

**Code of Practice for
Local Authorities on
Delivery of Free Early
Years Provision for 3 &
4 year olds**

September 2010

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Foreword



Early years provision has been transformed in the last decade, beginning with the rollout of free part time places for 3 year olds in 1999, initially in disadvantaged areas. By April 2004, all 3 year olds were able access a free part time place. From April 2006, the entitlement was extended further and all 3 and 4 year olds, regardless of their background or family circumstances, were entitled to free part time early years provision of 12 ½ hours a week for 38 weeks of the year. Free places are now available in nursery schools and classes, day nurseries, playgroups and pre-schools and with accredited childminders.

The Government shares with all of those in the early years sector a commitment to improving life chances for all children, whatever environment they are in. We want to support parents into work, out of poverty, and enable families to make positive choices about how they balance their work and family life. We increasingly know more about how high quality early years provision can improve children's current experiences and future fulfilment, and its unique potential to narrow gaps between those from disadvantaged families and their peers.

The publication of this Code of Practice, alongside new regulations bring into force a universal extended entitlement for all 3 and 4 year olds - of 15 hours a week of free, flexible early years provision – and signals the fulfilment of the commitment made in the in the *10 Year Childcare Strategy: Choice for Parents, the best start for children*, published in 2004. Since then, Parliament has passed the first Childcare Act (2006) and we have introduced the Early Years Foundation Stage framework, ensuring child outcomes remain at the heart of the changes we're making and promote consistent high quality, accessible provision for all.

From September 2010, as well as increasing the number of hours available in the free entitlement, delivery is becoming more flexible, to be more responsive to families' needs and to enhance the learning and development of children. The new guidance on flexibility will not only ensure local authorities are listening to parents about what they want, and being responsive to future changes in demand, but will empower parents to expect more from their free entitlement and to find provision that suits their family's life. The new Code also emphasises the importance of good quality provision and will support local authorities to foster a culture of high quality in the free entitlement, ensuring that whatever choices parents make about where they access their entitlement, they will have a meaningful choice between good quality providers.

These changes offer a considerable challenge to local authorities and providers in all parts of the sector. I would like to thank local authorities and providers for their hard work in helping to make the entitlement such a success, with 95% of all eligible children taking up at least some of their free provision. It is essential that central government, local government and providers continue to work together to build on the great progress made in early years provision over the past decade.

A handwritten signature in black ink, reading "Dawn Primard". The signature is fluid and cursive, with a large, stylized 'D' at the beginning.

Minister of State for Children, Young People and Families

1. Introduction

The entitlement to free early years provision for 3 and 4 year olds

1.1 The free entitlement for 3 and 4 year olds is at the heart of the Government's vision for all children to have access to high quality early years provision that helps them reach their full potential. It offers universal free provision from the term following a child's third birthday up until they reach compulsory school age, for every child, irrespective of background or family circumstances. From September 2010, the free entitlement equates to 15 hours per week, over a minimum 38 weeks of the year, with flexible access to meet parents' needs.

Evidence of the positive effects of the free entitlement

1.2 Major studies commissioned to track large groups of children are clear: alongside good parenting, regular access to high quality part-time provision for this age group is a powerful driver of positive outcomes for children. And the benefits are likely to be greatest for those from more disadvantaged backgrounds, making the free entitlement a powerful part of the Government's strategy to promote equality of opportunity and narrow gaps in achievement. The 2009 Foundation Stage Profile results show that 23,000 more children achieved a good level of development at age five than the previous year and the gap in outcomes between the lowest achievers and their peers narrowed.

Changes to the free entitlement

1.3 The Government consulted on changes to the Code of Practice between May 2009 and January 2010. As a result of the consultation, from September 2010, when the free entitlement extends to 15 hours per week, the Government is focusing on 3 priorities for its delivery – *flexibility, quality and delivery of the entitlement in partnership*.

Flexibility

1.4 The Government recognises that whilst parents value the free entitlement, with 95% of 3 and 4 year olds accessing some free provision, the common pattern of delivery prior to September 2010 meant that some families could not access their entitlement in a way that best enabled them to balance their family and work commitments. Evidence from the pathfinder local authorities, which rolled out the 15 hours entitlement early, was that longer and more flexible provision increased participation, particularly from under-represented groups, and also increased the average amount of free provision taken up by those already accessing the entitlement.

Quality

1.5 Evidence also shows that the quality of provision has a significant impact on child outcomes and the Government is committed to improving quality in all settings so that all children have access to high quality provision which supports their learning and development. This is why the Government has recognised the opportunities to improve quality linked to investment in the free entitlement.

Delivery in Partnership

1.6 Local authorities will need to work in close partnership with providers in all parts of the sector in order to achieve flexible, high quality provision which meets the needs of children and promotes parental choice, but balances this with supporting provider sustainability and a thriving market.

This Code of Practice sets out the changes in these 3 areas, summarised below:

What's new?

Flexibility

National Minimum Standards of flexibility and a published *Local Core Offer* for parents in each local authority. The Standards comprise:

- a guarantee for parents that they can expect at least 3x5 hour or 5x3 hour sessions over a week
- a clear role for local authorities to assess parental demand for other patterns of flexibility - and continue to be responsive to changing demand in the future - and secure these wherever possible, in negotiation with providers and within a national framework.

Quality

An expectation that local authorities will, wherever possible, concentrate free entitlement funding on the highest quality providers (funding others where necessary to uphold sufficiency and accessibility) and prioritise support to those of lower quality which are delivering the free entitlement.

A transparent, consistent process for identifying the highest quality providers across all sectors through the national Early Years Quality Improvement and Support Programme (EYQISP) tools.

An expectation that all local authorities will establish childminder networks to enable childminders to deliver the free entitlement.

