



Department
for Education

Early education and childcare

Statutory guidance for local authorities

September 2014

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Summary

About this guidance

This statutory guidance from the Department for Education is for English local authorities on their duties under 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 2014 it will supersede the current statutory guidance (which was published in July 2013 and came into effect from 1 September 2013).

Review date

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

What legislation does this guidance refer to?

This guidance refers to the Childcare Act 2006, specifically:

- Section 6, which places a duty on English local authorities to secure sufficient childcare for working parents.
- 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 section 7 set out the type and amount of free provision and the children who benefit from the free provision.
- 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.
- 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.
- Section 12 which places a duty on English local authorities to provide information, advice and assistance to parents and prospective parents on the provision of childcare in their area and other services which may be of benefit to parents, prospective parents or children and young persons in their area.
- Section 13, which places a duty on English local authorities to provide information, advice and training to childcare providers.

Who is this guidance for?

This guidance is for local authorities.

Key points

This statutory guidance includes guidance on eligibility for the entitlement to early education for around the 40% most disadvantaged two-year-olds. It introduces new elements relating to: the introduction of childminder agencies; on how local authorities discharge their duties to secure early education for two-, three-, and four-year olds; and, on the provision of information, advice and training to childcare providers. The changed role for local authorities, making Ofsted the sole arbiter of quality, will enable local authorities to focus on ensuring all eligible children are able to take up their early education place and supporting weaker providers to take steps to improve the quality of their provision.

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’ as ‘early education’.

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

In the guidance ‘provider’ means:

- an early years provider other than a childminder registered on the Ofsted Early Years Register;
- a childminder registered on the Ofsted Early Years Register;
- a childminder registered with a childminder agency that is registered with Ofsted;
or
- schools taking children age three and over and which are therefore 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 early education place. Local authorities should not intervene in providers’ private businesses outside of a child’s early education place.

Part A: Early education places for two-, three- and four-year-olds

Section A1: Eligibility

Outcome: all children who meet the prescribed criteria are able to take up high quality early education, regardless of their parents' ability to pay – benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that regular, high quality early education has lasting benefits for all children.¹

Three- and four-year-olds:

A1.1 Local authorities **are required** by legislation to:

Secure early education places offering 570 hours a year over no fewer than 38 weeks of the year for every child in their area from the relevant date, as set out in paragraph A1.1 below, until the child reaches compulsory school age (the beginning of the term following their fifth birthday).

A1.2 The relevant dates are as follows:

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

Two-year-olds:

A1.3 From September 2014 local authorities **are required** by legislation to:

Secure early education places offering 570 hours a year over no fewer than 38 weeks of the year for every eligible child in their area from the relevant date, as set out in paragraph A1.5 below.

A1.4 A child is eligible if:

- they are looked after by the local authority;
- they meet the criteria used to determine eligibility for Free School Meals;
- their family receives Working Tax Credits and have an annual gross income of no more than £16,190 per year;
- they have a current statement of Special Educational Needs or an Education, Health and Care plan;

¹ Sylva, K et al (2008) Final Report from the Primary Phase: Pre-school, School and Family Influences on Children's Development during Key Stage 2 (Age 7-11) EPPE. Research Report DCSF-RR061 DCSF-RR061.pdf

- they are entitled to Disability Living Allowance; or
- they are no longer looked-after by the local authority as a result of an adoption order, a special guardianship order or a residence order.

A1.5 The relevant dates are as follows:

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

A1.6 For two-year-olds who become eligible after the beginning of the term following their second birthday local authorities must secure a place from the start of the next term.

A1.7 Local authorities must ensure that two-year-olds who have met the eligibility criteria set out above in paragraph A1.2 continue to receive a place once they have taken it up even if the child ceases to meet these criteria at a later date.

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

Local authorities **should**:

A1.8 Secure an appropriate number of hours of early education for children who first take up their place part-way through the year.² The number of hours should be adjusted to reflect the portion of the year remaining.

A1.9 Ensure that if providers charge for any goods or services, this is not a condition of children accessing their place. Such goods or services might include meals, optional extra activities or additional hours of provision in addition to the funded place.

A1.10 Ensure that eligible two-year-old children, and all three- and four-year-old children moving to England from another country can access a place on the same basis as any other child in the local authority area.

A1.11 Promote equality and inclusion, particularly for disadvantaged families, looked after children, children in need and children with disabilities or special educational needs by removing barriers of access to early education and working with parents to give each child support to fulfil their potential. Local authorities **must** ensure they meet their duties under the Equality Act 2010 when securing early education places.

A1.12 Encourage take-up of early education places and undertake outreach activities to identify children who are not taking up their full hours and support them to do so.

² This is relevant to two-year-olds who first meet the relevant eligibility criteria at paragraph A1.4 *after* the start of the term following their second birthday, as well as two-, three- and four-year-olds who move to the local authority area part-way through the year.

