



Department
for Education

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**Consultation on proposed changes to the role of the
local authority in early education and childcare**

Consultation on proposed changes to the role of the local authority in early education and childcare

The Government values local authorities' important role as 'champions' of disadvantaged children and their families. We want local authorities to focus on ensuring that all two, three and four-year olds, particularly the most disadvantaged, take up their entitlement to funded high-quality early education. This consultation seeks your views on the specific reforms to the role of local authorities in early education and childcare. It offers you the opportunity to influence the secondary legislation and statutory guidance, which will implement changes to the local authority role.

To Parents/Carers, Nurseries and other Pre-School Settings, Local Authorities, Childminders, Health Professionals, Teachers/Practitioner, Academics

Issued 25 March 2013

Enquiries To If your enquiry is related to the policy content of the consultation you can telephone: 0370 000 2288 or e-mail:
FundedEarlyEducation.CONULTATION@education.gsi.gov.uk

Contact Details

If your enquiry is related to the DfE e-consultation website or the consultation process in general, you can telephone: 0370 000 2288 or email via the Department's ['Contact Us'](#) page.

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1 Introduction

1.1 Vision

Local authorities are already playing an important role in the school system as the 'champions' of children and parents, especially the most disadvantaged. We want to free up local authorities so that they are able to concentrate on a similar role in the early years, ensuring that all children in their area – regardless of family background - are able to experience a high quality early education. This will be particularly important during the implementation of the new early education programme for two-year-olds from lower income households.

1.2 As with the school system, the government wants to see maximum funding passed to early years providers on the front line, along with increased autonomy, complemented by rigorous inspection arrangements. We want Ofsted to be the sole arbiter of quality in the early years and to reduce confusion and additional bureaucracy for providers, local authorities and parents. At a time when resources are under pressure, it does not make sense for local authorities to be conducting their own quality assessments of providers. That is Ofsted's job. As we announced in *More great childcare*, Ofsted will have a greater focus on identifying underperformance in the early years; ensuring that weaker performers are inspected more frequently and that there is greater involvement of Her Majesty's Inspectors in inspections.

1.3 Once Ofsted has identified how providers can improve, providers should have the freedom to seek support from wherever they find most helpful. Where the current arrangements are working well, providers can continue to take up the support they need, including training and advice, from their local authority. Where providers have their own effective quality systems in place, such as providers in chains or for childminders registered with childminder agencies, they should not be required to also receive support from their local authority.

1.4 Ofsted data suggests that finding quality provision in disadvantaged areas can be particularly difficult for parents, yet evidence shows that children from lower income families benefit most from high quality early education. We anticipate that local authorities will continue to play an important part in supporting existing providers to improve the quality of their provision and to encourage more high quality providers to expand into these areas.

1.5 Government proposals

This consultation seeks views on the Government's specific reforms to the role of local authorities in early education and childcare. It offers respondents the

opportunity to influence the secondary legislation (regulations) and statutory guidance which will implement changes to the local authority role.

1.6 The Government is proposing to make the following changes, either by introducing legislation at the earliest opportunity, or through statutory guidance to:

a. guarantee an offer of funding for all providers of a quality assessed by Ofsted, or an inspection body approved by the Secretary of State, as 'satisfactory', 'good' or 'outstanding' where there is an eligible child wanting to take up an early education place;¹

b. guarantee an offer of funding for new early education providers, which have been registered with Ofsted, prior to their first full Ofsted inspection;

c. limit the extra conditions that local authorities can place on private, voluntary and independent (PVI) early education providers in order for them to qualify for funding to deliver places;

d. remove the existing duty on local authorities to secure information, advice and training for childcare providers, but give local authorities power to offer it; and

e. reform the early education funding system, by encouraging local authorities to simplify their funding formulae and to limit the amount of centrally retained spend.

2 Guarantee funding for children taking up their early education place at providers based solely on their Ofsted quality rating

2.1 Current position

Local authorities have discretion over the early education providers they choose to fund to deliver places. Current statutory guidance states that local authorities should fund early education providers rated 'satisfactory' by Ofsted only if they can demonstrate that they meet additional quality requirements from a 'basket of measures'. These measures may include participation in a local authority's own quality improvement programme.

