



Department
for Education

Free early education for 2-year-olds with no recourse to public funds

Government consultation response

August 2022

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Introduction

Background

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.

The core purpose of the two-year-old early education entitlement is to improve educational outcomes for the most disadvantaged children. Since 2013, children from families in receipt of specified benefits or who were looked after by the local authority are entitled to 15 hours free childcare across 38 weeks of the year. More details on current eligibility criteria can be found [here](#). Families arriving in England under the Ukraine Family Scheme or the Local Sponsorship Scheme for Ukraine are able to access the two-year-old entitlement as long as they meet the eligibility criteria.

Individuals or families with 'no recourse to public funds' (NRPF) cannot access specified welfare benefits (for example, Universal Credit, housing benefit, disability living allowance) or public housing. Details on which benefits NRPF families cannot access are set out in section 115 of the Immigration and Asylum Act 1999¹ and paragraph 6 of the Immigration Rules², although some exceptions apply.

In September 2019, we extended eligibility for the two-year-old early education entitlement to two-year olds from three groups of families with NRPF that came to the government's attention:

- a. Dependent children of Zambrano Carers³;
- 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 Rights⁴; and

¹ [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](#)

² [Immigration Rules part 6: self-employment and business people - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](#)

³ 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).

⁴ 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

- c. Children of families supported under section 4 of the Immigration and Asylum Act 1999⁵.

Proposal

The government proposes 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 all disadvantaged two-year-old children from families who have NRPF status. The rationale for extending eligibility is that the most disadvantaged two-year-olds should be able to access early education regardless of their circumstances.

The Department for Education (DfE) consultation “Eligibility for the free early education entitlement for two-year-olds from families with no recourse to public funds” ran from 25 March to 20 May 2022. The consultation identified groups of NRPF households and invited views on whether there were other disadvantaged groups of families with NRPF status that had not been identified and who should therefore be added to help make it clear that all disadvantaged two-year-olds are in scope. The consultation also sought views on the impact on people who share protected characteristics of extending the eligibility criteria.

The following groups of families with NRPF were already identified in the consultation:

- a) **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.
- b) **Spouse Visas:** A spouse visa allows married partners of UK citizens to migrate 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.

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.

⁵ 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-olds.

- c) **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.
- d) **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 can use this time to apply for a different job and apply for the visa again without leaving the country, providing that they are able to find an employer who is willing to sponsor them.
- e) **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 5 years.
- f) **Undocumented Migrants:** Undocumented migrants are migrants who are in the country illegally – this may be from illegally entering the country, or by overstaying their visa. Undocumented migrants are not able to work.

Consultation Period

The consultation ran for 8 weeks from 25 March to 20 May 2022. Responses could be submitted via the government's online consultation portal, or by email or post.

Summary of responses received

In response to the consultation, the Department for Education (DfE) received contributions from 225 respondents: 223 responses were received through Citizen Space, our online consultation platform, and 2 were received via email.

Online respondents were asked to choose which of the following categories best described their circumstances:

Table 1: *Categories of respondents to the consultation*

Category of respondent	Total	Percent
Parent/ Carer	117	52%
School early education provider/ childcare provider	51	22.7%
Teacher/ practitioner	7	3.1%
Health Professional	7	3.1%
Social Worker	2	0.9%
Charity	4	1.8%
Academic	3	1.3%
Local Authority	22	9.8%
Government Department	0	0%
Other	11	4.9%
Not Answered	1	0.4%
Total	225	100%

The respondents who selected 'other' were made up of groups such as trustees, students, expectant mothers, immigrants, support workers, home educators, trade unions and networks.

Annex B presents full details of the organisations who responded to the consultation.

Main findings from the consultation

The responses to each question posed in the consultation are summarised below.

Just under half of those that responded (107 responses) felt that there were groups of low income or economically disadvantaged families with no recourse to public funds not already listed at paragraphs 13.4 to 13.9 of the consultation. A further 56 were unsure. 111 respondents gave further details about the groups that they were thinking about, as follows.

A minority of these described groups that are NRPF and were not already named in paragraphs 13.4-13.9:

- Families with a UK Ancestry visa
- Those with temporary protection statuses under Section 12 of the Nationality and Borders Act

A further minority of responses described another group:

- Families who have pre-settled status

EEA citizens granted pre-settled status are able to access benefits and services on the same basis as applied under free movement rules, i.e., they need to demonstrate a qualifying EU law right to reside such as having worker or self-employed status. This reflects the position that those who are not economically active and were required to be self-sufficient in order to have a right to reside under EU law should continue to be self-sufficient until they qualify for settled status. The implication is that some households with pre-settled status who cannot demonstrate that they have the qualifying right to reside are currently unable to access the two-year-old entitlement.

