

Consultation

**Launch Date 5 July 2012
Respond by 15 October 2012
Ref: Department for Education**

Extending Free Early Education to More Two Year Olds

The Government plans to introduce a legal entitlement to free early education for two year olds. Following a previous consultation, it has decided which children will be eligible for the first phase of the entitlement from September 2013 - around 20% of two year olds in England. This consultation seeks views on proposed eligibility criteria for the second phase of the new entitlement from September 2014 - for around 40% of two year olds.



**Department
for Education**

Extending Free Early Education to More Two Year Olds

A Consultation

To Local authorities, providers of free early education and childcare, parents and carers

Issued 5 July 2012

Enquiries To If your enquiry is related to the policy content of the consultation you can contact Simon Hampson by telephone: 0370 000 2288 or email: TwoYearOldEarlyEducation.CONSULTATION@education.gsi.gov.uk

To If you have a query relating to the consultation process you can contact the CYPFD Team by telephone: 0370 000 2288 or via the Department's ['Contact Us'](#) page.

1 Introduction

1.1 The Government plans to introduce a legal entitlement to free early education for two year olds. Following a previous consultation, it has decided which children will be eligible for the first phase of the entitlement from September 2013 - around 20% of two year olds in England. This consultation seeks views on proposed eligibility criteria for the second phase of the new entitlement from September 2014 - for around 40% of two year olds.

1.2 This consultation document is accompanied by:

- A table showing indicative numbers of two year olds meeting the proposed eligibility criteria (paragraph 4.1), as at April 2012 , by local authority area;
- An equality impact assessment and economic impact assessment on the proposals.

1.3 The consultation is aimed primarily at local authorities and providers of free early education or childcare. We welcome views from other parties, particularly from parents and carers.

2 Background and Context

- 2.1 The Government is committed to enabling more children to access high quality early education. Research shows the importance of high quality early education in supporting children's development.¹ The foundation years (pregnancy to age five) are critical to children's life chances. Most children who are developing well at the end of their foundation years go on to exceed expectations in reading and maths at the end of Key Stage 1. However, if their attainment falls behind in the foundation years, children are less likely to achieve well throughout school; children in the lowest achieving 20% at age five are six times more likely to be in the lowest 20% at age seven.²

¹ Sammons, P. Sylva, K. Melhuish, E. Siraj-Blatchford, I. Taggart, B. And Hunt, S. (2008) *Influences on Children's Attainment and Progress in Key Stage 2: Cognitive Outcomes in Year 6*. DCSF Research Report DCSF-RR048

² DfE Internal Analysis

- 2.2 The Government intends to introduce a new entitlement for two year olds to access free early education. Free places will be targeted on the children who will benefit the most, with a primary focus on economic disadvantage. This is part of the Government's fairness premium, to drive social mobility and improve life chances.
- 2.3 The first phase of the entitlement, from September 2013, will offer free early education to around 150,000 (20%) of two year olds. Following a consultation from December to February 2011-12, the Government decided that two year olds will be eligible if:(1)
- Their families meet the criteria also used to establish school-aged children's eligibility for free school meals (FSM); or
 - They are looked after by the local authority.

³ The Government report on the consultation is available to download at: <http://www.education.gov.uk/consultations/index.cfm?action=nResults&consultationId=82&external=&menu=/a>>

- 2.4 This consultation proposes eligibility criteria for the second phase of the entitlement, from September 2014. The number of free places will increase to a total of 260,000 (around 40% of two year olds). Currently, children in less advantaged families are less likely to achieve a good level of development at age five than their better off peers.⁴ Despite evidence suggesting that they would benefit from early education, the second poorest quintile of two year olds are least likely to access it: only 37% of this group take up any early

education, compared to 72% of the most advantaged quintile, and 43% of the poorest.

