



Department
for Education

Eligibility for free school meals, the early years pupil premium and the free early education entitlement for two-year-olds under Universal Credit

Government consultation response

March 2018

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Introduction

Our guiding mission for the Department for Education is to promote social mobility and ensure equality of opportunity for every child. Their background should not determine what they can achieve, and we are committed to supporting children to go as far as their talents will take them.

This government has already taken significant steps towards creating an education system that will help achieve this. The next step for us is to ensure that those children and families who are most in need benefit from the full range of support our schools and early years providers can give them.

In autumn 2017, we launched public consultations on setting updated criteria for three entitlements which are integral to our ambitions to support children from disadvantaged families. The three entitlements covered by these consultations are as follows:

Free school meals

We recognise the benefits of providing a healthy school meal to the most disadvantaged children, and we are committed to continuing to provide free school meals¹ to families in need. Last year, around 1.1 million of the most disadvantaged children were eligible for and claimed a free meal.

As well as providing a nutritious meal for eligible children, free school meals eligibility is also used to determine additional funding for schools, local authorities and early years settings through the pupil premium, the national funding formulae, and the early years pupil premium.

The early years pupil premium

The early years pupil premium is additional funding for early years settings to improve the education they provide for disadvantaged three and four-year-olds. It gives providers up to £302 a year for each eligible child taking up the universal 15-hour free early education entitlement for three and four year olds.

¹ Free school milk is covered by the same legislation as free school meals. Where free school meals is referenced throughout, the same applies to free school milk.

The free early education entitlement for two-year-olds

High quality early years education and care can have a positive impact on a child's development, and are particularly important in supporting social mobility for disadvantaged children. The free early education entitlement for two-year-olds offers children from less advantaged backgrounds 15 hours a week, or 570 hours a year, of free early years education.

This sits alongside the 15 hours of early years education that all three- and four-year-olds are entitled to, as well as the additional 15 hours for three- and four-year-old children of eligible working parents.

Setting new criteria under Universal Credit

Since 2013, as a temporary measure, all families receiving Universal Credit have been entitled to the above three entitlements, pending the introduction of new eligibility criteria.

The temporary criteria were designed to ensure that families moving on to Universal Credit in the early stages of rollout (for example, those in pilot areas) did not lose these entitlements during that initial period. Since autumn 2017, the national rollout of Universal Credit has accelerated, and as planned, we will now set new criteria for these entitlements.

Our proposals to update the eligibility criteria under Universal Credit were published in autumn 2017, with the following aims:

- To ensure that our support is targeted effectively towards those families that are most in need of it;
- To enable a greater number of children to benefit from these entitlements compared to the previous benefits system;
- To ensure that existing claimants are protected against losing these entitlements because of the criteria change;
- To ensure that our new arrangements are as clear and straightforward as possible for schools, local authorities, early years providers and parents; and
- To be consistent with the wider approach to determining eligibility for other passported benefits that flow from Universal Credit eligibility.

This consultation response relates to England only. Northern Ireland, Scotland and Wales have responsibility for establishing their own criteria for these entitlements. This document, alongside our updated Equality Impact Assessments, forms the Government's response to the two following consultations.

Free school meals and the early years pupil premium

On 16 November 2017, we published our consultation on how we would determine eligibility for free school meals and the early years pupil premium under Universal Credit.

The consultation set out our intention to introduce an annual net earned income threshold of £7,400. A typical family earning around this threshold, depending on their exact circumstances, would have a total annual household income of between £18,000 and £24,000 once benefits are taken into account. Households earning under this threshold, and receiving Universal Credit, would be eligible for free school meals and the early years pupil premium. This is comparable to the approach taken in Scotland, where a net earnings threshold of £610 per month (equating to £7,320 per annum) was introduced in August 2017.

Under our proposals, we estimate that by 2022 around 50,000 more children will benefit from a free school meal compared to the previous benefits system.²

We also proposed to introduce transitional protections to ensure that existing recipients of free school meals and the early years pupil premium would not lose their entitlement following the introduction of new eligibility criteria.

The free early education entitlement for two-year-olds

On 4 December 2017, we published a consultation on eligibility for the free early education entitlement for two-year-olds under Universal Credit.

This set out our intention to introduce an annual net earned income threshold of £15,400. A typical family earning around this threshold, depending on their exact circumstances, would have a total annual household income of between £24,000 and £32,000 once benefits are taken into account. Households earning under this threshold, and receiving Universal Credit, would be eligible for the free early education entitlement for two-year-olds.

Under this new threshold, we estimate that by 2023 around 7,000 more children will benefit from the two-year-old entitlement compared to the previous benefits system.³

² The modelling for the threshold was conducted using a range of data, including population projections, Office of Budget Responsibility forecasts of earnings growth and employment rates, and expected levels of take-up. Since we published the consultation, we have updated the modelling with the latest population estimates, earnings data, and assumptions about National Living Wage increases. These numbers will be subject to change as these forecasts are updated.

