



Department  
for Education

# **Early education and childcare**

**Statutory guidance for local authorities**

**February 2018**

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# Summary

## About this guidance

This statutory guidance from the Department for Education is for English local authorities on their duties pursuant to 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 1 September 2017 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?

Childcare Act 2006	Childcare Act 2016
<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. Regulations made under s7 set out the type and amount of free provision and the children who benefit from 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></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 2. 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 their duty under section 1 of the Act by placing a duty on English local authorities to secure free childcare for qualifying children. This duty is set out at regulation 33 of the Childcare (Early Years Provision</li></ul>

<ul style="list-style-type: none"> <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>	<p>Free of Charge) (Extended Entitlement) Regulations 2016.</p>
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## Who is this guidance for?

This guidance is for English local authorities.

## Main points

It provides guidance which applies to the free entitlements for two-, three- and four-year-olds, both the universal entitlement and the extended entitlement; securing sufficient childcare for working parents; providing information advice and assistance to parents; and providing information, advice and training to childcare providers. It introduces new elements relating to:

- the introduction, from September 2017, of the extended entitlement to 30 hours free provision - an additional 15 hours a week for working parents of three- and four-year-olds (on top of the universal entitlement of 15 hours a week for all

three and four year olds). Eligibility for the additional hours will be determined by HMRC;

- how local authorities should pay providers to deliver free entitlement places; and
- requirements on local authorities to publish information about childcare in their area including the free entitlements.

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 early years provision free of charge (sections 7 and 7A Childcare Act 2006) and free childcare (section 2 Childcare Act 2016) as the 'free entitlement(s)', a 'free place' or 'free hours'. The guidance applies to the 15 hour entitlement for the most disadvantaged two year olds, the 15 hour entitlement for parents of three and four year olds (the universal entitlement) and the 30 hours entitlement for working parents of three and four year olds (the extended entitlement).

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 which is itself 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 free hours. Local authorities should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place.

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

## Section A1: Eligibility

**Outcome:** all children who meet the prescribed criteria are able to take up a free place benefiting their social, physical and cognitive development and outcomes and helping to prepare them for school. Evidence shows that attending high quality early education has a lasting impact on social and behavioural outcomes. The entitlements make childcare more affordable for parents and enables parents to work or increase their working hours if they wish to do so.

### Two-year-olds:

A child will be entitled to the free hours from the term after if both of the following conditions are satisfied: (1) the child has attained the age of two (2) the child or parent meets the eligibility criteria. The eligibility criteria are set out in the legal annex (see page 39/40).

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

A1.1 Secure free places offering 570 hours a year over no fewer than 38 weeks of the year<sup>1</sup> and up to 52 weeks of the year for every eligible child in their area from the relevant date, as set out in paragraph A1.2 below. The eligibility criteria are set out in the legal annex (see page 39/40).

A1.2 The relevant dates (in relation to the age criterion) 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.

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<sup>1</sup> This equates to 15 hours a week for 38 weeks of the year. Children may stretch their entitlement over more than 38 weeks (and up to 52 weeks). This means taking fewer hours per week, subject to a maximum of 570 hours a year.

A1.3 Local authorities **must** ensure that the child has a place no later than the beginning of the term following the child or parent meeting the eligibility criteria.

A1.4 Local authorities must ensure that two-year-olds who have met the eligibility criteria continue to receive a place once they have taken it up until the point when the child becomes eligible for the universal entitlement (the child remains eligible even where the child or parent ceases to meet these criteria at a later date).

A1.5 Local authorities should secure an appropriate number of free hours for children who first take up their place part-way through the year<sup>2</sup>. The total number of hours should be adjusted to reflect the portion of the year remaining.

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

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

A1.6 Secure free places offering 570 hours a year over no fewer than 38 weeks of the year<sup>3,4</sup> and up to 52 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).

A1.7 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;

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<sup>2</sup> This is relevant for two-year-olds who meet the eligibility criteria who take up their place later in the year or move to the local authority area part-way through the year.

<sup>3</sup> This equates to 15 hours a week for 38 weeks of the year. Children may stretch their entitlement over more than 38 weeks (and up to 52 weeks). This means taking fewer hours per week, subject to a maximum of 570 hours a year.

<sup>4</sup> Children who have been admitted to primary school and are attending a maintained school reception class are not entitled to any additional free hours outside their school reception class place as local authorities can meet their duty to secure the universal entitlement through reception class provision.



- 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 free hours for children who first take up their place part-way through the year<sup>5</sup>. The total number of hours should be adjusted to reflect the portion of the year remaining.

A1.9 Ensure that all<sup>6</sup> three- and four-year-old children moving to England from another country can access their free place on the same basis as any other three- and four-year-old child in the local authority area.

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

A child will be entitled to the additional free hours from the term after both of the following conditions are satisfied: (1) the child has attained the age of three; (2) the child's parent has a current positive determination of eligibility from HMRC.

The eligibility criteria for the additional hours are set out in the legal annex (see page 39/40).

A1.10 Local authorities should ensure that parents and providers are aware that the child's parent **must** apply for the additional free hours through the Government's online Childcare Service<sup>7</sup>. **Eligibility for the additional free hours is determined by HMRC through this online application.**

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<sup>5</sup> This is relevant for three and four-year-olds who take up their place later in the year or move to the local authority area part-way through the year.

<sup>6</sup> All three- and four-year-olds living in England are entitled to the universal entitlement irrespective of the immigration status of the child or their parent(s).

<sup>7</sup> Parents will be able to call a helpline in cases where they are unable to send information by electronic communication due to age, disability, inability to operate a computer effectively with the use of assisted digital support or where they live in remote locations where electronic communications are not practicable. The helpline will provide support on making an application through the electronic system (by an employee or agent of HMRC) using information that is supplied by the applicant over the phone.

From September 2017 local authorities **are required** by legislation to:

A1.11 Secure an additional 570 free hours a year over no fewer than 38 weeks of the year<sup>8,9</sup> and up to 52 weeks of the year, for qualifying children in their area.

A1.12 The relevant dates (in relation to the age criterion) 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.

A1.13 Local authorities must ensure that the child has a place no later than the beginning of the term following the child and the parent meeting the eligibility criteria.

Local authorities should:

A1.14 Ensure that parents and providers are aware that the eligibility code must be verified in accordance with local procedures before the child is able to take up the additional free hours and ensure that all providers receive clear guidance on how to verify the eligibility code, preferably through a digital portal to minimise burdens on providers.<sup>10</sup>

A1.15 Ensure that the parent is aware that there is a review and appeals process available to them if they disagree with the eligibility outcome as determined by HMRC. The review and appeals process is managed by HMRC.

