



Department  
for Education

# **Early education and childcare**

**Statutory guidance for local authorities**

**March 2016**

Draft text in italics/square brackets for consultation

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## Summary

### About this guidance

This statutory guidance from the Department for Education is for English local authorities on their duties under section 2 of the Childcare Act 2016 and sections 6, 7, 7A, 9A, 12 and 13 of the Childcare Act 2006. Local authorities **must** have regard to this guidance when seeking to discharge those duties. They **should not** depart from it unless they have good reason to do so.

From XX 2016 it will supersede the current statutory guidance (which came into effect from 8 September 2014).

### Review date

This guidance will be kept under review and updated as necessary.

### What legislation does this guidance refer to?

This guidance refers to:

Childcare Act 2006	Childcare Act 2016
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<ul style="list-style-type: none"> <li>• Section 6, which places a duty on English local authorities to secure sufficient childcare for working parents.</li> <li>• Section 7 (as substituted by section 1 of the Education Act 2011), which places a duty on English local authorities to secure early years provision free of charge.</li> <li>• Regulations made under section 7 set out the type and amount of free provision and the children who benefit from the free provision.</li> <li>• Section 7A (as inserted by the Children and Families Act 2014). Regulations made under section 7A make provision about how local authorities should discharge their duty under section 7.</li> <li>• Section 9A (as inserted by the Children and Families Act 2014). Regulations made under section 9A limit the requirements local authorities can impose when they make arrangements to deliver early education places for two-, three- and four-year-olds.</li> <li>• Section 12 which places a duty on English local authorities to provide information, advice and assistance to parents and prospective parents. Section 12 is amended by section 5 of the Childcare Act 2016 to enable the Secretary of State to make regulations placing a duty on English local authorities to publish certain information at prescribed intervals.</li> <li>• Section 13, which places a duty on English local authorities to provide information, advice and training to childcare providers.</li> </ul>	<ul style="list-style-type: none"> <li>• Section 1 which places a duty on the Secretary of State to secure the equivalent of 30 hours of free childcare over 38 weeks of the year for qualifying children. Children in England will qualify if they are under compulsory school age and meet the description set out in regulations made under Section 1. These regulations also set out the conditions to be met by parents in order for their children to qualify.</li> <li>• Section 2 which allows the Secretary of State to discharge her duty under section 1 of the Act by placing a duty on English local authorities to secure free childcare for qualifying children.</li> </ul>
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## Who is this guidance for?

This guidance is for English local authorities.

## Main points

It provides guidance on the entitlement to free provision for around the 40% most disadvantaged two-year-olds<sup>1</sup>, the universal entitlement to free provision for three- and four-year-olds, securing sufficient childcare for working parents, providing information advice and training to providers and providing information, advice and assistance to parents. It introduces new elements relating to:

- the introduction, from September 2017, of an additional 15 hours a week of free childcare for working parents of three- and four-year-olds (on top of the universal entitlement of 15 hours a week of free early education for all three and four year olds). Eligibility for the additional hours will be determined by HMRC;
- *[flexible delivery of the free early education and childcare entitlements];*
- *[how local authorities should pay providers to deliver free early education and childcare places];*
- *[requirements on local authorities to publish information about early education and childcare places in their area].*

The guidance seeks to assist local authorities, providers and parents by making clear:

- what **outcomes** different measures are seeking to achieve;
- what is a legal duty **required** by legislation; and
- what local authorities **should do** to fulfil their statutory responsibilities.

The guidance refers to free early education and childcare care as 'funded hours' or 'a funded place'. This includes the entitlement for the 40% most disadvantaged two year olds, the 15 hour universal entitlement for parents of three and four year olds and the extended entitlement for working parents of three and four year olds.

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<sup>1</sup> The Department will consult on eligibility for Free School Meals and eligibility for a funded place for two year olds for families in receipt of Universal Credit later in the year.

References to a provider's Ofsted inspection judgement in this guidance should be read to include the inspection judgement of an independent inspectorate approved by the Secretary of State.

In the guidance 'provider' means:

- an early years provider other than a childminder registered on the Ofsted Early Years Register;
- a childminder registered on the Ofsted Early Years Register;
- a childminder registered with a childminder agency that is registered with Ofsted; or
- schools taking children age two and over and which are exempt from registration with Ofsted as an early years provider.

This document does not provide guidance on how providers operate their private businesses, including charges for provision over and above a child's funded hours. Local authorities should not intervene in providers' private businesses outside of a child's funded place.

# Part A: Funded places for two-, three- and four-year-olds

## Section A1: Eligibility

**Outcome:** all children who meet the prescribed criteria are able to take up funded provision regardless of their parents' ability to pay – benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that attending good quality early education has a lasting impact on social and behavioural outcomes. The entitlements makes childcare more affordable for parents and enables parents to work or increase their working hours if they wish to do so.