Partnership working

An expectation that local authorities will establish Provider Agreements with

providers in all parts of the sector, through negotiation, to secure mutual commitments on flexibility, quality and working together.

An expectation that local authorities will encourage providers to use Parental Declarations with parents, which will build stability into the flexible offer for parents and providers.

Looking ahead – future policy changes

1.7 Two existing ambitions already make it likely that elements of this Code will need to be revised in the future:

Stretching the free entitlement

1.8 Local authorities will have an ongoing role to consult with parents about how they want to access their free entitlement more flexibly and should continue to be responsive to changing demand, working with providers to secure provision that matches changing needs as much as possible. In addition, in *Next Steps for Early Learning and Childcare*, published in January 2009, the Government set out plans to increase flexibility through making it possible for parents to ‘stretch’ their free provision by accessing fewer hours across more weeks of the year. While 38 weeks will remain the minimum entitlement, giving parents the opportunity to access the free entitlement in this way may help parents to budget and balance work or other commitments consistently across the year. The Government expects local authorities to consider parental demand for a “stretched” offer as part of their next Childcare Sufficiency Assessment in preparation for enabling any parent who wants it to access a “stretched” offer from September 2012.

Rose Review

1.9 In response to the recommendations on improving attainment of summer-born children made by Sir Jim Rose in his review of the Primary Curriculum, the Admissions Code has been revised to require admissions authorities to make a full-time reception place available for all children from the September after their 4th birthday from September 2011 (see www.dcsf.gov.uk/sacode). However, parents will retain the right to defer their child’s entry to school until the term after their 5th birthday and these children will continue to be able to access their free entitlement in other early years settings instead, up until compulsory school age.

Two year olds

1.10 Disadvantaged 2 year olds in every LA are able to access at least 10 hours per week of free provision. This will be extended to more families over the next few years, delivered in a way that supports effective transition to the statutory entitlement at age 3.

The legal framework and the status of the Code

1.11 Section 7(1) of the Childcare Act 2006 Act places a duty on English local authorities to secure free early years provision for all eligible children in their area. Regulations made under section 7 set out the type and amount of free provision and the age of children to benefit,

Section 7(2) of the Act requires that in discharging their duty under section 7(1), local authorities must have regard to any guidance given by the Secretary of State. This Code of Practice constitutes such guidance. It is effective from 1 September 2010 and replaces all previous guidance on the delivery of free early years provision for eligible children.

Local authorities *must* have regard to this guidance when fulfilling their duty under s7 of the Childcare Act 2006. Local authorities *should not* depart from the guidance in this Code unless they have good reason to do so.

The guidance in this Code does not prescribe matters which are rightly for local determination; local authorities must work with providers to plan and manage local provision to meet the needs of families and children in their area. The Code is clear that local authorities should not intervene in providers' private business outside of the free entitlement for which local authorities fund providers, nor does it provide guidance on how providers operate their private businesses or charge for provision over and above the free entitlement.

1.12 In the context of the status of this document set out in the paragraph above, the guidance provided here states:

- what is a legal duty required by legislation (**must**)
- what local authorities **should** as a matter of course do to fulfill their statutory responsibilities and ensure effective delivery in accordance with the key principles
- what further actions local authorities might want to consider in order to respond to particular issues.

1.13 The following chapters set out how local authorities should plan and manage the delivery of the free entitlement to meet the objectives of high quality, flexible provision for all children delivered in partnership with a mixed economy of providers to meet parental demand. They also make reference to other provisions in the Childcare Act which are relevant to the free entitlement. In addition local authorities must comply with all relevant legislation on equality.

Free Entitlement Support Pack

1.14 Local authorities and providers may also wish to refer to the online Free Entitlement Support Pack, which consists of good practice and

experience from the 34 flexible extension pathfinders, which began rolling out in April 2007. This resource pack will be updated on a regular basis to reflect latest emerging practice and provide support for future policy changes. The Support Pack is available at:

<http://www.dcsf.gov.uk/everychildmatters/earlyyears/localauthorities/lap/ractice/entitlement/flexibleresources/flexibleresources/>

Chapter 2: The Free Entitlement

Vision

The free entitlement is the Government's major early years investment in child outcomes and enables every 3 and 4 year old child, irrespective of background, access to two years of free early years provision before they reach compulsory school age. From September 2010, the offer increased to 570 hours a year accessed over a minimum 38 weeks of the year (equating to 15 hours a week), and became more flexible to better meet families' needs. The extended flexible entitlement will continue to promote child outcomes but also allow parents additional provision and more flexible access, in order to support them to better balance work and family life, access employment or training and contribute to the drive to reduce poverty.

To secure delivery:

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

- Make available sufficient free places of 570 hours a year over no fewer than 38 weeks of the year for every eligible child in their area from the relevant date following their 3rd birthday until they reach compulsory school age

Local authorities *should*:

- Work with providers to ensure that every free entitlement place is delivered completely free at the point of delivery, with no conditions of access
- Deliver the free entitlement in accordance with the local market through providers, across the maintained, private, independent and voluntary sectors
- Consult with parents about what they want from their flexible free entitlement, on an ongoing basis, being as responsive as possible to changing demand
- This includes enabling choice for parents who wish to access the free entitlement at a provider open fewer weeks of the year, or hours of the week, and consider how local partnership arrangements might support delivery of a flexible offer to these parents
- Promote equality and inclusion, particularly for disadvantaged families, looked-after children and children with disabilities or special educational needs, both in terms of access to the free entitlement and learning opportunities within a setting

Key principles

Local authorities **should** have regard to all of the following principles when planning and managing the delivery of the free entitlement:

