



Department
for Education

Draft statutory guidance for local authorities on the exercise of their duties relating to early education and childcare

September 2013

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Introduction

This statutory guidance from the Department for Education is for English local authorities on their duties under sections 6, 7, 11 and 13 of the Childcare Act 2006. From 1 September 2013 it will supersede the current statutory guidance (which was published in May 2012 and came into effect from September 2012). It includes new elements relating to early years provision for two-year-olds from lower income families and providing information, advice and training to childcare providers. It sets out a changed role for local authorities to enable them to focus, in particular, on identifying and supporting disadvantaged children to take up their early education place.

Section 6 places a duty on English local authorities to secure sufficient childcare for working parents.

Section 7 (as substituted by section 1 of the Education Act 2011, effective from 1 September 2013) places a duty on English local authorities to secure early years provision free of charge. Regulations made under section 7 set out the type and amount of free provision and the children who benefit from the free provision. This guidance refers to 'early years provision free of charge' as '*early education*'.

Section 11 places a duty on English local authorities to assess childcare provision. Regulations made under section 11 set out how the assessment must be prepared and published.

Section 13 places a duty on English local authorities to provide information, advice and training to childcare providers.

Local authorities **must** have regard to this guidance when seeking to discharge their duties under sections 6, 7, 11 and 13 of the Childcare Act 2006. They **should not** depart from it unless they have good reason to do so.

The guidance seeks to assist local authorities, providers and parents by making it clear:

- what **outcomes** different measures are seeking to achieve;
- what is a legal duty **required** by legislation; and
- what local authorities **should** as a matter of course do to fulfil their statutory responsibilities.

This document does not provide guidance on how providers operate their private businesses including charges for provision over and above a child's early education place. Local authorities should not intervene in providers' private businesses outside of a child's early education place.

Future policy intentions

Two year olds from lower income households

From 1 September 2013, local authorities will have a duty to secure early education for specified two-year-olds. The Government anticipates that around 130,000 two-year-olds in England will be able to take up a place.

The Government consulted from July to October 2012 on proposals to extend this duty to cover more two-year-olds from lower income households from September 2014 so that around 260,000 children will be able to take up a place. The proposals were to include two-year-olds: from households receiving Working Tax Credits and with an annual gross

income of no more than £16,190; who have a statement of special educational needs (or in future an education, health and care plan); who attract Disability Living Allowance; or who have left care through adoption orders, residence orders, or special guardianship.

The Department will confirm shortly which additional children will be included. It will then amend regulations accordingly and will refresh this guidance for September 2014 to reflect amended regulations and the introduction of Universal Credit.

Quality

Evidence shows that high quality early education at age two brings benefits to children's development. This guidance reflects the Government's intention that, as far as possible, early education for two-year-olds from lower income households is delivered by providers who have achieved an overall rating of 'outstanding' or 'good' in their most recent Ofsted inspection report. The Government is considering whether to require that, in future, such early education could only be delivered by 'good' and 'outstanding' providers.

Assessing the sufficiency of childcare

The Department has introduced measures to repeal the requirement on local authorities to assess the sufficiency of childcare in their area (section 11 of the Childcare Act 2006 and the associated regulations).

Providing information, advice and training to childcare providers

The Department intends to introduce measures at the earliest opportunity to replace the duty on local authorities to provide information, advice and training to childcare providers (section 13 of the Childcare Act 2006) and the associated regulations with a power to do so.

Part A: Early education places for two, three and four year olds

Section A1: Eligibility

Outcome:

All children who meet the prescribed criteria are able to take up high quality early education regardless of their parents' ability to pay – benefiting their social, physical and mental development and helping to prepare them for school. Evidence shows that regular good quality early education has lasting benefits for all children.

To secure delivery:

Three and four-year-olds:

Local authorities **are required** by legislation to:

- 1.1 Secure early education places offering 570 hours a year over no fewer than 38 weeks of the year for every child in their area from the relevant date, as set out in paragraph 1.2 below, until the child reaches compulsory school age (the beginning of the term following the child's fifth birthday).
- 1.2 The relevant dates are as follows:
 - Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's third birthday.
 - Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's third birthday.
 - Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's third birthday.