### Two-year-olds:

Local authorities **are required** by legislation to:

A1.1 Secure funded places offering 570 hours a year over no fewer than 38 weeks of the year for every eligible child in their area from the relevant date, as set out in paragraph A1.3 below.

A1.2 A child is eligible if:

- they meet the criteria used to determine eligibility for Free School Meals<sup>2</sup>;
- their families receive Working Tax Credits and have an annual gross income of no more than £16,190 per year;
- their families receive Universal Credit and have monthly earnings of no more than XX<sup>3</sup>
- they have a current statement of Special Educational Needs or an Education, Health and Care plan;
- they are receiving Disability Living Allowance;
- they are looked after by a local authority;

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<sup>2</sup> The Department will consult on the earnings threshold for families on Universal Credit to be eligible for Free School Meals later in the year.

<sup>3</sup> The Department will consult on the earnings threshold for families on Universal Credit later in the year.

- they are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangements order which specifies with whom the child lives.

A1.3 The relevant dates are as follows:

- Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's second birthday;
- Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's second birthday;
- Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's second birthday.

A1.4 For two-year-olds who become eligible (i.e. they meet the criteria set out in paragraph A1.2) after the beginning of the term following their second birthday (i.e. as set out in paragraph A1.3) local authorities should secure a place as soon as is reasonably practicable and must do so no later than the start of the next term.

A1.5 Local authorities must ensure that two-year-olds who have met the eligibility criteria set out above in paragraph A1.2 continue to receive a place once they have taken it up even if the child ceases to meet these criteria at a later date.

## **All three- and four-year-olds (universal entitlement):**

Local authorities **are required** by legislation to:

A1.6 Secure funded places offering 570 hours a year over no fewer than 38 weeks of the year for every eligible child in their area from the relevant date, as set out in paragraph A1.7 below, until the child reaches compulsory school age (the beginning of the term following their fifth birthday).

A.1.7 The relevant dates are as follows:

- Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's third birthday;
- Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's third birthday;
- Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's third birthday.

Local authorities **should**:



A1.8 Secure an appropriate number of funded hours for children who first take up their place part-way through the year<sup>4</sup>. The total number of hours should be adjusted to reflect the portion of the year remaining.

A1.9 Ensure that all<sup>5</sup> three- and four-year-old children moving to England from another country can access their funded place education place on the same basis as any other child in the local authority area.

### **Three- and four-year-olds of working parents (extended entitlement):**

From September 2017<sup>6</sup> local authorities **are required** by legislation to:

A1.10 Secure an additional 570 funded hours a year over no fewer than 38 weeks of the year for qualifying children in their area from the relevant date set out in paragraph A1.11 below. Eligibility for the additional funded hours will be determined by HMRC.

A1.11 The relevant dates are as follows:

- Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's third birthday;
- Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's third birthday;
- Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's third birthday.

A1.12 A child qualifies for free childcare if they are resident in England and under compulsory school age:

- both parents are working (or the sole parent is working in a lone parent family), and each parent earns, on average:

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<sup>4</sup> This is relevant three and four-year-olds who move to the local authority area part-way through the year.

<sup>5</sup> This includes when a three- or four-year-old child or the parent(s) of a three- or four-year-old child is categorised as having 'no recourse to public funds'.

<sup>6</sup> From September 2016 the following local authorities will deliver the extended entitlement to children in their area through grant funding: Hertfordshire, Newham, Northumberland, Portsmouth, Staffordshire, Swindon, Wigan, and York.

- a weekly minimum equivalent to 16 hours at national minimum wage (NMW) or national living wage (NLW); and
- less than £100,000 per year.

A1.13 Parent means a person who has parental responsibility for the child or care of the child<sup>7</sup>. In cases where a parent has remarried or is living with a partner, the step-parent or partner must also meet the earnings threshold.

A1.14 Foster carers are eligible for the extended entitlement if they meet the criteria set out at paragraphs A1.12 & A1.15 for their own children. Foster carers are not eligible for the extended entitlement for the children that they foster.

Working includes employed persons, self-employed persons and parents on zero hours contracts who meet the criteria.

A1.15 Families where one parent does not work (or neither parent works) will not usually be eligible for the extended entitlement. However the extended entitlement will be available where:

- both parents are employed but one (or both parents) is temporarily away from the workplace on parental, maternity or paternity leave;
- both parents are employed but one (or both parents) is temporarily away from the workplace on adoption leave;
- both parents are employed but one (or both parents) is temporarily away from the workplace on statutory sick pay;
- one parent is employed and one parent has substantial caring responsibilities based on specific benefits received for caring; or
- one parent is employed and one parent is disabled or incapacitated based on receipt of specific benefits.

A1.16 Local authorities should secure a funded place for children already taking up their universal entitlement whose parents become newly eligible for the extended entitlement during the term as soon as is reasonably practicable during that term and must do so no later than the start of the next term.

