



Department
for Education

**Eligibility for the free early
education entitlement for two-year-
olds from families with no
recourse to public funds
Government consultation**

**Launch date 25/03/2022
Respond by 20/05/2022**

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1. About this consultation

1.1 This consultation seeks views on changes to the eligibility criteria for the free early education entitlement for disadvantaged two-year-olds, namely whether there are other groups of families with no recourse to public funds¹ (NRPF) whose children should be eligible for the free early education entitlement; and the possible impact of any extension on people who share protected characteristics.

The consultation will run for eight weeks.

2. Who this is for

2.1 This consultation is for anyone with an interest in early education and supporting disadvantaged children through early education. This includes:

- parents / carers
- early education and childcare providers, nursery schools and primary schools with nursery classes
- early years sector organisations
- health professionals
- social workers
- charities and organisations with particular interest in families with no recourse to public funds
- academics
- local authorities
- other government bodies and departments

2.2 Free early education and childcare in the UK is a devolved matter. As such this consultation only applies to England.

3. Issue date

3.1 The consultation was issued on 25/05/2022.

4. Enquiries

4.1 If your enquiry is related to the policy content of the consultation you can contact the team on:

- nrpf.consultation@education.gov.uk

¹ See page 8 of Home Office guidance - [Public funds \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk)

4.2 If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can contact the DfE Ministerial and Public Communications Division by email: Consultations.Coordinator@education.gov.uk or by telephone: 0370 000 2288 or via the [DfE Contact us page](#).

5. Additional copies

5.1 Additional copies are available electronically and can be downloaded from [GOV.UK DfE consultations](#).

6. The response

6.1 The results of the consultation and the Department's response will be [published on GOV.UK](#).

7. Respond online

7.1 To help us analyse the responses please use the online system wherever possible. Visit www.education.gov.uk/consultations to submit your response.

8. About this consultation

8.1 The aim of this consultation is to seek views from interested parties on changes to [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2014](#)² (as amended) (the “2014 regulations”) which set out the eligibility criteria for the free early education entitlement for disadvantaged two-year-olds.

8.2 In September 2019, the Government extended eligibility for this entitlement to two-year-old children from three groups of families who have no recourse to public funds and, in September 2020, extended the entitlement to a fourth group of families who have no recourse to public funds.

8.3 This consultation seeks views on:

- whether there are other disadvantaged groups of families with no recourse to public funds that we have not identified in this consultation whose two-year-old children should benefit from the free early education entitlement; and;
- the potential impact on people who share protected characteristics of extending the eligibility criteria for the entitlement to families with no recourse to public funds identified in section 13 of this consultation document.

² The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014

9. Other ways to respond

9.1 If you are unable to use the online system, for example because you use specialist accessibility software that is not compatible with the system, you may download a word document version of the form and email it or post it.

9.2 By email

- nrpf.consultation@education.gov.uk

9.3 By post

Maria Sciara
Department for Education
Sanctuary Buildings
20 Great Smith St, London SW1P 3BT

10. Deadline

10.1 The consultation closes on 20/05/2022.

11. Background and context

11.1 The early years are crucial for children's development and for establishing the foundations for future success. This government is committed to ensuring that every child, regardless of their background or any additional needs they may have, has access to high quality education in their earliest years, which enables them to progress confidently to the next stage of their education and onwards through life. Making sure all children have access to high quality education is vital to Levelling Up and spreading opportunity, and particularly supports the Levelling Up education mission to make sure that 'by 2030, 90% of all primary school children in England will achieve the expected standard in reading, writing and maths, with the percentage of children meeting the expected standard in the worst performing areas improving by a third'.

11.2 The core purpose of the two-year-old early education entitlement is to improve educational outcomes for the most disadvantaged children. The early years present a key opportunity to make sure that all children develop the strong cognitive, social and emotional foundations on which future success is built. The proportion of children achieving a good level of development has risen from 51.7% in 2013 to 71.8% in 2019. However, too many children still fall behind early and it is hard to close the gaps that emerge. Disparities in child language capabilities are recognisable in the second year of life and are having an impact by the time children enter school. Once children start behind, they stay behind, leading to costly interventions later in their school career and potentially through life.

11.3 This entitlement ensures that disadvantaged children can benefit from an early start in education. The Effective Pre-School, Primary and Secondary Education (EPPSE) study³ shows that:

- *Pre-school influenced outcomes throughout primary school. At age 11, a high quality pre-school was particularly influential for boys, pupils with SEN, and disadvantaged pupils.*
- *Pre-school is of particular importance to children from disadvantaged backgrounds, particularly for those with a less stimulating home learning environment or from families where the parents were poor or had no qualifications.*
- *The benefit of attending any pre-school was equivalent to 41 points at GCSE which represents the difference between getting 7 GCSE at 'B' grades versus 7 GCSE at 'C' grades, or 7 'C' grades versus 7 'D' grades etc*

11.4 That is why in September 2013⁴ the Government introduced 15 hours a week of free early education for 38 weeks of the year to two-year-olds from families in receipt of specified benefits or who were looked after by the local authority, in order to address the inequality of access to early education.

