

Government response to Supporting Families in the Foundation Years: Consultation on Proposed Changes to Free Early Education and Childcare Sufficiency

Introduction

1. The Government consulted on proposals to:
 - Streamline statutory guidance to local authorities on the delivery of free early education and securing sufficient childcare;
 - Set eligibility criteria for the new entitlement to free early education for two year olds;
 - Increase flexibility on when free entitlement hours can be taken; and
 - Clarify quality requirements that providers need to meet in order to deliver free early education places.
2. The consultation posed questions about how funding to deliver free early education places for two year olds should be made available to local authorities from 2013-14 onwards. The Government also sought views on funding for three and four year olds through the school funding consultation - *A consultation on school funding reform: Proposals for a fairer system* which ran from July 2011 to October 2011. The Government's response *School funding reform: Next steps towards a fairer system* was published in March. The publication makes clear the Government's commitment to work towards a fair and transparent national funding formula to fund local authorities, so this can be introduced alongside a national funding formula for schools and with minimal disturbance for local authorities and providers.

The two year old entitlement

3. The Government plans to introduce a new targeted entitlement for two year olds to access free early education. The Government intends to take a phased approach to introducing the entitlement. In September 2013, around 130,000 two year olds in England will be able to access free early education places. From 2014, this will be extended to around 260,000 two year olds.
4. The consultation included proposals on the eligibility criteria for the first phase of the entitlement. It also included a number of proposals which will be common across both phases of the entitlement; these include technical proposals on when children will become eligible for the two year old entitlement, and on the quality and flexibility of provision.
5. The Government's intentions for the first phase of the entitlement are set out in this consultation report. New eligibility criteria will be required for the second phase of the entitlement from September 2014. The primary focus will remain on supporting economically disadvantaged families, and the Government will also consider whether additional groups of children, such as children with special educational needs or disabilities, should be included.
6. In developing options for the new eligibility criteria, we will apply the following design principles. The new eligibility criteria should:
 - Reach around 260,000 two year olds in England;
 - Be simple and transparent for parents, providers and local authorities;
 - Secure, so far as possible, that families who would be eligible under the criteria for the 'first phase' would also be eligible under the 'second phase' criteria; and
 - Allow local authorities to easily verify who is eligible.
7. We plan to hold a consultation later this year on proposed eligibility criteria for the second phase of the entitlement.

Consultation analysis¹

Streamlining statutory guidance to local authorities on the delivery of free early education and securing sufficient childcare

8. The draft statutory guidance has been amended to apply only to the delivery of free places for three and four year olds. It will come into force in September 2012. Revised statutory guidance to reflect decisions on the details of the new two year old entitlement to receive free early education will be issued in 2013. Responses to specific sections of the revised guidance are addressed under the relevant sections of this Government response.

Free early education for disadvantaged two year olds

9. This section sets out the Government's intentions on the implementation of the first phase of the two year old entitlement. Subject to Parliamentary approval of regulations, the Department will publish a revised version of the statutory guidance which will include the delivery of free early education places for two year olds. We intend that the revised guidance will come into force from September 2013.

Eligibility criteria

10. We will hold a further consultation on eligibility criteria for the second phase of the entitlement, which will extend to more children. The extended criteria will apply to children beyond the most economically disadvantaged.
11. Given the largely positive response to the proposal to link eligibility to the Free School Meals criteria, the Government intends to define this in regulations for the first phase of the entitlement, to come into force in September 2013.
12. A number of respondents recommended that two year olds with special educational needs or disabilities should be entitled to free early education. The Government will return to this issue in developing options for the second phase of the entitlement, and will consult again later this year.
13. There was strong support for the proposal that looked after two year olds should be entitled to free early education; 85% of respondents agreed. Looked after children are currently disadvantaged in terms of educational achievement, and the new entitlement will help to tackle this.
14. In light of the responses, the Government will take forward the proposal in the regulations for the first phase of the entitlement, and intend that looked after two year olds will continue to be eligible for the second phase of the entitlement.

Local discretion to give priority to other two year olds

15. Local authorities will continue to have discretion to offer free places to children in addition to those defined in regulations. The Government invited views on whether, in the event that not all children with a legal entitlement take up a place, it would be helpful for guidance to identify further groups of children who should be given priority consideration by local authorities for a free place.