A1.17 Local authorities should continue to fund a place for a child who parents cease to

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<sup>7</sup> The person making the declaration confirming that they meet the eligibility criteria for the additional funded hours will need to be resident in the UK as determined by HMRC

meet the eligibility criteria set out in paragraphs A1.12 – A1.15 as set out below:

- Autumn and Spring terms
  - a child who becomes ineligible during the first half of a term (up to the first day of the half-term holiday) should be funded until the end of that term.
  - a child who becomes ineligible in the latter half of the term (up to the first day of the Christmas and Easter holiday) should be funded until the end of the following half-term.
  
- Summer term
  - a child who becomes ineligible in the first half of the summer term (up to the first day of the half-term holiday) should be funded until the end of the term.
  - a child who becomes ineligible in the latter half of the summer term (up to the first day of the summer holiday) should be funded until the start of the following term in September.

A1.18 There are circumstances where the grace period should be longer. For example, where a child becomes ineligible and is going through a review or appeals process, they should retain their childcare place until a final decision has been made. In addition, in circumstances where it is beneficial for the child's well-being to remain in childcare for a longer period than a term, for example, where a parent who is a victim of domestic violence, leaves their home and paid employment in order to escape their situation, local authorities have the discretion to extend the period the child receives their funded place for a short time.

A1.19 When parents have taken up their funded place at more than one provider and their child becomes ineligible, parents should have the choice of which provider they continue to take up their child's universal entitlement.

## **Two-, three- and four-year-olds:**

Local authorities **should**:

A1.20 Work with providers to ensure that parents are not charged for any part of their child's funded place. This includes providers charging top-up fees (the difference between a provider's usual fee and the funding they receive from the local authority to deliver funded places).

A1.21 Ensure that whilst providers may charge for any goods or services, this is not a condition of children taking up their funded place. Such goods or services might include

consumables such as meals, refreshments, nappies and sun cream, optional extra activities, trips or additional hours of provision in addition to the funded place.

A1.22 Ensure that if providers charge for consumables parents are given the option of providing a packed lunch or refreshments or providing their own nappies and sun cream if that would be more affordable.

A1.23 Promote equality and inclusion, particularly for disadvantaged families, looked after children, children in need and children with disabilities or special educational needs by removing barriers of access to funded places and working with parents to give each child support to fulfil their potential. Local authorities **must** ensure they meet their duties under the Equality Act 2010 when securing funded places.

A1.24 Encourage take-up of funded places and undertaking outreach activities to identify children who are not taking up their full hours and supporting them to do so.

A1.25 Take action over concerns about providers that do not actively promote fundamental British values, or which promote views or theories as fact which are contrary to established scientific or historical evidence and explanations. Further details on this are set out in section A4b.

## Section A2: Flexibility

**Outcome:** children are able to take up their full entitlement to a funded place at times that best support their learning, and at times which fit with the needs of parents to enable them to work or increase their hours of work if they wish to do so.

### Two-year-olds and three- and four-year-olds (universal and extended entitlement):

To secure flexible delivery, local authorities **should**:

A2.1 Consult with parents and involve them in local assessments of demand for flexibility.

A2.2 Act as a broker between overall parental demand in the area and provider capacity, seeking to provide the maximum possible flexibility where demand exists beyond the minimum models referred to in paragraph A2.7.

A2.3 Encourage strong partnership working between providers from all sectors (maintained, private, voluntary and independent) to ensure the market offers maximum flexibility for parents to access funded hours to meet their needs and the needs of their child.

A2.4 Encourage providers to offer flexible packages of funded hours, subject to the

following standards which will enable children to access regular, quality provision in keeping with the evidence of the benefits of doing so whilst maximising flexibility for parents and ensuring a degree of stability for providers.

- no session to be longer than 10 hours
- *[no session to be shorter than 3 hours between 9.00am and 3.30pm]*
- *[not before 6.00am or after 8.00pm]*
- *[a maximum of three providers]*

A2.5 *[Ensure parents and providers are aware that there is no minimum session length for funded places taken before 9.00am or after 3.30pm]*

A2.6 Ensure that parents and providers are aware that, subject to the standards set out in A2.4, there is no requirement that funded places must be taken on or delivered on particular days of the week or at particular times of the day.

A2.7 As a minimum, ensure that parents are able to access their child's funded place in the following patterns:

- 5 hours per day over 3 days of the week
- 3 hours per day over 5 days of the week

A2.8 Ensure that parents and providers are aware that funded places can be delivered:

- over more than 38 weeks of the year;
- outside of school terms; or
- **at weekends**

A2.9 Enable parents to take up their child's funded place in patterns of hours that "stretch" their child's entitlement by taking fewer hours a week over more weeks of the year, where there is provider capacity and parental demand. For example:

- Just under 12 hours a week for 48 weeks of the year (universal 15 hour entitlement)
- Around 23 hours a week for 48 weeks of the year (extended 30 hours a week entitlement)
- Around 11 hours a week for 50 weeks of the year (universal 15 hours a week entitlement)
- Just under 23 hours a week for 50 weeks of the year (extended 30 hours a week entitlement)
- Just under 11 hours a week for 52 weeks of the year (universal 15 hours a week entitlement)

- Just under 22 hours a week for 52 weeks of the year (extended 30 hours a week entitlement)

A.2.10 Provision of the models above should not restrict greater flexibility and local authorities should ensure parental demand drives local planning of flexibility.