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<sup>8</sup> This equates to 15 hours a week for 38 weeks of the year. Children may stretch their entitlement and take fewer hours per week over up to 52 weeks of the year subject to a maximum of 570 hours a year.

<sup>9</sup> Children who have been admitted to primary school and are attending a state-funded school reception class are not entitled to any additional free hours outside their school reception class place as local authorities can meet their duty to secure the extended entitlement through reception class provision

<sup>10</sup> Local authorities will provide a validity checking service to providers to enable them to verify the code before parents take up a place. The ECS allows all LAs to make instant checks for code validity.

## The Grace Period

A1.16 Local authorities should continue to fund a place for a child whose parents cease to meet the eligibility criteria and ensure that providers are aware of this. This is known as the “grace period”. During the grace period local authorities should continue to fund a child as set out in A1.11 (i.e. they should continue to receive the additional 15 hours a week over 38 weeks of the year, or its equivalent if the entitlement is being stretched).

- A child who becomes ineligible during the first half of a funding block (as defined at table A below) should be funded until the end of that funding block (31 March, 31 August, 31 December) or for as long as they remain under Compulsory School Age, whichever is the shorter.
- A child who becomes ineligible in the latter half of the funding block (up to the last day of the funding block) should be funded until the end of the following funding block or for as long as they remain under Compulsory School Age, whichever is the shorter.

A1.17 Local authorities will be able to access this information via the Eligibility Checking Service, which will automatically encode the grace period end date to all eligibility codes. Local authorities should complete an audit check on eligibility codes at 6 fixed points in the year, both at half-term and at the end of term across the year (in line with the dates as listed at table A below). Local authorities should communicate the grace period (through providers) to parents who are found to be ineligible for the extended entitlement at the audit check date.

**Table A:**

<b>Date Parent receives ineligible decision on reconfirmation:</b>	<b>LA audit date:</b>	<b>Grace Period End date:</b>
1 Jan – 10 Feb	11 February	31 March
11 Feb – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December

22 October – 31 December	1 January	31 March
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A1.18 Local authorities should consider extending the “grace period” set out above for a short time in very exceptional circumstances if the parent has been forced to leave their home and paid employment, for example, where the parent is a victim of domestic abuse or other serious crime.

A1.19 Ensure that parents are aware that if they cease to meet the eligibility criteria and the “grace period” has expired they can continue to take up their child’s universal entitlement, provided they have not exceeded the number of hours as set out at A1.16. If the parent has been taking up the extended entitlement at more than one provider, the local authority should continue to fund 15 hours at the provider of the parent’s choice.

## Charging

Government funding is intended to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the costs of meals, other consumables, additional hours or additional services.

Local authorities **should**:

A1.20 Ensure that providers are aware that they can charge for meals and snacks as part of a free entitlement place and that they can also charge for consumables such as nappies or sun cream and for services such as trips and yoga. These charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks, or allowing parents to supply their own meals.

A1.21 Not intervene where parents choose to purchase additional hours of provision or additional services providing that this does not affect the parent’s ability to take up their child’s free place.

A1.22 Ensure providers deliver the free entitlements consistently, so that all children accessing any of the free entitlements receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.

A1.23 Ensure that providers are completely transparent about any additional charges, for example, for those parents opting to purchase additional hours or additional services.

A1.24 Work with providers and parents to ensure all parents, including disadvantaged families, have fair access to a free place, which must be delivered completely free of charge. Ensure that providers do not:

- charge parents “top-up” fees (the difference between a provider’s usual fee and the funding they receive from the local authority to deliver free places).
- require parents to pay a registration fee as a condition of taking up their child’s free place.

A1.25 Work with providers to ensure that, if providers charge parents a deposit to secure their child’s free place, the deposit is refunded in full to parents within a reasonable time scale.

A1.26 Ensure that providers publish their admissions criteria and ensure that providers work with parents to ensure parents understand which hours / sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the pattern of hours are convenient for parents’ working hours.

A1.27 Work with providers to ensure their invoices and receipts are clear, transparent and itemised allowing parents to see that they have received their child’s free entitlement completely free of charge and understand fees paid for additional hours or services. Invoices and receipts should include the provider’s full details so that they can be identified as coming from a specific provider.

## Inclusion

A1.28 Promote equality and inclusion, particularly for disadvantaged families, looked after children, children in need and children with special educational needs and disability by removing barriers of access to free 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 and take account of the Special Educational Needs and Disability (SEND) Code of Practice 0-25 when securing free places.

A1.29 Identify children who qualify for the Early Years Pupil Premium and the Disability Access Fund and promote these to parents.

A1.30 Ensure a strong multi-agency focus by securing local partnerships between all joint working professionals including education, health and social care.

A1.31 Encourage providers to be clear, transparent and consistent about the SEND support available at their setting and make information available about the support to enable parents to choose the right setting for their child.

A1.32 Encourage take-up of free places and undertake outreach activities to identify disadvantaged children and children who are not taking up their entitlement or their full hours and support them to do so.’

A1.33 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. We define fundamental British values as democracy, the rule of law, individual liberty, and mutual respect and tolerance of those of other faiths and beliefs.

## Section A2: Flexibility

**Outcome:** children are able to take up their full entitlement to a free place at times that best support their learning and development, 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 for parents. Support providers to establish parental declarations setting out their hours and patterns of take up of free places.

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

A2.4 Encourage providers to offer flexible packages of free hours, subject to the following standards which will enable children to access regular, high 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 minimum session length (subject to the requirements of registration on the Ofsted Early Years Register)
- not before 6.00am or after 8.00pm
- a maximum of two sites in a single day

A2.5 Evidence shows that continuous provision is in the best interests of the child. Where it is reasonably practicable local authorities should ensure that children are able to take up their free hours in continuous blocks and avoid artificial breaks being created throughout the day, for example over the lunch period.

A2.6 Ensure that parents and providers are aware that free places can be delivered:

- over up to 52 weeks of the year
- outside of maintained school term times
- at weekends

A2.7 Ensure that parents and providers are aware that, subject to the standards set out in A2.4, there is no requirement that free places must be taken on or delivered on particular days of the week or at particular times of the day.

A2.8 Ensure that parents and providers are aware that there is no requirement that providers must be open for at least 38 weeks of the year, or that providers must offer 30 hours in order to receive funding to deliver free places.

A2.9 Ensure that providers are aware that they can choose not to deliver free places.