- ***The needs and best interests of the child should be paramount***
- ***The free entitlement must be provided completely free at the point of delivery***
- ***Local authorities should deliver the free entitlement in a way that balances their priorities around sufficiency, quality and accessibility***
- ***Local authorities and providers should consult with and listen to parents about how they want to access their flexible free entitlement***
- ***The free entitlement should be delivered in a way that reflects parental demand as much as possible and gives parents choice about where and how they access their entitlement***
- ***Local authorities and providers should adopt an inclusive approach, promoting equality of opportunity, particularly to the most disadvantaged, looked-after children and children with a disability or special educational needs***

Provision of the free entitlement

The free entitlement

Amount of free provision

- 2.1 The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 (“The Free Entitlement Regulations”), together with section 7 of the Childcare Act 2006 under which they are made, govern the free entitlement – see Annex for further details
- 2.2 With effect from September 2010, the entitlement to free early years provision for every eligible child is 570 hours per year, the full 570 hours **must** be taken over no fewer than 38 weeks in any year – for example, at least 15 hours per week over 38 weeks of the year. A year commences on the date the child becomes eligible for free early years provision and subsequent years commence on the anniversary of this date. However, although this free provision must be available over at least 38 weeks of the year, the regulations do not prevent the entitlement being stretched over more than 38 weeks of the year, with fewer than 15 hours a week to enable the entitlement to be delivered more flexibly. This supports the aim to ensure that local authorities can secure the availability of the free provision flexibly from September 2010 - see Chapter 3.

Eligibility

2.4 Local authorities **must** ensure that children are able to access their free entitlement for up to 2 years before they reach compulsory school age. Compulsory school age is defined in Section 8 of the Education Act 1996 with the effect that a child reaches compulsory school age at the beginning of the school term following the child's 5th birthday (see Annex). In practice, local arrangements may mean children are admitted to full-time education before reaching compulsory school age. It may also mean that some 5 year olds will be accessing the free entitlement, usually at providers in the private, voluntary and independent sectors as they will not have reached compulsory school age. However, for simplicity, this Code refers generally to "3 and 4 year olds" as being the recipients of the free entitlement.

2.5 The regulations prescribe that children become eligible for free early years provision on the dates set out below

A child born in the period	Will become eligible for a free place
1st April to 31st August	1st September following child's 3rd birthday (Autumn* school term)
1st September to 31st December	1st January following child's 3rd birthday (Spring* school term)
1st January to 31st March	1st April following child's 3rd birthday (Summer* school term)

* based on a 3 term school year

A free place for every 3 and 4 year old

2.6 Local authorities are **legally required** to secure sufficient **free** early years provision, as described above, for every eligible child. A child moving to England from another country is entitled to free early years provision on the same basis as any other child regardless of whether they have British citizenship.

2.7 The free entitlement is a free, part-time place for each eligible child. Therefore, local authorities **should** ensure:

- **No conditions of access / completely free at the point of delivery.**

Local authorities **should** ensure that providers which they fund to deliver the free entitlement do not impose on parents conditions of access to which they must agree in order to take-up their free hours, i.e., parents **must not** be obligated to purchase additional hours or pay lunch time charges in order to secure free provision.

- **No fees charged for free hours.** Local authorities **must** also ensure that providers are not charging “top up” fees (the difference between what a provider would normally charge and the funding they receive from the local authority to deliver the free entitlement) in relation to any free hours and **should** take immediate action where this practice is identified. Local authorities should also ensure no other fees are being charged in relation to the free entitlement, for example for registration or uniform. If the practice continues local authorities **should** consider removing the provider from the Directory of Providers delivering the free entitlement and withdraw free entitlement funding.

2.8 Local authorities **should** consider setting out these terms, including their expectations on how providers will work together in partnership, in local Provider Agreements - see 2.15.

What a free place means for families

2.9 Local authorities **should** ensure parents are not subject to any conditions such as charges or a requirement to purchase additional provision, in order to access their free entitlement. From parents’ perspective, funding for the free entitlement enables their entitlement to be offered as a free place, which also means local authorities must ensure parents are not required to pay up-front and be refunded at a later date, and if they want to access only their free place, they will be able to do so.

2.10 Local authorities **should** communicate to parents that they may not always be able to access their full entitlement at the times they want, at their provider of choice. In these circumstances, local authorities **should** consider alternative provision which can be offered as a choice to the parent, or how they can broker local partnership arrangements to ensure that parents, wherever possible, are able to access their full 15 hours.

2.11 Many parents choose to purchase additional hours at the same provider where they access their free entitlement. The rates which providers charge for their privately funded hours are a matter for them to decide and should not be dictated by local authorities. However, in these instances parents will be provided with a bill. Local authorities **should** support providers to ensure parents’ bills are set out clearly so that parents can easily recognise and understand what hours they have accessed in relation to the free entitlement and how any fees relate to additional services or hours. Local authorities **should** also ensure that the free entitlement is not represented to parents as a monetary subsidy but as a free part-time place.

Providers not delivering the full entitlement

2.12 The Department recognises that some providers are not able to be open for 15 hours a week or the full 38 weeks a year so may not be able to offer the full minimum free entitlement (for example, independent schools which are usually only open 34 weeks of the year, or a playgroup open only 12 hours a week due to shared premises). Local authorities **should** enable parents to choose a reduced entitlement at these providers if they wish and inform parents about the implications of doing so, in particular that, if the local authority has made the full entitlement available at a different provider, the local authority is not under any obligation to offer the rest of the child's free entitlement elsewhere in these circumstances. However, local authorities **should** seek to broker local partnerships to enable parents to access their full entitlement, wherever possible.

2.13 Whilst local authorities **should** negotiate with providers the patterns in which they will deliver the free entitlement, local authorities **should not** fund providers to deliver fewer hours than the statutory 15 hours free early years provision without good reason (for example, limited premises or opening hours). Local authorities **should** ensure that providers who are receiving funding to deliver a reduced entitlement are not delivering additional hours of provision for which parents are being charged.

