guidance that providers must both inform local authorities and seek the view of parents in order to meet the conditions of the exemption.

Amended EYFS Exemptions regulations are expected to come into force in October 2012, at which time the revised exemptions procedure outlined here will come into effect.

## Respondents

8. The breakdown of respondents to the online consultation was as follows:

	Number	Percentage
Parents/Carer	22	11%
Maintained school	1	0%
Local Authority	29	14%
Nursery	6	3%
Academy/Free School	2	1%
Inspectorate	2	1%
Early Years Sector Representative	8	4%
Independent School	115	56%
Other	14	7%
Union Representative	4	2%
Independent School Association	2	1%
<b>TOTAL</b>	<b>205</b>	<b>100%</b>

<sup>3</sup> The revised Independent Schools Standards (ISS) are expected to come into force on 1 January 2013 and the new standard for children below compulsory school age is expected to say that "Where the school has pupils below compulsory school age, a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional, physical development and communication and linguistic skills"

## Results

### Proposed changes to exemption arrangements

#### 1. A new route to exemptions for independent schools

9. This proposal offered independent schools the opportunity to opt for full exemption from the learning and development requirements for all children aged 3 and above. If an exemption were in place, the learning and development of children aged 3 and over would only be governed by the Independent School Standards (ISS) and the school would be inspected on this basis. To be eligible, schools would need to reach a quality threshold set by the Secretary of State.<sup>4</sup> Exemptions would lapse if schools fell below this threshold in subsequent inspections.

**a) Do you agree that all registered independent schools (excluding Academies and Free Schools) should be eligible for complete exemption from the learning and development requirements of the EYFS for children aged 3 or over, provided they meet the quality threshold?**

	<b>Number</b>	<b>Percentage</b>
Yes	132	66%
No	40	20%
Not sure	29	14%
<b>TOTAL</b>	<b>201</b>	<b>100%</b>

10. All but 4 respondents answered this question, with 66% agreeing that independent schools should be eligible for exemption. However, there were differences in responses depending on the category of respondent. For example 82% of independent schools agreed that they should be eligible for exemption, whereas only 44% of all other respondents felt this should be the case.

11. Many Independent schools argued that, although they valued some of the content of the EYFS, they strongly disagreed with this being imposed upon them. One major independent schools association felt that it was a matter of principle that independent schools should be eligible for exemption and called for exemptions to be extended to 0-3 year-olds in the longer-term. They did, however, state the need to make it clear to schools that exemption was entirely optional and that no school would be forced to go down this route.

12. However, others expressed concern about this new route to exemption. This included 18 of the 29 local authorities that responded, teacher unions, plus most of the early years sector representative bodies, who thought that EYFS should continue to be the universal standard. Several of the local authorities which disagreed with the new route were concerned at the quality they had seen in their independent schools, describing

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<sup>4</sup> The most recent inspection judgement for 'overall effectiveness of the EYFS' (which will be included in all inspection reports up to December 2011) would have to be 'good' or better. Thereafter (when separate EYFS judgements may not be made by inspectorates for non-registered provision) the threshold would be based on the judgements of the overall school in the following two areas: i) the 'quality of education provided' and ii) the 'spiritual, moral, social and cultural development of pupils', both of which would have to be at least 'good'.

very formal, teacher-led activity as opposed to learning through play, characterised by EYFS. However, 11 local authorities were supportive or undecided about exempting independent schools. They did, however, question how robust the inspection of independent schools would be via the Independent Schools Standards in comparison to the EYFS.

13. One large early years sector organisation said that they strongly believed there should be one single, mandatory framework for all early years settings with all children having the same learning opportunities whichever setting they attended. Three teacher unions felt that the proposal to exempt independent schools was aimed at leaving the “upper-end” of the market to regulate itself, creating a “two-tier” system within a universal entitlement.
14. Having considered all the views expressed, the Government has decided to proceed to establish this new route to exemption for independent schools.