¹ - References to Ofsted judgements throughout this consultation also refer to judgements made by an inspectorate approved by the Secretary of State

2.2 Currently, local authorities also have the discretion to place additional quality conditions on early education providers rated 'good' by Ofsted. They can also exercise discretion over whether to remove funding from those judged 'inadequate' by Ofsted at their most recent inspection.

2.3 Rationale for reform

Ofsted inspection is a tried and tested means of holding early education providers to account for the quality of their provision. This reform will end the current overlapping quality regimes and make it clear that Ofsted inspection outcomes are the sole benchmark of quality in the early years. Reforms to Ofsted's inspection regime will ensure that there is a greater focus on underperformance. It is proposed that weaker early education providers will be targeted and inspected more frequently and all registered providers will be able to request a paid-for, early re-inspection, if they believe they have improved since their previous inspection.

2.4 We want to remove requirements that central Government has placed on local authorities to add locally-defined eligibility criteria. This will give clarity to early education providers as they will know the standard that they need to reach in order to be funded to deliver Government places, and will create a level playing field for all types of provider, including childminders. Nationally consistent criteria will make it easier for early years providers, who want to, to expand into other local authority areas.

2.5 Freeing up local authorities will allow them to focus on supporting disadvantaged families to increase their take up of funded early education places. This change will also mean they can pass more of the funding they are allocated by central Government for early education to the frontline. At present, local authorities retain centrally around £160 million a year from the DSG, some of which is spent on duplicating work Ofsted is already doing. Some local authorities use funds from the Early Intervention Grant (EIG) for this purpose, which could instead be spent on helping the poorest families.

2.6 Proposals

As a first step, the Government proposes to revise statutory guidance (to take effect from September 2013) to make it clear to local authorities that they should make decisions on whether to fund early education providers to deliver places solely on the basis of Ofsted inspection judgements. The guidance will make it clear that local authorities should not undertake separate assessments of the quality of early years provision.

- 2.7 In the longer term, we will seek to amend the law, when possible, so that local authorities cannot refuse to offer to fund a place at early education providers of a certain quality as judged by Ofsted if an eligible child wants to take up a place there. We propose to set out in regulations the level of quality that early education providers will have to reach in order to be eligible to offer funded places. We propose that this would, in the first instance, mean that local authorities could not refuse to offer to fund any 'satisfactory', 'good' or 'outstanding' early education provider to deliver places for three and four-year-olds.
- 2.8 The proposed revisions to the regulations would also mean that local authorities could not refuse to offer to fund any 'good' or 'outstanding' provider to deliver early education places for two-year-olds.
- 2.9 In a previous consultation (November 2011), the Government asked whether there should be a higher quality threshold for providers of early education to two-year-olds, as the evaluation of the two-year-olds pilot scheme found that high quality settings had a positive impact on child development.
- 2.10 The current position for two-year-olds is that local authorities should fund places in 'good' and 'outstanding' providers wherever possible. 'Satisfactory' providers may be used if there is not sufficient accessible 'good' and 'outstanding' provision available. In time, our aspiration is to make changes so that funded places for two-year-olds can only delivered by providers judged as 'good' or 'outstanding' by Ofsted.
- Question 1: What would the impact be of requiring local authorities to offer to fund all providers, except those judged 'inadequate', to deliver funded places for three and four-year-olds?**

Question 2: When is the earliest point (after full implementation in September 2014) that we should require that funded places for two-year-olds can only be delivered by providers judged 'good' or 'outstanding' by Ofsted?

3 Guarantee funding for new early education providers, who have been registered with Ofsted, prior to their first Ofsted inspection

3.1 Current position

Currently, local authorities can exercise discretion over whether to fund newly established early education providers that wish to deliver funded places. Statutory guidance states that local authorities should not refuse funding to providers, which have not yet been inspected by Ofsted, unless they have concerns about the quality of the provision. In order to make these judgements on quality many local authorities undertake additional assessments of the provision, alongside Ofsted's compulsory pre-registration checks. In most cases new providers are given a full inspection by

Ofsted seven months after they are first registered.

3.2 Before registration, an early education provider must satisfy Ofsted that they have an appropriate educational programme in place to help children progress towards the early learning goals set out in the Early Years Foundation Stage (EYFS). All early education providers also receive a registration visit by an Ofsted Inspector to check the safety of the premises and the suitability of staff to deliver the EYFS. If Ofsted is not satisfied, it will conduct another visit or refuse registration.