Two-year-olds:

From 1 September 2013, local authorities **are required** by legislation to:

- 1.3 Secure early education places offering 570 hours a year over no fewer than 38 weeks of the year for every eligible child in their area from the relevant date, as set out in paragraph 1.5 below.
- 1.4 Establish eligibility on the basis of whether:
 - the child is looked-after by the local authority; or
 - the child comes within the earnings and benefits criteria used to determine eligibility for Free School Meals (the current criteria are set out in the section on free school meals at **Annex D**).¹
- 1.5 The relevant dates are as follows:
 - Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's second birthday.

¹ The entitlement to an early education place follows the earnings and benefits criteria for eligibility for Free School Meals as set out in section 512ZB(4) of the Education Act 1996, and in regulations made under that section. Two-year-olds whose families meet these new criteria will be eligible for a place.

- Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's second birthday.
- Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's second birthday

1.6 For two-year-olds who become eligible after the beginning of the term following their second birthday local authorities are required by legislation to secure a place from the start of the next term. Local authorities can choose to secure a place sooner than this.

1.7 Secure that two-year-olds who have met the eligibility criteria set out above can continue to receive a place once they have taken it up even if there is a change in the child's circumstances, until the child reaches the date in paragraph 1.2 after their third birthday.

Two, three and four-year-olds:

Local authorities **should**:

1.8 Secure an appropriate number of hours of early education for children who first take up their place part-way through the year.² The number of hours should reflect the portion of the year remaining.

1.9 Ensure that providers who charge for any goods or services, for example meals, optional extras or additional hours of provision outside of the Government funded place, do not do so as a condition of children accessing their place.

1.10 Ensure that two, three and four-year-old children moving to England from another country can access a place on the same basis as any other child in the local authority area provided they meet the relevant eligibility criteria for their age.³

1.11 Ensure that early education providers are treated in an equitable way whether they are from the private, independent, voluntary or maintained sectors.

1.12 Enable children to take-up a place at a provider which does not open for 38 weeks a year or for 15 hours a week where this suits the parents' needs.

1.13 Promote equality and inclusion, particularly for disadvantaged families, looked-after children, children in need and children with disabilities or special educational needs by removing barriers of access to early education and working with parents to give each child support to fulfil their potential. Local authorities **must** ensure they meet their duties under the Equality Act 2010 when securing early education places.

1.14 Encourage take-up of early education places and identify children who are not taking up their full hours and support them to do so.

² This is relevant to two-year-olds who first meet the relevant eligibility criteria at paragraph 1.4 *after* the start of the term following their second birthday, as well as two, three and four-year-olds who move to the local authority area part-way through the year.

³ This is also relevant where a child or a child's parents is categorised as having 'no recourse to public funds'.

Section A2: Flexibility

Outcome:

Children are able to take-up their full entitlement to early education at times that best support their learning, and at times which fit with the needs of parents.

To secure flexible delivery:

For two, three and four-year-olds:

Local authorities **should**:

- 2.1 Fund providers to deliver early education places at times and in patterns that support parents to maximise the use of their child's place.
- 2.2 Encourage providers to offer flexible packages of early education, subject to the following standards:
 - No session longer than 10 hours;
 - No session shorter than 2.5 hours;
 - Not before 7.00am or after 7.00pm.
- 2.3 As a minimum ensure that parents are able to access their child's early education place in the following patterns:
 - 3 hours a day over 5 days of the week;
 - 5 hours a day over 3 days of the week.
- 2.4 Ensure that parents and providers are aware there is no requirement for all early education places to be delivered only over 38 weeks of the year or in line with maintained school term dates.
- 2.5 Enable parents to take up their child's early education place in patterns of hours which "stretch" their child's entitlement by taking fewer hours a week over more weeks of the year where there is provider capacity and parental demand.
- 2.6 Act as a broker between overall parental demand in the area and provider capacity, seeking to provide the maximum possible flexibility where demand exists beyond the guaranteed models referred to in 2.3.
- 2.7 Support parents to identify providers who can offer an early education place on the day and hours they need. Ensure parents are aware that the entitlement to an early education place does not offer a guarantee of a place at any one provider or a particular pattern of provision.
- 2.8 Consider the impact on continuity of care for children when enabling children to take up their early education place at more than one provider.
- 2.9 Publish their local flexible offer.

Section A3: Quality

Outcome:

All children are able to take-up their entitlement to funded early education in a high quality setting. Evidence shows that higher quality provision has greater developmental benefits for children particularly for the most disadvantaged children.