⁴ *Achievement of Children in the Early Years Foundation Stage (2010)*, Department for Education

- 2.5 For the new entitlement, local authorities will have a statutory duty to secure 570 hours of free early education for eligible children. To prevent disruption to children's learning, two year olds who take this up will not lose their free place if their family's circumstances change such that they no longer meet the eligibility criteria. All children are eligible for a free early education place from the term after their third birthday, until they start school.
- 2.6 From 2013-14 the new entitlement will be funded through the Dedicated Schools Grant. Funding for the entitlement will increase throughout the Spending Review period - to £760m in 2014-15 - to enable local authorities and providers to build capacity and prepare for the new entitlement.
- 2.7 The Government will not set an hourly rate for the free places. Rather, funding will be allocated to local authorities who will set rates taking account of local circumstances, as they do now for the free entitlement for three and four year olds. The Government considers that funding will be sufficient for 260,000 free places, as well as local administration of the entitlement.
- 2.8 Terms used in the document are described briefly below, with references to legislation which defines them fully:

Disability Living Allowance: A benefit for disabled children and adults, to help with the extra costs incurred as a result of being disabled. Disability Living Allowance is provided for children with mental or physical disabilities, who need more help or supervision than other children of the same age. This will remain as a separate benefit for children after the introduction of Universal Credit. The legal basis for the benefit is the Disability Living Allowance and Disability Working Allowance Act 1991.

Looked after children: Children who are provided with accommodation by a local authority for more than 24 hours on a voluntary basis or who are under a care order. The child may be living with foster carers, in a residential home or with parents or other relatives. The term is defined in section 22 of the Children Act 1989.

Statements of special education needs (SEN): Local authorities issue statements of SEN following practitioners' assessments of the child's level of need. The statement describes the child's needs, and the special help required to meet them. The legal basis is section 324 of the Education Act 1996 and accompanying regulations: the "Education (Special Educational Needs) (England) (Consolidation) Regulations S.I. 2001/3455". SEN

statements will be replaced with a single, simpler birth to 25 years assessment process and education, health and care plan from 2014.

Universal Credit will provide a new single system of means-tested support for working-age people who are in or out of work. As a result, some existing means-tested benefits will no longer be needed. The design will be simple, clear and secure, reducing the opportunity for both fraud and error.

Universal Credit will transform existing labour market and benefits services to deliver a more efficient, informative and streamlined experience for people. The Department for Work and Pensions will be responsible for the delivery of Universal Credit and will make extensive use of online technology to allow people to better manage their claim and understand the benefits of entering paid work. The Department for Work and Pensions expect to start taking claims for Universal Credit from October 2013. People in receipt of existing benefits and tax credits will be migrated to Universal Credit gradually over the next few years.

3 Design principles for eligibility criteria

3.1 In developing proposals for the new eligibility criteria, the Government sought:

- To include all children who meet the criteria for the first phase of the entitlement, including looked after children;
- To retain the primary focus on economic disadvantage;
- Criteria that will, taken together with the first phase, reach around 260,000 children (around 40% of two year olds);
- Criteria that are simple to understand and verify; and,
- Criteria that will work with both the current benefits system and the new Universal Credit system.

4 Proposal 1 – Economic criteria

4.1 The Government proposes that from September 2014 two year olds will be eligible for free early education if:

Current Benefits System

i. They meet the eligibility criteria also used for free school meals (annual gross household earnings of no more than £16,190 and receipt of various benefits);⁵ **or**

ii. Their families receive Working Tax credits and have annual gross of no more than £16,190; **or**

New Benefits System

iii. Their families receive Universal Credit and have annual gross earnings of no more than £16,190.

⁵ Children are currently entitled to receive FSM if their parents are in receipt of any of the following benefits:

- Income Support
- Income-based Job Seekers' Allowance
- Income-related Employment and Support Allowance
- Support under Part VI of the Immigration and Asylum Act 1999
- the Guaranteed element of State Pension Credit
- Child Tax Credit, provided have an annual gross income of no more than £16,190, as assessed by Her Majesty's Revenue and Customs, and are not in receipt of Working Tax Credits (except during the four-week period immediately after their employment ceases, or after they start to work less than 16 hours per week).

