



Department  
for Education

# **Early education and childcare**

**Statutory guidance for local authorities**

**September 2014**

# Contents

|  |    |
|--|----|
| Contents   | 2  |
| Summary  | 3  |
| About this guidance  | 3  |
| Review date  | 3  |
| What legislation does this guidance refer to?                      | 3  |
| Who is this guidance for?  | 4  |
| Main points  | 4  |
| Part A: Early education places for two-, three- and four-year-olds | 6  |
| Section A1: Eligibility  | 6  |
| Section A2: Flexibility  | 8  |
| Section A3: Quality  | 9  |
| Section A4: Funding early education places                         | 12 |
| Part B: Securing sufficient childcare                              | 18 |
| Part C: Information to parents                                     | 19 |
| Part D: Information to childcare providers                         | 20 |
| Part E: Legal annex and other relevant information                 | 22 |

# 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 8 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.
- 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.

## Main 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;
- how local authorities discharge their duty to secure early education for two-, three-, and four-year-olds;
- the provision of information, advice and training to childcare providers; and
- early education providers who do not actively promote fundamental British values or promote views or theories as fact which are contrary to established scientific or historical evidence and explanations.

The changed role for local authorities, making Ofsted the sole arbiter of quality, will enable local authorities to focus on ensuring that all eligible children are able to take up their early education place and that weaker providers 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 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 that is registered with Ofsted;  
or
- schools taking children age three (and rising threes) 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.

### Three- and four-year-olds:

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).

A1.1 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:

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 A1.3 below.

A1.2 A child is eligible if:

- they meet the criteria used to determine eligibility for Free School Meals;
- their families receive 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;
- they are entitled to Disability Living Allowance;
- they are looked after by a local authority;
- they are no longer looked after by the local authority as a result of an adoption order, a special guardianship order or a child arrangements order which specifies with whom the child lives.

A1.3 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.

A1.4 For two-year-olds who become eligible (i.e. they meet the criteria set out in paragraph A1.2) after the beginning of the term following their second birthday (i.e. as set out in paragraph A1.3) local authorities must secure a place from the start of the next term.

A1.5 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**:

A1.6 Secure an appropriate number of hours of early education for children who first take up their place part-way through the year<sup>1</sup>. The number of hours should be adjusted to reflect the portion of the year remaining.

A1.7 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

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<sup>1</sup> This is relevant to two-year-olds who first meet the relevant eligibility criteria at paragraph A1.2 *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.

extra activities or additional hours of provision in addition to the funded place.

A1.8 Ensure that eligible two-year-old children and all<sup>2</sup> 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.

A1.9 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.

A1.10 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.

A1.11 Take action over concerns about early years 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.

## 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

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<sup>2</sup> This includes when a three- or four-year-old child or the parent(s) of a three- or four-year-old child is categorised as having 'no recourse to public funds'.

- 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:

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

A2.4 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.

A2.5 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.

A2.6 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.

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

A2.8 Support parents to identify providers who can offer early education places on the days and at the times needed by the parent.

A2.9 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 Consider the impact of the educational experience and continuity of care for children when enabling children to take up their early education place at more than one provider.

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 education 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:

- 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 registered with Ofsted; or
- schools taking children age three (and rising threes<sup>3</sup>) and over and which therefore are exempt from registration with Ofsted as early years providers.

Local authorities are **required** to:

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 and any other local authority funding requirements (see also A4.12).

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 '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 and any other local authority requirements (see also A4.12).

A3.4 Not to undertake a local authority assessment of the quality of the provider, but 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

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<sup>3</sup> 'Rising threes' are children who are registered pupils at a school and have not reached the age of three, but will do so before the end of their first term at school. There are three cut-off dates for the end of a school term: 31 August, 31 December and 31 March. Schools are currently required to register provision for two-year-olds who are not 'rising threes' separately with Ofsted. Subject to the will of Parliament the Government intends to remove this requirement. Local authorities should ensure that any 'rising threes' who fall within the eligibility criteria for the entitlement to early education for two-year-olds are identified and included in the School Level Annual School Census.

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 and any other local authority requirements (see also A.4.12).

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 and the provider is willing to accept the local authority funding and any other local authority requirements (see also A.4.12).

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.

A3.8 Providers cannot be used to ensure sufficiency if they 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.

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

A3.9 Only fund places for two-year-old children in 'satisfactory' or 'requires improvement' providers or with childminders registered with childminder agencies judged 'requires improvement' where there is not sufficient, accessible 'good' or 'outstanding' provision.

A3.10 Fund providers with an Ofsted inspection judgement of 'met' until their Ofsted quality inspection judgement is published.

A3.11 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 or childminder agency of 'inadequate'. When withdrawing funding local authorities should take into account the continuity of care for children who are already receiving their funded entitlement at a provider or agency registered childminder and Ofsted monitoring information about the provider or agency.

A3.12 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.

A3.13 Not fund childminders registered with a childminder agency where the agency has indicated to the local authority that the childminder is not of satisfactory quality unless it is necessary to do so to ensure sufficiency of accessible places.