A further minority of responses described groups that contain families some of whom could be NRPF and some of whom could have recourse to public funds:

- Domestic Worker in a Private Household
- Temporary Workers
- Sports Person

A significant number of respondents suggested additional households that are not NRPF, i.e., whose immigration status does not prevent them from accessing state benefits such as Universal Credit, Tax Credits, or any of the passported benefits specified in the existing eligibility criteria. In other words, they suggested that a larger number of families with recourse to public funds should be able to access the two-year-old entitlement.

A full list of these groups can be found in Annex A.

The majority of respondents (148) believed that the extension of eligibility would have a positive impact on people who share protected characteristics under the Public Sector Equality Duty (Equality Act 2010). A substantial number of respondents took a broader interpretation of the impact of the proposed extension, and answered that this would have a positive impact as they felt: early years education is valuable in aiding children to have the best start in life, the proposal would make access to early education more equal and would promote social mobility, and the proposal would reduce childcare costs for those eligible and support eligible families to find or attend work. A minority referred directly to these protected characteristics, and the majority of those felt that the proposal would benefit families who share the characteristics of race, sex, and pregnancy and maternity.

A number of respondents (73) stated that they were uncertain of the impact or did not understand the question, and a small number (4) thought it would have a negative impact.

Question analysis

This section provides a breakdown of the responses received for each consultation question following a categorisation process and the government’s response.

Other No Recourse to Public Funds Groups

Question 1: 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?

Table 2. *Summary of Responses to Question 1.*

	Total	Percent
Yes	107	47.6%
No	62	27.6%
Unsure	56	24.9%

The largest group of respondents said that there were other groups of low income or economically disadvantaged families with NRPF that were not listed in paragraph 13. This was the case across most respondent groups, including social worker (100%), charities (75%), teacher/ practitioner (71%), academics (67%), school early education provider/ childcare provider (63%), parent/ carer (43%) and those that selected “other” (45%).

The respondents who believed that there were no missing groups were primarily health professionals (57%) and local authorities (50%). An equal number of the “other” category stated that they were unsure.

Question 2: If yes/ unsure please describe in as much detail as possible the families you are thinking about.

Respondents were asked to give a text response to this question with 111 doing so: 86 (80%) of those who had answered “Yes”, and 23 (37%) who had answered “Unsure”.

From 111 responses, a number of suggestions were made. A full list of suggestions can be found in Annex A.

The vast majority of groups suggested by respondents have already been identified in the consultation. For example, those with Student Visas and those who hold Work Permits.

A number of NRPF groups were suggested that are already eligible to the two-year-old entitlement under current eligibility criteria, e.g., households with Private and Family life visas.

A small number of additional NRPF categories were suggested. These were households with:

- New temporary protection status
- UK Ancestry visas

Some respondents also suggested families with pre-settled status.

Some suggested groups including families some of whom could be NRPF and some of whom could have recourse to public funds:

- Domestic Worker in a Private Household
- Temporary Workers
- Sports Person

Even where respondents did not suggest additional groups, respondents agreed that the principle of extending eligibility criteria to other NRPF groups would be a positive decision.

Government response

We are grateful to all those who took the time to respond to the consultation. DfE has noted the range of responses received and we are pleased to have received responses that show the range of different types of NRPF households even within the categories mentioned in Annex A.

The government believes that the most disadvantaged two-year-olds should be able to access early education regardless of their circumstances. There were no responses that disagreed with this fundamental principle. In extending eligibility to NRPF groups, more disadvantaged two-year-olds in England will be able to benefit from the positive impact of early education.

It remains our intention to extend eligibility to disadvantaged children in all types of NRPF households. In our guidance to local authorities we will ensure that it is clear that families identified through our consultation (those with a UK ancestry visa; those subject to temporary protection status; families with pre-settled status that do not have a qualifying right to reside); the NRPF groups already named in paragraph 13 of the consultation; and the NRPF groups that are already eligible should be able to access the entitlement.

Where respondents have suggested specific types of NRPF households that fall within the categories we have already identified (e.g., graduate students) we will similarly

ensure that our guidance to local authorities sets out a clear but proportionate eligibility check to make sure that these households do not miss out. It should be clear that the government believes that the most disadvantaged two-year-olds should be able to access early education regardless of their circumstances. Where children are living in poverty or are destitute, they will be able to access early education.

At present many families who have NRPF cannot access the two-year-old entitlement as they cannot access the passporting benefits specified as part of the eligibility criteria. This is the case even if those families are similarly disadvantaged and have a comparable household income. The question of comparable household income is key. For families with NRPF, we will include in guidance an income ceiling intended to be reasonably equivalent to the ceiling for RPF families.