A2.10 Ensure parents are aware that the entitlement to a free place does not offer a guarantee of a place at any one provider or a particular pattern of provision.

A2.11 Enable parents to take up their child's free 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 for the universal 15 hour entitlement or around 23 hours a week for 48 weeks of the year for the extended 30 hour entitlement.

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

A2.13 Encourage providers to work with parents to ensure continuity of care for children and effective transitional arrangements to support children's learning and wellbeing when enabling children to take up their free place at more than one provider or on more than one site.

A2.14 Refer to page 14 of the Department's early years national funding formula operational guidance for the circumstances in which an authority can provide a flexibility supplement (see A4.5).

A2.15 Use their Family Information Service and children's centres, as well as local childminder agencies, if available, to publicise the childminders and other flexible wraparound provision in their areas and help match childminders with parents.

A2.16 Make full use of their maintained nursery schools, if they have them. Maintained nursery schools are almost exclusively good or outstanding, the majority are located in disadvantaged areas and they have early years expertise and experience that can be used to benefit the whole local area. Local authorities should ensure that they have a role in the pedagogical leadership for the local early years system. What this means in practice will depend on local need, but it might include for example: commissioning nursery schools to develop and deliver a quality improvement strategy for the area; having nursery schools work with other providers to share their experience and expertise to raise the overall quality of provision across the area; helping nursery schools to work in partnership with other providers to offer the 30 hours entitlement; and providing funding to nursery schools to allow them to deliver family support services.

## Section A3: Quality

**Outcome:** all children are able to take up their free hours in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children, particularly for the most disadvantaged children leading to better outcomes. 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, free places are delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report.

The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe. Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.

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

A3.1 To secure quality, local authorities **are required** by legislation to deliver free 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 itself registered with Ofsted on early years register; or

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

A3.2 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' by Ofsted if a parent wants their child to take up their free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.3 Fund places for three- and four-year-old children at any provider judged 'satisfactory' (prior to 2014) 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 free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.4 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 free place at that provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.5 Fund providers with exemptions from the Early Years Foundation Stage if a parent wants their child to take up their free place at an exempt provider and the provider is willing to accept the local authority funding and any other local authority requirements (see also A4.9).

A3.6 Fund individual children who have exemptions from the EYFS.

A3.7 Local authorities are not required to fund places at providers who do not meet the quality standards set out at A3.2 and A3.3 above but may choose to do so to ensure sufficiency of free places.

Local authorities **should:**

A3.8 Rely solely on the Ofsted inspection judgement of the provider or the childminder agency as the benchmark of quality.

A3.9 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.

A3.10 Only fund places for two-year-old children in 'satisfactory' or 'requires improvement' providers where there is not sufficient, accessible 'good' or 'outstanding' provision.

A3.11 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'.

A3.12 Refer to page 14 of the Department's early years national funding formula operational guidance for the circumstances in which an authority can provide a quality supplement (see A4.5).

A3.13 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'. It is for local authorities to determine an appropriate timeframe for withdrawing funding. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their free hours at a provider or with an agency registered childminder and Ofsted monitoring information about the provider or agency. Local authorities should 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.

A3.14 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.

A3.15 Not fund childminders registered with a childminder agency where the agency has indicated to the local authority that the childminder is not of the appropriate quality unless it is necessary to do so to ensure sufficiency of accessible places. Local authorities should also consider any information provided by a childminder agency about the childminder registered with them and the childminder's premises.

A3.16 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 may include, for example, where the local authority has concerns that a provider judged "inadequate" by Ofsted may have re-registered their setting with Ofsted to avoid making the quality improvements identified by Ofsted.

## Section A4: Funding places

**Outcome:** fair and transparent funding which supports a diverse range of providers to deliver free places on a sustainable basis 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.

### A4a: Early years national funding formula

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

The School and Early Years Finance (England) Regulations 2017 set out the framework for early years funding in the 2017-2018 financial year.

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

A4.1 Use a locally-determined, transparent formula 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. The formula must be based on a count of children attending provision conducted at least three times a year.

#### Three- and four- year- old funding

A4.3 Local authorities are funded on the same basis for both the existing 15 hour entitlement for all three- and four-year-olds and the additional 15 hours for three- and four-year-old children of working parents. This is because the statutory framework and the quality requirements for the universal and extended entitlement are the same. We expect local authorities to also fund providers for both sets of hours at the same rate.

A4.4 A guide to the regulations in respect of three- and four-year-old funding can be found at the following link:

<https://www.gov.uk/government/publications/early-years-national-funding-formula-allocations-and-guidance>

A4.5 The main requirements imposed on local authorities by the regulations are set out below.

- pass through a minimum of 93% of funding to providers in 2017-18 and a

minimum of 95% in future years.

- include a mandatory deprivation supplement in their local formula and only provide further discretionary supplements within the permitted categories and up to a total of 10% of the value of planned funding to providers.
- pay providers the Disability Access Fund in respect of eligible children.
- establish a special educational needs inclusion fund.
- pay providers the Early Years Pupil Premium in respect of their disadvantaged three- and four-year-old children.

#### Two-year-old funding

A4.6 Local authorities may include a deprivation supplement in their local formula when determining allocations in respect of providers of free places for two-year-olds.

#### Other funding matters

Local authorities must:

A4.7 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.

A4.8 Introduce a local universal base rate for all types of provider by 2019-2020 at the latest.

A4.9 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 free place for two-year-olds who meet some of the criteria also used for Free School Meals, and the extended eligibility criteria for Free School Meals to include infants who are registered pupils in maintained schools.

Local authorities should:

A4.10 Fund separately, through the schools block of the Dedicated Schools Grant, eligible children who have already been admitted to primary school and are attending a maintained school reception class.

A4.11 Work in partnership with providers in all sectors and actively support partnership working between providers to ensure that free places are high quality, flexible and accessible to give parents choice about how and where they take-up their child's free hours. Unless they have good reason not to local authorities should use the model agreement as a tool to develop their agreements with providers.

A4.12 Be clear in their agreements with providers how and when providers will be paid particularly when children split their entitlement between providers and the documentation required from providers in order to receive payment.

A4.13 Local authorities should pay all providers, particularly childminders, monthly and are expected to do so from September 2018. If a provider requests and the local authority agree an existing alternative sustainable method of payment may be continued.

A4.14 Sign up to the [Prompt Payment Code](#) that has been produced by the Institute of Credit Management.

A4.15 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.

A4.16 Ensure that none of the funding paid to childminders registered with an agency to deliver free places is retained by the agency (see also A4.21).

A4.17 Ensure providers are aware that they are required by legislation to complete the termly school census or the annual early years census.