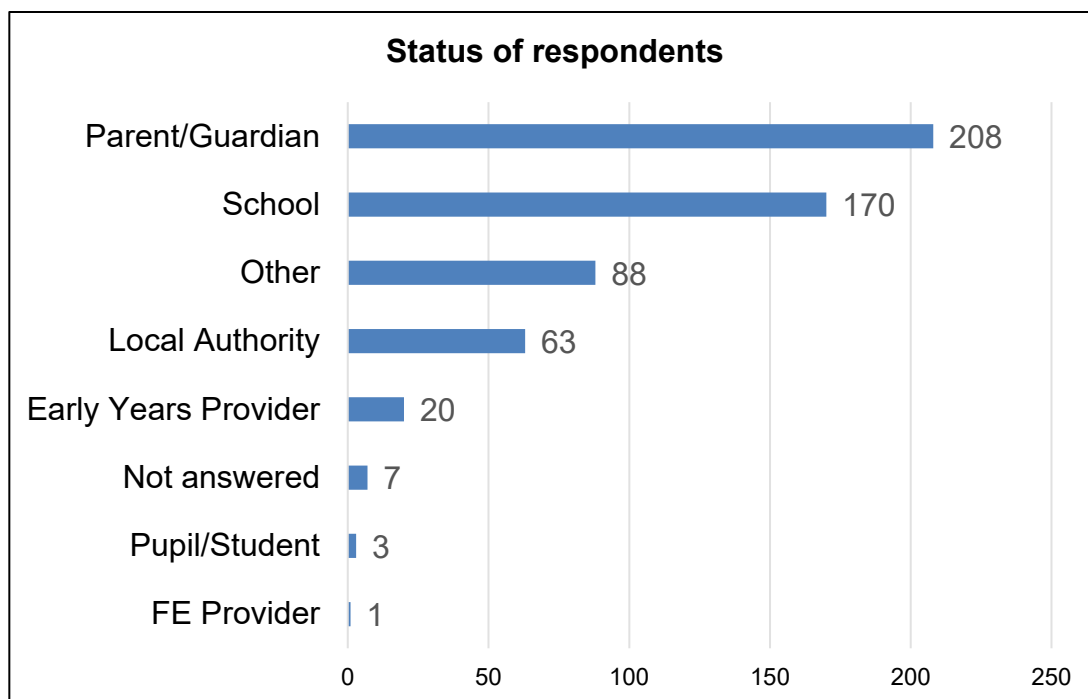
³ See footnote 1.

Children continue to benefit from the free early education entitlement for two-year-olds until they become eligible for the universal three- and four-year-old entitlement, even if their family circumstances change. Therefore, two-year-olds will not lose their entitlement once they have taken it up, and no child who starts their entitlement will lose it because of the introduction of the new earnings threshold.

Key findings from the consultation and our response

Free school meals and the early years pupil premium

Our consultation ran from 16 November 2017 to 11 January 2018. We received 560 responses through our consultation website from a range of individuals and stakeholders, with a breakdown set out in the chart below:



In addition, we received 8,421 emails as part of the Children’s Society “Fair and Square” campaign, which asked people to share the Children’s Society’s response to our consultation. This campaign proposed that all children in families receiving Universal Credit should be eligible for free school meals in future. We also received a further 16 freeform responses which did not directly answer the questions posed in the consultation. These responses have not been included in the data analysis used in this document but have been considered when formulating our response.

Departmental officials also met a range of interested organisations during the consultation to understand their views in more detail.

Summary of responses

The majority of those who replied through our consultation website (56% of 560) agreed with our proposed net earnings threshold of £7,400 per annum. They cited it as an improvement on the current system of eligibility, as it would mean that eligibility was based on a household’s earnings, rather than the number of hours worked. There was

also support for our proposal to set the threshold at a level that we estimated would increase the number of eligible pupils.

However, a significant proportion of respondents believed that free school meals should be extended to all households on Universal Credit, as this would reach a greater number of children and raise the level of earnings at which families would cease to be eligible. Many respondents also believed that our proposals might discourage some families from raising their earnings above the proposed threshold.

The vast majority of respondents (87% of 560) agreed with our proposals to protect families against losing their free school meals during the transition to the new criteria under Universal Credit. Many recognised that this would give certainty to families and ensure that children did not experience a sudden loss of their free school meals during the transition to Universal Credit. A majority (58% of 512) did not feel the proposals would adversely affect children with one or more of the relevant protected characteristics outlined in the Equality Act 2010.

While not all respondents answered our question about the use of free school meals data in measuring school performance, of those that did, some raised the issue of data comparability both between years and between schools nationally, and suggested that clear guidance needs to be provided on how the data should be interpreted.

A more detailed breakdown of responses is available in the question analysis section of this document.

Summary of the Government response

Introducing a net earnings threshold remains the fairest and most practical way to ensure that children from the lowest-income families receive free school meals, and benefit from the early years pupil premium.

We will introduce an annual net earnings threshold of £7,400⁴, which will typically equate to an overall household income of between £18,000 and £24,000 once benefits income is taken into account, depending on individual circumstances. Eligibility will be verified by using an equivalent monthly check verified from the household's most recent Universal Credit assessment periods. Our threshold is comparable with that introduced by the

⁴ Based on calculating earnings on a monthly basis.

Scottish government for free school meals eligibility, and we consider it fair and appropriately targeted.

As a result of these proposals, we estimate that by 2022 around 50,000 more children will benefit from a free school meal compared to the previous benefits system.⁵ We will keep the threshold constant until the end of the Universal Credit rollout period, and will then keep the threshold under review to ensure that those who most need support are benefiting. We will provide additional funding to schools to recognise the increase in the number of free school meals they will be providing.

We will, as proposed in our consultation paper, protect both those families who would otherwise have lost eligibility for free school meals because of this change, and those who become eligible during the rollout of Universal Credit. The protection arrangements will work as follows:

- From April 2018, all existing claimants will continue to receive free school meals whilst Universal Credit is rolled out. This will apply even if their earnings rise above the new threshold during that time.
- In addition, any child gaining eligibility for free school meals after the threshold has been introduced will be protected against losing free school meals during the Universal Credit rollout period.
- No further eligibility checks will be required for protected families during this period; schools would simply leave these pupils flagged as protected pupils in their management information systems.
- Once Universal Credit is fully rolled out, any existing claimants that no longer meet the eligibility criteria at that point (because they are earning above the threshold) will continue to receive protection until the end of their current phase of education (e.g. primary, secondary).
- New claimants earning above the threshold after April 2018 will not be eligible for free school meals.

These protections will be in place until the end of the Universal Credit rollout, and then until the end of each protected pupil's phase of education if they are still in school when the rollout of Universal Credit is complete. These protections will mean that no family

⁵ See footnote 1.

should lose out because of these changes. They are intended to be straightforward for schools to administer.

Recognising that some households see their earnings fluctuate from month to month, we will ensure that earnings are checked over a period lasting up to three months (where assessment period data is available). In addition, we are exploring ways to ensure that very low-income families can receive free school meals during the initial assessment period for Universal Credit.