Delivery in Partnership

2.14 Key to successful delivery of the free entitlement is for local authorities to achieve a balance in their priorities; securing sufficiency, quality and accessibility in free provision. To achieve this, local authorities **should** actively work towards securing strong partnerships with providers. This will enable local authorities to strike the balance between securing sufficient high quality places, in accordance with local market capacity, and meeting parental demand for flexibility.

2.15 Local authorities **should** ensure that partnership is based on negotiation and mutual agreement between local authorities and providers in all sectors. This partnership should be set out and agreed by all parties in a Provider Agreement, which local authorities **should** put in place with all parts of the sector delivering the free entitlement. These agreements should set out how providers will contribute to delivery of a local flexible offer, how they will drive quality and how the local authority will support this, and how they will work in partnership together. More detail on the use and content of Provider Agreements is set out at section 6.11.

Chapter 3: Flexibility

Vision

Delivery of a flexible free entitlement in a way which is useful for parents and meets their needs; that maximises and safeguards child development; and is workable for local authorities and providers – within a consistent framework of National Minimum Standards of flexibility. Local authorities will broker and publish a Local Offer of flexibility, based on assessments of parental demand and negotiations with providers about their capacity.

To secure flexible delivery:

Local authorities are required in legislation to:

- Make available free early years provision for every eligible child in their area.

Local authorities should:

- Fund providers to deliver free early years provision according to the National Minimum Standards of Flexibility
- Consult with parents and involve them in local assessments of demand for flexibility
- Act as a broker between overall parental demand and provider capacity, providing the maximum possible flexibility where demand exists beyond the guaranteed models
- Negotiate with individual providers how they will contribute to a local offer of flexibility
- Set this agreement out in a Provider Agreement – with providers in all sectors
- Publish their local flexible offer and inform the Family Information Service (FIS) about what is available
- Draw on providers' assessments of parental demand at their setting, where this occurs
- Encourage providers to establish Parental Declarations with parents who use their setting, to each commit to an agreed pattern of flexible access to the free entitlement, on a termly/3-monthly basis.
- Assess local demand and capacity relating to a free entitlement offer of fewer hours a week over more weeks of the year, to offer a "stretched" entitlement to any parent who wants it.
- Consider how to incentivise or support flexibility through their local Early Years Single Funding Formula

Provision of the flexible free entitlement

National Minimum Standards of Flexibility

3.1 Local authorities **should** secure delivery of a flexible offer, in a way that is meaningful and useful for parents, promotes child development and is workable for local authorities and providers. All local authorities **should**

deliver flexibility in keeping with the **National Minimum Standards of flexibility**. These National Minimum Standards incorporate 2 elements:

- 1) Guaranteed models of access to free early years provision
- 2) Brokerage by local authorities of a Local Offer, within a national framework.

1) *Guaranteed models of access to free early years provision*

3.2 There is a national expectation that certain guaranteed models of access to the free entitlement **should** be available in every local authority for any parent who wants them. Local authorities should note this does not mean they must be available through every provider. This secures for parents a minimum guarantee and clear understanding of flexibility in their extended entitlement. Local authorities should make clear to parents that:

- They are entitled to 570 hours of free provision within a year, with the full amount to be taken over no fewer than 38 weeks, and that they can take up as much or as little as they wish.
- They can request access to their entitlement in a particular pattern, and that the local authority **should** consider this in securing the local flexible offer.
- They will have a choice of provider, though they may not always be offered the full entitlement at the times they want at their provider of choice.

3.3 Local authorities **should** guarantee any parent who wants it access to their free entitlement in the following models:

- 3 hours a day over 5 days of the week
- 5 hours a day over 3 days of the week

3.4 Provision of the models above should not restrict greater flexibility and local authorities **should** ensure parental demand drives local planning of flexibility, including demand for greater flexibility in future. Local authorities **should not** consider delivery of these models alone, without further assessment of parental demand, to be full flexibility but **should** take into account the level of demand for these models, and local provider capacity to deliver. Local authorities **should not** expect providers to create places in this way where there is not demand. Local authorities will also wish to consider demand from parents who wish to access less than their full entitlement and should make clear to parents that they can still access, for example, up to 12.5 hours over 2 days(see 3.9).

Other common models of delivering flexibility which local authorities might wish to consider demand for include:

Over 3 days

- 6 hours + 6 hours + 3 hours
- 9 hours + 3 hours + 3 hours
- 10 hours + 2.5 + 2.5

Over 4 days

- 5 + 5 + 2.5 + 2.5
- 4 + 4 + 3.5 + 3.5

Over 5 days

- 2.5 hours x 4 days + 5 hours on one day

3.5 Local Families Information Service (FIS) **should** inform parents that the two guaranteed models set out at 3.3 are the minimum they can expect within their area (though not necessarily at their provider of choice) from their extended, flexible free entitlement. Section 12 of the Childcare Act 2006 places a legal duty on local authorities to provide information, advice and assistance to parents and prospective parents. Under this section local authorities are required to ensure that this service is available to all parents and that it is pro-active in reaching those parents who might otherwise have difficulty taking advantage of the service. The Act also requires local authorities to deliver information to parents through a brokerage service. The further assistance should be offered where parents do not find childcare which readily meets their needs and includes checking whether parents of eligible children are aware of the free entitlement and working with them to secure a suitable place. It should also be focused on those groups who might otherwise find it hard to access support. Local authorities should engage the FIS in ongoing assessments of parental demand, including for changing patterns of flexibility in the free entitlement.