**b) Do you agree that the quality threshold should be set at ‘good’ or better?**

	<b>Number</b>	<b>Percentage</b>
Yes	124	63%
No	60	31%
Not sure	12	6%
<b>TOTAL</b>	<b>196</b>	<b>100%</b>

15. 196 people answered this question, with 63% feeling that it was right to set the threshold at ‘good or better’ and 31% opposing this. Those opposing this did so for different reasons. For example, Steiner schools felt that there should be no threshold for exemption, feeling it was contrary to the spirit of exemptions which were in place because of principles which conflicted with the EYFS, rather than based on quality. However, others (including three independent schools) felt that this threshold was too low and that it should be set at ‘outstanding’.
16. Some respondents were concerned that, although the initial threshold was based on the ‘overall effectiveness of the EYFS’, the threshold in later inspections would be based on the quality of education of the overall school (due to separate judgements against the EYFS no longer being made for school provision by most inspectorates). Some schools felt that it would be unfair to judge their early years provision on the basis of the whole school when, in some cases, the early years provision was of significantly better quality than that higher up the school. Others felt that the overall provision in a school could be classed as ‘good’ whilst elements of the early years provision were not up to the same standard.
17. A major independent schools association commented that the continuing requirement to meet the quality threshold will ensure that good or better standards are maintained in exempt settings – thereby balancing the rights of children to a good start in life with the parents’ right to choose.
18. Some respondents expressed doubts that an overall school judgement could be a reliable indicator of the quality of early years provision. However, analysis of independent school inspection reports from 2008 to 2011 (which contain separate EYFS judgements) show that there are rarely discrepancies between judgements against the EYFS and those against the quality of teaching in the overall school (in

only around 1% of cases were there any differences). Government accordingly supports the proposed quality threshold but will strengthen it by requiring independent schools to also meet the new proposed standard for children who are below compulsory school age that is in the revised Independent Schools Standards<sup>5</sup>. There would then remain a quality measure specifically related to early years provision.

### The entitlement to free early education

19. We asked respondents if they had any comments to make on the interactions between exemptions and funding to deliver free early education places. The revised statutory guidance for local authorities on the delivery of free early education places gives local authorities broader discretion to fund provision which is exempt from the learning and development requirements of the EYFS. The revised guidance states that local authorities should consider and determine whether to fund places with providers that are exempt in this way. We will also make it clear in guidance on exemptions that any provider taking up exemption from the EYFS learning and development requirements should consult the relevant local authority and inform parents if the exemption is likely to have an impact on whether the provider is able to offer the free entitlement.

#### c) Do you have any comments on the interaction between the proposed exemptions and delivery of the free entitlement?

	Number	Percentage
Yes	132	72%
No	41	22%
Not sure	11	6%
<b>TOTAL</b>	<b>184</b>	<b>100%</b>

20. There were many comments in both written responses and in meetings with parents around the funding of free early education places. Some parents felt that leaving the decision to local authorities amounted to a 'postcode lottery' and felt that local authorities might use this as an excuse to save money. One Independent school organisation felt that there should not be a link between the proposed exemptions and the free entitlement and a distinction needed to be made between outcomes and methodology, with funding following good outcomes for children rather than the approach used for teaching and learning. Another independent school organisation commented that local authorities should not have any role to play in determining whether or not a particular independent school met the needs of its parents as local authorities would interpret their role in very different ways, resulting in little or no consistency across the country as a whole.

21. At one prep school, no parents said they took the funding and some felt, if government resources were stretched, that it was wrong to take the free entitlement in order to send their children to an independent school. However, other parents saw the free entitlement as a fundamental right, whether they needed it for financial

<sup>5</sup> The revised Independent Schools Standards (ISS) are expected to come into force on 1 January 2013 and the new standard for children below compulsory school age is expected to say that "Where the school has pupils below compulsory school age, a programme of activities which is appropriate to their educational needs in relation to personal, social, emotional, physical development and communication and linguistic skills"



reasons or not. Parents at another prep school said they would remove their children from the school if it opted for exemption and subsequently lost funding, despite agreeing with the principle of exemption. Most parents at independent Steiner schools were reliant on the funding and wouldn't be able to opt for a Steiner education without it. Many independent schools also responded that they would like to take up exemptions, but would be unable to do so if this meant that the local authority stopped funding free early education places. An independent school organisation commented that funding should follow quality provision whether it was exempt or not, although they added that loss of funding was a price which some schools will be willing to pay for exemption and that some of its member associations had withdrawn from funding anyway.