A2.11 Enable children to take up a place at a provider which does not open for 38 weeks (for example an independent school) a year where this suits parents' needs.

A2.12 Support parents to identify providers who can offer funded places on the days and at the times needed by the parent.

A.2.13 Ensure parents are aware that the entitlement to a funded place does not offer a guarantee of a place at any one provider or a particular pattern of provision.

A2.14 Consider the impact of the educational experience and continuity of care for children when enabling children to take up their funded place at more than one provider.

A2.15 Use their Family Information Service, as well as local Childminder Agencies, if available, to publicise the childminders and other flexible provision in their areas and help match childminders with parents.

A2.16 Publish their local flexible offer (see also section C - Information to parents).

## Section A3: Quality

**Outcome:** all children are able to take up their funded hours in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the most disadvantaged children. The evidence also shows that high quality provision at age two brings benefits to children's development. This guidance reflects the Government's intention that, as far as possible, funded places for two-year-olds are delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report.

### Two- three- and four-year-olds (universal and extended entitlement):

A3.1 To secure quality, local authorities **are required** by legislation to deliver funded places through:

- early years providers other than a childminder registered on the Ofsted Early Years Register; or
- a childminder registered on the Ofsted Early Years Register; or
- a childminder registered with a childminder agency which is registered with Ofsted; or

- schools taking children aged two and over and which therefore are exempt from registration with Ofsted as early years providers.

## Two-year olds and three- and four-year-olds (universal and extended entitlement)

Local authorities **are required** by legislation to:

A3.1 Fund places for two-, three- and four-year-old children at any provider judged 'good' or 'outstanding' by Ofsted or at any childminder registered with a childminder agency judged 'effective'<sup>8</sup> by Ofsted if a parent wants their child to take up their funded education place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.15).

A3.2 Fund places for three- and four-year-old children at any provider judged 'satisfactory' or 'requires improvement' by Ofsted or at any childminder registered with a childminder agency judged 'effective' by Ofsted if a parent wants their child to take up their funded education place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.15).

A3.3 Fund places for two-, three- and four-year old children at new providers registered with Ofsted until the provider's first full Ofsted inspection judgement is published or at a childminder registered with an agency until the agency's first full Ofsted inspection judgement is published if a parent wants their child to take up their funded place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.15).

A3.4 Fund providers with exemptions from the Early Years Foundation Stage if a parent wants their child to take up their funded place at an exempt provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.15).

A3.5 Local authorities are not required to fund places at providers who do not meet the quality standards set out at A3.1 and A3.2 above but may choose to do so to ensure sufficiency of funded places.

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<sup>8</sup> Subject to the will of Parliament the Department will amend regulations made under s7 of the Childcare Act 2006 to reflect Ofsted's decision to award childminder agencies an inspection judgement of 'effective' / 'not effective'.

Local authorities **should:**

A.3.6 Rely solely on the Ofsted inspection judgement of the provider or the childminder agency as the benchmark of quality.

A3.7 Not fund providers who do not actively promote fundamental British values or if they promote views or theories as fact which are contrary to established scientific or historical evidence and explanations.

A3.8 Only fund places for two-year-old children in 'satisfactory' or 'requires improvement' providers where there is not sufficient, accessible 'good' or 'outstanding' provision.

A3.9 Fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published. Local authorities should not fund providers with an Ofsted inspection judgement of 'not met'

A3.10 Secure alternative provision and withdraw funding from a provider (other than a local authority maintained school), as soon as is practicable, when Ofsted publish an inspection judgement of the provider of 'inadequate' or an inspection judgement of a childminder agency of 'not effective'. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their funded hours at a provider or agency registered childminder and Ofsted monitoring information about the provider or agency.

A3.11 Not withdraw funding from providers or from childminders registered with an agency until the provider's or childminder agency's Ofsted inspection judgement is published.

A3.12 Not fund childminders registered with a childminder agency where the agency has indicated to the local authority that the childminder is not of satisfactory quality unless it is necessary to do so to ensure sufficiency of accessible places.

A3.13 Consider any information published by Ofsted about a provider or childminder agency including the recent history about childcare provision by a particular provider or agency or childcare provision at a particular address. This could include, for example, a provider using the same location, and employing at least one member of the leadership team, as one previously closed down or rated 'inadequate' by Ofsted.