To secure quality:

Local authorities **are required** by legislation to:

3.1 Deliver the free entitlement through early years providers who deliver the full Early Years Foundation Stage (EYFS) and are either registered with Ofsted as early years providers, or are schools taking children age three and over and therefore exempt from registration with Ofsted as early years providers.

Local authorities **should**:

3.2 Base their decision whether to fund a provider to deliver early education places solely on the provider's most recent Ofsted⁴ inspection judgement and not undertake a separate assessment of the quality of the provider.

3.3 Fund providers rated 'satisfactory', 'good' or 'outstanding' by Ofsted to deliver early education places for three and four-year-olds.

3.4 Only fund two-year-old places in 'satisfactory' providers where there is not sufficient, accessible 'good' or 'outstanding' provision.

3.5 Fund new providers, registered with Ofsted, until their first full Ofsted inspection judgement is published.

3.6 Secure alternative provision and withdraw funding, as soon as is practicable, for children who are already receiving their funded entitlement at a provider when it is rated 'inadequate' by Ofsted.

⁴ Or an independent inspectorate approved by the Secretary of State

Section A4: Funding early education places

Outcome:

Fair and transparent funding that supports a diverse range of providers. This diversity enables parents to choose a provider that best meets the needs of their child.

To fund early education places:

Local authorities **are required** by legislation to:

- 4.1 Fund early education places in all sectors using a locally-determined, transparent formula – the early years single funding formula (EYSFF).
- 4.2 Issue all providers with an indicative budget at the beginning of the financial year which broadly reflects anticipated participation. Local authorities must also adjust budgets to reflect actual levels of participation within the financial year, across all sectors.
- 4.3 Construct a formula composed of either a single base rate for all providers or a number of base rates differentiated by type of provider according to unavoidable cost differences. The formula must include a deprivation supplement for three and four-year-olds, but is not required to do so for two-year-olds. Funding must be based on a count of children attending provision conducted at least three times a year.
- 4.4 Provide Free School Meals for children who are registered pupils of a maintained school, who attend early years provision both before and after lunch and whose parents are in receipt of specified benefits. This requirement is distinct from the duty to secure an early education place for two-year-olds who meet the earnings and benefits criteria also used for Free School Meals (paragraph 1.4).
- 4.5 From 2013-14 local authorities will be required to submit details of funding rates they pay providers for two, three and four-year-old places to the Department. This information will be published by the Department and enable providers and parents to compare rates across the country.

Local authorities **should**:

- 4.6 Maximise the funding which is passed to providers.
- 4.7 Ensure that their EYSFF is clear, simple and transparent, and in particular that:
 - the number of base rates is kept to a minimum; and
 - fund providers of two-year-old early education on a flat base rate only, with no supplements (except where funding is for children with additional needs such as SEN).
- 4.8 Ensure any process to account for the proper use of public funding does not place undue administrative burdens on providers.
- 4.9 Limit the conditions they place on providers to deliver funded places to those related to flexible delivery of places and proper use of public funding.
- 4.10 Make clear their local policy for funding providers of early education places in situations where children move providers during the term or start later in the term.
- 4.11 Consider and determine whether to fund providers / children with exemptions from the Early Years Foundation Stage Learning and Development requirements.
- 4.12 Ensure providers do not charge parents for any hours for which the provider

already receives any funding from the local authority.

4.13 Ensure providers are not penalised for short term absences of children through withdrawing funding but use their discretion where absence is recurring or for extended periods taking into account the reason for the absence and the impact on the provider.

4.14 Ensure providers are aware of the local authority policy on reclaiming funding when a child is absent from a setting.

4.15 Consider and determine whether to fund the cost of lunch when a child who would qualify for Free School Meals in a maintained school takes up their funded entitlement at a private, voluntary or independent provider.

4.16 Fund separately through the main schools budget eligible children who have already been admitted to primary school and are attending a maintained school reception class.

Section A5: Delivery in Partnership

Outcome:

Parents have a choice of taking up their child's early education place in a variety of settings that meet the needs of their family.

Local authorities **are required** by legislation to:

5.1 Act in accordance with the School Admissions Code in enabling children to take up a place in a maintained school reception class from the September following their fourth birthday.

Local authorities **should**:

5.2 Maintain a list of providers who choose to receive funding to deliver early education places.

5.3 Maximise parental choice by funding all providers who wish to deliver early education places if they meet the required quality standards (see 3.3, 3.4 and 3.5) and local conditions of funding.