## **A4b: Scope of requirements on providers**

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

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

A4.18 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 the provider meets the needs of disabled children and children with special educational needs;
- effective safeguarding and promotion of welfare of the children for whom the early education is provided;

- that providers 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 early years provider takes any measures identified in a report from Ofsted to improve the overall effectiveness of the provision (see A4.23), and
- are necessary for the effective administration of the arrangements

A4.19 Where the local authority makes arrangements with a provider for the purposes of securing free places, it must limit the requirements to those that are necessary to meet the above objectives at A4.18. It must also include termination provisions permitting it to terminate the arrangements if the quality criteria in A3.2 and A3.3 are not met.

A4.20 Limit the requirements they place on providers judged less than 'good' by Ofsted to those that enable providers to improve the quality of their provision as identified in the provider's Ofsted inspection report. The requirements may include, where applicable, participating in training or other quality improvement programmes.

A4.21 The requirements will apply to the person with whom the local authority makes arrangements to deliver free 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.

A4.22 Local authorities **cannot** place additional requirements on any childminder agency, regardless of the agency's Ofsted inspection judgement, beyond those listed in paragraphs A4.18 and A4.19.

A4.23 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.

A4.24 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).

A4.25 Local authorities **cannot** require a provider or a childminder agency to participate in a local authority assessment of a provider's quality.

A4.26 Local authorities **can** refuse to fund providers who meet the quality criteria set out at A3.2 and A3.3 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 A4.18 and A4.19 or the provider falls into one of the categories set out in A4.28.

A4.27 To fund providers local authorities **should**:

- ensure that providers are treated in an equitable way;
- ensure any process to ensure the proper use of public funding does not place undue administrative burdens on providers.

A4.28 Local authorities cannot meet their duty to secure free 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.

A4.29 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 A4.28 applies, the local authority should withdraw funding.

A4.30 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'

A4.31 The learning goals in the EYFS are clear that providers are expected to offer 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.

A4.32 The restriction described in A4.28 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 A4.28.

A4.33 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.

A4.34 Local authorities may choose to investigate further to support a decision made under paragraph A4.28. If a claim is taken further, local authorities should notify and consult the appropriate regulator<sup>11</sup>. The presumption is that local authorities will consider, but not necessarily investigate, all claims made.

A4.35 If funding is withdrawn on the grounds that a provider meets one or more of the criteria set out in A4.28, local authorities should secure alternative provision for children taking up their free place at those providers as soon as practicable. In cases where funding is withdrawn in the circumstances set out in A4.28 – A4.34 above local authorities should make arrangements for the review of their decision if new information comes to light.

A4.36 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.

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<sup>11</sup> The Department for Education for registered independent schools and Ofsted for all other providers



A4.37 Local authorities **should** also:

- as far as reasonably practicable, ensure that eligible children who move into the local authority area from another local authority area are able to take up their free 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 free place outside of any regular headcount for funding purposes.
- make clear their local policy on funding providers in situations where children change providers within the local authority area during the term and encourage providers to work together to support children's learning and well-being when children change providers.
- ensure that providers and childminders registered with a childminder agency are not penalised for short term absences of children, for example sickness, arriving late or leaving early, or a family emergency 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.
- ensure that providers and childminders registered with a childminder agency are aware of the local authority policy in the area in which they practice on reclaiming funding when a child is absent from a setting.
- ensure that providers are not penalised through withdrawal of funding for short term closures of a setting, for example, as a result of local or national elections or damage to the premises.

## 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 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 local labour market including the sufficiency of the local childcare workforce;
- the quality and capacity of childcare providers and childminders registered with a childminder agency, including their funding, staff, premises, experience and expertise;
- should encourage schools in their area to offer out-of-hours childcare from 8.00am until 6.00pm and in school holidays;
- should encourage existing providers to expand their provision and new providers to enter the local childcare market.
- should encourage providers to take a sustainable business approach to planning and signpost providers to resources to support them, for example the business sustainability tool kit published by the Department, and can be found at the following link:

<https://www.gov.uk/government/collections/early-years-business-sustainability>

B.2 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: children with special educational needs and disabilities;

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 free places; school age children; and children needing holiday care;

- information about the current and projected 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 free places in their area, usually via the Family Information Service.

Local authorities **must:**

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>12</sup>) and from 1 September 2017, to publish this information electronically on the local authority website and update it at a minimum termly on 1 January, 1 April and 1 September.

C.2 During the period 1 April 2017 to 31 August 2017, provide information regarding persons who intend to provide the extended 30 hours entitlement.

C.3 Maintain a service providing the information listed at Schedule 2 of these regulations, i.e. information on any other services or facilities that may be of benefit to parents, prospective parents, children or young persons in the area.

C.4 Clearly publish how those without access to the internet or from different groups, including people with special educational needs and disability, can access Schedule 1 and Schedule 2 information.

C.5 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.<sup>13</sup>

C.6 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.

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<sup>12</sup> <http://www.legislation.gov.uk/uksi/2007/3490/contents/made>

<sup>13</sup> This refers to childminders working from their own homes and other childcare where the address should not be published, for example in women's refuges.

Local authorities **should** ensure that published information for parents makes them aware:

- of the 15 hour free places for two-year olds, the universal 15 hour free entitlement for three- and four-year-olds and the extended 30 hour free entitlement for working parents of three- and four-year-olds;
- of the local authority complaints procedure if they are not satisfied that their child has received their free place or with any aspect of the way they have received it.
- that they can choose to continue to take up their child's free place at a private, voluntary or independent childcare provider until their child reaches compulsory school age if they choose 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 free places in their area;
- how to assess the quality of that provision; and
- how any of their personal data or data about their child will be used.

Local authorities **should** also:

C.7 Ensure that parents are aware of the local authority procedures to check eligibility for free places to two-year-olds and to verify their eligibility for the extended entitlement.

C.8 Continue to draw on the [2008 guidance](#) as appropriate to inform their duty to provide information, advice and assistance to parents.

C.9 Ensure that published childcare provider information is updated as frequently as appropriate – and at least termly as set out in regulations - 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; and
- keeping the provider's Ofsted inspection judgements up to date.

