



Department  
for Education

# Equality assessment

**Government Response: Early Years  
National Funding Formula and changes  
to the way the three-and four-year old  
entitlements to childcare are funded**

**December 2016**

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# The Public Sector Equality Duty

1. The Equality Act 2010 identifies the following as protected characteristics for the public sector equality duty:
  - Age
  - Disability
  - Gender Reassignment
  - Pregnancy and Maternity
  - Race (including ethnicity)
  - Religion or belief
  - Sex
  - Sexual orientation
  
2. Under Section 149 of the Equality Act 2010, the Secretary of State is under a duty to have due regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
    - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - tackle prejudice, and
    - promote understanding.

## Early years funding reform

3. This Government is committed to giving children from all backgrounds the best start in life. We are expanding our free childcare programme and we will be investing over £1 billion more per year in childcare by 2019-20. The Manifesto commitment to expand the free entitlement, from 15 to 30 hours a week for working parents, will reduce the cost of childcare for working families and break down the barriers to work so that parents who want to return to work, or work more hours, can do so.
4. To deliver the extended entitlement, and ensure that all children can continue to benefit from high quality early learning, we need to get the funding right. We have committed to increasing the average hourly rate paid to providers for delivering the entitlements; £300 million per year is included in the £1 billion extra annual funding for a significant uplift to funding rates.
5. But more funding, even if it is at record levels, is only part of the answer. This consultation turns to *how* that funding will be distributed. We must ensure that funding is allocated transparently across the country, in a way that channels funding to local areas with the children of the greatest needs and providers with the greatest costs. Once local authorities have received this funding, we must ensure that the great majority of it then reaches providers and that it is allocated between providers on a fair basis so they have a sustainable footing on which to meet the requirements of parents in their community and the needs of children in their care.
6. The current system does not do this very effectively. It features unjustified variation in the funding rates paid to different local areas and, even within the same area, to different providers. We now have a unique opportunity to change this.
7. An early years national funding formula, combined with reforms at the local level, will deliver a funding system which is fair for children, parents, providers and local authorities. The reforms will incentivise providers to deliver 30 hours of free childcare and enable them to thrive and expand. They will support parents who want to return to work or work more hours if they wish. And they will enable all children, whatever their background and individual needs, to access the high quality early learning and childcare they deserve.
8. As fairness and sufficient funding is at the heart of our reforms, children of all characteristics will attract hourly funding that covers the cost of the childcare they need. Adults (staff, volunteers and business owners) likewise will be funded fairly in a system that is transparent, straightforward and accountable.
9. We believe our reforms will bring about a necessary balance and levelling across areas that have been significantly underfunded or overfunded historically. While the former stand to receive significant increases in funding; the latter will face reductions in their hourly funding rates. These will however be mitigated by a funding floor that limits any reductions in local authority hourly funding rates to 5% in the first year and 10% overall. We will also introduce a minimum hourly funding rate of £4.30 to

support those local authorities whose new funding rates would otherwise be below that level.

10. This assessment has considered whether the changes brought about as a result of our reforms will have an impact on protected characteristics, by reference to the public sector quality duty.

11. In summary, our approach to early years funding reform is:

### **Early years funding reform:**

- To reform the funding system to deliver affordable, flexible and high quality childcare for all parents and children – including those with disabilities and with special educational needs.
- To have a fairer funding system for both the existing universal three- and four-year-old entitlement (for all parents) and the extension to 30 hours (for working parents).
- To introduce a national funding formula for the early years from 2017-18 (how money is allocated from Government to local authorities).
- To use factors in the national formula including the incidence of children with additional needs and relative costs of delivery.
- To reform the existing approach of local early years funding formulas (how money is allocated from local authorities to childcare providers) and maximise the amount of money to providers and therefore the children in their care.

## Consideration of the protected characteristics identified in the Equality Act 2010

12. The Equality Act 2010 identifies eight protected characteristics, as set out in Paragraph 1. Our consultation document included a question of whether respondents foresaw the proposed reforms having any negative impact on:

- eliminating unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act;
- advancing equality of opportunity between people who share a protected characteristic and people who do not share it; or
- fostering good relations between people who share a protected characteristic and people who do not share it.