5.4 Have an appeals procedure for providers who are refused funding to deliver early education places.

5.5 Publicise their complaints procedure so that providers know how to complain if necessary.

Part B: Securing Sufficient Childcare

Outcome:

Parents are able to work because childcare places are available, accessible and affordable and are delivered flexibly at a range of high quality settings.

To secure sufficient childcare places:

Local authorities **are required** by legislation to:

B.1 Secure sufficient childcare, so far as is reasonably practicable, for working parents, or parents who are studying or training for employment, for children aged 0-14 (or up to 18 for disabled children).

B.2 Prepare assessments of the sufficiency of the provision of childcare in their area at least every three years.⁵

Local authorities **should**:

B.3 Take into account, what is 'reasonably practicable' for them when assessing what sufficient childcare means in their area and;

the state of the local childcare market, including the demand for specific types of providers, in a particular locality and the amount and type of supply that currently exists;

the state of the labour market; and

the quality and capacity of childcare providers including their funding, staff, premises, experience and expertise.

B.4 Report annually to elected council members on how they are meeting their duty to secure sufficient childcare and to make this report available and accessible to parents. Local authorities are responsible for determining the appropriate level of detail in their report, geographical division and date of publication. However, the report should include:

a specific reference to how they are ensuring there is sufficient childcare available to meet the needs of: disabled children; children from families in receipt of the childcare element of Working Tax Credit or Universal Credit; children aged two, three and four-year-olds taking up Government funded early education places; school age children; and children needing holiday care;

information about the supply and demand of childcare for particular age ranges of children, and the affordability, accessibility and quality of provision; and

details of how any gaps in childcare provision will be addressed.

⁵ The Department has introduced measures in the Children and Families Bill to repeal the duty on local authorities to prepare assessments of the sufficiency of provision of childcare in their area at least every three years (section 11 of the Childcare Act 2006).

Part C: Information to parents

Outcome:

Parents are provided with comprehensive information about their child's entitlement to an early education place and childcare options in their area so that they are easily able to take it up.

Local authorities **are required** by legislation to:

C.1 Provide information, advice and assistance to parents and prospective parents on the provision of childcare in their area.

Local authorities **should**:

C.2 Ensure that parents are aware of:

- Government funded early education places for two, three and four-year-olds;
- the option to continue to take up their child's 15 hour early education place until their child reaches compulsory school age if they choose not to take up a place in a maintained school reception class in the September following their child's fourth birthday; and
- how to identify high quality provision in their area.

C.3 Ensure that parents are aware of local authority procedures to check eligibility for early education places for two-year-olds, and any implications for the use of their personal data.

C.4 Ensure that parents can clearly see, from the information they receive from their provider, that they have received their child's full 15 hour place completely free.

C.5 Make parents aware of the quality of providers delivering early education places based on the provider's most recent Ofsted inspection.

C.6 Have a complaints procedure for parents who are not satisfied that their child has received their early education place or with any aspect of the way in which they have received it and publicise this to parents.

Part D: Information to Childcare Providers

Outcome: Childcare providers who request it are able to access information, advice and training on the Early Years Foundation Stage (EYFS) and working with disadvantaged children.

Local authorities **are required** by legislation to⁶:

D.1 Secure information, advice and training for childcare providers in their area.

Local authorities **should**:

D.2 Where required signpost childcare providers to information provided by Ofsted, the Department for Education and others about Ofsted registration, the Early Years Foundation Stage and national policy.

D.3 Ensure that it is voluntary for providers to take up training delivered directly or commissioned by the local authority. Take-up of local authority training should not be a condition of a provider receiving funding to deliver early education places.

⁶ The Department intends to introduce measures at the earliest opportunity to replace the duty on local authorities to provide information, advice and training to childcare providers (section 13 of the Childcare Act 2006 and the associated regulations) with a power to do so.