C.10 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.11 Ensure that they publish their information in a way that best suits parents' and other users' needs and aligns with local and central government's aspirations for increasing transparency and open data standards. This means that it should:

- Take account of the Freedom of Information Act and accompanying Code of Practice<sup>14</sup>. As far as is reasonably practicable, data should be published in a re-usable and machine-readable format based on open standards.
- Take account of the technical standards and principles for publishing open data that are available in guidance, such as the "Open Standards principles"<sup>15</sup>, and the Local Government Transparency Code"<sup>16</sup>.
- Consider signposting the data it publishes to a platform such as Data.gov.uk where it can be aggregated.
- Publishing data in these ways allows more meaningful and innovative use of data through existing and new online applications, tools and services. As well as benefiting local authorities' own business information, this can encourage local groups, such as parents, to make better use of the information available, and to be able to do in a way that cuts across local or regional boundaries.

C.15 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](#). Certain providers may request via Ofsted that their details be kept anonymous and local authorities **must** ensure they comply with those requests.

C.16 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.

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<sup>14</sup>As far as is reasonably practicable. , <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>

<sup>15</sup> <https://www.gov.uk/government/publications/open-standards-principles>

<sup>16</sup> <http://www.local.gov.uk/local-transparency>

C.17 Provide a brokerage service for parents needing further support to find the childcare that is suitable for their needs, including for parents of children with special educational needs or a disability.

C.18 Advise on or signpost users of the Family Information Service to a wider range of relevant services for young children. This should include services for children and young people up to age 19 where a child or parent is disabled.

C.19 Ensure that parents of children with special educational needs or a disability are able to access relevant information about childcare quickly and easily. This means linking to or incorporating the key information from the local authority's Local Offer for children and young people with Special Educational Needs and Disabilities with the information on childcare published by the Family Information Service, and vice versa.

C.20 Consider whether the information published on childcare should also signpost or refer users to wider services for parents or children, such as child and adolescent mental health services.

C.21 Consider whether other information on childcare (which is not listed in schedule 1 to the 2007 regulations but which is of help to parents) could be published, such as where childcare providers work in partnership with others to offer more wraparound services for parents.

C.22 Consider how the information provided to parents under schedule 2 could be used to support awareness and provision of assistance via Early Help services, as set out in the [2015 Working Together to Safeguard Children](#) guidance.

## 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>17</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). Local authorities may provide information, advice and training if this is requested by the provider. Local authorities are

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<sup>17</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)



able to offer support to settings rated good or outstanding if there is evidence of need but cannot require this support is taken up.

## Part E: Legal annex and other relevant information

### Summary of the key provisions in the Childcare Act 2006 relating to early education and childcare

- Sections 1 to 5 require local authorities and their partners to improve the outcomes of all children under 5 and reduce inequalities.
- Section 6 requires local authorities to secure sufficient childcare.
- Section 7<sup>18</sup> places a duty on local authorities in accordance with regulations to secure free early years provision of the prescribed description for each young child in their area who is under compulsory school age and is of the prescribed description.
- Section 7A<sup>19</sup> allows regulations to be made about how local authorities should discharge their duty under section 7.
- Section 8 enables local authorities to assist others to provide childcare (including free early years provision) including giving them financial assistance but specifies that local authorities should only provide childcare themselves if no other provider is willing to or, where another person is willing, if it is appropriate in the circumstances for the local authority to provide it.
- Section 9 gives local authorities the power to attach requirements to the arrangements they make with providers (other than the governing body of a maintained school) to deliver childcare including free early years provision.
- Section 9A allows regulations to be made which prescribe the requirements local authorities may or may not impose when they make arrangements.
- Section 12 places a duty on local authorities to provide information, advice and assistance to parents about childcare in the area.

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<sup>18</sup> As this was substituted by section 1(2) of the Education Act 2011

<sup>19</sup> Section 87 of the Children and Families Act 2014 - Discharge of authority's duty to secure free early years provision - inserted sections 7A and 9A into the Childcare Act 2006

- Section 13 places a duty on local authorities to secure the provision of information, advice and training to childcare providers and childcare workers.
- Section 13A makes provision for information relating to tax credits and social security information to be supplied to the Secretary of State, and to local authorities, for use for the purpose of determining eligibility for free of charge early years provision and funding for free early years provision. Section 13B deals with the unauthorised disclosure of this information.
- Section 20 defines early years provision as the provision of childcare for a young child and section 18 defines the meaning of childcare.
- Sections 39 to 48 establish the early years foundation stage (EYFS).
- Sections 31 to 38 and 49 to 98G set out the childcare and early years regulation framework.
- Section 99 allows for the collection of information about young children.

The Childcare Act 2006 Act provides that local authorities must have regard to any guidance given by the Secretary of State, when discharging their duties under:

- The duty to secure sufficient childcare for working parents - section 6(3);
- The duty to secure prescribed early years provision free of charge – section 7(3);
- The power of a local authority in relation to the provision of childcare – section 8(6);
- The duty to establish and maintain a service providing information, advice and assistance for parents – section 12(7); and
- The duty to secure the provision of information, advice and training to childcare providers – section 13(5).

## **Summary of the key provisions in the Childcare Act 2016**

- Section 1 places a duty on the Secretary of State to secure childcare free of charge for qualifying children of working parents for, or for a period equivalent to, 30 hours over 38 weeks of the year.
- Section 1(2) and regulations made under Section 1(2) define a qualifying child.
- Section 1(4) enables the Secretary of State to make regulations about when a person is to be regarded as another person's partner, what constitutes paid work

and the circumstances in which a person is or is not to be regarded as in paid work.

- Section 1(5) confers a power on HMRC to check and determine eligibility for the free childcare.
- Section 1(6) enables the Secretary of State to take account of any free provision provided to the child under section 7 of the Childcare Act 2006 for the purposes of determining whether the duty under section 1(1) has been discharged.
- Section 1(8) says that childcare has the meaning given by section 18 of the Childcare Act 2006 and enables the Secretary of State to set out in regulations when a child is considered to be in England for the purposes of the free childcare entitlement.
- Section 2 allows the Secretary of State to make regulations about how the discharge of the duty to secure free childcare.
- Section 2(2) sets out a non-exhaustive list of what the regulations may provide for in particular to require English local authorities to secure the free childcare (section 2(2)(a)) and to have regard to any guidance issued by the Secretary of State when securing the free childcare (section 2(2)(k)).
- Part II of the School Standards and Framework Act (1998) sets the legal framework for the provision of financial assistance by local authorities to maintained schools and private, voluntary and independent childcare providers. Section 3(2) extends the framework to include the provision of financial assistance to settings delivering the free childcare.
- Section 5 amends section 12 of the Childcare Act 2006 enabling regulations to be made to require local authorities to publish information about childcare in their area at prescribed intervals and in a prescribed manner.