2) *Brokering a Local Offer*

3.6 The guaranteed models set out at 3.3 are the *minimum* that any parent can expect from their flexible free entitlement. However, demand will differ from authority to authority and will change over time. Therefore, local authorities **should** also assess demand for flexible provision *beyond* the guaranteed models. This should include demand for a “stretched” free entitlement, over more than 38 weeks (see 3.18) and demand for increased flexibility in future. While local authorities are not required to meet every individual parent’s needs they **should** assess local patterns of demand,

including those unmet currently, for how the free entitlement is taken up and use that to inform planning.

3.7 Local authorities **should** negotiate with individual providers in all sectors how they will each contribute to a local flexible offer, which will include the guaranteed models available to parents. Local authorities **should** also work with providers to secure an offer which as closely matches parental demand as possible. Local authorities **should** take into account provider capacity and individual circumstances which may limit flexibility, such as rurality or restrictions on premises, but will be expected to encourage and support providers to be as flexible as possible.

3.8 Local authorities **should** publish on their websites, and in other local early years literature, their Local Offer of flexibility. Local authorities should also promote actively their Local Offer through information to parents, including, for example, advertisements and information in early years settings and local press.

Framework for delivery

3.9 The Government has set a national framework for delivery, outside of which local authorities **should not fund providers to** deliver the free entitlement. These limits secure an offer which will enable children to access regular, quality provision, in keeping with the evidence of the benefits of doing so, and promote continuity whilst also maximising flexibility for parents and ensuring a degree of stability for providers. The limits are:

- No session longer than 10 hours
- No session shorter than 2.5 hours
- Not before 8am or after 6pm
- The full 15 hours over no fewer than 3 days (this would permit up to 12.5 hours over 2 days)
- A maximum 2 providers at any one time

3.10 These limits are not what local authorities should make available to parents. The limits are parameters outside of which the local flexible entitlement **should not** operate. There is no national expectation that local authorities will expect all providers to offer the sessions at the outer limits as a matter of course. Where provision of the full entitlement is secured through a partnership of 2 providers, their combined offer should be within the national framework.

3.11 Local authorities **should** support providers to promote continuity for children in the flexible offer, meaning key person, friendship groups and children's interests are prioritised in delivery.

Use of Provider Agreements to secure flexibility

3.12 Local authorities **should** use Provider Agreements with all parts of the sector to secure a local, flexible offer which delivers the National Minimum

Standards and, as far as is practicable, meets parental demand beyond that. Agreements **should** set out each provider's contribution to the local flexible offer. They **should** also set out the support and incentives (where applicable) that local authorities can offer to providers to increase the degree of flexibility on offer to parents.

3.13 Local authorities **should** seek to support providers to deliver the free entitlement as flexibly as possible, including supporting providers to make their sessions more flexible, for example, longer or shorter, or available at different times of day or over fewer days a week (i.e. 12.5 hours over 2 days). Local authorities **should not**, as a rule, expect providers to move to offering the free entitlement on an hourly (rather than sessional) basis.

3.14 Local authorities **should** recognise any costs associated with delivery of increased flexibility and consider how best to concentrate funding to support development of a local flexible offer which meets parental demand. This may include considering how to reward, support or incentivise more flexible delivery through the Early Years Single Funding Formula (EYSFF - see 3.17 below and chapter 5). Local authorities may choose to concentrate funding on the more flexible providers in order to meet effectively parental demand, but, in doing so, **must not** compromise sufficiency and accessibility of the free entitlement, nor quality of provision, in line with chapter 4 of this guidance.

Parental Declarations

3.15 Local authorities **should** ensure that increasing flexibility does not impact on the manageability of the entitlement for providers. Therefore, local authorities **should** support providers to establish Parental Declarations (see section 6.15) with parents, which set out the hours and patterns of access to the free entitlement that the parent and provider have agreed to for a defined period (e.g. termly / 3 monthly). Local authorities should encourage providers to discuss verbally the terms of Parental Declarations wherever necessary to ensure that they do not present a barrier to parents' access to their entitlement.

Appeals

3.16 Local authorities **should** put in place complaints procedures for parents who are not satisfied that their child has received their free entitlement in the correct way, as outlined in Chapter 2. All complaints procedures should satisfy public law requirements. In the event that a parent is not satisfied with the way in which their complaint has been dealt with or believes the authority has acted unreasonably, they may make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

Supporting and incentivising flexibility through the Single Funding Formula

3.17 All local authorities **must** implement their Early Years Single Funding

Formula (EYSFF) from April 2011. From then, local authorities will be **legally required** to fund providers on the basis of a transparent, locally-defined funding formula, which is based, in all sectors, on participation. The formulae are composed of a base rate plus supplements, one of which may be based on flexibility. Local authorities **should** consider how best to use their EYSFF as part of a package of measures to support, promote and incentivise flexible patterns of delivery in the free entitlement, and **should** refer to the *Practice Guidance on Implementation of the EYSFF* (DCSF, July 2009).

The future of the free entitlement – delivering a ‘stretched’ offer

3.18 The Government set out in *Next Steps for Early Learning and Childcare* (DCSF, January 2009) a future ambition that local authorities will make available to any parent who wants it, access to their 570 free hours in fewer hours per week over more weeks of the year. Local authorities **should** establish, as part of their assessment of local demand and provider capacity, the level of parental demand for an offer which can be accessed in this way. This includes, specifically, local authorities considering demand for a “stretched” entitlement as part of their next Childcare Sufficiency Assessment due to be completed in 2011, and their ongoing sufficiency action planning.

3.19 For parents who access only their free hours, local authorities will need to consider how they can secure free provision which is stretched over the preferred number of weeks. For parents who choose to purchase additional provision across the year already, local authorities will have to negotiate with providers how a stretched free place can be reflected in parents’ billing across more weeks of the year.