16. The Government intends that the revised guidance for the free entitlement to be issued in early 2013 will note that local authorities have the flexibility to offer discretionary free places for two year olds. The Government accepts that no list of priority groups can be exhaustive, and so the guidance will include examples of groups who could be prioritised as local authorities have indicated that this would be helpful. This will not preclude local authorities from using their own criteria to offer discretionary places to other groups of children.

Becoming eligible for the two year old offer

17. In light of the support for this proposal, and the benefits in terms of simplifying the new entitlement for parents and providers, regulations will specify that the eligible children will be entitled to receive free early education from the beginning of the term following their second birthday (1 September, 1 January or 1 April). Some two year olds who are not eligible initially will meet the eligibility criteria at a later point during the year. The Government proposed that such children would be entitled to a free place from the start of the month in which the next school term begins.

18. The Government believes that the most appropriate balance is to set out in regulations the start-dates as proposed, but to state in guidance that local authorities have discretion to fund places sooner, should they be available.

19. In the consultation document the Government proposed that regulations would not prescribe the number of hours that part-year entitlements should receive. This is because such an approach would risk being inflexible, given differences in the length of school terms. Instead, the proposal was that regulations would simply require the local authority to secure an appropriate number of hours reflecting the proportion of the year remaining, leaving the authority scope to reflect actual patterns of provision or lengths of school terms. The Government intends to take forward this proposal.

20. The Government proposed that, when they take up a free place, eligible two year olds should remain entitled to this place until the three year old entitlement starts; that is, they should not lose their place even if their family's circumstances change. Given this rationale, and the strong support for this policy, it will be included in regulations.

21. The Government has decided that funding for early education for two year olds will transfer to the Dedicated Schools Grant (DSG) from 2013-14. We believe this will enable effective local integration of free early education for two, three and four year olds. It will also give providers greater certainty to make the necessary expansion in high quality provision. We will provide details in due course about how the funding will be distributed.

Implementation challenges

Funding

22. In the Autumn Statement 2011 the Government announced additional funding to reflect the costs of building towards and delivering the expanded entitlement. Funding will rise to £760m in 2014-15 in recognition of the costs of the extended entitlement for around 260,000 two year olds. In calculating the national amount to support this policy, the Government recognised the higher cost of two year old places compared to those for three and four year olds, and took account of funding levels which were used in pilots of the two year old offer.

23. A number of responses focused on hourly funding rates for the two year old places. The Government will not set hourly funding rates for providers as this is a matter for local flexibility. The Government considers that the funding provided to local authorities will be sufficient to secure high quality places for eligible children.

Increasing the supply of places

24. The Government recognises that, while there is some spare capacity in the sector, additional places will be needed in many local authority areas. The early year's market is very flexible and diverse and it should respond to this demand. The Government is working with providers and representative organisations to identify how high quality providers can be incentivised and supported to deliver the two year old places. The private, voluntary and independent sector, maintained settings, and childminders will all play a key role in delivering the new entitlement.
25. The Government plans to make changes to the criteria that childminders are currently required to meet to deliver free places for three and four year olds (see 'Quality' section below), which will level the playing field and may enable more childminders to provide free places for two year olds.

Quality improvements in disadvantaged areas

26. The Government recognises the importance of ensuring that the places for two year olds are high quality, and a range of measures will support quality improvements in disadvantaged areas. Graduate leaders have a particularly important role to play in working with the most vulnerable children. Early Years Professional Status (EYPS), launched in 2007, is the graduate level professional accreditation programme for leading practitioners in the early year's sector. Since January 2012, the EYPS programme has had a specific focus on disadvantage.

Quality

27. The Government is committed to ensuring that public money is invested in securing the best possible outcomes for children. Ministers recognise the difficulty in prescribing requirements centrally which do not take account of the wide variations in local circumstances. The Department therefore intends to retain the list of measures set out in the revised guidance as these provide local authorities with the discretion to adopt the most appropriate measures for their area within a national framework.
28. Ofsted's current grading scale for inspection judgements of early year's providers is: outstanding, good, satisfactory and inadequate. In its consultation on *Regulation of providers on the Early Years Register*, Ofsted is proposing to replace 'satisfactory' with 'requires improvement', and 'inadequate' with 'requires significant improvement or enforcement'. Subject to the outcome of the consultation the revised statutory guidance will refer to the new grading scales.
29. The Department has considered the concerns raised about the impact on children and families of removing funding from settings rated "*inadequate*". The Department would normally expect local authorities to withdraw funding in these circumstances. However, in response to those concerns, the Department has replaced the current wording in the draft guidance to make it clearer that, should a provider receive an "*inadequate*" inspection rating, the local authority would have the discretion to continue to fund the provider if they believe the setting is likely to improve significantly at re-inspection or within an agreed timescale.
30. Many respondents welcomed the fact that the basket of quality measures offered childminders not part of a network the opportunity to receive funding to deliver free

places if they met other quality criteria. This should level the playing field between childminders and other providers and increase parental choice.