## **Regulations made under the Childcare Act 2006**

[The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2014 \(S.I. 2014/2147\)](#) are made under section 7 of the Childcare Act 2006. They identify children who should benefit from free early years provision, the type and amount of free early years provision and how local authorities should discharge their duty to secure free early years provision. These 2014 regulations were amended in February 2018 by the [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) \(Amendment\) Regulations 2018 \(S.I. 2018/146\)](#). Amendments have been made to include an income threshold for parents entitled to Universal Credit (as part of the economic criteria for

eligibility – see further below), and the non-economic criteria to detail that children who are looked after by a local authority in Wales can also take up a place in England. These regulations will come into force on 1<sup>st</sup> April 2018<sup>20</sup>.

## **Regulations made under the Childcare Act 2016**

Parts 1, 2 and 3 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 came into force on 9<sup>th</sup> January 2017. The regulations include the eligibility criteria for free early years provision (regulations 3 to 8). Part 4 of the regulations came into force on 1<sup>st</sup> September 2017. Part 4 of the regulations set out that local authorities must secure the early years provision free of charge, the type and amount of free childcare and how local authorities should discharge their duty to secure free childcare.

## **Eligibility for free early education for two-, three- and four-year-olds**

Three-year-olds (and two-year-olds who meet the eligibility criteria below) are entitled to 15 hours of free early years provision from the start of the term beginning on or following the date set out below:

- Children born in the period 1st January to 31st March: 1st April following the child's third birthday, or second birthday, as applicable
- Children born in the period 1st April to 31st August: 1st September following the child's third birthday, or second birthday, as applicable
- Children born in the period 1st September to 31st December: 1st January following the child's third birthday, or second birthday, as applicable

These dates are consistent with those used for determining the start of compulsory education.

Two-year-olds are eligible for 15 hours of free early years provision if:

- The parent(s) claim one of the following benefits:
  - Income Support

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<sup>20</sup> Subject to normal Parliamentary procedures

- income-based Jobseeker's Allowance (JSA)
- income-related Employment and Support Allowance (ESA)
- Universal Credit – For places starting in the summer term of 2018 (on or after 1<sup>st</sup> April 2018), or any subsequent term, if a parent is entitled to Universal Credit they **must** have an annual net earned income equivalent to and not exceeding £15,400, assessed on up to three of the parent's most recent Universal Credit assessment periods.<sup>21</sup> Further guidance on checking eligibility is set out below.
- tax credits and they have an annual income of under £16,190 before tax
- the guaranteed element of State Pension Credit
- support through part 6 of the Immigration and Asylum Act
- the Working Tax Credit 4-week run on (the payment you get when you stop qualifying for Working Tax Credit)
- the child has a statement of special educational needs made under section 324 of the Education Act 1996;
- the child has an Education, Health and Care plan prepared under section 37 of the Children and Families Act 2014;
- the child is in receipt of Disability Living Allowance under section 71 of the Social Security and Contributions and Benefits Act 1992;
- they are looked after by a local authority (under section 22(1) of the Children Act 1989) or by a local authority in Wales within the meaning given by section 74(1) of the Social Services and Well-being (Wales) Act 2014
- they are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangement order (within the meaning of section 8(1) of the Children Act 1989 or section 74(1) of the Social Services and Well-being (Wales) Act 2014) which relates to either or both of the following
  - with whom the child is to live;
  - when the child is to live with any person.

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<sup>21</sup> Subject to the normal Parliamentary procedures.

The [Department for Education's eligibility checking system](#) provides a mechanism for local authorities to verify whether children meet the eligibility criteria based on parental receipt of benefits (including Universal Credit).

## Assessing eligibility for parents in receipt of Universal Credit

Parents who wish their child to start a two-year-old entitlement place from 1 April 2018 onwards (children starting in summer term 2018, or any subsequent term) and who are in receipt of Universal Credit will be subject to the earned income threshold.<sup>22</sup>

This means that when assessing eligibility for the two-year-old entitlement, any child born on or after 1 January 2016 whose parent(s) is entitled to Universal Credit is subject to the income threshold outlined above. Parents of children born before 1 January 2016 who are entitled to Universal Credit are not subject to the income threshold. Therefore, the child's date of birth must be taken into account when assessing eligibility.

For children born on or after 1 January 2016, eligibility must be checked through an assessment of the parent's net earned income over up to three of the Universal Credit assessment periods immediately preceding the date of the request for a two-year-old entitlement place. Checking earnings over up to three Universal Credit assessment periods will take into account families with fluctuating earnings.

The date of request is the date on which the parent submits their information (name, national insurance number, date of birth) and gives permission for their eligibility to be checked. The local authority **should** ensure that the date of request is recorded, and that eligibility is checked as soon as possible after the date of request.

The date of request provides the reference point from which the parent's most recent three universal credit assessment periods must be determined. Therefore, when carrying out a manual check using evidence provided by the parent, the three relevant universal credit assessment periods would be the three complete assessment periods which immediately preceded the date of request.

The [Department for Education's eligibility checking system](#) provides a mechanism for local authorities to verify whether children meet the eligibility criteria under Universal Credit above. Eligibility is assessed as follows:

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<sup>22</sup> See S.I 2018/146. Subject to the appropriate Parliamentary procedures

- If the parent's net earned income in their first assessment period (period 1) does not exceed threshold 1, £1,283.34<sup>23</sup> the child is eligible.
- If the parent's net earned income exceeds threshold 1, then the sum of the parent's net earned income in the assessment period immediately preceding period 1 (period 2) and period 1 is compared to threshold 2 (£2,556.67). If that total net earned income does not exceed threshold 2, the child is eligible.
- If the parent's net earned income exceeds threshold 2, then the sum of parent's net earned income in the assessment period immediately preceding period 2 (period 3) and period 1 and period 2 is compared to threshold 3 (£3,850). If that total net earned income does not exceed threshold 3, the child is eligible.

Note that:

- Period 2 or 3 cannot be assessed on their own independently of period 1. Likewise, period 3 cannot be assessed with period 1 unless period 2 is included.
- Where the parent has completed less than three assessment periods, the steps above will apply up to, but not including, the step when there is no complete assessment period preceding period 1 or 2.

This process is summarised in Fig 1.

For the purposes of checking eligibility, net earned income is defined in the same way as "earned income" in the Universal Credit 2013 (SI 2013/376) regulations in accordance with section 43(3) of the Welfare Reform Act 2012. This includes earnings from contracted employment, trades, professions, vocations, elective offices or any other paid work, and deductions for income tax, national insurance etc.<sup>24</sup> The way in which income is assessed jointly for couples also mirrors that in Universal Credit. This ensures that when checking eligibility for the two-year-old entitlement earnings are treated in the same way as calculations for 'take home pay' under Universal Credit.