Many respondents called for free school meals to be extended to all families on Universal Credit. However, this would mean that around half of all pupils would become eligible for free school meals, compared to a current rate of around 14%. This is because some Universal Credit households will be on middle-incomes, sometimes exceeding £40,000 a year, and receiving in most cases only a small amount of Universal Credit. While this is right as it ensures they are always encouraged to work and earn more, we must ensure that we use public money effectively and that free school meals go to disadvantaged families on low incomes.

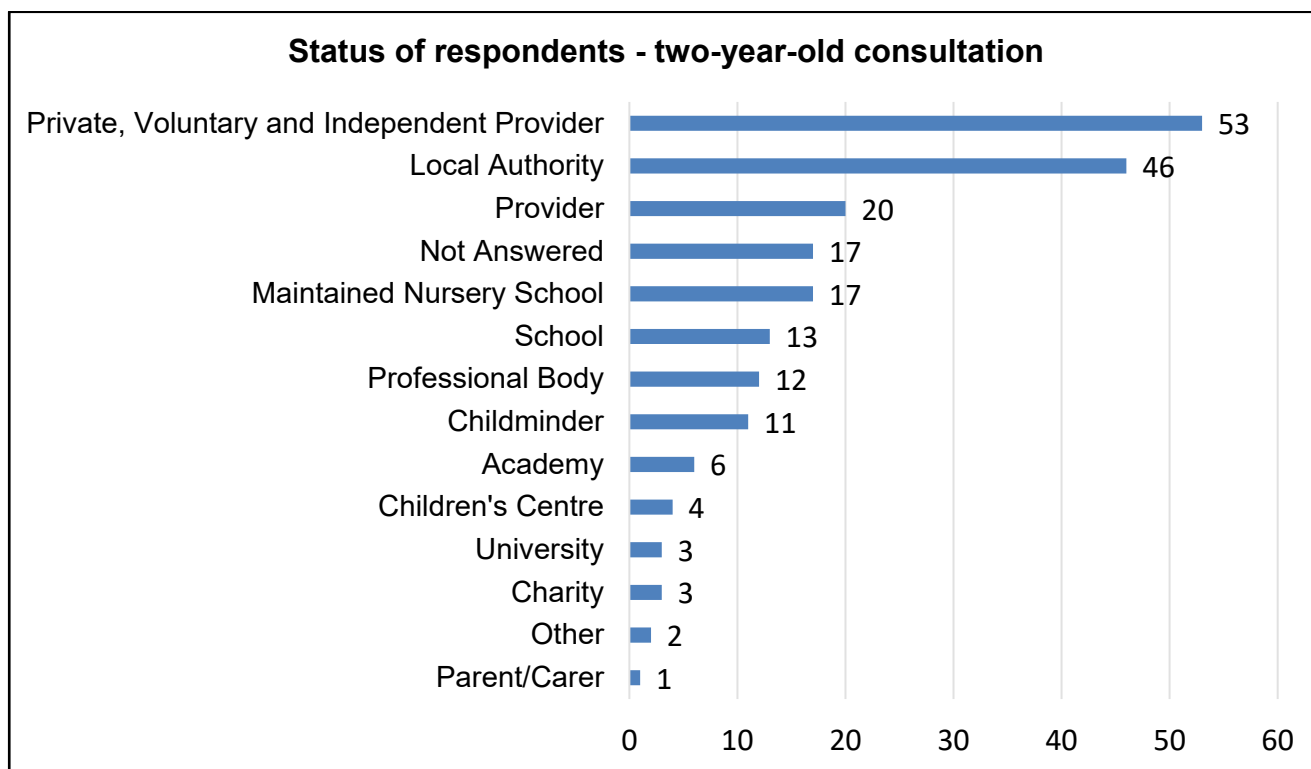
Some respondents were also concerned about the effect that introducing an eligibility threshold would have on encouraging people into work. We continue to believe that a threshold is the most practical approach, and ensures a clear and simple system that is realistic for schools and local authorities to deliver. The alternatives to a threshold suggested, such as tapering the amount of meals a child would receive as their family moves up the income spectrum, would add complexity for families, and significantly increase the administrative burden on schools and local authorities.

As proposed in our consultation paper, we are not changing the current free school meals and early years pupil premium criteria for children whose parents receive support provided under Part 6 of the Immigration and Asylum Act 1999 or the guarantee element of Pension Credit. These qualifying benefits are not to be replaced by Universal Credit. Children who are eligible for free school meals or the early years pupil premium through these benefits will therefore remain in receipt of these meals and the early years pupil premium for as long as they retain the benefit.

We have considered the equality impacts of these proposals when developing the government response, and an updated equality analysis for the final proposals can be found in the Equality Impact Assessment document, published alongside this consultation response.

The free early education entitlement for two-year-olds

Our consultation ran from 4 December 2017 to 15 January 2018. We received 208 responses through our consultation website and by email from a range of individuals and stakeholders, with a breakdown set out in the chart below:



Summary of responses

Overall, 80% of respondents agreed with the proposed threshold. Eighteen percent of respondents disagreed with the threshold, citing various reasons, including that the threshold should be higher or that the two-year-old entitlement should be universal.

The majority of respondents (77%) felt that there would be no adverse impact on children who share one or more of the protected characteristics as set out in the Equality Act 2010. The most common protected characteristics that were mentioned in relation to potential adverse impacts of the proposals were disability and race, either directly or implied through reference to English being an additional language.

A more detailed breakdown of responses is available in the question analysis section of this document.

Summary of the Government response

Introducing an earnings threshold is the simplest and fairest way to ensure the two-year-old entitlement continues to benefit the families who need it most. We welcome the widespread support for the two-year-old entitlement and its aims from respondents.

We will introduce an annual net earnings threshold of £15,400⁶, which will typically equate to an income of between £24,000 and £32,000 once benefits income is taken into account, depending on individual circumstances. Eligibility will be verified by using an equivalent monthly earnings check from the household's most recent Universal Credit assessment periods.