Section A2: Flexibility

Outcome: children are able to take up their full entitlement to early education at times that best support their learning, and at times which fit with the needs of parents.

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

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

A2.1 Fund providers to deliver early education places at times and in patterns that support parents to maximise the use of their child's place.

A2.2 Encourage providers to offer flexible packages of early education, subject to the following standards:

- No session to be longer than 10 hours
- No session to be shorter than 2.5 hours
- Not before 7.00am or after 7.00pm

A2.3 As a minimum, ensure that parents are able to access their child's early education place in the following patterns:

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

A2.4 Encourage providers, wherever possible, to offer 5 hour sessions rather than 3 hour sessions.

A2.5 Ensure that parents and providers are aware that there is no requirement for all early education places to be delivered only over 38 weeks of the year or in line with maintained school term dates.

A2.6 Enable parents to take up their child's early education 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 sufficient parental demand.

A2.7 Enable children to take up a place at provider which does not open for 38 weeks a year or for 15 hours a week where this suits parents' needs.

A2.8 Act as a broker between overall parental demand in the area and provider capacity, seeking to provide the maximum possible flexibility where demand exists beyond the minimum models referred to in A2.3.

A2.9 Support parents to identify providers who can offer the days and hours needed by the parent. Ensure parents are aware that the entitlement to an early education place does not offer a guarantee of a place at any one provider or a particular pattern of provision.

A2.10 Have a policy on enabling children to take up their early education place at more than one provider, as appropriate, taking into consideration the child's experience and flexibility for parents.

A2.11 Publish their local flexible offer.

Section A3: Quality

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

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

A3.1 To secure quality, local authorities are required by legislation to deliver funded early education through providers who are:

- registered with Ofsted as early years providers; or
- a childminder registered with Ofsted; or
- a childminder registered with a childminder agency which is registered with Ofsted; or
- schools taking children age three and over and therefore 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 'good' or 'outstanding' by Ofsted if a parent wants their child to take up their early education place at that provider and the provider is willing to accept the local authority funding terms and any other local authority funding requirements. (see also A4.10).

A3.3 Fund places for three- and four-year old children at any provider judged 'satisfactory' or 'requires improvement' by Ofsted or at any childminder registered with a childminder agency judged 'satisfactory' or 'requires improvement' by Ofsted if a parent wants their child to take up their early education place at that provider and the provider is willing to accept the local authority funding terms and any other local authority requirements (see also A4.10 and A4.11).

A3.4 Not undertake a local authority assessment of the quality of the provider, but instead rely solely on the Ofsted inspection judgement of the provider or the childminder agency as the benchmark of quality.

A3.5 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 early education place at that provider and the provider is willing to accept the local authority funding terms and any other local authority requirements.

A3.6 Fund providers with exemptions from the Early Years Foundation Stage if a parent wants their child to take up their early education place at an exempt provider.

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 early education places.

To secure quality, local authorities **should**:

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

A3.9 Fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published.

A3.10 Secure alternative provision and withdraw funding, as soon as is practicable, when Ofsted publish an inspection judgement of 'inadequate', taking into account the continuity of care for children who are already receiving their funded entitlement at a provider and Ofsted monitoring information about the provider.

A3.11 Before agreeing to fund a provider, consider any information published by Ofsted about that provider including the recent history about childcare provision at a particular provider or childcare provision at a particular address.

Section A4: Funding early education places

Outcome: fair and transparent funding which supports a diverse range of providers to deliver early education places and encourages existing providers to expand and new providers to enter the childcare market, supported by a more consistent approach across local authorities. This diversity enables parents to choose a provider that best meets the needs of their child and family.

A4.a: Early Years Single Funding Formula

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

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

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

A4.2 Construct a formula composed of either a single base rate for all providers or a number of base rates differentiated by type of provider according to unavoidable cost differences. The formula must include a deprivation supplement for three- and four-year-olds, but is not required to do so for two-year-olds.

A4.3 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 adjustment must be based on a count of children attending provision conducted at least three times a year.

A4.4 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.

A4.5 Provide Free School Meals for children who are registered pupils of a maintained school, who attend early years provision both before and after lunch and whose parents are in receipt of specified benefits. This requirement is distinct from the duty to secure an early education place for two-year-olds who meet the criteria also used for Free School Meals (paragraph A1.2).

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

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

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

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

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

A4.9 Determine locally whether childminders registered with a childminder agency are funded directly or through the childminder agency.

A4b: Requirements on early education providers

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

A4.10 Limit the requirements they place on any provider or childminder agency to those which ensure:

- early education places are delivered completely free of charge to parents;
- early education 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; and
- that providers keep children safe.