PART D: Legal annex and other relevant information

Summary of the key provisions in the Childcare Act 2006 (“the 2006 Act”) relating to the entitlement to free early years provision

- Sections 1-5 require local authorities and their partners to improve the outcomes of all children under 5 and reduce inequalities.
- **Section 6 requires local authorities to secure sufficient childcare and Section 11 requires local authorities to prepare assessments of the sufficiency of the local childcare market.**
- **Section 7 places a duty on local authorities to secure free early years provision of the prescribed description for each young child in their area who is under compulsory school age and is of the prescribed description. Section 7 has been substituted by section 1 of the Education Act 2011 and the new section 7 will come into force fully on 1 September 2013.**
- Section 8 enables local authorities to assist others to provide childcare (including giving them financial assistance) but says that local authorities should only provide childcare themselves if no other provider is willing to.
- Section 9 gives local authorities the power to place conditions of funding on providers of childcare.
- Section 12 places a duty on local authorities to provide information to parents about childcare in the area.
- Section 13 places a duty on local authorities to secure the provision of information, advice and training to childcare providers and childcare workers.
- Sections 39-48 establish the Early Years Foundation Stage (EYFS).
- Sections 31-38 and 49-98 set out the childcare and early years regulation framework.
- Section 99 allows for the collection of information about young children.
- **Local authorities should have regard to any statutory guidance issued under the Childcare Act 2006**

Section 7 – Duty to secure prescribed early years provision free of charge

- Section 7(1) of the 2006 Act places (from 1 September 2013) **a duty on local authorities in England to secure free early years provision of the prescribed description for each young child in their area who is under compulsory school age and is of the prescribed description.**
- Under s7 (3) local authorities must have regard to statutory guidance issued by the Secretary of State when discharging their duty under section 7.

Regulations made under section 7

Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012 (S.I. 2012/2488), made under section 7 of the 2006 Act

These regulations prescribe the early years provision which must be made available by an English local authority free of charge, and also prescribe the description of the children for whom the provision must be made available. These Regulations come into force on 1st September 2013. They revoke the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 (S.I. 2008/1724), and the

Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2010 (S.I. 2010/301).

Type of free provision

- Local authorities **must** secure that the prescribed amount of free early years provision is available for each child of the prescribed description in their area from early years providers who are prescribed in the 2012 regulations.
- Early years providers prescribed in the regulations are providers who are under a duty (set out in section 40 of the 2006 Act) to deliver the Early Years Foundation Stage (the EYFS - established under section 39 of the 2006 Act). These providers are either a) registered on the Ofsted Early Years Register (as required by section 34(1) of the 2006 Act) or b) are schools which are exempt from registration on the Ofsted Early Years Register (pursuant to section 34(2) of the 2006 Act). Section 34(2) covers maintained schools, approved non-maintained special schools or independent schools.
- Local authorities are not under a duty to secure free early years provision from providers who are exempt from delivering the EYFS learning and development requirements because of a direction made by the Secretary of State under regulations made under section 46 (1) of the 2006 Act, or because a provider has made a determination in relation to a young child under regulations made under section 46(2) of the 2006 Act. Local authorities have discretion whether to fund such provision and the amount of such provision that they wish to fund. The relevant regulations are the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008 (SI 2008/1743, as amended by SI 2012/2463).
- Local authorities **must** ensure that all parents have the option to take up their child's free early education place at a provider who delivers the full EYFS learning and development requirements.

Children to benefit from free provision

- Three-year-olds (and two-year-olds who meet the eligibility criteria below) are entitled to free early education from the start of the term beginning on or following the date set out below:
 - Children born in the period 1st January to 31st March: **1st April** following the child's third birthday, or second birthday, as applicable
 - Children born in the period 1st April to 31st August: **1st September** following the child's third birthday, or second birthday, as applicable
 - Children born in the period 1st September to 31st December: **1st January** following the child's third birthday, or second birthday, as applicable
- These dates are consistent with those used for determining the start of compulsory education and ensure that every child taking up the free entitlement for three and four-year-olds is able to access at least two years of early education before they reach statutory school age.
- Two-year-olds are eligible for free early education if:
 - they come within the earnings and benefits criteria used to determine eligibility for free school meals (as set out in section 512ZB(4) of the Education Act 1996 - the 'Free School Meals' section of Annex D below)

or

- they are looked after by a local authority (under section 22(1) of the Children Act 1989)

Amount of free provision:

- Local authorities **must** secure availability of at least 570 hours of free provision over **at least** 38 weeks for each child in each 12 month period from the date at which the entitlement starts until the child reaches compulsory school age. (This works out at 15 hours per week if spread over 38 weeks.)
- Local authorities **must not** condense the free entitlement into less than 38 weeks.

Special Educational Needs

- Local authorities should ensure that all providers in the maintained and private, voluntary and independent sectors that they fund to deliver free early education places are aware of the requirement on them to have regard to the Special Educational Needs Code of Practice and to have a written Special Educational Needs policy.