Local authorities should use the Department for Education's eligibility checking system to verify whether children meet the eligibility criteria under Universal Credit above.

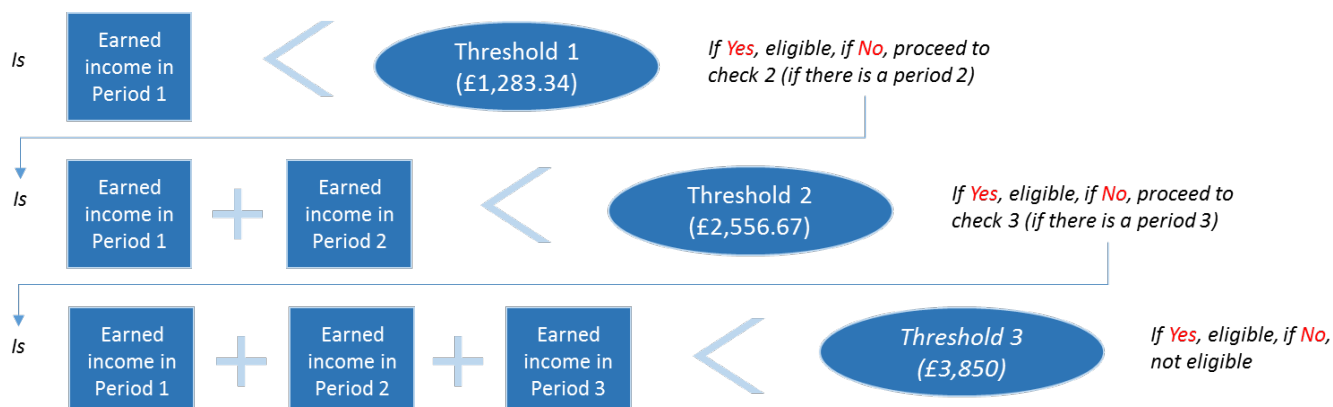
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<sup>23</sup> See footnote 22

<sup>24</sup> <http://www.legislation.gov.uk/uksi/2013/376/regulation/52>



Fig. 1



## Eligibility for free childcare for three- and four-year-olds of working parents

A child is entitled to free early years provision if the child has attained the age of three, is under compulsory school age and the child's parent(s) meets the eligibility criteria set out below.

- the parent of the child (and their partner where applicable) should be seeking the free childcare to enable them to work;
- the parent of the child (and their partner where applicable) should also be in qualifying paid work. The definition of qualifying paid work is set out at regulation 5. Each parent or the single parent in a lone parent household will need to expect to earn the equivalent of 16 hours at the national living wage or their national minimum wage rate over the forthcoming quarter;
- where one or both parents are in receipt of benefits in connection with sickness or parenting, they are treated as though they are in paid work;
- where one parent (in a couple household) is in receipt or could be entitled to be in receipt of specific benefits related to caring, incapacity for work or limited capability for work that they are treated as though they are in paid work;
- where a parent is in a 'start-up period' (i.e. they are newly self-employed) they do not need to demonstrate that they meet the income criteria for 12 months in order to qualify for the extended entitlement.
- if either or both parents' income exceeds £100,000 they will not be eligible for the extended entitlement.

The relevant dates in relation to the age criterion are the same as for the three-year-olds eligible for 15 hours of free provision.

## **Type of free early education and free early years provision for two-, three- and four-year-olds (universal and extended entitlement)**

Local authorities **must** secure that the prescribed amount of free early years provision is available for each child in their area of the prescribed description from prescribed early years providers.

Early years providers prescribed in the 2014 Regulations are providers to whom section 40 of the 2006 Act applies. Section 40 applies to early years providers, providing early years provision in respect of which they are required by the 2006 Act to be registered with Her Majesty's Chief Inspector of Education, Children's Services and Skills. These providers are either a) registered on the Ofsted Early Years Register (as required by section 34(1) of the 2006 Act) or b) are schools which are exempt from registration on the Ofsted Early Years Register (pursuant to section 34(2) of the 2006 Act). Section 34(2) covers maintained schools, approved non-maintained special schools and independent schools.

Prescribed provision **includes** provision from providers who are exempt from delivering the EYFS Learning and Development requirements because of a direction made by the Secretary of State under regulations made under section 46 (1) of the 2006 Act, or because a provider has made a determination in relation to a young child under regulations made under section 46 (2) of the 2006 Act. The relevant regulations are the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (SI 2008/1743, as amended by SI 2012/2463).

Prescribed provision **excludes** provision where it is provided by:

- an independent school (other than an Academy) which does not meet the independent school standard in relation to the spiritual, moral, social and cultural development of pupils at the school; or
- a provider in relation to whom the local authority has grounds to believe:
  - does not actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths or beliefs; or
  - promotes views or theories as evidence-based which are contrary to established scientific or historical evidence or explanations.

## Amount of free early education for two-, three- and four-year-olds

Local authorities **must** secure availability of 570 hours of free provision over **at least 38 weeks** for each eligible two-year-old and all three- four-year-olds in each 12 month period from the date at which the child's entitlement starts until the child reaches compulsory school age. (This works out at 15 hours per week if spread over 38 weeks.)

Local authorities **must not** condense the funded early education entitlement into less than 38 weeks.

## Amount of free childcare for three- and four-year-olds of working parents

Local authorities **must** secure availability of 570 hours of free provision over **at least 38 weeks** for each qualifying three- four-year-old in each 12 month period from the date at which the child's entitlement starts until the child reaches compulsory school age. (This works out at 15 hours per week if spread over 38 weeks.)

Local authorities **must not** condense the funded free childcare entitlement into less than 38 weeks.

## Childminders

Early years provision is defined in section 20 of the 2006 Act as the provision of childcare. "Childcare", as defined in section 18 of the 2006 Act, specifically excludes care provided for a child by a parent, step-parent, foster parent (or other relative) or by a person who fosters the child privately or has parental responsibility for the child. Early years provision by a childminder (either independently registered with Ofsted or registered with a childminder agency) for a related child does not count as childcare in legal terms. Government funding cannot be claimed by, or spent on, childminders providing childcare for their own child or a related child, even if they are claiming for other children. However, a local authority can choose to fund the parent providing childcare for their child but this would have to be from other local authority funds.

## Special educational needs

Local authorities must ensure that all providers in the maintained and private, voluntary and independent sectors that they fund to the free entitlements are aware of the requirement on them to have regard to the Special Educational Needs and Disability Code of Practice: 0-25.