A3.14 Take appropriate action to improve the quality of provision at a local authority maintained school which has been judged by Ofsted to require significant improvement or has been placed in special measures. [Guidance on schools causing concern](#) can be found on GOV.UK.



## Section A4: Funding places

**Outcome:** fair and transparent funding which supports a diverse range of providers to deliver funded places and encourages existing providers to expand and new providers to enter the childcare market. This diversity enables parents to choose a provider that best meets the needs of their child and family.

### A4.a: Early years single funding formula<sup>9</sup>

#### Two-, three- and four-year-olds:

To fund places, local authorities **are required** by legislation to:

A4.1 Use a locally-determined, transparent formula - the early years single funding formula (EYSFF) - to set the funding rates for all types of provider.

A4.2 Issue all providers with an indicative budget at the beginning of the financial year which broadly reflects anticipated participation. Local authorities must also adjust budgets to reflect actual levels of participation within the financial year, across all sectors.

A4.3 Construct a formula composed of either a single base rate for all providers or a number of base rates differentiated by type of provider according to unavoidable cost differences. The formula must include a deprivation supplement for three- and four-year-olds, but is not required to do so for two-year-olds. The formula must be based on a count of children attending provision conducted at least three times a year.

A4.4 Provide Free School Meals for children who are registered pupils of a maintained school, who attend places both before and after lunch and whose parents are in receipt of specified benefits. This requirement is distinct from the duty to secure a funded place for two-year-olds who meet the criteria also used for Free School Meals (paragraph A1.2), and the extended eligibility criteria for Free School Meals to include infants who are registered pupils in maintained schools.

A4.5 Submit details of the funding rates they pay providers for two-, three- and four-year-old places to the Department. This information will be published by the Department and enable providers and parents to compare rates across the country.

To fund places, local authorities **should**:

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<sup>9</sup> As announced in the November 2015 Spending Review the Department will bring forward proposals to reform early years funding later in the year

A4.6 Maximise the funding that is passed to providers, rather than centrally retained.

A4.7 Ensure that their EYSFF is clear, transparent, and in particular that:

- the number of base rates is kept to a minimum;
- any supplements are understood by providers and help drive positive outcomes for children; and
- providers of two-year-old funded places are funded using a single base rate, with no supplements (except where funding is for children with additional needs such as special educational needs).

A4.8 Fund separately, through the main schools budget, eligible children who have already been admitted to primary school and are attending a maintained school reception class.

*A4.9 [Be clear in their agreements with providers how and when providers will be paid. Unless they have good reason not to, local authorities should pay providers on a monthly basis to minimise cash flow difficulties for providers. Local authorities should do this by allocating an amount based on projected pupil numbers, which should be adjusted based on actual pupil numbers, for example every term].*

A4.10 [Should sign up to the [Prompt Payment Code](#) which has been produced by the Institute of Credit Management on behalf of the Department for Business, Innovation and Skills].

*A4.11 [Local authorities should work in partnership with providers in all sectors and actively support partnership working between providers to ensure that funded places are high quality, flexible and accessible to give parents choice about how and where they take-up their child's funded hours. Unless they have good reason not to local authorities should use the model agreement as the basis for their agreements with providers] (see Annex XX).*

A4.12 Discuss and agree locally with childminder agencies and each childminder registered with each agency whether funding is paid directly to childminders or is routed to the childminder through the agency.

A4.13 Ensure that none of the funding paid to childminders registered with an agency to deliver funded places is retained by the agency (see also A4.15).

A4.14 Pay providers the Early Years Pupil Premium in respect of their disadvantaged three- and four-year-old children. Details of eligibility and funding rates will be set out in separate guidance [here](#).

## A4b: Scope of requirements on providers

### Two-, three- and four-year-olds:

To fund places, local authorities **are required** by legislation to:

A4.15 Limit the requirements they place on any provider (other than the governing body of a local authority maintained school) or childminder agency to those which ensure:

- places are delivered completely free of charge to parents;
- places are provided flexibly in a pattern which meets the needs of parents;
- that the funding provided is used properly and in accordance with any arrangements made with providers;
- that providers will actively promote fundamental British values and not promote views or theories as fact which are contrary to established scientific or historical evidence and explanations;
- that the provider meets the needs of disabled children and children with special educational needs; and
- those providers keep children safe.

A4.16 Where the local authority makes arrangements so that a funded place is secured with a provider of a parent's choice, it must limit the requirements it places on that provider (or childminder agency) to those arrangements which are necessary for the local authority to discharge its duty to secure that such arrangements are made and may be terminated.

A4.17 The requirements will apply to the person with whom the local authority makes arrangements to deliver funded places. If the local authority funds an agency registered childminder directly, the local authority may place requirements on the childminder. If funding is routed via the childminder agency to the childminder the local authority can place requirements on the childminder agency. In order to place specific requirements on a childminder funded via an agency, it would be necessary for the local authority to put in place arrangements directly with that childminder as well as the agency.