13. We asked respondents to provide any representations and/or evidence on the impact of our proposals for the purposes of the Public Sector Equality Duty (Equality Act 2010). We reminded respondents that the protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race (including ethnicity); religion or belief; sex and sexual orientation. 550 respondents chose to answer this question, of which 424 provided a response relevant to the question.

14. Not all of those 424 contributions were representations relevant to the protected characteristics of the Equality Duty. Relevant concerns raised were:

Protected characteristic	Proportion of respondents to this question
<p><b>Age</b> If levels of funding are not sufficiently high, childcare providers could be forced to employ younger staff.</p>	10%
<p><b>Disability</b> Feedback that, despite the measures of the Disability Access Fund and the SEN inclusion fund, there may not be equality of opportunity for children with SEND. There were other comments during the consultation which voiced concern around access to funding for children not yet eligible for the Disability Living Allowance (an eligibility criteria in our proposals) because they are in the process of assessment or diagnosis.</p>	12%
<p><b>Pregnancy / Maternity</b> If there were an efficiency supplement, it must consider maternity leave and its impact on staffing/costs.</p>	1%

<p><b>Race</b></p> <p>If levels of funding are not sufficiently high, there could be a detrimental impact on BME, EAL children in high level deprivation areas.</p>	9%
<p><b>Sex</b></p> <p>If levels of funding are not sufficiently high, the proposals could “undermine the early years profession” predominantly staffed by women.</p>	2%
<p><b>Other</b></p> <ul style="list-style-type: none"> <li>• No problems identified through equality assessment</li> <li>• Do not understand the question / not sure</li> </ul>	4% 4%

15. This Equality Assessment has been updated to incorporate these relevant representations. We have included representations which refer to the *amount* of early years funding available (opposed to the distribution of that funding) in recognition of this being a key theme of free text consultation responses, despite this not being a question asked.

## Age

16. All age groups are distributed evenly across the country (including that of three- and four-year olds) and the childcare service for which providers are funded must meet exactly the same requirements as the service they provide for any other age of child and regardless of whether the child attracts Government funding.

17. We are not aware of any evidence that our means of distributing early years funding could impact upon children or adults (employees or business owners) of particular ages disproportionately. There were several representations made that the *amount* of funding distributed by our proposed means could, if not sufficient, encourage childcare providers to employ cheaper staff, who are generally younger in age and less qualified – therefore disrupting the equality of opportunity between different ages.

18. We are investing record levels of funding in childcare and the level of investment was informed by a rich source of evidence – the ‘Review of Childcare Costs’<sup>1</sup>, described as “thorough and wide-ranging” by the National Audit Office. The Review looked at both the current costs of childcare provision and the implications of future cost pressures facing the sector, including the potential pressures of the national living wage. We are providing additional funding for the system through the minimum hourly funding rate of £4.30 to support those local authorities whose new

<sup>1</sup> Review of Childcare Costs (2015)

<https://www.gov.uk/government/publications/review-of-childcare-costs>

funding rates would otherwise be below that level and this should mitigate any potential impact on higher paid workers, promoting equality of opportunity.

19. Regarding children who are younger than three, working parents who want to access early education and childcare will be eligible to apply for Tax-Free Childcare, which will save up to 2 million families up to £2,000 per child on their annual childcare bill. Some lower income families can access the 15 hour entitlement when their child is two, as well as other forms of support with childcare costs when their children are younger, such as the childcare element of working tax credit (to be replaced by the childcare element of Universal Credit).

## Disability

20. Our reforms support our strong view that no child should have access to their free childcare entitlements restricted or denied because of a disability or special educational need (SEN). The childcare service for which providers are funded must meet exactly the same general requirements as the service they provide for any other age of child, regardless of additional needs.
21. In practice, we know there is much work to be done in terms of access. In 2014 the Parliamentary Inquiry into childcare for disabled children<sup>2</sup> found that 41% of parents who responded to the inquiry said their children did not access the full 15 hours of the free entitlement for early education for three and four year olds. We believe that the revised early years funding system will lead to better access to, and better outcomes from, the early years entitlements for children with disabilities or SEN.