Under this new threshold, we estimate that by 2023 around 7,000 more children will benefit from the two-year-old entitlement compared to the previous benefits system.⁷

We will hold the net earnings threshold constant until Universal Credit is fully rolled out, and will then keep the level of the threshold under review to ensure those who need support most are benefiting. Recognising that some households see their earnings fluctuate from month to month, we will ensure that a claimant's earnings are checked over a period lasting up to three months.

Some respondents suggested that eligibility for the free early education entitlement for two-year-olds should be extended to all families on Universal Credit, or even to all two-year-olds. The two-year-old entitlement is designed to ensure that two-year-old children of low income working families, as well as those not in work, are able to benefit, and deliberately targets a much broader cohort than for free school meals. We want this to continue to be the case so that a wider group of less advantaged children can benefit from high quality early education. These families are less likely to access, but most likely to benefit from early education. If we did not introduce a threshold, a significant proportion of middle income families in receipt of Universal Credit would receive the entitlement. Similarly, widening eligibility for the entitlement to all children would significantly change the nature of the policy. We must ensure that we use public money effectively and target support to those families and children most in need.

We have considered the equality impacts of these proposals when developing the government response, and an updated equality analysis for the final proposals can be found in the Equality Impact Assessment document, published alongside this consultation response.

⁶ Based on calculating earnings on a monthly basis.

⁷ See footnote 1.

Detailed question analysis

Free school meals and early years pupil premium

Q.1 Do you agree with our proposed net earnings threshold to determine eligibility for free school meals and the early years pupil premium under Universal Credit?

	Total	Percentage
Yes	315	56.3%
No	226	40.4%
Not Answered	19	3.39%

Summary of responses

A majority of respondents (56% of 560) through our consultation website agreed with our proposed net earnings threshold for a household's eligibility for free school meals. Those agreeing cited a range of reasons including supporting our plans to make more children eligible compared to the previous benefits system, and agreeing with our plans to address unfairness in the current system, in which free school meals eligibility for working families is based on hours worked, rather than income earned.

Many respondents, however, considered the threshold too low, with a substantial number (including an additional 8,421 emails received outside our consultation system through the Children's Society campaign) believing that all school-aged children from families receiving Universal Credit should be entitled to free school meals.

Many expressed a view that the introduction of an earnings threshold undermined a principle of Universal Credit, that is to make work pay: there was concern that families may be better off working fewer hours to remain under the earnings threshold.

Government response

As outlined earlier in this document, we continue to believe that introducing an earnings threshold is the simplest and fairest way of providing free school meals and the early years pupil premium to the most disadvantaged children in the country, and that an earnings threshold of £7,400 per annum (with typical total income between £18,000 and £24,000) is an appropriate level at which to set this threshold.

We will therefore take forward our proposed new criteria for free school meals and the early years pupil premium.

Responses to the specific issues raised by respondents are set out below.

Setting a threshold for households receiving Universal Credit

We recognise the benefits that healthy, nutritious school meals can bring to children and families, and understand why some respondents wanted to ensure that as many children as possible benefit from free school meals. However, when the Government introduced the current arrangements in 2013, which enable all Universal Credit families to receive free school meals, it was clear that this was intended only to cover the duration of the Universal Credit pilots.

Once Universal Credit has completed its rollout, around half of all children will be in households which receive it. Extending eligibility for free school meals to all of these children would go far beyond the intention for free school meals to go to the lowest-income households. This is because Universal Credit is replacing Working Tax Credit and Child Tax Credit, and will therefore be received by a significant proportion of middle-income families.

For example, as families move onto Universal Credit, they can in some circumstances be earning over £40,000 and still receive a small amount of Universal Credit, which ensures they are always encouraged to work and earn more. These are not the most disadvantaged households that we intend to receive free school meals, or the early years pupil premium, and they are not eligible to receive them currently.

Not introducing a threshold would bring significant costs for the government and schools, including the potential capital expenditure that some schools may have to undertake to expand school kitchen and dining facilities. We remain confident that introducing our proposed threshold directs public money effectively towards those families that need our support.

The impact of the threshold on work incentives

Some respondents believed that our threshold might discourage some households from increasing their income through work. Until the end of Universal Credit rollout (and then until the end of each pupil's phase of education), this will not affect existing recipients of free school meals, as households whose incomes move above our threshold during this period will retain eligibility for free school meals because of our transitional protections.

In the longer term, introducing a threshold remains the most practical approach. We must have a clear system that is realistic for school and local authorities to deliver. Some respondents suggested tapering the number of free meals a child can receive as their family moves up the income spectrum. However, this would add complexity for families, and significantly increase the administrative burden on schools and local authorities. Other respondents suggested we should instead provide free school meals to all on Universal Credit, but this would move the effective threshold further up the income spectrum rather than remove it.

Reviewing the level of the threshold

Some respondents called for the threshold to be updated regularly to keep up with increase in wages. However, the calculations on which our threshold is based already include forecasts of employment rates, earnings and National Living Wage projections, and benefits eligibility up to 2022. As outlined in our original consultation paper, we intend to keep the threshold constant until the end of the Universal Credit rollout period. After this period, we will then keep the threshold under review to ensure that those who most need support are benefiting. This is consistent with the approach taken by other government departments that have introduced thresholds under Universal Credit as part of their eligibility criteria for passported benefits.

Fluctuating earnings and initial assessment periods for Universal Credit

Some respondents were concerned that the use of monthly income assessment periods in Universal Credit could lead to those with fluctuating earnings losing eligibility for meals which they would be entitled to in the current system. For existing recipients, this should not be an issue, as our transitional protections over the course of the rollout will mean that children from these families do not lose eligibility. For new claimants, to address this, we will ensure that a claimant's earnings can be checked over a maximum of three Universal Credit assessment periods prior to the request for free school meals or the early years pupil premium, rather than taking only the most recent assessment period into consideration.