4.2 The proposed criteria would maintain the primary focus on economic disadvantage. Under the current benefits system, they would include all children eligible for the first phase of the entitlement, and add children from families in receipt of Working Tax Credit. This would extend the free places to more low income working families, and would mean that almost all two year olds classed as being in poverty would be entitled to free early education. The same £16,190 earnings threshold would also apply to families on Universal Credit, so families will be treated equally regardless of which benefit they claim.

4.3 The criteria are designed to be clear by setting a single earnings threshold of £16,190 for a family's eligibility to the two year old entitlement. The Government plans to extend the use of the automated Eligibility Checking Service (ECS) to provide a quick and low-cost way for local authorities to verify whether two year olds are eligible for the free places. This system is currently used by almost all local authorities to check FSM eligibility. Technical changes will be needed for the ECS to run checks against the new eligibility criteria. The Government plans to implement these changes following decisions on the eligibility criteria.⁶

⁶ A monthly earnings threshold will be needed to verify eligibility for Universal Credit claimants, as Universal Credit will use monthly, rather than annual, assessment periods: £16,190 per annum equates to £1350 per month.

- 4.4 The Government estimates that the proposed criteria would mean that between 260,000 and 296,000 two year olds would be eligible for free early education in 2014. In the first years of the entitlement, 100% take-up is unlikely. Based on surveys of parents, the Government's central take-up estimate for the start of the new entitlement is 80%. This would mean that around 210,000 to 240,000 children who are eligible under the economic criteria might take up places.
- 4.5 Estimated figures of how many two year olds meet the proposed economic criteria, by local authority area, accompany this consultation. These are indicative figures only - they are based on a sample of data, and are subject to sampling error. Changes to earnings, as well as demographic changes, will mean that actual numbers of two year olds eligible in 2014 may differ from these indicative figures.
- 4.6 The Government considered options for a different earnings threshold to cover slightly fewer two year olds, thus leaving a greater margin for other groups of children. However, such criteria would not meet the design principles. For example, an earnings threshold to cover around 30% of two year olds would either need to exclude low-income working families who receive Working Tax Credit, or include these families but set the earnings threshold below £16,190 - which would mean that some families who would be eligible in the first phase would miss out in the second phase.

Consultation question

1. Do you agree that two year olds whose families meet the earnings and benefits criteria proposed in paragraph 4.1 should be eligible for free early education from September 2014?

5 Proposal 2 - Children with special educational needs or disabilities

- 5.1 The Government proposes to extend the free entitlement to two year olds with special educational needs or disabilities (SEND) in the second phase (regardless of their family's income). Research evidence indicates that early education is particularly beneficial for children with SEND.⁷ Early education also has wider benefits for these children, such as supporting social inclusion and improving well-being.⁸ However, parents of children with SEND can often face higher costs for early education and childcare.⁹

⁷ K Sylva et al. The Effective Pre-school and Primary Education 3-11 Project (EPPE 3-11). *Report from the Primary Phase: Pre-school, School and Family Influences on Children's Development during Key Stage 2 (Age 7-11)* (2008) DCSF Research Report 061.

⁸ *Aiming High for Disabled Children' (2007)*. HM Treasury/ DfES.

⁹ D. Abbott, *Disabled Children's Access to Childcare (DCATCH): A Qualitative Evaluation*, (2010). Department for Education.

- 5.2 For the first phase of the entitlement, we have signalled that we hope local authorities might prioritise children with SEND for any discretionary free places they are able to offer. The second phase provides an opportunity to go further and extend the legal entitlement to two year olds with identified high-level SEND.
- 5.3 The Government considers that eligibility criteria for children with SEND should link to existing measures that are widely understood by parents, and that have a statutory basis to which regulations and guidance can link. The Government proposes that two year olds would be eligible for free places in the second phase if:
- They have a current statement of special educational needs / an education, health and care plan¹⁰; **or**
 - They attract Disability Living Allowance (DLA).

¹⁰ Education, health and care plans will replace statements of SEN from 2014.