## Disabled children

22. Local authorities should continue to support settings to provide childcare to disabled children through use of the high needs block within the Dedicated Schools Grant. The Government is clear that the high needs block is for children and young people aged 0 -25 years.
23. While this approach should continue, we believe that the introduction of additional targeted Disability Access Funding will, in principle, provide greater recognition to the youngest children with disabilities and, in practice, support providers to make initial reasonable adjustments and build the capacity of the setting to support disabled children.
24. In the consultation, we sought views on the best means of this funding reaching providers and the eligibility of children who will qualify for the funding. We want to

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<sup>2</sup> Parliamentary Inquiry into childcare for disabled children (2014)  
<http://councilfordisabledchildren.org.uk/sites/default/files/field/attachemnt/parliamentary-inquiry-into-childcare-web.pdf>



support providers to use the funding more strategically to increase the capacity of their setting to care for disabled children and the large majority of respondents agreed that there should be a Disability Access Fund to support disabled children to access their free entitlement (89% of 3121 respondents).

25. Respondents did voice concern regarding eligibility; that the eligibility criteria of being in receipt of Disability Living Allowance would not cover all relevant children because some have not yet been diagnosed; are still going through assessment processes; parents may not have accepted that such young children require additional support; or parents may be unaware that support is available. However, the Disability Living Allowance is the Government's assessment process for eligibility to disability support and no better alternatives were proposed and a new process would create additional costs, taking funding away from providers.
26. Providers will still be required to support all children within their setting as per their duties under the Equality Act 2010 and work with their local authority when additional support is required for complex needs that go beyond that which they are expected to provide for.

## **Special educational needs (SEN)**

27. High quality childcare in the early years has a significant impact on outcomes for children and these experiences are even more important for children with SEN in their earliest years. Early identification and early intervention can have a positive impact on life chances and outcomes.
28. We have drawn on evidence from the Cost of Childcare Review<sup>3</sup> to identify the key drivers of cost. At the national level (the early years national funding formula) the 'additional needs' factor will reflect the extra costs of supporting children with additional needs to achieve good early learning and development outcomes. There were representations from respondents that these additional costs require a higher amounts of hourly funding than announced in indicative funding allocations and that higher rates of funding should apply to broader eligibility criteria to support those children in need of early intervention.
29. Funding channelled through the additional needs factor of the national funding formula will reflect the proportion of children in the local area who receive free school meals, receive disability allowance and/or speak English as an additional language.
30. On the former, some consultation respondents suggested alternatives to using free school meals as one proxy measure of SEN, for example to use the same eligibility criteria as for the free childcare entitlement for two-year olds. On the face of it, this is

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<sup>3</sup> Review of Childcare Costs (2015)

<https://www.gov.uk/government/publications/review-of-childcare-costs>

a sensible suggestion. However, such eligibility criteria alone are not enough: instead we would have to use data on *take-up* of the two-year old programme. Such data varies between local authorities, and from year-to-year, and is therefore insufficiently robust or stable to use for funding purposes.

31. It was also suggested that using the Disability Living Allowance (DLA) is not a close enough proxy for special educational needs and disabilities. The government recognises that while there may not be a perfect correlation between DLA and SEND in an area, this is a consistent, national level dataset which is up-to-date, inherently linked to children's needs, and more comprehensive than any alternative.
32. We therefore continue to believe, in light of the consultation responses, that free school meals and DLA are our best proxies for SEN in an area.
33. At the local level, we seek to build on the best practice of local areas and providers who deliver effective support for children with SEN. We will require all local authorities to set up an 'Inclusion Fund' in their local funding systems.
34. We believe that the principle of this fund will help focus local authorities on their strategic role to increase the capacity of their childcare market to appropriately support and develop children with SEN. We believe that the practical structure of the system will support local authorities to work with individual providers to resource support for the needs of individual children with SEN. We will use guidance to encourage local authorities to develop the fund in consultation with providers, SEN specialists and parents in the local area.

## **Gender reassignment, pregnancy and sexual orientation**

35. We do not consider these characteristics relevant to the distribution of hourly rates of funding to provide free childcare for children and we are not aware that funding levels would differentially affect adults (employees or business owners) with these protected characteristics. We therefore do not believe there to be any direct impact from our reforms.

## **Race (including ethnicity)**

36. Rather than including a funding stream in the early years national funding formula that is linked to the broad characteristic of ethnicity, we are using pupil characteristics that evidence suggests provide the strongest correlation to lower attainment. This approach will directly identify local authorities with young children most likely to need additional support to reach their full potential. Some of these factors, in turn, correlate to ethnicity.