All local authorities have access to our Eligibility Checking System, which provides a simple and rapid online portal for determining households' eligibility for free school meals and the early years pupil premium. The eligibility checking arrangements will work as follows:

- Firstly, a Universal Credit claimant will be checked for monthly earned income not exceeding £616.67 (a twelfth of an equivalent yearly income of £7,400) in their most recent Universal Credit assessment period;
- If their earned income exceeds the above threshold for their most recent Universal Credit assessment period, the claimant will be checked for earned income not exceeding £1,233.34 (a sixth of an equivalent yearly income of £7,400) in their two most recent Universal Credit assessment periods, provided there are two such assessment periods;
- If their earned income exceeds the above threshold for their two most recent Universal Credit assessment periods, the claimant will be checked for earned income not exceeding £1,850 (a quarter of an equivalent yearly income of £7,400) in their three most recent Universal Credit assessment periods, provided there are three such assessment periods.

In addition, we are exploring ways to ensure that very low-income families can receive free school meals during the initial assessment period for Universal Credit. This would not confer longer-term entitlement to these families, nor trigger associated deprivation funding to schools, but it would offer free school meals as an interim measure. Our aim is to develop an approach which would be simple for local authorities to administer and for schools to provide, and we will work with stakeholders to explore this further. We will provide further information shortly.

Automatic registration for free school meals

Currently, legislation requires parents and carers to make a request for a free school meal prior to gaining eligibility. Some respondents felt that changing the eligibility criteria presented an opportunity to remove this legislative requirement and introduce automatic registration. We want to make sure as many eligible children as possible are claiming their free school meals, and to make it as simple as possible for schools and local authorities to determine eligibility for FSM. We are exploring what opportunities may exist in the longer term to make the registration processes more efficient. As signalled in the consultation, we will also continue with efforts to increase free school meals registration, which will include highlighting and disseminating best practice from the most effective schools and local authorities, and monitoring the impact of these efforts.

Financial support for schools

We will support schools to meet the higher costs that will result from the anticipated increase in the number of pupils eligible for free school meals.

The increase in the number of pupils in receipt of free schools meals will be reflected in the data that local authorities use to determine individual schools' funding allocations. We continue to believe that lagged funding is the best approach for the school funding system as a whole, as it provides schools with budget certainty against which they can plan their spending. However, we recognise that for some schools this increase in free school meal numbers may be difficult to manage in the short term.

To support schools in this position, we will introduce a school-level meal cost grant for 2018-19 and 2019-20. The allocation will be determined by the difference between a school's free school meals numbers in the October censuses as follows:

Financial year	What we will measure	What schools will receive
2018-19	School-level FSM increase between October 2018 and October 2017 census	Measured increase in number of pupils x £440
2019-20	School-level FSM increase between October 2019 and October 2018 census	Measured increase in number of pupils x £440

This grant will not affect a school’s allocation through the pupil premium, national funding formulae or any other source of existing funding. We will set out further technical details in due course, including how we will adjust for overall changes in pupil numbers in schools facing significant growth. We will assess whether there is any need to continue this grant beyond 2020 as Universal Credit rollout progresses, in the light of the outcome of the next Spending Review.

Q.2 Do you agree with our intention to protect those pupils who would otherwise lose their entitlement to free school meals, and those children who would otherwise lose their entitlement to the early years pupil premium, under the new eligibility criteria?

	Total	Percentage
Yes	489	87.3%
No	53	9.5%
Not Answered	18	3.2%

Summary of responses

The vast majority of respondents (87% of 560) agreed with our proposed protections. Those agreeing cited a number of reasons, including that the protection would help families avoid hardship. Respondents also felt that protecting those who would otherwise lose was the fairest approach, as many of these families’ circumstances would not have changed.

A small minority of respondents felt that the protection should be longer, covering children until they reached year 11 of their schooling. Conversely, a small number of respondents considered the proposals too generous, arguing that protections would apply to some families who moved onto higher earnings who would then be less in need of free school meals.

Government response

Given the significant support for our proposals, we will introduce the transitional protections outlined in our consultation document. We are committed to providing certainty for families and ensuring that they do not experience a sudden loss of their free school meals. We will provide further guidance on how these protections will operate in practical terms prior to the introduction of the income threshold.

Q.3 Do you feel that the proposals in this consultation may adversely affect any children who share one or more of the relevant protected characteristics outlined in the Equality Act 2010?

	Total	Percentage
Yes	217	38.8%
No	295	52.7%
Not Answered	48	8.6%

Summary of responses

Not all respondents answered this question. Of those that did, the majority (58% of 512) did not feel the proposals might adversely affect children with one or more of the relevant protected characteristics. Some flagged agreement with our equality analysis.

A large proportion of respondents who suggested an adverse effect on those with protected characteristics were opposed to the proposed new threshold more generally, and did not specify particular protected groups that might be adversely affected, or explain why this might be the case.

Only a small proportion cited specific protected characteristics, including references to disability (highlighting the links between disability and earnings) and a smaller number to age (that those with ages nearer to their end of education phase would receive less protection than others). A very small number cited race, including links to income and possible impacts on migrant families.

Government response

We have considered these aspects when developing the government response, and an updated equality analysis for the final proposals can be found in our Equality Impact Assessment document, published alongside this response.

Q.4 Do you have any views on the proposed management of the changes to the disadvantage measures or on the metrics we publish for the measurement of disadvantaged pupils' performance?

Summary of responses

Just under a third (31% of 560) of consultees responded to this free text question, although a large proportion did not directly address this specific issue and instead reiterated their responses to earlier questions about the proposed earnings threshold.

Of those that did respond directly, the majority raised the issue of data comparability, both over time and between schools nationally. Some suggested that guidance should be

provided for stakeholders (such as Ofsted, Regional Schools Commissioners and school governors) on how the data should be interpreted and used.

Some suggested that wider factors such as complex needs, parental mental health and factors outside purely financial terms/absolute poverty should be taken into account when identifying pupils as disadvantaged.

Government response

We are committed to continuing to publish data to support understanding of how schools are performing with their disadvantaged pupils both nationally and at school level, as these measures are a vital part of ensuring schools are able to drive social mobility.

Our provisional analysis indicates that the impact of the new free school meals threshold and the roll out of Universal Credit on schools' disadvantage data is likely to be relatively minor in the context of normal levels of change schools see in their free school meals cohorts year on year. There may be a small number of cases where the changes are outside the normal levels but this is unlikely to be significant. We will be clear with those working with schools that no schools should be unfairly penalised in these circumstances.