22. In contrast, other respondents felt that it was wrong for schools to receive exemptions, particularly full exemptions, and continue to receive government funding. Eight local authorities were clear that exempted providers should not receive funding. Ten other local authorities were less prescriptive and said that their decision to fund would be based on a range of factors. Some felt that national guidance should clearly set out the minimum standard that should be expected in exempt schools in order to qualify for funding. Some local authorities felt it was one thing to continue funding settings which had partial exemptions against very particular 'established principles' but another to continue funding schools which had entirely opted out of the learning and development requirements of the EYFS.

23. The Government has noted the diverse opinions on funding free early education places in schools exempt from the learning and development requirements of the EYFS. The regulations that enact the free entitlement to early education make it clear that local authorities have a duty to provide 570 hours of Early Years Foundation Stage provision. This means that children are entitled to a free place in a provider delivering the full EYFS. However, the Government has also decided that revised statutory guidance on the delivery of the free entitlement will give local authorities broader discretion to consider and determine whether to fund places with providers that are exempt, if there is parental demand. The Department will monitor the impact of exemptions on take-up of free early education provision and keep policy on funding free early education places in exempt schools under review.

**d) If you are an independent school (and you meet the eligibility criteria) do you expect to seek a full exemption?**

	<b>Number</b>	<b>Percentage</b>
Yes	62	47%
No	22	17%
Not sure	48	36%
<b>TOTAL</b>	<b>132</b>	<b>100%</b>

24. 64% of respondents (132 out of 205) answered this question as it was only aimed at independent schools. Of those, 47% were definite that they expected to seek exemptions, 17% said they didn't expect to seek an exemption and 36% were unsure. The majority (28 out of 48) of those who were unsure said they needed to consult the local authority about free entitlement funding before they could make a decision.

25. Many of those who said they would seek an exemption did not currently take free entitlement funding and therefore did not see this as a barrier to exemption. These

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schools felt that exemptions would allow them to take greater ownership of their early years provision and offer what parents wanted. One independent school association said many of its schools would seek exemption but would still maintain the EYFS framework as “a skeleton for best practice.”

26. Some independent schools said they were very happy with the EYFS and enjoyed the links that they had forged with the local authority. They were not keen to create barriers between themselves and the local authority or others schools by opting out of the EYFS learning and development requirements.

27. Over 20 Steiner schools responded that they would like to be able to have full exemptions but that most of them would not be able to opt for these under the independent schools route because of the risk of losing free entitlement funding.

## 2. Retaining the current exemption route based on ‘established principles’

28. Under this proposal, settings applying because of a conflict between the learning and development requirements and the principles which govern the setting would still be able to apply for partial or full exemptions on this basis, but with a simplified process in place. These settings would still need to apply to the Department for exemption.

### a) Do you agree that the route for providers to apply for exemption on this basis should continue to be available?

	Number	Percentage
Yes	144	80%
No	14	8%
Not sure	22	12%
<b>TOTAL</b>	<b>180</b>	<b>100%</b>

29. There was very strong support for retention of this exemption route, with 80% of people who responded supporting it. 12% were uncertain, mainly due to lack of knowledge about this route and who used it. There were few comments on this question. The Steiner Waldorf Schools Fellowship (SWSF), who has extensive knowledge of the ‘established principles’ exemption route, agreed that it should remain but noted, that it was “bureaucratic, time consuming and costly in manpower hours.” They would prefer this route not to involve an individual application process but for the SWSF to be able to apply for exemptions on behalf of all its schools.

30. Local authorities which had Steiner schools located in them, were generally supportive of this route to exemption.

## 3. Minimising bureaucracy with a new block exemptions for independent schools

31. Independent schools would be covered by a single direction from the Secretary of State allowing them exemptions if they meet certain conditions (e.g. meeting the required quality threshold). They would not need to apply to the Department but must instead notify the Department that they meet the conditions and are ‘taking up’ the exemption in order for the direction to take effect.