3.3 Rationale for reform

The Government wants to increase the choice of high quality and affordable childcare for working parents. Newly established early education providers have told us that uncertainty about whether they will receive local authority funding can act as a clear disincentive to enter the market. We want to remove this barrier by guaranteeing an offer of funding for all newly established early education providers, that have been successfully registered with Ofsted, and wish to offer Government funded places.

3.4 The pre-registration checks carried out by Ofsted are robust and fit for purpose. They assess whether an early education provider is safe and suitable to operate a childcare business and therefore should be sufficient to allow new providers to deliver Government funded places until the date of their first Ofsted inspection judgement. All providers wishing to deliver funded places must be compliant with the '*Welfare and Safeguarding Requirements*' of the EYFS. All new providers will have to demonstrate that they can meet these EYFS requirements.

3.5 Proposals

As a first step, we propose to amend statutory guidance to make it clear to local authorities that they should offer to fund all new providers until the date their first Ofsted inspection judgement is published. We will also make it clear that local authorities should not set any additional eligibility criteria on these providers in order to qualify for funding. In the longer term, we will seek to amend the law, when possible, so that local authorities cannot refuse to offer to fund new providers to deliver early education places when they have passed their initial Ofsted registration visit and prior to their first Ofsted judgement.

Question 3: What will be the impact of offering to fund new providers to deliver early education places prior to their first Ofsted inspection judgement?

4 Limit the conditions that local authorities can set on private, voluntary and independent early education providers to qualify for funding to deliver places

4.1 Current position

Current legislation gives local authorities the power to impose requirements on the funding they give PVI early education providers (including Academies) to deliver funded places. However, local authorities do not have the power to place conditions on the governing bodies of maintained schools that deliver funded early education places.

4.2 Typically local authorities place conditions on PVI providers through their funding agreements. These conditions are often related to quality improvement, the flexibility of the provision, training and financial management requirements. These conditions can sometimes place significant additional burdens on early education providers, and act as a disincentive to enter the market, particularly for providers operating in more than one local authority area.

4.3 Rationale for reform

Limiting the conditions that local authorities can place on PVI providers to qualify for Government funding is expected to contribute to increased transparency and greater national consistency. Chain providers, which operate across local authority boundaries, tell us that conditions placed on them by local authorities are often confusing and create unnecessary burdens and bureaucracy. Greater national consistency may incentivise more early education providers to enter the childcare market and help to address the shortage of affordable childcare faced by some working parents. It will also help to achieve a more 'level playing field' for PVI providers and maintained schools that deliver funded early education places.

4.4 Local authorities will continue to play a role in setting conditions on early education providers in respect of the proper use of public funds, i.e. fraud and misappropriation, securing flexible delivery of funded places and in preventing providers charging 'top-up fees'.

4.5 Proposals

As a first step, we propose to amend statutory guidance to set out explicitly that local authorities should not place quality conditions on early education providers. We propose to state in statutory guidance that the only conditions that local authorities should set in return for funding are those that guard against the misappropriation of public funds, prohibit the charging of 'top-up fees' and support the flexible delivery of

early education places.

- 4.6** We will consider whether we should introduce other measures to qualify the existing powers granted to local authorities in the Childcare Act and limit the conditions that local authorities can place on providers.

Question 4: What would be the impact of limiting the conditions local authorities can set on providers solely to those outlined in paragraph 4.4?

Question 5: What other conditions, if any, should local authorities be able to place on early education providers to deliver funded places?

- 5** Remove the existing duty on local authorities to secure information, advice and training for childcare providers, but give local authorities power to offer it

5.1 Current position

Local authorities have a legal duty to secure information, advice and training to all childcare providers, or potential providers. The type of training that must be made available to all early education providers is set out in regulations. This includes training and advice on Ofsted's registration processes, meeting the requirements of the EYFS, business planning and financial management. Some local authorities also require early education providers to undertake local authority delivered training as a condition of receiving funding to deliver early education places.

5.2 Rationale for reform

Early years professionals on the frontline are the best judges of their training and development requirements. At a time when local budgets are tight, it also makes no sense for the Government to compel local authorities to deliver support services to providers that do not need it or do not want it, perhaps because they have other effective arrangements in place. We want to give early education providers greater choice and flexibility over how they access training. In particular, providers should not be required to accept training or support from their local authority in return for early education funding if they believe they can obtain better services elsewhere.