A3.14 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 could include, for example, a provider using the same location, and employing at least one member of the leadership team, as one previously closed down or rated 'inadequate' by Ofsted.

A3.15 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. [Guidance on schools causing concern](#) can be found on GOV.UK.

## 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. 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 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.

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

A4.4 Provide Free School Meals for children who are registered pupils of a maintained school, who attend early education 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), and the extended eligibility criteria for Free School Meals to include infants who are registered pupils in maintained schools.

A4.5 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.

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 two-year-old early education 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 Discuss and agree locally with childminder agencies and each childminder registered with each agency whether funding for the early education entitlement is paid directly to childminders or is routed to the childminder through the agency.

A4.10 Ensure that none of the funding paid to childminders registered with an agency to deliver early education places is retained by the agency (see also A4.15).

A4.11 After April 2015, pay providers the Early Years Pupil Premium in respect of their disadvantaged three- and four-year-old children. Details of eligibility and funding rates will be set out in separate guidance.

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

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

A4.12 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:

- 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 providers will 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 provider meets the needs of disabled children and children with special educational needs; and
- that providers keep children safe.

A4.13 Where the local authority makes arrangements to secure that early years provision chosen by parents is provided as described in paragraphs A3.2, A3.3, A3.5 and A3.6, they must limit the requirements they place on providers (and childminder agencies) to those which are necessary for the local authority to discharge its duty to secure that such arrangements are made and may be terminated.

A4.14 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.

A4.15 The requirements will apply to the person with whom the local authority makes arrangements to deliver early education 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.

A4.16 Local authorities **cannot** place additional requirements on any childminder agency, regardless of the agency's Ofsted rating, beyond those listed in paragraphs A4.12 and A4.13.

A4.17 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 (see A4.14) and the provider has been judged less than 'good' by Ofsted.

A4.18 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).

A4.19 Local authorities **cannot** require a provider or a childminder agency to participate in a local authority assessment of a provider's quality.

A4.20 Local authorities **can** refuse to fund providers who meet the quality criteria set out

at A3.2, A3.3, A3.5 and A3.6 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 A4.12 and 4.14 or the provider falls into one of the categories set out in A4.23.

A4.21 To fund early education providers local authorities **should**:

- Ensure that early education providers are treated in an equitable way;
- Maintain a list of providers that choose to receive funding to deliver early education places; and
- Ensure any process to ensure the proper use of public funding does not place undue administrative burdens on providers.

A4.22 Where Ofsted have raised particular concerns about how a provider judged less than 'good' is using the Early Years Pupil Premium to support their disadvantaged children the local authority should include requirements to address this.

A4.23 Local authorities cannot meet their duty to secure early education by securing places at an early education 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.

A4.24 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 A4.23 applies, the local authority should withdraw funding.

A4.25 Fundamental British values, first set out in the Government's Prevent strategy, are democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs. The promotion of fundamental British values will be reflected in the Early Years Foundation Stage (EYFS) and exemplified in an age-appropriate way through practice guidance<sup>4</sup>.

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<sup>4</sup> We will consult on proposed wording in autumn 2014 and the General Childcare Register (GCR) will also

A4.26 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’

A4.27 The learning goals in the EYFS are clear that providers are expected to teach 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.

A4.28 The restriction described in A4.23 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 A4.23.

A4.29 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.

A4.30 Local authorities may choose to investigate further to support a decision made under paragraph A4.23. If a claim is taken further, local authorities should notify and consult the appropriate regulator<sup>5</sup>. The presumption is that local authorities will consider, but not necessarily investigate, all claims made.

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be amended to ensure the promotion of fundamental British values.

<sup>5</sup> The Department for Education for registered independent schools and Ofsted for all other providers

A4.31 If funding is withdrawn on the grounds that a provider meets one or more of the criteria set out in A4.23, local authorities should secure alternative provision for children taking up their early education place at those providers as soon as practicable. In cases where funding is withdrawn in these circumstances, local authorities should make arrangements for the review of their decision.

A4.32 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.

A4.33 Local authorities **should** also:

- 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 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 an early education place outside of any regular headcount for funding purposes.
- 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.
- ensure that providers and childminders registered with a childminder agency 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 or childminder.
- ensure that providers and childminders registered with a childminder agency are aware of the local authority policy on reclaiming funding when a child is absent from a setting.
- 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.

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:**

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 and childminders registered with a childminder agency, 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;
- 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 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 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;
- that they can choose to continue to take up their child's 15 hour early education entitlement at another early education provider until their child reaches compulsory school age if they choose not to take up their right a place in a maintained 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 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 place 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 guidance is focused on childcare providers identified as needing to improve the quality of their provision and should promote high quality early education. Local authorities have a power to impose reasonable charges when securing information, advice and training.

Local authorities **are required** by legislation to<sup>6</sup>:

D.1 Secure information, advice and training for early years 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 or the requirements relating to their activities<sup>7</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). If local authorities decide they wish to

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<sup>6</sup> The Childcare Providers (Information, Advice and Training) Regulations 2014 (SI 2014/2319) made under section 13 of the Childcare Act 2006 will come into force on 24 September 2014.