## National funding formula: English as an additional language and free school meals

37. We know that there is a significant overlap between children eligible for **free school meals** (FSM) and black and minority ethnic groups. This means that the protected characteristic of race (including ethnicity) needs to be considered. As there is no FSM data for children in the early years, we are using data for Key Stage 1 and 2 as the best proxy.
38. 89.5% of the national funding formula will be channelled through a universal base rate. The remaining funding will be allocated to reflect the additional needs of children in the area and, of that, 8% will be directed according to the FSM metric. This is distinct from the Early Years Pupil Premium which remains a separate funding stream outside the funding formula.
39. There is a significant difference in attainment in the early years foundation stage profile between children with **English as an additional language** (EAL) and those with English as a first language. Again, there is a significant overlap between children with EAL and the protected characteristic of race (including ethnicity). For 2015, the early years foundation stage profile results showed that children with English as a first language are more likely than pupils with EAL to get at least the expected levels in all their early learning goals (67% and 56% respectively).
40. Representations were made to explain concerns that, if levels of funding are not sufficiently high, there could be a detrimental impact on EAL children in high level deprivation areas. In recognition that supporting children with EAL amounts to additional costs for childcare providers, the early years national funding formula will target additional resource to the local areas in which those children live to help them achieve good outcomes. 1.5% of total early years funding will be directed according to this metric.
41. We have listened to concerns and to further advance equality of opportunity we will permit a discretionary funding supplement designed to channel money from local authorities to providers supporting children with EAL.
42. It is essential to allocate funding to all childcare providers, and so the children in their care, on a fair basis. The children of inner city local authorities are also likely to benefit from the additional needs factor of the national funding formula (the high weighted free school meals metric and the EAL metric). These children will therefore continue to attract higher levels of funding than average (and additional funding will continue to reach individual children via the Early Years Pupil Premium).

## Local funding formulas: deprivation supplement

43. As mentioned above, and referred to in representations made by respondents, there is a significant overlap between deprivation and the protected characteristic of race

(including ethnicity). At the local level, we will continue to require local authorities to channel funding to providers that **serve areas of deprivation**. Evidence<sup>4</sup> confirms that costs are genuinely higher for these providers and this funding will ensure a greater equality of access to the free entitlements for children in the most deprived areas and those in less deprived areas.

44. At present, local authorities are required to include a deprivation supplement in their three- and four-year old funding formulae and they use a variety of metrics to allocate this funding. The majority use the 'income deprivation affecting children index' dataset (IDACI), others use rates of Free School Meals, the Index of Multiple Deprivation, ACORN or a combination. This deprivation factor will continue to be mandatory in local formulae and local authorities will continue to use their own choice of metric for allocating this funding in accordance with local circumstances.
45. Local authorities will continue to retain an amount of discretion over the amount of funding they direct through this supplement (up to a certain overall limit on the proportion of money channelled through supplements). Allowing this discretion reduces local fluctuations and turbulence thus giving providers more funding stability to meet the needs of the children in their care.

## Religion

46. We have no evidence to show, and no representations have been made to suggest, that the introduction of a national funding formula would impact disproportionately on parents choosing a nursery or pre-school run by a faith organisation. Our reforms will bring about greater equality of funding per child regardless of their childcare provider or geographical location and this principle of fairness will extend to faith-led childcare providers.

## Sex

47. We are not aware of any evidence that our revised means of distributing funding will disproportionately benefit children of a particular sex – gender is distributed evenly across the country and our reforms are designed to bring about fairness across the country.
48. We acknowledge that females make up the largest percentage of the workforce (and business ownership). The vast majority of providers in the sector stand to see higher funding rates as a result of the funding uplift and reform to maximise funding to providers. In the main, the remaining providers do not lose significantly as a result of redistributive reform. However, a small number of representations have been made

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<sup>4</sup> Review of Childcare Costs (2015)

<https://www.gov.uk/government/publications/review-of-childcare-costs>

to suggest that if the *amount* of funding is not sufficiently high, risks to business sustainability could affect the early years profession which, as a whole, is predominantly staffed by women. As mentioned earlier, our new £4.30 minimum funding rate floor will increase the amount of funding in many local authorities.

49. We believe that our reforms will advance the equality of opportunity between female parents, who wish to return to work or work more hours, and those who do not have maternal caring responsibilities.



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