**a) Do you agree with creating a block procedure for exemption for eligible independent schools?**

	<b>Number</b>	<b>Percentage</b>
Yes	124	70%
No	39	22%
Not sure	14	8%
<b>TOTAL</b>	<b>177</b>	<b>100%</b>

32. 124 respondents (70%) agreed that a block procedure should be created for independent schools and 39 (22%) were against this. Reasons against a block procedure included independent schools being left to their own devices, concern that schools would not properly take account of parents' views, and concerns that schools would be able to get exemptions without any rigorous oversight of whether they were offering a high quality early years experience for children.

33. However, others saw a block procedure as a way of cutting down on paperwork and dealing with exemptions more efficiently.

34. The Government will put in place a block process to enable independent schools associations to notify the Department of schools seeking to become exempt under the proposed Secretary of State's direction.

35. The Department will keep inspection reports under review, liaising with inspectorates and requiring schools to notify the Department and their local authority when they no longer meet conditions for exemption.

**4. Further simplifying the exemptions procedure to reduce administrative burdens**

36. Proposed changes to simplify the process include providers no longer having to consult local authorities over exemptions but rather inform them if any exemptions are being requested. Providers should, as now, continue to seek views of parents but the process for doing so will be simplified. Exemptions would not need to be renewed every two years but would remain in place for as long as the conditions upon which they were granted remained in place.

**Do you agree with the changes proposed to simplify the exemptions process?**

	<b>Number</b>	<b>Percentage</b>
<b>a) Removing the renewal process</b>		
Yes	140	80%
No	27	15%
Not sure	9	5%
<b>TOTAL</b>	<b>176</b>	<b>100%</b>
<b>b) Advising rather than consulting local authorities when providers are planning to take up or apply for exemptions</b>		
Yes	144	81%
No	28	16%
Not sure	6	3%

TOTAL	178	100%
<b>c) Removing temporary exemptions</b>		
Yes	162	92%
No	9	5%
Not sure	6	3%
TOTAL	177	100%
<b>d) Simplifying arrangements for securing parental support by allowing providers to decide how to demonstrate that they have parental support for exemptions</b>		
Yes	149	85%
No	22	12%
Not sure	5	3%
TOTAL	176	100%
<b>e) Changing the commencement date of exemptions to the date of the letter from the Secretary of State granting an exemption</b>		
Yes	124	72%
No	11	6%
Not sure	37	22%
TOTAL	172	100%

37. On these proposed changes, the majority of respondents agreed that they should be introduced – support ranged from 72%-92% for the 5 questions. Most respondents including providers that already had exemptions favoured the lighter touch.

38. There were few comments on this section of the consultation.

39. Of the small number of respondents who opposed changes at 4 b), some local authorities were concerned that without renewals and without their intervention, quality of exempted provision would be compromised. One inspectorate was concerned that removing the need to renew the exemptions would need careful monitoring to ensure that children were not in provision that was not good enough, especially if they were also in receipt of funding. They felt inspection would play a part in this but the interval between inspections may not be helpful to those children who attended in between inspections.

40. Steiner schools thought that advising rather than consulting local authorities would save them from the long delays that they often currently experienced with their applications, waiting for formal letters from their local authorities.

41. Most schools were happy to decide for themselves how to demonstrate parental support but one independent school association and some local authorities underlined that schools would need to make absolutely clear to parents what impacts an exemption would have on free entitlement funding. At consultation events with parents, schools taking free entitlement funding confirmed that they would be very open with parents on this point as they would not want exemptions if parents opted out of the school because their free entitlement had been lost. Schools also commented that it would not be in their interest to overlook parents in considering exemptions, and parents themselves felt confident that schools would involve them.

42. The Government endorses the proposed simplifications to the exemptions process and removal of the unused temporary exemption option. We will make clear in guidance, and through the notification template and application form, that providers

must both inform local authorities and seek the view of parents in order to meet the conditions of the exemption.

## Next steps

43. The proposals set out in this report are broadly supported by most of those who responded to the consultation, and as a result, revised exemptions arrangements will be available to providers from the end of October 2012. Amended regulations will be in force on 26 October 2012. Guidance on the new arrangements will be available from the Department and published on our website.



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