³ <https://www.ucl.ac.uk/ioe/research-projects/2019/mar/effective-pre-school-primary-and-secondary-education-project-eppse>

⁴ [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2012 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

11.5 This entitlement was further extended in September 2014 to children in low income working families, children with a statement of Special Educational Needs or an Education, Health and Care Plan, children in receipt of Disability Living Allowance and children who are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangements order which specifies with whom the child is to live. In April 2018⁵, the eligibility criteria were changed to reflect the introduction of Universal Credit.

⁵ [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) \(Amendment\) Regulations 2018 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2018/1000/contents/part-1/section-1)

12. The free early education entitlement for two-year-olds

12.1 Eligible two-year-old children are entitled to 570 hours a year of free early education over no fewer than 38 weeks of the year (which equates to 15 hours a week for 38 weeks of the year)⁶. Over 1.1 million two-year-olds have taken up a free place since 2013. This sits alongside the 15 hours a week of free early education that all three- and four-year-olds are entitled to, as well as the additional 15 hours a week (30 hours in total) for three- and four-year-old children of eligible working parents (subject to income-related eligibility criteria). Families arriving in England under the Ukraine Family Scheme or the Local Sponsorship Scheme for Ukraine will be able to access the two-year-old entitlement as long as they meet the eligibility criteria set out at para 12.2.

12.2 As set out in the 2014 regulations, two-year-olds are eligible for 15 hours of free early education if:

1. the parent(s) are entitled to one of the following benefits:
 - Income Support
 - income-based Jobseeker's Allowance (JSA)
 - income-related Employment and Support Allowance (ESA)
 - Universal Credit – if a parent is entitled to Universal Credit and they have an annual net earned income equivalent to and not exceeding £15,400
 - Tax Credits and they have an annual income of not exceeding £16,190 before tax
 - the guaranteed element of State Pension Credit
 - provided 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)
2. the child has a statement of special educational needs made under section 324 of the Education Act 1996;
3. the child has an Education, Health and Care plan prepared under section 37 of the Children and Families Act 2014;
4. the child is in receipt of Disability Living Allowance under section 71 of the Social Security and Contributions and Benefits Act 1992;

⁶ See: [Help paying for childcare: Free education and childcare for 2-year-olds - GOV.UK \(www.gov.uk\)](https://www.gov.uk/help-paying-for-childcare/free-education-and-childcare-for-2-year-olds)

5. 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
6. 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:
 - o with whom the child is to live;
 - o when the child is to live with any person.

12.3 No recourse to public funds means that the individual / family cannot access specified welfare benefits (for example, Universal Credit, housing benefit, disability living allowance) and public housing. These are set out in section 115 of the Immigration and Asylum Act 1999⁷ and paragraph 6 of the Immigration Rules⁸ although some exceptions apply.

12.4 Unlike the universal 15 hour free early education entitlement which is available to all three- and four-year-olds regardless of their immigration status, when the entitlement for two-year-olds was first introduced, two-year-old children from families with no recourse to public funds were not entitled to a free place unless they fell into one of the groups listed at para 12.2, numbers two to six .

12.5 In September 2019, eligibility for the two-year-old early education entitlement was extended to two-year olds from three groups of families with no recourse to public funds that came to the government's attention. Children from these families are likely to be in a similar position in terms of economic or financial need to families already eligible (for example, families in receipt of specified benefits or low income families) but who, because of their immigration status, are unable to benefit from the entitlement.

12.6 The groups are:

- a. Dependent children of Zambrano Carers⁹;

⁷ [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1999/33/section/115)

⁸ [Immigration Rules part 6: self-employment and business people - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/immigration-rules-part-6-self-employment-and-business-people)

⁹ A Zambrano Carer is the primary carer of a British citizen child or dependent adult where requiring the primary carer to leave the UK would force that British citizen to leave the European Economic Area (EEA).

- b. Children of families with no recourse to public funds with a right to remain in the UK on grounds of private and family life under Article 8 of the European Convention of Human Rights¹⁰; and
- c. Children of families supported under section 4 of the Immigration and Asylum Act 1999¹¹.

12.7 In September 2020, following a temporary extension of eligibility during the Covid-19 pandemic, the government permanently extended eligibility to two-year-olds from families in receipt of support under section 17 of the Children Act 1989¹².

¹⁰ Article 8 of the European Convention of Human Rights states that everyone has the right to respect for his private and family life, his home and his correspondence. It goes on to state there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Immigration rules have made provision for those granted leave to remain in the UK on Article 8 family and private life grounds to have a condition attached to their leave to remain in the UK prohibiting them from having access the public funds.