- 5.3** We want to encourage new training providers to enter the market and to drive up the quality and choice of training on offer to early years professionals. Reducing the existing requirements on local authorities will allow them to pass more funding to the frontline to support greater choice and flexibility for providers. It will also reduce burdens on local authorities at a time of significant pressure on resources.

5.4 Where providers value the support they receive from their local authority, they will continue to be able draw on that training and advice. Where providers have their own quality improvement and support systems in place, such as providers in large nursery chains or childminders working in childminder agencies, they should not be required also to accept support from their local authority. All providers should have the freedom to seek support from wherever they find it most helpful.

5.5 Proposals

As a first step, we propose to revise statutory guidance (to take effect from September 2013) to make it clear that participation in local authority training or quality improvement programmes should be voluntary and should not be a condition of receiving funding to deliver early education places. We propose to reduce the list of prescribed training requirements (to take effect from September 2013) set out in regulations by removing those requirements that we believe create unnecessary burdens on both local authorities and early education providers. A copy of the proposed list can be found at Appendix 1.

5.6 We will seek to repeal this duty on local authorities at the earliest opportunity. We propose to replace the duty with a power that allows local authorities to continue to deliver training for providers that want it. We propose that local authorities will continue to be able to charge a reasonable rate for the training they deliver to early years providers.

Question 6: Do you agree with the proposed list of reduced training requirements set out in Appendix 1?

Question 7: What would be the impact of reducing the prescribed training requirements on providers/local authorities as set out in Appendix 1?

Question 8: Would these changes have a greater impact on some areas of information, advice and training provision over others? If so, which?

6 Simplify the early years funding system, by encouraging local authorities to simplify and reduce their funding formulae and to limit the amount of centrally retained spend

6.1 Current position

Local authorities fund education for 2-16-year-olds through the DSG and are responsible for setting funding rates for early education places as part of that. The introduction of the early years single funding formula (EYSFF) in April 2011 marked a new way of funding early education provision for three and four-year-olds. The

EYSFF has improved transparency, increased fairness between providers and enabled greater efficiencies in the use of resources.

6.2 Local authorities are required to fund providers using a base rate (hourly per child funding rate). They can have more than one base rate, and having at least three base rates (PVI, nursery classes in primary schools and maintained nursery schools) is common. Some local authorities have additional rates for childminders. Some local authorities have a large number of base rates, paying a slightly different hourly rate depending on, for example, the size of the setting.

6.3 As well as the base rate, local authorities can fund providers through a system of supplements:

- Deprivation (mandatory for three and four-year-olds);
- Quality;
- Flexibility; and
- Sustainability.

6.4 Local authorities can also use the various school funding formula factors where relevant. In addition, local authorities can sub-divide supplements into bands (for example a quality supplement split into two different levels, one for providers rated as 'outstanding' by Ofsted and one for those rated as 'good'). Local authorities can also allocate lump sums to providers.

6.5 Local authorities pass most of the DSG funding directly to providers but are able to hold back some funding centrally for other purposes. In 2012-13, local authorities retained centrally £160m, out of a total early years' DSG spend of £2.1bn. Beneath this, though, the situation at local authority level varies considerably. In 2012-13, 113 local authorities retained less than 10%, 22 retained zero, and nine retained centrally over 20% of their total early years budget.²

6.6 Rationale

In March 2012 the Government committed to introduce a national funding formula, for schools and early years, in the next spending period. A national funding formula will help to address the weaknesses of the current system for funding early education for three and four-year-olds, which, like school funding, has significant

² - Early years budget defined as the amount of DSG LAs record as for the EYSFF, early years contingency and early years central spend.

variations in per child allocations which are out of date and unfair to both providers and children.