We are considering how best to present the disadvantage data from 2018 onwards. Alongside this, we will set out clear communications to schools, stakeholders, Regional Schools Commissioners and Ofsted to ensure the published data are considered appropriately. We will ensure that those using this data are aware of what can and cannot be inferred from it and are encouraged to look at a range of other information alongside the disadvantage measure. We plan to issue the communications in spring 2018 after the regulations come into effect, but before the schools get their first set of school level data in the September data checking exercise.

The free early education entitlement for two-year-olds

Q.1 Do you agree with our proposed net earnings threshold to determine eligibility for the free early education entitlement for two-year-olds under Universal Credit?

	Number of respondents	Percentage
Yes	166	80%
No	38	18%
Not Answered	4	2%

Summary of responses

Overall, the majority of respondents agreed with introducing the proposed annual net earnings threshold of £15,400. We received positive comments from a broad cross-section of respondents, supporting the general aims of policy and the new threshold. Respondents in support of the policy who provided comments felt strongly that two-year-olds in receipt of the policy would benefit from access to early education, and this would particularly benefit low-income families.

Some respondents raised concerns that the proposed new net earnings threshold of £15,400 was lower than the previous £16,190 threshold for Child Tax Credit. Respondents also raised concerns about how the new threshold would affect families living in different parts of England where living costs and earnings differ, and how it might affect the cost of childcare for parents earning just above the proposed threshold.

A minority disagreed with the threshold and/or commented on the proposed threshold being too low. There were concerns from some respondents who thought the threshold could act as a work disincentive, incentivising parents either not to work at all or limit their working hours. A few felt that due to this disincentive non-working parents should not be eligible for the entitlement at all. A few respondents felt that the two-year-old entitlement should be extended to specific groups, for example all working parents or all families on Universal Credit, and some commented that the policy should become a universal entitlement for all two-year-olds.

A number of respondents, particularly local authorities and providers, raised concerns about the wider delivery implications of the proposed threshold.

Government response

We welcome the widespread support for the policy and its aims from respondents. We are determined to support as many families as possible with access to high quality,

affordable childcare, and this is why in 2019-20 the Government will be spending around £6 billion on childcare – a record amount.

The level of the threshold

We are confident the proposed threshold of £15,400 will ensure the entitlement continues to benefit the low-income families who need it the most.

Some respondents perceived that the proposed earnings threshold was lower than the income threshold for Child Tax Credit. This is not the case.

- The original eligibility criteria apply a **gross** income threshold, and do not therefore take into account deductions such as income tax and national insurance contributions.
- Our proposed criteria apply a **net** earnings threshold, and do therefore take into account these deductions.

In reality, the £15,400 net earning threshold means that, depending on circumstances, families could earn a combined gross income of between approximately £24,000-32,000 once benefits are taken into account and be eligible for the two-year-old entitlement.

To take account of households with fluctuating earnings, we will ensure that earnings can be checked over a maximum of three Universal Credit assessment periods prior to a request for the two-year-old entitlement, rather than taking only the most recent assessment period into consideration.

All local authorities have access to our Eligibility Checking System, which provides a simple and rapid online portal for determining households' eligibility for the two-year-old entitlement. The eligibility checking arrangements will work as follows:

- Firstly, a Universal Credit claimant will be checked for monthly earned income not exceeding £1,283.34 (a twelfth of an equivalent yearly income of £15,400) in their most recent Universal Credit assessment period;
- If their earned income exceeds the above threshold for their most recent Universal Credit assessment period, the claimant will be checked for earned income not exceeding £2,566.67 (a sixth of an equivalent yearly income of £15,400) in their two most recent Universal Credit assessment periods, provided there are two such assessment periods;
- If their earned income exceeds the above threshold for their two most recent Universal Credit assessment periods, the claimant will be checked for earned income not exceeding £3,850 (a quarter of an equivalent yearly income of £15,400) in their three most recent Universal Credit assessment periods, provided there are three such assessment periods.

We propose to introduce the net earnings threshold and hold it constant until Universal Credit is fully rolled out. Following completion of the Universal Credit rollout, we will keep the level of the threshold under review to ensure that those who need support most are benefiting.

Widening the eligibility criteria

Some respondents felt that the two-year-old entitlement should be open to all families on Universal Credit, or should be a universal entitlement for all two-year-olds. The government is committed to continuing to make the two-year-old entitlement available to families who need it the most. Extending eligibility to all children would go far beyond the intention for the two-year-old entitlement to benefit less well-off households.

Universal Credit is replacing tax credits, and a significant proportion of middle-income families will be in receipt of Universal Credit, including families who would not have been eligible for the two-year-old entitlement under the previous benefits system. As families move onto Universal Credit, they can be earning over £40,000 and still receive a small amount of Universal Credit, which ensures that they are incentivised to work. It is appropriate for these families to receive some Universal Credit, but we are not seeking to target the two-year-old entitlement towards this wider group.

Cost of childcare

A minority of respondents raised concerns that childcare costs could be a burden for families earning just above the proposed threshold, especially for single parent families. In April 2016, the government announced that working families could get help with 85% of their childcare costs through Universal Credit, subject to a monthly limit. This will make sure work pays for families on a low income.

If a working family is not in receipt of Universal Credit, the government has introduced Tax-Free Childcare, which will be available to around 2 million households to help pay for childcare costs. For every £8 parents pay into an online account, the government will pay £2 – up to a maximum contribution of £2,000 per child each year, for children aged up to 12. Parents of disabled children will receive extra support (worth up to £4,000 per child, each year and until their child is 17). These policies have been designed to give more families access to affordable childcare.

Delivery of entitlements

Some respondents questioned the deliverability of places under the new threshold, and particularly raised concerns about funding, staffing and the quality of provision.