¹¹ Section 4 of the Immigration and Asylum Act 1999 provides support for failed asylum seekers as they would otherwise be destitute and they are temporarily unable to leave the UK. This form of support is only available to those who would otherwise be destitute, so those receiving it are in similarly economically disadvantaged position as others families eligible to the entitlement to free early education for two-year

¹² This Act places a duty on local authorities to “safeguard and promote the welfare of children within their area who are in need; and so far as is consistent with that duty, to promote the upbringing of such children by their families, providing a range and level of services appropriate to those children’s needs.” Services are tailored to the needs of the family and can include accommodation, assistance, financial aid or other services

13. Extending the free entitlement to all NRPF groups

13.1 The government is proposing that the eligibility criteria for the entitlement to 15 hours a week of free early education for two-year-olds should be further extended to include other disadvantaged two-year-old children from families who have no recourse to public funds.

13.2 The rationale for extending eligibility is that the most disadvantaged two-year-olds should be able to access early education regardless of their. The government has already accepted this principle in extending to the groups mentioned at paragraphs 12.6. The government believes it is reasonable to extend access to early education to disadvantaged children in other no recourse to public fund households.

13.3 Our proposed groups of families with no recourse to public funds the government has identified are set out below. Two-year olds from these families would be eligible for the free early education if they are disadvantaged and have a comparable household income to those families who do have recourse to public funds and other eligibility criteria are met.

13.4 Chen Carers: A Chen carer is a primary carer of a self-sufficient EEA citizen child. The child must have sufficient resources to prevent them from becoming a burden on the social assistance system, and they must have comprehensive sickness insurance. Chen carers are able to work.

13.5 Spouse Visas: A spouse visa allows married partners of UK citizens to immigrate to the UK. Among other conditions, the couple must be legally married, and the sponsoring partner must earn more than £18,600 per year or have enough savings to be able to support the spouse visa holder. Spouse visa holders are able to work.

13.6 Student Visas (Tier 4 – General): A student visa can be applied for if the applicant is 16 or over, has been offered a place on a course, and has enough money to support themselves and pay for the course. They are able to bring dependents with them as long as the course is a full time postgraduate course of at least 9 months. On a postgraduate course people are permitted to work for a maximum of 20 hours, with some restrictions.

13.7 Work Permit Holders: The tier 2 visa is the main route for skilled workers, and must be sponsored by a UK employer and with a salary of at least £30,000 a year. This visa lasts up to 5 years. Tier 5 visas are for temporary roles and cover a variety of different circumstances – these are not subject to a salary restriction. In all cases, the visa is cut short to a remainder of 60 days if the visa holder loses their job – though they are able to use this time to apply for a different job and apply for the visa again without leaving the country providing they are able to find an employer who is willing to sponsor them.

13.8 Hong Kong BN(O)s: Hong Kong British Nationals from Overseas and their dependents are given the right to remain in the UK, including the right to work and study, for five years.

13.9 Undocumented Migrants: Undocumented migrants are migrants who are within the country illegally – this may be from illegally entering the country, or by overstaying their visa. Undocumented migrants are not able to work.

14. Consultation Questions

14.1 This consultation asks a question to understand whether the list of NRPF families to whom we are seeking to extend eligibility is a comprehensive one. To this end, we would like to understand whether we have captured all the potential NRPF families that should be eligible. In addition, we ask a question to understand the potential impact of extending the entitlement to people who share protected characteristics.

15. Responding to the Consultation

About You

1. What is your name?

2. What is your email address?

3. What is the name of your organisation (if applicable)?

4. In what capacity are you responding to this consultation? Please select one option from the list below.

- Parent / carer
- School early education provider / childcare provider
- Teacher / practitioner
- Health professional
- Social worker
- Charity
- Academic
- Local authority
- Government Department
- Other

If you answered "Other" please specify in what capacity, you are responding to this consultation.

Questions

Q1. Are there other groups of low income or economically disadvantaged families with no recourse to public funds not listed at paragraph 13 whose children should benefit from the free early education entitlement for two-year-olds?

Yes
No
Unsure

Q2. If yes / unsure please describe in as much detail as possible the families you are thinking about.

Equalities Impact Assessment

This section asks for your help in identifying any potential impacts of our proposals on people who share protected characteristics. The protected characteristics are: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race (including ethnicity), religion or belief, sex, and sexual orientation.

Q3. Will our proposal to extend eligibility for the free early education entitlement to include two-year-olds from the groups of families with no recourse to public funds identified in this consultation at section 13 (of this consultation document) have an impact on people who share protected characteristics for the purposes of the Public Sector Equality Duty (Equality Act 2010)?

No impact
Positive Impact
Negative impact
Unsure

Q4. Please explain the reasons for your answer.



Department
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