A4.18 Local authorities **cannot** place additional requirements on any childminder agency, regardless of the agency's Ofsted rating, beyond those listed in paragraphs A4.15 and A4.16.

A4.19 Local authorities **cannot** require a provider to undertake any training or quality improvement programme, unless the training or quality improvement programme has been identified as necessary to address concerns raised in the Ofsted inspection report and the provider has been judged less than 'good' by Ofsted.

A4.20 Where Ofsted has identified the need for training or quality improvement, the local authority **cannot** require the provider to undertake training or quality improvement provided by the local authority itself and should enable providers to choose where and how they take up training or quality improvement (see D.2).

A4.21 Local authorities **cannot** require a provider or a childminder agency to participate in a local authority assessment of a provider's quality.

A4.22 Local authorities **can** refuse to fund providers who meet the quality criteria out at A3.1 – A3.2 if the local authority has reasonable grounds to believe that the provider is unable to meet any of the local authority terms of funding as set out in A4.15 and A4.16 or the provider falls into one of the categories set out in A4.25.

A4.23 To fund providers local authorities **should**:

- Ensure that providers are treated in an equitable way;
- Maintain a list of providers that choose to receive funding to deliver funded places; and
- Ensure any process to ensure the proper use of public funding does not place undue administrative burdens on providers.

A4.24 Where Ofsted have raised particular concerns about how a provider judged less than 'good' is using the Early Years Pupil Premium to support their disadvantaged children the local authority should include requirements to address this.

A4.25 Local authorities cannot meet their duty to secure funded places by securing places at a provider in relation to whom the local authority has reasonable grounds to believe:

- is not meeting the independent school standard in relation to the spiritual, moral, social and cultural development of pupils;
- is not actively promoting fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
- is promoting as fact views or theories which are contrary to established scientific or historical evidence and explanations.

A4.26 Local authorities **should** respond to substantive and well-evidenced concerns regarding fundamental British values or the promotion of views and theories contrary to established scientific or historical evidence and explanations brought to their attention. Where the local authority has reasonable grounds to believe that one or more of the criteria set out in A4.25 applies, the local authority should withdraw funding.

A4.27 Fundamental British values, first set out in the Government's Prevent strategy, are

democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. The promotion of fundamental British values is reflected in the Early Years Foundation Stage (EYFS) and exemplified in an age-appropriate way through practice guidance.

A4.28 The reference to the promotion as evidence-based of views and theories contrary to established scientific or historical evidence and explanations is intended to cover the presentation of creationism as fact. It has no bearing on teaching children about religious beliefs, traditions and festivals, and is simply intended to remove funding from providers presenting such views and beliefs as 'fact' or 'science'

A4.29 The learning goals in the EYFS are clear that providers are expected to teach a broad and balanced curriculum to ensure that children 'understand the world' and learn about 'similarities and differences between themselves and others, and among families, communities and traditions'. Providers who wish to celebrate religious and cultural festivals, for example putting on a nativity play, a harvest festival or a celebration of Eid, can still do so.

A4.30 The restriction described in A4.22 should not be interpreted as imposing an obligation on local authorities proactively to inspect providers. Local authorities can investigate allegations and, where appropriate, withdraw funding from providers on the grounds specified in A4.25.

A4.31 The first step to be taken upon receipt of a complaint will be to consider the claim being made. Some factors to which a local authority will wish to have regard are:

- **Source** – what is the relationship between the person making the claim and the institution? Is it a single claim, or have several been made together? A claim being made by a parent or member of staff will usually carry more weight than one made by a third party.
- **Substance** – how well-evidenced is the allegation? Is it based on rumour and hearsay or are the facts well substantiated? A specific claim might be considered differently to a claim that is vague or unspecific.
- **Severity** – in addition to substance, the severity of the claim will be a critical factor in determining appropriate steps.

These factors and examples are not exhaustive; local authorities should exercise judgement in deciding how best to proceed.

A4.32 Local authorities may choose to investigate further to support a decision made

under paragraph A4.25. If a claim is taken further, local authorities should notify and consult the appropriate regulator<sup>10</sup>. The presumption is that local authorities will consider, but not necessarily investigate, all claims made.

A4.33 If funding is withdrawn on the grounds that a provider meets one or more of the criteria set out in A4.25, local authorities should secure alternative provision for children taking up their funded place at those providers as soon as practicable. In cases where funding is withdrawn in these circumstances, local authorities should make arrangements for the review of their decision.

A4.34 In **all** cases where funding is withdrawn, the local authority should give the provider a written explanation of the decision to withdraw funding. Local authorities should have a complaints procedure for providers whose funding has been withdrawn despite the provider being of the required quality or awaiting their first Ofsted inspection, and should publicise this complaints procedure so that all providers can reasonably be aware.