The *Special educational needs and disability code of practice: 0 to 25 years* (2015) clearly sets out the details of the legal requirements under the Children and Families Act 2014 for local authorities to publish a Local Offer. The Local Offer must set out in one place, comprehensive information about provision they expect to be available in their area across education, health and social care for children and young people in their area who have SEN or are disabled, including those who do not have EHC plans.

## Education, Health and Care plans

Part 3 of the Children and Families Act 2014 contains provisions which set out the statutory framework for identifying and assessing the needs of children and young people with special educational needs (SEN) who require support beyond that which is usually available. Statements made under section 324 of the Education Act 1996 and Learning Difficulty Assessments made under section 139A of the Learning and Skills Act 2000 are being replaced over a transitional period by new 0-25 Education, Health and Care plans (EHC plans) for both children and young people.

## Equality

The Equality Act 2010 offers protection against discrimination, harassment and victimisation and applies to statutory and non-statutory early years organisations and the provision of early years services. It applies to a number of “protected characteristics” including sex, race, disability, religion or belief and sexual orientation.

The Equality Act 2010 sets out the legal obligations for local authorities to plan in advance what disabled children and young people might require and what adjustments might need to be made to prevent that disadvantage.

Local authorities and other listed public authorities (which include local authority maintained schools and Academies) must comply with the public sector equality duty (found in section 149 of the Equality Act 2010) which sets out the three “equality needs” that they must have due regard to when making decisions:

- to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the Act;
- to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
- to foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Local authorities and other listed public authorities must also comply with the requirements of the Equality Act 2010 (Specific Duties) Regulations 2011 which places a duty of them to publish information annually to demonstrate how they are complying with the public sector equality duty and to prepare and publish one or more specific and measurable equality objective every four years.

While private, voluntary and independent settings are not bound by the public sector equality duty which applies to public authorities, the principles of equity and justice underpinning the law should be applied as good practice. Where provision is overseen, coordinated or advised by the local authority or a partnership with local authority membership, the local authority will have responsibility to ensure the duties are fulfilled.

## **Early years national funding formula**

The School and Early Years Finance (England) Regulations 2017 (S.I. 2017/44) set out how local authorities must operate their early years national funding formula (EYNFF).

Guidance for local authorities is available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/580716/EYNFF\\_Operational\\_Guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/580716/EYNFF_Operational_Guidance.pdf)

## **Compulsory school age**

Compulsory school age is set out in section 8 of the Education Act 1996 and the Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607).

A child reaches compulsory school age on the prescribed day following his fifth birthday (or on his fifth birthday if it falls on a prescribed day). The prescribed days are, 31 March, 31 August and 31 December.

## **School admissions**

School admission authorities and local authorities must comply with the School Admissions Code 2014.

Published admission arrangements must make clear to parents that a separate application must be made for any transfer from nursery to primary school, and from infant to junior school.

## **Admission of children below compulsory school age and deferred entry to school**

The School Admissions Code requires admission authorities to provide for the admission of all children in the September following their fourth birthday. They must make it clear in their admission arrangements that, where they have offered a child a place at a school:

- the child is entitled to a full-time place in the September following their fourth birthday
- the child's parents can defer the date their child is admitted to school until later in the school year, but not beyond the point at which they reach compulsory school age and not beyond the beginning of the final term of the school year for which the offer was made; and
- where the parents wish, the child may attend part-time until later in the school year, but not beyond the point at which they reach compulsory school age.

## **The admission of summer born children outside their normal age group**

Parents may request their child is admitted out of their normal age group. This includes the parents of summer born children (children born from 1 April to 31 August) who may request their child is admitted to reception rather than year 1 at the point they reach compulsory school age. Admission authorities must make clear in their admission arrangements the process for requesting admission out of the normal age group.

Where such a request is made, the admission authority must make a decision on the basis of the circumstances of the case and in the child's best interests. They must also take into account the views of the head teacher of the school concerned, and must set out clearly the reasons for their decision.

Where a request is agreed, they must process the parent's application as part of the main admissions round (unless the request was made too late for this to be possible) and must not give it lower priority on the basis that the child is being admitted out of their normal age group.

## **Free school meals**

Statutory entitlement to FSM only applies to children in maintained schools, including the extended eligibility criteria for those in reception, Years 1 and 2. Academies and free

schools are required to follow the FSM legislation as if it applied to them by virtue of their funding agreements. FSM requirements do not apply to children in the private, voluntary or independent sector.

In order to qualify for FSM:

- a child must be a registered pupil of a maintained school;
- if the child is under compulsory school age, the child must be receiving full time education, or if part time, receiving education before and after the lunch break;
- under current criteria the child's parent must be in receipt of any one or more of the following benefits:
  - income support (IS);
  - income-based jobseeker's allowance (IBJSA);
  - income-related employment and support allowance;
  - support under Part 6 of the Immigration and Asylum Act 1999;
  - the guaranteed element of State Pension Credit;
  - Child Tax Credit (but not Working Tax Credit) and have an annual income not exceeding £16,190, as assessed by Her Majesty's Revenue and Customs.
  - Working Tax Credit four-week run-on (the payment someone receives for a further four weeks after they stop qualifying for Working Tax Credit).
  - Universal Credit. From 1 April 2018 if a parent is entitled to Universal Credit they must have an annual net earned income equivalent to and not exceeding £7,400, assessed on up to three of the parent's most recent Universal Credit assessment periods, to be eligible<sup>25</sup>.
- A child who is in receipt of a qualifying benefit in their own right is also entitled to FSM. To be eligible to receive free school meals, a pupil or their parent must be in receipt of any of the above listed benefits and must make a claim to the school for FSM. Until the claim is made, the pupil is not eligible for FSM.
- There is a duty (section 512ZB(4A) of the Education Act 1996) to provide FSM for all infants (those children in reception and Years 1 and 2) who are registered pupils in state schools (including academies and free schools).

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<sup>25</sup> Subject to the normal Parliamentary procedures.

## Looked after children

Looked after children are children who are provided with accommodation by a local authority for more than 24 hours on a voluntary basis or who are under a care order. The child may be living with foster carers, in a residential home or with parents or other relatives. A child who is “looked after” is defined in section 22 of the Children Act 1989.

Local authorities must try to ensure the integration of educational provision, health provision, training and social care provision where it believes this would improve the well-being of the child or young person and/or improve the quality of special educational provision. They must support the child and parent or young person to facilitate development and help them achieve the best educational and other outcomes.



Department  
for Education

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