- 6.7** In November 2012 we announced the funding allocations for the new two-year-old early education programme in 2013-14. This is a model to which we aspire for all early education: it used a specifically designed and appropriate formula, with the most up-to-date data; and it brought with it unprecedented levels of transparency and simplicity for local authorities and providers in terms of average hourly funding rates (£5.09 per hour per child adjusted by area cost). We want to take a similar approach as we develop a national funding formula for all early education.
- 6.8** In order to support the future introduction of a national funding formula, it would be beneficial to take steps now to simplify the current system. Simpler local formulae would also enable providers to be clearer about the funding they are receiving, and why they are receiving it. This would better support providers' business planning decisions about expanding existing provision or opening new provision.
- 6.9** Many local authorities have EYSFF which are clear and simple, but this is not uniformly the case. Some EYSFF appear unnecessarily complex with a large number of banded base rates and supplements. This was noted by the National Audit Office in its 2012 report on the value for money of early education for three and four-year-olds. As well as bringing complexity, it is not clear that supplements are having a positive impact on early education provision. Quality supplements, for example, are often set too low to incentivise providers to improve.

6.10 Proposals

In the current economic climate, it is particularly important that we make the best use of the funding available and maximise the funding which reaches providers on the frontline. It is also important that, for early years central spend; we are as transparent as possible and involve providers in financial decisions which affect them. We have already introduced a number of reforms to deliver this. Through the early years financial benchmarking tool³ providers and local authorities can compare levels of central spend across local authorities.

3 - <http://www.education.gov.uk/childrenandyoungpeople/earlylearningandchildcare/delivery/b00211546/foundation-years-benchmarking-tool>

- 6.11** For the first time, in 2013-14, local authorities will require specific School Forum approval for early years central spend. However, the current definition is not sufficiently clear to local authorities and providers about what activities central spending is intended to support. Reform is also needed to reflect the changing local authority role. *More great childcare*⁴ was clear that local authorities should focus resources where they can have maximum benefit, and areas where there is duplication with Ofsted's role.
- 6.12** We want to strike a balance between increasing the clarity and simplicity of the EYSFF without making changes which would bring unnecessary turbulence to providers. For two-year-olds we propose that local authorities should fund providers of two-year-old early education through a single flat rate within each local authority. This means setting the same base rate for all providers with no supplements as the offer is itself focused on deprived children. We strongly encouraged local authorities to do this when we announced the 2013-14 funding in November 2012, and from 2014-15 we propose to require this. We will maintain the option to fund on a place basis (rather than solely on participation) whilst provision is increasing to meet the new statutory entitlement for around 40% of two-year-olds.
- 6.13** For three and four-year-olds we propose:
- To restrict local authorities to a small number of base rates. We propose a limit of three, but would welcome views on this.
 - To restrict banding within base rates and supplements. We propose a limit of two, but would welcome views on this.
 - That lump sums should be more explicitly focused on meeting unavoidable costs.

We would also welcome views on whether we should remove all supplements and formula factors other than for deprivation.

- 6.14** On early years central retained spending we propose to recast the regulations so they are clear on what local authorities can – and cannot – use their early years DSG funding to achieve. We therefore propose that the regulations are clear that local authorities:

4 - <http://www.education.gov.uk/childrenandyoungpeople/strategy/laupdates/a00221747/more-childcare-report>

- **Cannot** use centrally retained DSG funding for areas like quality assessment and provider training. (If providers wanted this from the local authority, they could buy it back.)
- **Can** continue to use central DSG spend on activities intended to support the important local authority role of improving access and support for disadvantaged children and those with Special educational Needs (SEN) and other additional needs.

The regulations may also limit the proportion of the early years DSG budget that can be centrally retained. We are seeking views on a 10% limit, but would welcome comments on the impact that this would have in comparison to a 15% or 20% limit.

Question 9: Do you support the proposal for a single flat rate within a local authority for two-year-old early education?

Question 10: Do you support the proposal to limit the number of base rates and bands for three and four-year-old early education?

Question 11: What are your views on the limits proposed for three and four-year-old early education (a maximum of three base rates and no more than two bands)?

Question 12: What are your views on removing, for three and four-year-olds, all supplements (and factors) other than for deprivation?

Question 13: Do you support the changes proposed for early years centrally retained DSG spending? Can the definition be improved?

Question 14: Do you think that a 10% limit on early years DSG central spend is appropriate? If not, please explain why and include any comments on the impact that this would have in comparison to a 15% or 20% limit.

7 How To Respond

- 7.1** The consultation is aimed primarily at local authorities and providers of free early education and childcare. We welcome views from other parties, particularly from parents and carers, who may wish to answer individual questions or all questions.