31. In response to other comments the Department has made it clearer in the guidance that peer-to-peer support networks and quality improvement programmes should be those that the local authority considers appropriate, and that the level of workforce qualifications of all providers should be used as an indicator of higher quality provision. The revised guidance also makes clear that local authorities have a statutory duty under s13 of the Childcare Act 2006 to provide information, advice and training to childcare providers.
32. The Government agrees that provision for two year olds should be high quality. We believe that it will be important to allow local flexibility in applying the 'basket of measures', given the wide range of different quality improvement practices and Continuous Professional Development opportunities for early years practitioners.
33. The revised statutory guidance (in 2013), will set out quality thresholds for the two year old entitlement. The thresholds will be the same as those proposed in the 'basket of criteria' for the three and four year old entitlement. This means that settings judged 'good' or 'outstanding' by Ofsted should be able to deliver the free places (unless the local authority has reason to believe that quality has deteriorated significantly), and that 'satisfactory' settings will need to meet at least one other criteria in the basket. However, local authorities will have discretion to require that providers meet more than the minimum number of the criteria in the basket. This includes the discretion to set more stretching criteria for providers of two year old places.
34. This approach allows local authority flexibility, to achieve our aim that eligible two year olds can access the highest quality provision available. We will review this approach and reconsider whether a higher quality threshold for the two year old places should be set out in guidance, when revising the guidance for the second phase of the two year old entitlement (from 2014).

Flexibility

35. The Government believes that parents, not government, are best placed to know what patterns of early education provision will be in their children's best interests. The flexibility of early education session times for two year olds will help to ensure that providers are best able to deliver what parents want. As for the three and four year old entitlement, the Government acknowledges that some providers may wish only to provide the free places at particular hours within the 7am-7pm limits and they will continue to have discretion to do so. At the same time, local authorities should seek to help parents access provision at these times when this is what the parents prefer.
36. In light of the positive response, the guidance for the two year old entitlement will specify the same flexibility in patterns of provision as for the three and four year old entitlement.

Sufficiency of childcare

37. The majority of respondents supported the proposals for an annual report on availability and sufficiency of childcare in the local authority area. The Government acknowledges that the current duty to publish an assessment of childcare sufficiency is bureaucratic and costly to produce. However, local authorities will have the flexibility to determine the style and content of the annual report, in contrast with the highly detailed and prescriptive legal duty to assess childcare sufficiency that currently applies.

38. The Government considers that local authorities are best placed to determine the level of detail to be included in the report. However, to respond to the concerns raised, the guidance has been amended to suggest topics that should be included in the annual report, for example, information about: the supply and demand for childcare for particular age ranges of children; affordability and accessibility; and, details of how any gaps in childcare provision will be addressed.
39. The majority of respondents supported the proposal to repeal the duty to assess childcare provision every three years. The Government therefore intends to seek a legislative vehicle to repeal this duty at the earliest opportunity and introduce the new annual report in the statutory guidance.
40. The publication of the annual report will be required by statutory guidance and will provide evidence that a local authority is meeting its duty to secure sufficient childcare, under section 6 of the Childcare Act 2006.

Information to parents

41. Local authorities have a statutory duty under section 12 of the Childcare Act 2006 to provide information, advice and assistance to parents or prospective parents on childcare and must establish and maintain a service to do so. Local authorities must also have regard to statutory guidance issued under section 12.
42. To provide more information for parents the Department has contracted with 11 respected organisations² to provide national family support services online and by telephone. These services provide targeted support on a wide range of issues in areas such as: childcare and early learning; family law; specific advice for fathers; single parents; relationships; disability and SEN; and mental health.

² Contact A Family (disability and special educational needs); Coram Children's legal Centre (family law and some education issues); Family Lives (advice on any family issue); Family Matters Institute (DadTalk service for fathers); Family Rights Group (families involved with Children's Services); Gingerbread (single parents, particularly benefits); Netmums (advice on any family issue including childcare); One Plus One (relationship self-help); Relate (one-to-one relationship advice); Single Parents Action Network (single parents, particularly employment); Young Minds (child mental health and behaviour).