A4.35 Local authorities **should** also:

- ensure that eligible children who move into the local authority area are able to take up their funded place, regardless of when during the term this is. Local authorities should be clear with providers and childminders registered with a childminder agency on how they will be funded when a child takes up their funded place outside of any regular headcount for funding purposes. This also applies to situations where a parent of a three or four year old either meets the eligibility criteria for the extended entitlement during a term or ceases to meet the eligibility criteria for the extended entitlement during a term (see paragraphs A1.16 – A1.17).
- make clear their local policy on funding providers in situations where children change providers within the local authority area during the term.
- ensure that providers and childminders registered with a childminder agency are not penalised for short term absences of children, for example sickness, occasionally arriving late or leaving early through withdrawing funding, but use their discretion where absence is recurring or for extended periods taking into account the reason for the absence and the impact on the provider or childminder.

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<sup>10</sup> The Department for Education for registered independent schools and Ofsted for all other providers

- ensure that providers and childminders registered with a childminder agency are aware of the local authority policy on reclaiming funding when a child is absent from a setting.
- consider and determine whether to fund the cost of lunch when a child who would qualify for Free School Meals in a maintained school takes up their funded entitlement at a private, voluntary or independent provider.

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## Part B: Securing sufficient childcare

**Outcome:** parents are able to work because childcare places are available, accessible and affordable and are delivered flexibly in a range of high quality settings.

To secure sufficient childcare places, local authorities **are required** by legislation to:

B.1 Secure sufficient childcare, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (or up to 18 for disabled children).

To secure sufficient childcare places, local authorities **should:**

B.2 Take into account what is 'reasonably practicable' when assessing what sufficient childcare means in their area and:

- the state of the local childcare market, including the demand for specific types of providers in a particular locality and the amount and type of supply that currently exists;
- the state of the labour market;
- the quality and capacity of childcare providers and childminders registered with a childminder agency, including their funding, staff, premises, experience and expertise;
- encourage schools in their area to offer out-of-hours childcare from 8.00am and 6.00pm;
- encourage existing providers to expand their provision and new providers to enter the local childcare market.

B.3 Report annually to elected council members on how they are meeting their duty to secure sufficient childcare, and make this report available and accessible to parents.

Local authorities are responsible for determining the appropriate level of detail in their report, geographical division and date of publication. The report should include:

- a specific reference to how they are ensuring there is sufficient childcare available to meet the needs of: disabled children; children from families in receipt of the childcare element of Working Tax Credit or Universal Credit; children with parents who work irregular hours; children aged two, three and four taking up funded places; school age children; and children needing holiday care;
- information about the supply and demand of childcare for particular age ranges of children, and the affordability, accessibility and quality of provision; and
- details of how any gaps in childcare provision will be addressed.



## Part C: Information to parents

**Outcome:** parents and prospective parents can access online, or are provided with, comprehensive and up to date information about childcare and early education, including funded places in their area, usually via the Family Information Service.

Local authorities **are required** by legislation to:

C.1 Maintain a service that provides information for parents and prospective parents on the provision of childcare in their area as listed in Schedule 1 to the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007<sup>11</sup>) and from [date of new regulations], to publish this information electronically and update it at a minimum annually.

C.2 Maintain a service providing the information listed at Schedule 2 of these regulations.

C.3 Clearly publish how those without access to the internet or from different groups, including people with a disability, can access Schedule 1 and Schedule 2 information.

C.4 Withhold provider information from publication, for example, where the childcare provider has notified the local authority that they do not want certain information to be disclosed such as their address.

C.5 Act in accordance with the School Admissions Code in enabling children to take up a place in a state funded school reception class from the September following their fourth birthday.

Local authorities **should:**

C.6 Ensure that published information for parents makes them aware :

- of the funded places for two-year olds, the universal entitlement for three- and four-year-olds and the extended entitlement for working parents of three- and four-year-olds;
- that they can choose to continue to take up their child's funded place at another childcare provider until their child reaches compulsory school age if they choose

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<sup>11</sup> <http://www.legislation.gov.uk/ukxi/2007/3490/contents/made>

not to take up their child's right to a place in a state funded school reception class in the September following their child's fourth birthday;

- that a place in a school nursery does not guarantee admission to the school and parents must apply for a place at the school if they want their child to transfer to the reception class;
- how to find childcare and funded places in their area; and
- how to assess the quality of that provision.

C.7 Continue to draw on the [2008 guidance](#) as appropriate to inform their duty to provide information, advice and assistance to parents

C.8 Ensure that parents are aware of local authority procedures to check eligibility for funded places for two-year-olds and any implications for the use of their personal data.

C.9 Ensure that parents can clearly see, from the information they receive from their provider, that they have received their child's full funded place completely free.

C.10 Have a complaints procedure for parents who are not satisfied that their child has received their funded place or with any aspect of the way in which they have received it and publicise this to parents.