Although the purpose of the consultation was to identify additional disadvantaged NRPF groups, the majority of respondents suggested a number of groups that already have recourse to public funds (RPF), i.e., they thought that a higher number of children from families with RPF should be eligible too. A number of respondents requested that the income thresholds for RPF families should be increased. At present we do not plan to change the [existing eligibility](#) criteria for households in receipt of passporting benefits.

The core purpose of the two-year-old entitlement is to improve educational outcomes for disadvantaged children from low-income families who are less likely to use early education, but who stand to benefit from it the most. The existing national eligibility criteria targets those groups who the evidence shows will most benefit from early education. Whilst the entitlement provides some practical support with the cost of childcare, this is not its purpose, with the primary focus of the entitlement remaining to improve educational outcomes for the most disadvantaged children.

In addition to the free early education entitlements, the government offers support to working families with the cost of childcare through Tax-Free Childcare. This is available for children from 0-11 years old, or up to 16 if disabled. This scheme means that for every £8 parents pay their provider via an online account, the government will pay £2 – up to a maximum contribution of £2,000 per child (or up to £4,000 for a child who is disabled). Working parents on a low income may also be eligible for help with up to 85% of their childcare costs through Universal Credit Childcare. This is subject to a monthly limit of £646 for one child or £1108 for two or more children, payable in arrears.

Equality Impact Assessment

Question 3: 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)?

Table 3. *Summary of Responses to Question 3.*

	Total	Percent
Positive Impact	148	65.8%
Negative Impact	4	1.8%
Unsure	44	19.6%
No Impact	29	12.9%

The majority of respondents felt that the proposed changes to NRPF eligibility would have a positive impact on people who share protected characteristics. All respondents from particular groups (academics and social workers) felt that this impact was positive, with the group with the lowest level being local authorities at 41%.

The second most common answer provided was “unsure”. Groups that stated this included local authorities (32%), school early education provider/ childcare providers (27%) and charities (25%).

Only a very small number of respondents replied that they believed that there was a negative impact: 9% of local authorities, 9% of those who declared they were in the “other” category and 2% of school early education provider/ childcare providers.

Question 4: Please explain the reasons for your answer.

Respondents were asked to give a text response to this question, with around 221 choosing to do so. Of those, 8 commented specifically on the public sector equality duty and a further 39 stated that they were uncertain of the impact or did not understand the question.

Of the 174 respondents who commented that this would have a positive impact on equality but did not name particular protected characteristics in their response, 148 expressed general sentiments about the proposals for early years education.

Broadly, the minority that commented on the public sector equality duty felt that the proposed changes would have a positive impact.

It is assumed that an extension to the eligibility criteria will broaden the reach and access to funding.

- Local Authority, Positive Impact

A small number of responses stated that the proposals would positively impact on those who share the characteristic of race. Many respondents felt that ethnic minority groups are more likely to be included in the NRPF groups proposed:

“It is very likely that this extension will have a positive impact on those who share protected characteristics for the purposes of the PSE Duty. Although the Home Office does not publish data on those affected by NRPF restrictions and collects limited data on protected characteristics, several studies have highlighted that it is families with children from ethnic minority groups that are overwhelmingly affected by NRPF restrictions (Citizens Advice, 2020; Pinter, Compton, Majid, & Parhar, 2020; Woolley, 2019).”

- Academic, Positive Impact

Respondents commonly felt that these proposals would create more parity between ethnic minority groups who are classed as NRPF and those who are eligible for the two-year-old entitlement under the current arrangements.

“Further ensure that children of different races aren’t discriminated against; if you are British you would have an automatic entitlement based on low income, this is not the case if you have a different nationality.”

- Social Worker, Positive Impact

Some responses stated that proposals would positively impact on the basis of sex and pregnancy and maternity. It has been suggested that women and mothers who were categorised as NRPF were more likely to have lower incomes or be part of single parent households and could not afford childcare without this entitlement.

Some respondents stated that the proposals would positively impact upon those who are disabled. Most respondents who answered believed that in accessing early education, support can be provided earlier for these children and families.

Other listed positive impacts were on those who share the characteristic of age, marriage and religion.

Of those who responded that this proposal would have a positive impact, reasons included that early years education is viewed as valuable for aiding children to have the best start in life and therefore the proposal would make access to early education more

equal and would promote social mobility. The proposal would also reduce childcare costs for those eligible and support those eligible to find or attend work.

When explaining their answer for Question 3, those who stated that the proposal would have a negative impact did not directly answer the question on how these proposals would impact those who share protected characteristics directly. Respondents instead addressed broader potential negative impacts, including concerns that a two-year-old entitlement does not promote equality of opportunity for all, and anxiety that there would be insufficient places in early years settings for more children.