Examples of a stretched free entitlement:

Around 12.5 hours a week for 45 weeks of the year

Just over 11 hours a week for 50 weeks of the year

Just under 11 hours a week for 52 weeks

The above models can be taken over 2 or more days a week.

3.20 Where demand exists, local authorities **should** work with providers to offer the free entitlement in this way in their area, as part of their local offer of flexibility, and to prepare for delivery of the future commitment. Local authorities **should** consider how this offer could be in place at local level by September 2012. Local authorities **should not** expect every provider to be able to deliver the entitlement in this way but **should** work with a range of providers to secure sufficient ‘stretched’ places to meet parental demand in the local authority.

Chapter 4: Quality

Vision

The free entitlement should be at the forefront of the drive towards high quality and excellence. This means local authorities being clear and consistent in their expectations of continuous quality improvement, concentrating free entitlement funding wherever possible on the highest quality providers and prioritising support to others. This will contribute to our goal for early years provision, where excellent learning and development, in line with the statutory Early Years Foundations Stage framework, adapted to the needs of each individual child, is delivered by well trained practitioners, who receive the right support, challenge and incentives to become the best at what they do. We want all parents to be confident that the setting their child attends is aspiring towards the best quality provision, for all children, whether or not it forms part of the free entitlement.

To secure and improve quality:

Local authorities are required in legislation to :

- Work with their partners to improve the outcomes of all children under 5 and reduce inequalities
- Deliver the free entitlement through early years providers who are Ofsted registered or schools which are exempt from registration and which deliver the full EYFS
- Provide information, advice and training to childcare providers

Local authorities should:

- Assess quality of settings' provision, guided wherever possible by the National Strategies Early Years Quality Improvement Support Programme (EYQISP) guidance
- Prioritise funding to settings categorised good or above (through EYQISP), funding those below that category as needed to secure sufficiency, flexibility and accessibility
- Prioritise quality improvement support to settings rated below 'good' which local authorities must include in delivery of the free entitlement in order to secure sufficiency, flexibility and accessibility
- Set out in Provider Agreements the quality conditions on which inclusion in the delivery of the free entitlement are based (including what the local authority will do to support the provider to improve in order to remain on the Directory of Providers and continue to receive funding)
- Consider withdrawal of funding from providers who are not demonstrating the agreed commitment to quality improvement in order to continue to deliver the free entitlement
- Establish childminder networks in order that childminders can deliver the free entitlement
- Where childminders are used to deliver the free entitlement, fund only those qualified to minimum level 3, or who are working towards it
- Consider using their Early Years Single Funding Formula to support or

incentivise quality improvement, according to local market needs

The free entitlement as part of the wider drive on Quality

Investment in quality

The Graduate Leader Fund - £305m over 3 years 2008-11

Introduced to support providers in developing, attracting and retaining Early Years Professionals

Capital Funding - £642m over 3 years 2008-11

To support settings to make adjustments to the flexibility of their settings to increase access for all children and improve the quality of provision. .

Outcomes, Quality and Inclusion block of the Sure Start, Early Years and Childcare Fund - £440m over 3 years 2008-11

For local authorities to support local providers' training, inclusion and quality improvement needs.

National Strategies – Making a Big Difference

Support to local authorities that need it most, in relation to narrowing the gaps in achievement between the most disadvantaged children and others.

Following the success of this programme, in targeted local authorities, best practices from the programme are being disseminated to all local authorities to support accelerated progress in improving all outcomes and narrowing the gap.

Partnership Working to enhance quality

35 local authorities have designed new models of working to link up the sector – private and voluntary providers and childminders with schools, and children's centres and wider children's services under the Buddying and 0-7 Partnerships programmes. The best models will be disseminated for all local authorities to use.

National Quality Improvement Network – NCB

The National Quality Improvement Network (NQIN) developed by NCB and originally funded by DCSF, has produced a set of 12 good practice principles that underpin effective quality improvement processes / quality assurance schemes.

The Early Years Quality Improvement and Support Programme (EYQISP)

EYQISP is focused on the process of quality improvement and support and is designed to help Early Years Consultants to put in place and monitor robust plans for quality improvement. EYQISP provides guidance tools and materials to support local authority Early Years Consultants and leaders of early years settings in quality improvement.

The EYQISP tools and materials include:

- Categorisation exemplification
- Self Evaluation Audits linked to Ofsted self-evaluation headings
- Focused improvement plans
- Professional Development Meetings (PDMs), themes and examples
- Case Studies

Process of categorising settings:

The guidance recommends the following steps* towards categorising early years settings within a local authority. Tools for the categorisation of settings are primarily aimed at supporting local authority early years teams to share and discuss the levels of support and the deployment of EYCs. Such a system is essential to ensuring better targeting of support at settings which need it most, and follow the principle of offering support in inverse proportion to success. The tools are based on local authorities having an open and transparent process which involves settings.

Step 1 - Collation and scrutiny of evidence

The early years team collates and scrutinises recent and relevant evidence relating to settings.