<sup>7</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)

provide information, advice and training in these circumstances then they should only do so if requested by the provider.

## Part E: Legal annex and other relevant information

### Summary of the key provisions in the Childcare Act 2006 (“the 2006 Act”) relating to the entitlement to funded early education

- 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 places a duty on local authorities 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>8</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 the 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.
- Section 13 places a duty on local authorities to secure the provision of information, advice and training to childcare providers and childcare workers.

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<sup>8</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 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. 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 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 duty to establish and maintain a service providing information, advice and assistance – section 12(7); and
- The duty to to secure the provision of information, advice and training to childcare providers – section 13(5).

## **Section 7 – duty to secure prescribed early years provision free of charge**

Section 7(1) of the 2006 Act places a duty on local authorities in England 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.

### **Regulations made under section 7**

The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) (“the 2014 Regulations”) are made under section 7 of the 2006 Act.

The 2014 Regulations prescribe the early years provision which must be made available by an English local authority free of charge, the description of the children for whom the provision must be made available and how local authorities must discharge their duty under section 7. These regulations come into force on 8th September 2014 and revoke the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013 and the Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2014.

## Type of free provision

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.

## Children to benefit from free provision

Three-year-olds (and two-year-olds who meet the eligibility criteria below) are entitled to 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 free early years provision if:

- the child comes within the criteria used to determine eligibility for Free School Meals (FSM) (as set out in section 512ZB(4) of the Education Act 1996 - see the 'Free School Meals' section of Annex D below);
- the parent of the child is entitled to Working Tax Credit under Part 1 of the Tax Credits Act 2002 by virtue of an award which is based on an annual income not exceeding £16,190;
- 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 entitled to 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

- 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) 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.

The [Department for Education's eligibility checking service](#) provides a mechanism for local authorities to verify whether children meet the qualifying criteria for Free School Meals.

## Amount of free provision

Local authorities **must** secure availability of at least 570 hours of free provision over **at least 38 weeks** for each child in each 12 month period from the date at which the 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.

## 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) by the childminder (for a related child) does not count as childcare in legal terms. Early education 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 deliver funded early education places are aware of the requirement on them to have regard to the Special Educational Needs and

Disability Code of Practice: 0-25 which gives guidance on supporting children with special educational needs (SEN) or disabilities.

## Early years single funding formula

The School and Early Years Finance (England) Regulations 2013 (S.I. 2013/3104) set out how local authorities must operate their early years single funding formula (EYSFF).

The Regulations require local authorities to consult their maintained schools, schools forum and providers about an EYSFF for the financial year 2013-2014, which they must decide on before the start of the year for use in that year.

The Regulations also state that, in operating their EYSFF, local authorities:

- must determine budgets for providers using the most recently available data;
- must review the budgets, when more attendance information becomes available, using either total actual hours of attendance for the period, or predicted hours based on actual attendance data collected during three sample weeks (census week for example);
- must re-determine the provider's budget as appropriate;
- must notify providers within 28 days of re-determining the budget, and tell them when the redetermination will be implemented;
- must not (for three- and four-year-olds) use a factor within the formula which takes into account the number of places, except where places have been specifically reserved by the authority for pupils with SEN or for children in need (as defined in section 17 of the 1989 Children Act) with a provider;
- may apply different funding criteria to different types of providers to reflect unavoidable costs;
- must (for three- and four-year-olds) use a factor within the formula which takes into account the incidence of deprivation at a child level not at a setting level (a deprivation supplement); and
- may use factors within the formula which include (but are not limited to):
  - the need to improve the quality of provision by particular provider or types of provider;
  - the degree of flexibility in hours of attendance the provider makes available; and
  - the need to secure or sustain a sufficiency of provision within an area.

## 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.

## 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.

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.

## School admissions

School admissions authorities and local authorities must comply with the School Admissions Code 2012.

### 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 and to make it clear in their admission arrangements that:

- parents can request that the date their child is admitted to school is deferred until later in the year or until the term in which the child reaches compulsory school age; and
- parents can request that their child takes up the place part-time until the child reaches compulsory school age. 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.

## 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 support payments: 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 guarantee 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. A child whose parent is entitled to the Working Tax Credit four-week run-on (the payment someone receives for a further four weeks after they

stop qualifying for Working Tax Credit) is also entitled to FSM. During the early introduction of Universal Credit, children in families in receipt of Universal Credit will also be entitled; and

- a child who is in receipt of a qualifying benefit in their own right is also entitled to FSM.
- There is a new duty to provide FSM for all infants (those children in reception and Years 1 and 2) who are registered pupils in maintained schools (section 512ZB(4A) of the Education Act 1996).

## **Looked after children**

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.

## **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.

## **Child arrangements orders**

Part 2 of the Children and Families Act 2014 makes changes to the operation of the Family Justice system, as recommended by the independent Family Justice Review and accepted by the Government in its response published on 6 February 2012. The Act contains provisions to introduce a ‘child arrangements order’, replacing residence and contact orders from 22 April 2014.



Department  
for Education

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