



Department  
for Education

# **Eligibility for the free early education entitlement for two-year-olds under Universal Credit: Equality analysis**

**February 2018**

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## The public sector equality duty

1. Under Section 149 of the Equality Act 2010, the Secretary of State is under a duty to have due regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it
    - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - i. tackle prejudice
    - ii. promote understanding
2. The Equality Act 2010 identifies the following as protected characteristics for the public sector equality duty:
  - age
  - disability
  - gender reassignment
  - pregnancy and maternity
  - race (including ethnicity)
  - religion or belief
  - sex
  - sexual orientation

## Proposed eligibility for the free early education entitlement for two-year-olds under Universal Credit

3. This equality analysis sets out our assessment of the impact of the proposals for the eligibility criteria for the free early education entitlement for two-year-olds under Universal Credit with regard to the protected characteristics identified in the Equality Act 2010, and our response to the relevant points raised during the consultation.
4. This analysis was initially published on 4 December 2017 alongside our consultation paper, and has now been updated following the closure of this consultation on 15 January 2018.
5. The 'Eligibility for the free early education entitlement for two-year-olds under Universal Credit' consultation invited views on the proposed approach to setting eligibility for this two-year-old entitlement under Universal Credit.
6. Final decisions on how the eligibility criteria will function are set out in the consultation response published alongside this impact assessment. They are summarised as follows.
7. For families in receipt of Universal Credit we will introduce an annual net earnings threshold of £15,400,<sup>1</sup> which, depending on their exact circumstances, will typically equate to an income of between £24,000 and £32,000 once benefits income is taken into account.
8. This new earnings threshold for families receiving Universal Credit will sit alongside the existing eligibility criteria under the previous benefits system, until Universal Credit is fully rolled out.
9. Once the entitlement has commenced, children continue to benefit from it until they become eligible for the universal three- and four-year-old entitlement, even if their family circumstances change. Therefore, two-year-olds do not lose their entitlement once they have taken it up and no child who has started their entitlement would lose it as a result of the introduction of the new earnings threshold.
10. We intend for the proposed earnings threshold for the two-year-old entitlement to take effect from 1 April 2018. Therefore, children whose parents are in receipt of Universal Credit and who intend to start the two-year-old entitlement in the 2018 summer term would be subject to the proposed threshold.

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<sup>1</sup> This is based on calculating earnings on a monthly basis.

11. We propose to introduce the net earnings threshold and hold it constant until Universal Credit is fully rolled out. After this period, we will then keep the threshold under review to ensure that those who most need support are benefiting.
12. We do not intend to change the current eligibility criteria for children whose parents receive support provided under Part 6 of the Immigration and Asylum Act 1999 or the guaranteed element of State Pension Credit. These are not to be replaced by Universal Credit. We also have no plans to amend the non-economic criteria, which are:
  - they (the child) are looked after by the local authority; or
  - they (the child) have left care through special guardianship or an adoption or child arrangements order; or
  - they (the child) have a current statement of SEN or an education, health and care plan (EHC); or
  - they (the child) are entitled to Disability Living Allowance.
13. The free early education entitlement for two-year-olds applies to England only.
14. Since the launch of the consultation in December, we have updated the modelling with the latest population estimates, earnings data, and assumptions about National Living Wage increases<sup>2</sup>. Using this latest data, under our proposals we estimate that by 2023 around 7,000 more children will benefit from the two-year-old entitlement compared to the previous benefits system.

## Consultation responses

15. Of the 195 responses to our question on equality impacts in the consultation, 161 (77% of those who responded to the question) felt there would be no adverse effect on children who share one or more of the relevant protected characteristics outlined in the Equality Act 2010.
16. A small number of respondents (16%) felt that certain protected characteristics would be affected by the new threshold. The most common protected characteristics that were mentioned in relation to potential adverse impacts of the proposals were

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<sup>2</sup> 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.

disability and race, either directly or implied through reference to English being an additional language. Other protected characteristics were mentioned by only one respondent at most.