Government response

DfE welcomes the broad support across respondent groups for these changes and the shared sentiment that they will enable more equal access to early years education. A high proportion of responses did not directly address the impacts of these changes upon those who share protected characteristics for the purposes of the Public Sector Equality Duty (Equality Act 2010). DfE will have due regard for the impact of this change on those with protected characteristics.

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. 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.

We appreciate the broad support across respondent groups for the importance of education for our youngest learners. 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.

Next steps

We will implement this extension of eligibility to disadvantaged 2-year-old children in NRPF households as soon as is practicable so that children can benefit as soon as possible. We will be working closely with local authorities to ensure that they are well prepared to implement these changes so that the most disadvantaged children, irrespective of their circumstances, including their type of NRPF status, are able to access the entitlement. This includes working with delivery partners on clear guidance on how to assess eligibility for these households, including specifying income levels for NRPF households that are reasonably equivalent to the thresholds for RPF households.

Annex A: Groups Suggested by Respondents

NRPF Groups not included in existing eligibility criteria nor named at paragraph 13 of consultation

- New temporary protection status
- UK Ancestry visa
- Families with pre-settled status who have failed the qualifying right to reside test

Groups that cannot be fully categorised as NRPF or RPF

- Domestic Worker in a Private Household
- Temporary workers
- Sports person

NRPF Groups with existing eligibility or included in paragraph 13 of consultation

- International Students visa (Tier 4)
- Immigrant families
- Asylum seekers/ Refugees
- Skilled workers (Tier 2)
- Graduate visa
- Dependent visa
- Work permit holder
- Private and Family Life visas
- Commonwealth Students

Recourse to Public Funds Groups

- Universal 2YO/ childcare offer
- Low/ middle income families
- Working parents
- Parent with medical or mental health needs
- Single parents
- Social services involved/ SEND

- EUSS: EEA nationals with pre-settled status (PSS)
- Military families
- Gypsy/Roma/Traveller families
- Children with developmental delay
- Victims of trafficking or modern slavery
- Unemployed
- Nigerian families
- Families where only one parent is working
- Victims of domestic violence
- Children living under Kinship arrangements by informal arrangements or a guardianship order
- Children with a sibling with an EHCP
- Children living in a household where a sibling is in receipt of Disability Living Allowance (DLA)
- Parent is a full-time carer for another adult
- Children with a parent in prison or who has been in prison in the last 2 years
- Rural families

Annex B: List of organisations that responded to the consultation

Respondents who are parents but listed themselves as one of the categories highlighted in blue and those where it is not clear is in yellow.

- Achieving for Children (Kingston & Richmond Councils)
- Alburgh with Denton and Harleston Preschool Nurseries
- Berrygrove Early Years Centre
- Blossoms Preschool and Children's Centre
- Brackley Junior School
- Bristol City Council
- Buckinghamshire Council
- Cambridgeshire County Council
- Center for Eclectic Strategy for Inclusive Development, Nigeria
- Crown Lane Primary School and Nursery
- Daisies Day Nursery
- Derby City Council
- Devizes Opportunity Centre
- Dudley Metropolitan Borough Council
- Early Years Alliance
- Earlybirds Playgroup
- East Sussex County Council
- Egg Childcare
- Exton Road Preschool
- Fullbrook Nursery School
- Fylingdales Preschool
- Happy Tots Childcare
- Hardmoor Early Years Centre

- Howden Preschool
- Jack and Jill Community Preschool
- Jack and Jill Nursery
- Karen's Childminding Services
- Ladybirds Ltd., Southampton
- Leicestershire Local Authority
- Little First Day Nursery
- Little Oaks Nursery
- London Borough of Hounslow
- Ministry of Education, Science and Technology, Nigeria
- Noah's Ark Preschool
- North Nibley Preschool
- North Yorkshire County Council
- Norton Preschool
- Nottingham City Council
- Outwood Preschool
- Penny Bridge Nursery
- Project 17
- Royal Borough of Kensington and Chelsea and Westminster City Council
- Sandcastle Playgroup Limited
- Sandwell NHS Trust Day Nursery
- Seeros Daycare
- Sheffield City Council
- Solihull Metropolitan Borough Council
- St Bees Preschool
- St Joseph's Preschool
- St Mary's Preschool Ltd

- St. John's Under 5s Preschool
- Surrey County Council
- The Parade Community Preschool
- Toddler Town Nursery Ltd
- Warrington Borough Council
- Warwickshire County Council
- Wembley Central Nursery School
- West Sussex County Council
- Worcestershire Children First



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