Early Years Single Funding Formula

The School and Early Years Finance (England) Regulations 2012 (S.I. 2012/2991) set out how local authorities must operate their Early Years Single Funding Formula (EYSFF). The Regulations require that:

- a local authority must consult their schools forum about and decide upon an EYSFF for the financial year 2013-2014, which they must use in that year.
- In operating their EYSFF local authorities:
 - must provide budgets for providers using the most recently available data;
 - must review the budgets during or after the year using either attendance data collected during three sample weeks (census week for example) or total actual hours of attendance;
 - must redetermine the provider's budget as appropriate;
 - must notify providers within 28 days of redetermining the budget;
 - must implement the redetermination when they consider it appropriate – which may be different for different providers;
 - must not (for three and four year olds) use a factor within the formula which takes into account the number of places, except where places have been specifically reserved by the authority for pupils with SEN or for children in need (following the 1989 Children Act definition) with a provider;
 - may provide differential funding to types of providers to reflect unavoidable costs;
 - must (for three and four-year-olds) use a factor within the formula which takes into account the incidence of deprivation at a child level not a setting level (a deprivation supplement); and
 - may use factors within the formula which take into account:
 - the need to improve the quality of provision by particular provider or

types of provider;

- the degree of flexibility in hours of attendance the provider makes available; and the need to secure or sustain a sufficiency of provision within an area

Compulsory School Age

- Compulsory School Age is defined at section 8 of the Education Act 1996 together with the Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607).
- A child reaches compulsory school age either on or after their fifth birthday, on whichever of the following dates is either on, or the first to follow, their birthday: 31st August, 31st December or 31st March.

Equality

- The Equality Act 2010 outlaws discrimination, harassment and victimisation and covers statutory and non-statutory early years organisations and provision. It applies to a range of protected characteristics including sex, race, disability, religion or belief and sexual orientation.
- Local authorities and other listed public authorities (which include schools) must also comply with the provisions of section 149 of the Equality Act, and the Equality Act 2010 (Specific Duties) Regulations 2011, in meeting their statutory responsibilities.
- While private, voluntary and independent settings are not bound by this public sector equality duty which applies to public authorities, the principles of equity and justice underpinning the law should be applied as good practice. Where provision is overseen, coordinated or advised by the local authority or a partnership with local authority membership, the local authority will have responsibility to ensure the duties are fulfilled.

School Admissions

- Local authorities must have regard to the School Admissions Code effective from 1 February 2012 and which applies to admissions from September 2013 in all maintained schools in England.

Admission of children below compulsory school age and deferred entry to school

- Admission authorities **must** provide for the admission of all children in the September following their fourth birthday. The authority **must** make it clear in their arrangements that:
 - parents can request that the date their child is admitted to school is deferred until later in the year or until the term in which the child reaches compulsory school age; and
 - parents can request that their child takes up the place part-time until the child reaches compulsory school age.

Free School Meals

- Statutory entitlement to free school meals (FSM) only applies to children in maintained schools, though Academies and free schools are required to follow FSM legislation as if it applied to them by virtue of their funding agreements. FSM

requirements do not apply to children in the private, voluntary or independent sector.

- In order to qualify for FSM:
 - a child must be a registered pupil of a maintained school or receiving education at the school;
 - if the child is under compulsory school age, the child must be receiving full time education, or if part-time, receiving education before and after the lunch break; and
 - under **current criteria**** the child's parent must be in receipt of any one or more of the following support payments: income support (IS); income-based jobseeker's allowance (IBJSA); income-related employment and support allowance; support under Part 6 of the Immigration and Asylum Act 1999; or the guarantee element of State Pension Credit; or be entitled to Child Tax Credit but not to Working Tax Credit and have an annual income not exceeding £16,190 (as of 6 April 2012), as assessed by Her Majesty's Revenue and Customs. A child whose parent is entitled to the Working Tax Credit four-week run-on (the payment someone receives for a further four weeks after they stop qualifying for Working Tax Credit) is also entitled to FSM.
 - a child who is in receipt of a qualifying benefit in their own right is also entitled to FSM.

** On 8 March 2012 the Welfare Reform Act 2012 received Royal Assent. The Act introduces Universal Credit, which will replace current benefits with a single payment. The plan is to introduce Universal Credit from 2013, with a phased introduction over several years.

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. A child who is "looked after" is defined in section 22 of the Children Act 1989.



Department
for Education

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