We are confident that the funding we are providing for the two-year-old entitlement is sufficient. All local authorities received increases in their two-year-old funding rates in April 2017 and our average hourly funding rate for two-year-olds has increased from £5.09 to £5.39. Local authorities receive funding according to the actual take-up of the free early education entitlement for two-year-olds; therefore, any increase in demand for places from families eligible for the two-year-old entitlement will be met by the government's funding in the usual way. Due to the managed way in which Universal Credit is being rolled out, we do not expect local authorities and providers to see a sudden change in demand for places.

Some respondents were concerned about the potential impact of the other early years entitlements, particularly 30 hours free childcare, on providing places for two-year-olds. The government recently completed two independent evaluations of 30 hours free childcare – one of early implementation and one of early rollout. These found no negative impact of 30 hours on the two-year-old entitlement and the universal entitlement for three and four year olds.⁸ We recognise, however, that pressure on places may increase in the spring and summer terms as more children turn three and parental awareness of the offer increases. The department will continue to monitor the impact of 30 hours on the existing entitlements and continue to provide support to local authorities with delivery.

Respondents raised concerns regarding the staffing and quality of two-year-old places offered. All Ofsted-registered early years providers and schools must adhere to the early years foundation stage statutory framework that sets out the standards for learning, development and care of children from birth to five years. Local authorities have a duty to secure free provision for eligible children. The statutory guidance for local authorities states that local authorities should only fund places in providers rated "Requires Improvement" where there is not sufficient, accessible good or outstanding provision in the area.

⁸ Evaluation of Early Implementation of 30 hours free childcare:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628938/Evaluation_of_early_implementation_of_30_hours_free_childcare_-_Brief.pdf

Evaluation of early rollout of 30 hours free childcare: <https://www.gov.uk/government/publications/early-rollout-of-30-hours-free-childcare-evaluation>

Q.2 Do you feel that the proposals in this consultation may adversely affect any children who share one or more of the relevant protected characteristics outlined in the Equality Act 2010?⁹

	Number of respondents	Percentage
Yes	34	16%
No	161	77%
Not Answered	13	6%

Summary of responses

Overall, the vast majority of respondents felt that there would be no adverse effect on children who share one or more of the protected characteristics in the Equality Act 2010. Some respondents felt that they did not know enough about the policy to be able to comment on the impact that the changes would have on children that share one or more protected characteristics.

A small number of respondents felt that the new threshold would affect certain protected characteristics. The most common protected characteristics that were mentioned in relation to potential adverse impacts of the proposals were disability and race, either directly or implied through reference to English being an additional language. A small number of responses were also concerned by funding and saw the current funding situation as discriminatory against certain groups, for example children with SEND, some of whom they considered may not be able to access a place at a provider because of additional costs such as adjustments, training and additional staff costs.

Government response

The Government welcomes the view of the vast majority of respondents that there would be no adverse impact on groups with protected characteristics from the proposals in the consultation. Our Equality Impact Assessment has been updated to reflect responses to the consultation.

⁹ Due to rounding percentages do not sum to 100.

Next steps

Free school meals and early years pupil premium

We are laying regulations in parliament that will bring the proposed thresholds into force in April 2018 for free school meals and the early years pupil premium. The regulations and commencement orders will also introduce protection arrangements for existing recipients of free school meals, so that no child will lose free school meals during the transitional period because of these changes.

We will provide schools, local authorities, early years settings and further education providers with guidance on the new eligibility criteria. This will support them in implementing the new arrangements and determining what evidence could be accepted to determine eligibility if they are not using our Eligibility Checking System. The guidance will also include information that they can share with families. We will communicate these changes through our newsletters and online services for local partners and will use our online channels to reach families.

Free early education entitlement for two-year-olds

We intend to lay regulations in parliament that will bring the proposed thresholds into force in April 2018 for the free early education entitlement for two-year-olds.

We will update our current guidance for local authorities with the new eligibility criteria, including information that they can share with providers. We will also update our guidance on using the Eligibility Checking System to support local authorities with checking potentially eligible families.

The Department for Work and Pensions will continue to provide the Department for Education with lists of households who may potentially be eligible for its free early education entitlement for two-year-olds to assist local authorities with their marketing to parents who may be eligible for the offer. Households on Universal Credit Live Service and legacy benefits are currently included on these lists, and households on Universal Credit Full Service will be included on these lists from March 2018.

Annex 1 – List of organisations that responded to the consultations

Free school meals and early years pupil premium

- Action for Children
- Alderman Jacobs School
- All Saints
- Ark Day Nursery
- Arnbrook Primary
- Ashbeach
- Association of Directors of Children's Services (ADCS)
- Association of London Directors of Children's Services (ALDCS)
- Association of Public Service Excellence
- Association of School and College Leaders
- Balham Nursery School
- Bede Academy
- Bedworth Heath Nursery School
- Bidfood
- Bracebridge Infant and Nursery School
- Bristol City Council
- British Dietetic Association
- Brookfields School
- Cambridge Road Community Primary and Nursery School
- CATERed Limited
- Catholic Education Service
- Chailey School
- Chesterfield High School
- Child Poverty Action Group
- Church of England Mission
- Churchill Academy & Sixth Form
- Colchester Borough Homes
- Crab Lane CPS
- Cubbington C E Primary School
- Dalmain Primary School
- Diocese of Liverpool
- Durham and Newcastle Dioceses
- Earlylearningwithlynn
- Enfield Council
- EP Collier Primary School
- Fakenham Academy Norfolk
- Falkland Primary School
- Family and Childcare Trust
- FAN
- Feeding Britain
- Feltham Hill Infant and Nursery School
- Folksworth C of E Primary
- Food for Life
- Food Foundation
- Food Partnership
- George Spicer Primary School
- Glebelands Primary Academy
- Gloucestershire County Council
- GMB
- Happy Kids
- Heelands School
- High Hazels Nursery & Pre-School
- Impetus – Private Equity Foundation
- Kennett Primary School
- Kingscliffe Day Nursery
- Kingsmead School
- Lead Association for Catering (LACA)
- Lead Association for Catering in Education