A4.11 Limit the requirements they place on childcare 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. This ability to impose additional requirements to improve on weaker providers is not relevant to childminder agencies.

A4.12 Local authorities **cannot** require providers to undertake any local authority training or other local authority quality improvement programmes, unless the training or quality improvement programme has been identified as necessary to address concerns raised in the Ofsted inspection report (see A4.11) and the provider has been judged less than 'good' by Ofsted.

A4.13 Where Ofsted has identified the need for training or quality improvement, the local authority cannot require the provider to undertake training provided by the local authority itself (see D.2).

A4.14 Local authorities **cannot** require providers to participate in a local authority assessment of a provider's quality.

A4.15 Local authorities can refuse to fund providers who meet the quality criteria set out at A3.2, A3.3 and A3.5 if the local authority has reasonable grounds to believe that the provider will not be able to meet the local authority requirements (see A4.10 and A4.11).

To fund early education providers local authorities **should**:

A4.16 Ensure that early education providers are treated in an equitable way whether they are from the private, voluntary, independent or maintained sectors.

A4.17 Maintain a list of providers that choose to receive funding to deliver early education places.

A4.18 Ensure any process to ensure the proper use of public funding does not place undue administrative burdens on providers.

A4.19 Give the provider a written explanation of the local authority decision not to provide funding and have a complaints procedure for providers who have not been offered funding despite the provider being of the required quality or awaiting their first Ofsted inspection.

A4.20 Publicise their complaints procedure so that providers know how to complain if necessary.

A4.21 Ensure that eligible children who move into the local authority area are able to take up their early education place, regardless of when during the term this occurs. Local authorities should be clear with providers on how they will be funding when a child takes up – and leaves – an early education place outside of any regular headcount for funding purposes.

A4.22 Make clear their local policy on funding providers of early education places in situations where children change providers within the local authority area during the term.

A4.23 Ensure providers are not penalised for short term absences of children 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.

A4.24 Ensure providers are aware of the local authority policy on reclaiming funding when a child is absent from a setting.

A4.25 Consider and determine whether to fund the cost of lunch when a child who would qualify for Free School Meals in a maintained school takes up their funded entitlement at a private, voluntary or independent provider.

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.

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

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

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

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

- the state of the local childcare market, including the demand for specific types of providers, in a particular locality and the amount and type of supply that currently exists;
- the state of the labour market;
- the quality and capacity of childcare providers, including their funding, staff, premises, experience and expertise;
- encourage schools in their area to offer out-of-hours childcare from 8.00am and 6.00pm and to offer 5 hour rather than 3 hour sessions;
- encourage existing providers to expand their provision and new providers to enter the local childcare market.

B.3 Report annually to elected council members on how they are meeting their duty to secure sufficient childcare, and make this report available and accessible to parents. Local authorities are responsible for determining the appropriate level of detail in their report, geographical division and date of publication. The report should include:

- a specific reference to how they are ensuring there is sufficient childcare available to meet the needs of: disabled children; children from families in receipt of the childcare element of Working Tax Credit or Universal Credit; children with parents who work irregular hours; children aged two, three and four taking up early education places; school age children; and children needing holiday care;
- information about the supply of and demand for 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 have a choice of taking up their child's early education place in a variety of settings and are provided with comprehensive information about their child's entitlement to an early education place and childcare options in their area.

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

C.1 Provide information, advice and assistance to parents and prospective parents on the provision of childcare in their area.

C.2 Act in accordance with the School Admissions Code in enabling children to take up a place in a maintained school reception class from the September following their fourth birthday.

Local authorities **should**:

C.3 Ensure that parents are aware of:

- early education places for two-, three- and four-year-olds;
- the option to continue to take up their child's 15 hour early education place until their child reaches compulsory school age if they choose not to take up a place in a maintained school reception class in the September following their child's fourth birthday;
- how to locate childcare and early education provision in their area; and
- how to assess the quality of that provision.

C.4 Ensure that parents are aware of local authority procedures to check eligibility for early education places for two-year-olds, and any implications for the use of their personal data.

C.5 Ensure that parents can clearly see, from the information they receive from their provider, that they have received their child's full 15 hour entitlement to early education completely free.

C.6 Make parents aware of the quality of providers delivering early education places based on the provider's most recent Ofsted inspection.

C.7 Have a complaints procedure for parents who are not satisfied that their child has received their early education place or with any aspect of the way in which they have received it, and publicise this to parents.

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 early education. It is for local authorities to determine what information, advice and training is appropriate in each case. Local authorities have a power to impose reasonable charges when providing information, advice and training.

Local authorities **are required** by legislation to:³

D.1 Secure information, advice and training for childcare 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; and

Local authorities **have the power to:**

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

³ By new regulations made under section 13 of the Childcare Act 2006 which will come into force on 1 September 2014, subject to the will of Parliament.



Department
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