C.11 *[Ensure that published childcare provider information is updated as frequently as appropriate – and at least annually - to ensure the integrity of the information and as deemed necessary according to its nature and content. This may include:]*

- *[updating provider vacancy rates on a frequent basis to ensure they remain current;]*
- *[keeping the provider's Ofsted registration status current;]*
- *[keeping the provider's Ofsted inspection judgements up to date.]*

C.12 Ensure, wherever practicable, that information about those providers who are not registered with Ofsted but who have given their consent is collected and published

C.13 *[Ensure that they publish their information in a way that best suits parents' and other users' needs and is line with local and central government's aspirations for increasing transparency and open data standards.]*

C.14 *[Take account of the Freedom of Information Act and the Code of Practice<sup>12</sup> which*

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<sup>12</sup> <https://www.gov.uk/government/publications/secretary-of-states-code-of-practice-datasets-on-the-discharge-of-public-authorities-functions-under-part-1-of-the-freedom-of-information-act>

*means publishing data in a re-usable and machine-readable format that is based on open standards in so far as is reasonably practicable. Local authorities should take account of the technical standards and principles for publishing open data in a range of guidance documents, such as the “Open Standards principles”<sup>13</sup>, and the Local Government Transparency Code”<sup>14</sup>].*

*C.15 [Be aware that publishing in this way allows better use of data through existing and new online applications, tools and services. As well as benefiting local authorities’ own business information, presenting data in meaningful and innovative ways can facilitate engagement with local childcare providers to make better use of it, and to do so on a wider basis than the immediate local area, such as regionally.]*

*C.16 [Consider signposting the data to a platform such as Data.gov.uk which can also benefit wider aggregation and help with issues such as childcare solutions for parents living on local authority boundaries.]*

C.17 When publishing information ensure that publication is compliant with the provisions of the Data Protection Act 1998, and have due regard to all information sharing principles set out in that Act. Further information on data protection is available [here](#). Via Ofsted, certain providers may request that their details be kept anonymous and local authorities must ensure they are in compliance with those requests.

C.18 Where information is held which identifies individuals, whether childminders or parents, local authorities should ensure that the information is held securely and that robust systems are in place to limit access to appropriate members of staff only.

C.19 Provide a brokerage service for parents needing further support to find the childcare that is suitable for their needs.

C.20 Advise or signpost users on a wider range of services and for a wider age range of children up to age 19 in cases where a child or parent is disabled. The Family Information Service’s published information on childcare may link to or incorporate the details of the local authority’s Local Offer for children and young people with Special Educational Needs and Disabilities. It may also signpost or refer users to other services for parents or children, such as child and adolescent mental health services. Further guidance on other services for parents, children and young people, such as brokerage, is available from this

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<sup>13</sup> <https://www.gov.uk/government/publications/open-standards-principles>

<sup>14</sup> <http://www.local.gov.uk/local-transparency>

link <sup>15</sup>. Local authorities should consider the link between this service and the provision of assistance via Early Help services as set out in the [2015 Working Together to Safeguard Children](#) guidance.

C.21 Should make use of social media and other technology where appropriate and consider examples of high quality online family information services available here XXXXX (add link when ready).

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<http://webarchive.nationalarchives.gov.uk/20130401151715/https://www.education.gov.uk/publications/standard/Youthandadolescence/Page4/DCSF-00943-2007>

## Part D: Information to childcare providers

**Outcome:** availability of information, advice and training is focused on childcare providers identified as needing to improve the quality of their provision and should promote high quality provision. Local authorities have a power to impose reasonable charges when securing information, advice and training.

Local authorities **are required** by legislation to

D.1 Secure information, advice and training for providers in their area set out in D.2 on the following matters:

- meeting the requirements of the Early Years Foundation Stage;
- meeting the needs of children with special educational needs and disabilities, vulnerable and disadvantaged children; and
- effective safeguarding and child protection.

D.2 Secure information, advice and training on the matters set out in D.1 for the following providers:

- those registered on the Ofsted Early Years Register who are judged less than 'good' by Ofsted in their most recent inspection report;
- newly registered providers on the Ofsted Early Years Register who have not yet had an inspection report published;
- those on Part A (the compulsory part) of the Ofsted General Childcare Register who are assessed by Ofsted as not having met the requirements of registration or the requirements relating to their activities<sup>16</sup>.

Local authorities **have the power to:**

D.3 Provide information, advice and training for all early years and childcare providers (including employees and prospective providers). If local authorities decide they wish to provide information, advice and training in these circumstances then they should only do so if requested by the provider.

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<sup>16</sup> The requirements are those prescribed for the purposes of section 59 of the Childcare Act 2006 and are found at regulation 6 of, and Schedule 3 to, the Childcare (General Childcare Register) Regulations 2008 (SI 2008/975)



Department  
for Education

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