Consultation responses can be completed online at www.education.gov.uk/consultations by emailing fundedearlyeducation.Consultation@education.gsi.gov.uk or by downloading a response form which should be completed and sent to:

Early Education and Childcare Division, Department for Education, Level 1,

Sanctuary Buildings, Great Smith Street, London SW1P 3BT.

8 Additional Copies

- 8.1** Additional copies are available electronically and can be downloaded from the Department for Education e-consultation website at:
<http://www.education.gov.uk/consultations>

9 Plans for making results public

- 9.1** The results of the consultation and the Department's response will be published on the Department for Education e-consultation website in early June 2013.

Appendix 1

1 Table of proposed section 13 regulations

1.1	<u>(1) The matters referred to in regulation 3(1) are –</u>	<u>Rationale for removal</u>
	<p><i>(a) registration procedures under Chapters 2, 3 and 4 of Part 3 (regulation and provision of childcare in England) of the Act and the prescribed requirements for registration(8);</i></p> <p><i>(b) information on the significance of registration under Chapter 4 (voluntary registration) of Part 3 of the Act;</i></p>	<p>Local authorities do not need a requirement to provide this. Ofsted will provide information about its registration procedures on its website. If local authorities wish to continue to provide information and guidance on registration they will be able to do so.</p>
	<p><i>(c) business planning, financial management and marketing;</i></p>	<p>We propose that this requirement is removed, as this support is provided by other organisations, such as the national provider organisations. Local authorities will still be able to offer this type of support to providers if they request it.</p>
	<p><i>(d) meeting the requirements of the Early Years Foundation Stage;</i></p>	<p><u>MAINTAIN</u></p>
	<p><i>e) meeting the requirements of regulations under sections 59(2) and 67(2) of the Act (regulations governing activities of providers of childcare);</i></p>	<p>Ofsted provides information for childcare providers on its website. If local authorities wish to continue to provide information and guidance on requirements for childcare providers, they will be able to do so.</p>
	<p><i>(f) meeting the requirements of the equality enactments;</i></p>	<p>Some providers may be subject to the public sector equality duty or other aspects of equalities legislation. If so, they must ensure that they meet these</p>

		requirements, and can seek the necessary training from other organisations. Local authorities will still be able to offer this type of support to providers if they request it.
(g) meeting the needs of persons described in paragraph (2) in relation to the provision of suitable childcare;	<u>MAINTAIN</u>	
(h) effective safeguarding and promotion of children's welfare and compliance with statutory requirements, guidance and procedures for the protection of children;	<u>MAINTAIN</u>	
(i) the use of the Common Assessment Framework(9).	<u>REMOVE</u>	We propose to remove this requirement as the use of tools like the CAF should be covered by the requirement to provide information, advice and training on (h).
(2) The persons referred to in paragraph (1)(g) are—		
(a) disabled children;	<u>MAINTAIN</u>	
(b) children with special educational needs;	<u>MAINTAIN</u>	
(c) looked after children within the meaning given in section 22(1) of the Children Act 1989(10);	<u>MAINTAIN</u>	
d) those using, or intending to use, childcare in respect of which the child care element of the working tax credit is payable; and	<u>MAINTAIN</u>	
(e) other children who are at risk of social exclusion by virtue of unemployment, poverty, homelessness, geographical remoteness, ill health, family breakdown or other economic, cultural or social factors.		
(1) An English local authority must secure the provision of information, advice and training to a childcare provider—		
(a) If following a report of the Chief	<u>REMOVE</u>	If 'inadequate' providers

<p>Inspector in which childcare provision by such provider is assessed as inadequate; or]</p>		<p>are motivated to improve their quality they will still be able to request quality improvement services from their local authority to support them to do so if they so wish. They will also be able to access this support from other organisations in the sector, such as nursery chains, schools and national provider organisations. Local authorities will still be able to offer this type of support to providers if they request it.</p>
<p><i>(b) in respect of whom an exemption has been granted for a specified period of time pursuant to regulations made under section 46(1) of the Act; and such exemption is for the purposes of developing childcare provision to meet the learning and development requirements of the Early Years Foundation Stage.</i></p>		
<p><i>(2) An English local authority shall not be required to secure information, advice and training under paragraph (1)(b) following the expiry of an exemption described therein.</i></p>		