17. A small number of responses were also concerned about 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.

## Consideration of the protected characteristics identified in the Equality Act 2010

18. This document provides an assessment, pursuant to the public sector equality duty, of the potential effect of the proposals set out in the 'Eligibility for the free early education entitlement for two-year-olds under Universal Credit' consultation in the light of further analysis we have conducted and of the consultation responses we received.
19. This document assesses the impact of these proposals on the eight protected characteristics identified in the Equality Act 2010. The assessment is based on a comparison between these proposals and what would be the position in the absence of Universal Credit (based on the previous benefits system).
20. Our assessment of the impact of our proposals is that we expect children from certain ethnic groups to benefit more than others from an increase in the size of the two-year-old entitlement cohort (outlined in more detail below). We do not have evidence to suggest there will be a negative impact on individuals who share the other protected characteristics.

### Age

21. Our proposed net earnings threshold of £15,400 will result in more two-year-olds benefiting from high quality early education than would have been the case under the previous benefits system.<sup>3</sup> Findings from the Department for Education's longitudinal study, the Study of Early Education and Development (SEED), shows that early education between two and three years of age can have a positive impact on a child's development.<sup>4</sup> As the express purpose of the entitlement is to benefit two-year-olds, we do not consider this to be detrimental to children or adults of other ages.

### Sex

22. We do not consider there to be any negative impact on the protected characteristic of sex. Under the new criteria, we estimate that the number of children (both male and female) who are eligible would increase.<sup>5</sup> As we propose to ensure that children who are in receipt of the two-year-old entitlement at the point of introducing the threshold

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<sup>3</sup> See footnote 2.

<sup>4</sup>

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/627098/SEED\\_ECEC\\_impact\\_at\\_age\\_3.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/627098/SEED_ECEC_impact_at_age_3.pdf)

<sup>5</sup> See footnote 2.

do not lose their entitlement to an early years place, there should be no negative impact on this protected characteristic.

## **Gender reassignment, pregnancy and sexual orientation**

23. We do not believe there to be any negative impact from these proposals on these protected characteristics.

## **Religion**

24. Our proposal on the two-year-old entitlement threshold will be applied to all children and early years providers consistently, including faith schools. Data shows that certain religious groups (e.g. Muslim, Hindu and Sikh) are more likely to experience poverty.<sup>6</sup> Under our proposals, the cohort eligible for the two-year-old entitlement is considerably larger than the cohort of children defined as in poverty. This suggests strongly that children from low-income families from those religious groups above will continue to benefit from the offer.

## **Race (including ethnicity)**

25. DWP Households Below Average Income (HBAI) statistics show that adults in families where the head is Bangladeshi, Pakistani, Black/African/Caribbean/Black British or from other ethnic groups (except White and Mixed) are more likely to be in both the bottom two quintiles of households for net equivalised disposable household income.<sup>7</sup> Under our proposed threshold, we would expect children from these ethnic groups to be more likely to be eligible for the two-year-old entitlement than those from other ethnic groups. A number of responses to the consultation supported this view.

## **Disability**

22. Children are eligible for the two-year-old entitlement if they are entitled to Disability Living Allowance or have a current statement of special education needs or an Education, Health and Care (EHC) plan. These eligibility criteria are not affected by these proposals. For this reason we do not consider there to be any impact on the protected characteristic of disability.

23. With regard to the concerns that were raised in a minority of responses about access to places, we would stress that local authorities and childcare providers have a duty

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<sup>6</sup> <http://csi.nuff.ox.ac.uk/wp-content/uploads/2015/03/religion-and-poverty-working-paper.pdf>

<sup>7</sup> <https://www.gov.uk/government/statistics/households-below-average-income-199495-to-201516>



under the Equality Act 2010 not to discriminate against children with disabilities when funding a childcare place for a child and should continue to use their discretion when offering places to children. The high needs funding system provides funding to local authorities for children with special educational needs and disabilities (SEND) from their early years to the age of 25.

## Next steps

23. We will continue to review the impact of the proposals in line with the public sector equality duty. This assessment is a living document and further policy work will be undertaken as the policies are developed and implemented to ensure that any negative impact is mitigated and potential positive impact is maximised.
26. As indicated in the Government's response to the consultation, published alongside this equality analysis, we are laying regulations in parliament which will bring the proposed threshold into force on 1 April 2018.



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Reference: DFE-00026-2018



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