Step 2 Identifying the criteria for categorisation

The early years team identify settings which need universal, targeted or intensive support (or equivalent category). The following are examples of criteria which *may* be used:

Quality criteria for settings needing intensive support:

- No self evaluation form (SEF) or evidence of reflective practice
- Setting requesting intensive support
- EYFSP results (school or feeder setting) with a high percentage of children not reaching national expectations
- EYFSP (school or feeder setting) shows widening gap between average and lowest 20% of children
- Significant issues with management , leadership or ownership
- Staffing concerns regarding high turnover, low qualifications and staff ratios
- Inadequate Ofsted inspection report

Quality criteria for settings needing targeted support:

- SEF started and some evidence of reflective practice
- Setting requesting some support
- EYFSP (school or feeder setting) shows a proportion of children not reaching national expectations

- EYFSP (school or feeder setting) shows no closing of the gap between average and lowest 20% of children
- Number of issues with management, leadership or ownership
- Some staffing concerns regarding turnover, qualifications and staff ratios
- Satisfactory Ofsted inspection report

Quality criteria for settings with regular support:

- Completed SEF and evidence of reflective practice
- Setting has some areas for development
- EYFSP (school or feeder setting) shows a high proportion of children reaching national expectations
- EYFSP (school or feeder setting) shows a closing of the gap between the average and lowest 20% of children
- No issues around management or leadership or ownership
- Few staffing concerns regarding turnover, qualifications and staff ratios
- Good or Outstanding Ofsted inspection report

Step 3 - Moderation of judgements

Moderation of judgements involving a round table discussion using all evidence available and professional input.

Step 4 - Sharing of judgements

Sharing the categorisation judgement should take into consideration individual setting information feedback, general feedback to all settings about the quality in the local authority outline of the support which will result from the judgements and a process of appeal if a setting disagrees about judgement.

Step 5 - Deployment and support to settings

Use judgement to plan deployment of the team and for the EYC, in partnership with the setting, to agree actions.

(Local authorities are encouraged to build in additional steps where necessary, to adapt their use of EYQISP to local circumstances.)*

Using EYQISP to identify the highest quality provision

4.1 To establish a transparent, consistent process for identifying the highest quality providers across all sectors, local authorities **should** use quality improvement and support programmes to categorise the quality of settings in their area. Wherever possible, these schemes should encompass and be guided by the principles in the Early Years Quality Improvement and Support Programme (EYQISP) guidance. EYQISP is focused on the process of quality improvement and support and is designed to help Early Years Consultants to put in place and monitor robust plans for quality improvement.

4.2 EYQISP guidance and tools enable a consistent process across all local authorities, and give local authorities the opportunity to factor in all available evidence about quality in a setting. EYQISP guidance **should** be used by local authorities as an analytical tool for the assessment of all local

evidence about a setting. Local authorities can adapt or build additional steps into the process outlined in the EYQISP guidance, as appropriate, to meet local need.

4.3 Local authorities **should**, through the EYQISP assessment process outlined above, identify which settings are categorised 'good' or above (or equivalent) and make funding eligibility decisions according to sections 4.6 - 4.13 of this Code.

4.4 Local authorities may continue to use their own quality improvement, assurance and support schemes and principles, but should not use *only* these as a basis for identifying the highest quality providers in relation to free entitlement funding.

4.5 Local authorities should continue to invest in improving the quality of *all* provision, across the age range, in accordance with local need and using the ringfenced Early Years Outcomes, Quality & Inclusion Grant. Local authorities should ensure they balance securing high quality alongside obligations to deliver sufficiency, access and flexibility, as set out in this Code.

Prioritising and driving high quality through the free entitlement

4.6 Settings' quality ratings should be assessed wherever possible through EYQISP, taking in to account the full local evidence base on quality. Evidence will include the setting's Ofsted rating and may also include any local quality improvement or assurance programme, in particular other widely-used schemes such as the Early Childhood Environment Ratings Scale (ECERS) tool, the Infant/Toddler Environment Ratings Scale (ITERS) or the National Quality Improvement (NQIN) principles. The local authority **should** make the final decision on which settings are funded based on all sources of evidence, using the EYQISP process of moderation and judgement.

4.7 Where there is a *surplus* of free entitlement provision, which is flexible, accessible, and meets parental demand, local authorities **should** concentrate free entitlement funding on the highest quality providers according to EYQISP assessments, i.e. those categorised 'outstanding' or 'good' (or equivalent), prioritising those with the highest ratings first.

4.8 In the context of their wider sufficiency duty, where there is a *deficit* of providers rated 'good' or above, or where the local authority has concerns about sufficiency, flexibility or accessibility, settings which are below this rating may be funded. Local authorities **should** also consider parental demand for settings which are not categorised as 'good' or above, or whether that setting is serving a particular need.

4.9 Local authorities **should** particularly take into account the need to ensure that there are sufficient, flexible places in areas of high disadvantage and whether those places are easily accessible without resulting in, for example, long journeys or additional costs to families.

4.10 Local authorities should ensure that settings categorised as below 'good' quality, which will still deliver the free entitlement, **are** supported as a priority by the local authority's Early Years Consultants to reach a quality standard of 'good' or above within a defined timescale, which should not exceed 18 months. Every provider qualifying for the free entitlement should meet the minimum standards of the Early Years Foundation Stage (EYFS).

4.11 Local authorities **should** also commit support to continuous quality improvement for providers classified 'good' or above, which may still have improvement needs.

4.12 No local authority **should** cite quality assessments as a basis for preventing any new providers compliant with EYFS standards from entering the free entitlement market. Local authorities should use the EYQISP wherever possible, as outlined above, to develop a clear picture of new settings' quality. Therefore, though settings may enter the market as 'satisfactory', the local authority should support the setting to achieve a level of 'good' or above in order to remain a prioritised free entitlement provider, as outlined in this Code.

4.13 Local authorities **should** also consider the quality improvement support they might wish to offer to providers not currently offering the free entitlement, but who may wish to do so, for example, in order for the local authority to meet parental demand, increase local flexibility, or offer more accessible provision in disadvantaged areas.

Provider Agreements to support quality improvement

4.14 Local authorities **should** set out clearly in their Provider Agreements the process for funding settings according to quality, as outlined above, and also include in the Agreements, where appropriate, individual settings' EYQISP categorisations, ensuring in these cases that agreements include opportunity for reviewing categories as appropriate.