- LEARNERS' Trust
- Little Paxton Preschool
- Local Government Association
- London Councils
- Low Income Tax Reform Group
- Miles Coverdale Primary School
- Morley Victoria Primary School
- Mortimer St Mary's Junior School
- Motcombe school
- NASUWT
- National Day Nurseries Association
- National Education Union
- National Governance Association
- New Invention Junior School
Walsall
- Newlands Primary School
- Newnham Croft Primary
- Nottinghamshire County Council
- Park Infant School
- Peckover Primary School
- Pictor Academy
- Plus Three Nurseries
- Policy in Practice
- Priory Park Infant School
- Purley Primary School
- Rixton-with-Glazebrook Pre-School
- Rodmell CEP School
- Rotherfield Primary School
- Sandford Hill Primary
- School and Nursery Milk Alliance
- School Food Matters
- South Gloucestershire LA
- South Tyneside Council
- Southfield Academy Trust
- St Aidan's R C Primary School
- St Andrew's Benn Primary
- St Barnabas Church of England
Primary School
- St Catherine's College
- St Chad's Catholic Primary School
- St Dennis Primary Academy
- St Lawrence CE (VA) Primary with
Little Lawrences
- St Mary's C.E. Primary
- St Mary's Catholic School
- St Matthew's CE Primary School
- St Nicholas Primary School
- St Paul's C of E Primary School
- St Peter & St Paul C E Primary
School
- St Richard's Catholic College
Bexhill
- Steps Community Nursery
- Stockton-on-Tees Council
- Strawberry Fields Primary
- Sustain
- Sutton Trust and Education
Endowment Foundation
- The Children's Society
- The Downs School
- The Rydal Academy
- The Salvation Army
- Thorns Community Infant School
- Tick Tocks
- Toner Avenue Primary School
- Trafalgar Community Infant School
- UNISON
- Wallands Community Primary
School
- Washacre Primary School
- Waverley School
- Wesfield Community Primary
School
- West Lea School
- Westwood Primary School
- Whitehill Community Academy
- William Lilley Infant and Nursery
School

The free early education entitlement for two-year-olds

- Acorns Playgroup
- Action for Children
- The Association of London Directors of Children's Services (ALDCS)
- Association of Schools and College Leaders (ASCL)
- Astrea Academy Trust
- Barlow Moor Community Association
- Barnardo's
- Barnsley Metropolitan Borough Council
- Blackdown Preschool
- Blackpool Council
- Bordesley Green East Nursery School and Children's Centre
- Bradford Council
- Brambly Hedge Day Nursery LTD
- Brighton & Hove City Council
- Buddies
- Bury Council
- Busy Bees
- Butterflies Day Nursery
- Cambridgeshire County Council
- Castle Mead School & Nursery
- Catherine House Day Nursery Schools
- Central Bedfordshire Council
- Central Greenwich Children's Centres Ltd
- Child Poverty Action Group
- Childcare Provider
- Coten End preschool
- Cuddles Day Nursery Ltd
- Daisy Chain Pre school
- Derbyshire County Council
- Devon County Council
- Doncaster Metropolitan Borough Council
- Earlham Nursery School
- Elmton Day Nursery
- Family and Childcare Trust
- Federation of Crigglestone and The Castle Nursery Schools
- First School
- Flying High Nursery School
- Folkestone Primary Kindergarten
- Fordley Primary School
- Frogmore Montessori Nursery School
- Gloucestershire County Council
- Greater London Authority
- Halton Borough Council
- Happy Hours Pre School
- Happy Kids
- Harewood Nursery School
- Hawthorn Park Community Primary School
- HCAT - Bellfield Primary School
- High Hazels Nursery & Pre-school
- Hillshott School
- Holy Family Playgroup
- Hook Pre-School
- ITT institution
- Kiddiwinks pre-school
- Kids Around The Clock
- kidswatch
- Kinderland Day Nursery Ltd
- Kingston upon Hull City Council
- Learning Ladder Childcare
- Leeds City Council
- Leicestershire County Council
- Little Explorers Childminding
- Little Saplings Childcare Centres
- Lizy's

- Local Government Association
- Locking stumps pre-school
- London Borough of Bromley
- London Borough of Hackney
- London Borough of Hounslow
- London Borough of Newham
- London Borough of Tower Hamlets
- London Borough of Waltham Forest
- London Councils
- Manchester Metropolitan university
- Meadowlands Pre-School
- Meadowside CP & Nursery School
- Mickle Trafford Preschool
- Middlesex University
- Morehall Pre-School
- NASUWT
- National Day Nurseries Association
- NCFE
- Next Step Nursery
- Norfolk County Council
- North East London NHS Foundation Trust
- North Somerset Family Information Service
- Nottinghamshire County Council
- Oakey dokey childcare
- Oxfordshire School Organisation Stakeholder Group
- Pavilion Playschool
- Peterborough City Council
- Plymouth City Council
- Premier Nurseries
- Putnoe Woods Preschool
- RCCG, Liberty Christian Connections-Liberty Preschool
- Roberttown Community Centre Pre-school
- Romford United Reformed Church Playgroup
- Sandwell Metropolitan Borough Council
- Sense Biodetection
- Severn View Primary Academy
- Shiremoor Primary School
- Shropshire Council
- Sir Edmund Hillary Primary School
- Somerset County Council
- Southampton City Council
- Southend on Sea Borough Council
- St Joseph's Pre-school Playgroup
- St Mary's Nurseries
- St Mary's Nursery Hexham
- St. Gabriel's Playgroup
- Staffordshire County Council
- Stampers Preschool, Stamfordham, Newcastle
- Stockton-on-Tees Council
- TCCL
- The Ace Group
- The Beeches Pre School
- The Crescent Pre School Day Nursery
- Thornbury Play & Learn Nursery
- Thurrock Council
- Toad Hall Pre-School
- Training Depot Day Nursery
- Trinity Preschool
- Valentines Nursery
- Victoria Park Nursery School & Family Hub
- Warwickshire Local Authority
- West Smethwick Enterprise
- Westerham Day Nursery
- Wigan Local Authority
- Wiltshire Council
- Woodfield Nursery
- Worcestershire County Council

- WPS Children's Centre CIC

- Young Explorers childcare



Department
for Education

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