- 5.4 These eligibility criteria will focus on children with high-level SEND. The numbers of two year olds with identified high-level SEND are relatively small: around 8,000 two year olds attract DLA, and around 250 have statements of SEN. Such children will often already be accessing some support (for example, health-based provision) - the new entitlement would enable them to access a wider range of educational provision.
- 5.5 There will also be additional groups of children who have lower-level SEND, or are at risk of developing SEND, and who do not meet the thresholds for SEN statements or DLA. Some such children would derive particular benefit from free early education. It might be possible to legally identify children with emerging SEN for free places through s.332 of the Education Act 1996, which places a statutory duty on health authorities to refer children who have, or may have, special educational needs to local authorities. However, the Government does not consider that a legal entitlement for these children would be the most appropriate way to ensure that free places are targeted at children who will benefit the most. Giving a legal entitlement to children who have been referred risks placing an unreasonable, and unknown, burden on health authorities and local authorities who may have to manage increasing numbers of referrals, or requests for referrals from parents. The SEN Green Paper set out plans to require LAs to publish a local offer showing the support available to disabled children and young people and those with SEN, and their families. The local offer will include information on the early education that is available to children with emerging SEND.

- 5.6 High quality early education for children with high-level SEND generally involves additional costs. The Department for Education's High Needs Funding Block is planned to come into effect from April 2013. This will be allocated to local authorities, to fund all provision for pupils in specialist settings, and the additional costs of education for high needs children in mainstream settings.

Consultation Question

2. Do you agree that, from September 2014, the legal entitlement to early education should be extended to two year olds with statements of SEN (or an education, health and care plan) or in receipt of DLA?

3. Do you have any comments on the feasibility and appropriateness of extending the free entitlement to more children with SEND?

6 Proposal 3 – Children who have left care

- 6.1 The Government has confirmed that, from September 2013, two year olds who are looked after by the local authority will be eligible for the free entitlement. This will continue to be the case from September 2014. Looked after children face multiple challenges to progressing well in the early years and at school, and as a group they persistently underachieve at Key Stages 1 and 2.
- 6.2 The Government is committed to supporting the needs of children who have been in care *but are not able to return home*. From September 2014, the Government proposes that two year olds who leave care through adoption orders, residence orders, or special guardianship should also be eligible for free entitlement. This would align with other Government policies, such as the new School Admissions Code, and ensure that children who have been in care are supported to have the best possible start in life. Around 1,000 children under two leave care through an adoption, special guardianship or residence order each year.

Consultation question

4. Do you agree that, from September 2014, two year olds who have left care through an adoption order, special guardianship or residence order, should be eligible for the free early education entitlement?

7 Funding

- 7.1 Funding for free early education for two year olds will be included in the Dedicated Schools Grant (DSG) from 2013-14. The Department is considering the methodology for how this funding will be allocated to local authorities (LAs).

- 7.2 Funding for free early education for three and four year olds is distributed to LAs on the basis of an annual count of actual participation. However, data on the number of eligible two year olds taking their entitlement in each LA cannot be available for the start of the entitlement, and we will instead to construct a funding formula which will use a proxy measure for the number of eligible children locally.
- 7.3 The Department is clear that the formula must target funding towards need, reflecting differences between LAs' relevant population and levels of deprivation. It must recognise that the costs of delivery will vary between LAs, so include an area cost adjustment.
- 7.4 The Department will continue to work with sector representatives in developing the formula. Alongside this, we welcome views on how funding for early education for two year olds should be distributed to LAs.

Consultation question

5. Please use this space to give us your views on how funding for early education for two year olds should be distributed to LAs.

6. Please use this space for any other comments you would like to make.

8 How to Respond

- 8.1 You can respond to the consultation by completing the response form and emailing it to:
TwoYearOldEarlyEducation.CONULTATION@education.gsi.gov.uk or by post to:

Two Year Old Entitlement – Framework Team, Foundation Years: Free Early Education and Funding Division, Level 1, Sanctuary Buildings, Great Smith Street, London SW1P 3BT

The deadline for response is 15 October 2012.

9 Additional Copies

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

10 Plans for making results public

- 10.1 The report from this consultation and government response will be published on the Department for Education websites in winter 2012-13.