4.15 Local authorities **should** also set out in Provider Agreements, where appropriate, the support they have committed to providing, including that of the local authority's Early Years Consultants, in order to improve a setting's quality, and the funding that is available for them to do so, in order that the setting can continue to deliver the free entitlement. The agreement should also set out the timescale within which improvement must be demonstrated, usually a maximum of 18 months.

4.16 Local authorities **should** make clear in Provider Agreements their policy on withdrawal of funding from providers who are not demonstrating the agreed commitment to working towards quality improvement in order to continue to deliver the free entitlement

Delivery of the free entitlement through childminders

4.17 All local authorities **should** establish a childminder quality improvement network or equivalent approaches that allow childminders to access free entitlement and other funding, to enhance their professional development and their provision and to strengthen their links with other settings and children's services. Local authorities may choose an approach which best meets local needs^[1], but should ensure that the following characteristics are included:

- A suitably qualified co-ordinator with sufficient dedicated hours to manage and develop the network and recruit, support and monitor members.
- Opportunities and access to funding for appropriate CPD training and peer support for members and the network coordinator.
- Access to a graduate leader, via the network coordinator or other comparable local arrangements.
- Integrated and partnership working with other local providers.
- Assessment and verification arrangements to ensure quality is achieved, is continuous and sustainable. This would feed into the continued professional development plans of local childminders.

Local authorities **should** also consider how a childminder network might be used to improve the flexibility and responsiveness of childcare provision to meet the needs of local parents, improve parental choice and improve links with family support services. Examples of instances where this might be particularly helpful include: caring for the children of teenage parents to enable them to return to school or training; short breaks and family support to families in need (e.g. those with complex family needs or during times of crisis); community childminding for families in need (including flexible placement lengths, wraparound care, unusual hours and specialist services for disabled children and their families).

4.18 Local authorities **should** only deliver the free entitlement through childminders where the childminder:

- 1) Is part of a network that includes the characteristics listed in 4.17. Where such network arrangements do not currently exist, the local authority should take prompt action to ensure that childminders in their area are not at a disadvantage compared to those in other areas.
- 2) Is qualified to minimum level 3, or working towards this.
- 3) Has received a good or outstanding Ofsted rating and/or has subsequently been categorised good or above through the EYQISP process outlined at 4.6 - 4.11.

In the *Next Steps for Early Learning and Childcare* document (DCSF, January 2009), the Government said that it will work with partners to ensure that everyone working in early years provision has a full and relevant qualification of at least level 3, and that we would consider making this a legal requirement from 2015. Local authorities are expected to support all childminders so they achieve level 3 by 2015 in order that they are able to deliver the free entitlement.

Funding providers/children with exemptions from EYFS

4.19 All early years providers which are required to register with Ofsted, and schools which are exempt from registration, are required by the Childcare Act 2006 to deliver the Early Years Foundation Stage (EYFS). However, there is a process by which early years providers and parents may, in certain circumstances, apply for exemptions/modifications from elements of the EYFS learning and development requirements. This is set out in the Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008. There are provider-level exemptions granted by the Secretary of State, and exemptions in respect of an individual child granted by the provider on application by a parent. A particular learning and development requirement can be disapplied altogether, or can be modified.

4.20 Providers may apply for exemptions/modifications in the following circumstances:

- Where providers are temporarily unable to deliver the full learning and development requirements.
- Where a majority of parents agree with the provider that an exemption should be sought, and the early years provision is governed by established principles relating to learning and development of young children which cannot be reconciled with one or more of the learning and development requirements.

A parent may apply to the provider where they consider that the learning and development requirements cannot be reconciled with their religious or philosophical convictions.

4.21 Local authorities **should** refer to full guidance on exemptions on the Qualifications and Curriculum Development Agency website (www.qcda.gov.uk). In order to comply with their legal duty under section 7 of the Act, local authorities **must** ensure that all eligible children can access the free entitlement through early years providers who are Ofsted registered (or schools providing early years provision which are exempt from registration) and who deliver the full EYFS with no exemptions or modifications. This means that even if a local authority chooses to fund some providers who have been granted exemptions /modification from the EYFS, a parent **must** always

¹ At the time of publication of this Code, the Government was consulting on the text of the model. Local authorities should refer to the final published version. The model has been drawn up to allow LAs the flexibility to accommodate their own delivery arrangements

be offered access to a free place for their child with a provider who has not been granted an exemption. But local authorities may use free entitlement funding to fund places at providers which have been granted an exemption.

4.22 Local authorities retain discretion over whether to agree to provide the free entitlement funding to a provider which has been granted exemptions from the EYFS by the Secretary of State, or to fund a place for an individual child who has been granted exemptions from the EYFS by their provider. The local authority **should not** continue to provide funding in the following circumstances:

- Where exemptions have been granted for all or most of the learning and development requirements; and
- Where there is an exemption from EYFS assessment arrangements for all or most of the early learning goals. However, local authorities will wish to take into consideration that providers may receive exemption from the assessment arrangements only in relation to the early learning goals which have been exempted. These exemptions may be few and therefore in these circumstances the local authority may wish to continue funding the setting.

4.23 For exemptions at *provider level* the local authority has discretion to decide whether or not to provide funding and this should be considered on a case by case basis, taking into account the evidence from the provider, extent of the exemption / modification, how the exemption /modification would impact on the quality and consistency of the experience for the child, overall sufficiency needs and alternatives to using that provider.

4.24 For *individual child level* exemptions local authorities **should** work with providers to ensure that a provider which is considering a request from a parent for exemption from one or more of the EYFS Learning and Development requirements makes clear to the parent the implications of the exemption including the fact that their child may not be eligible to receive their free entitlement. As with exemptions at provider level, the local authority has discretion whether to fund the child's place, and should take into account the nature and extent of the proposed exemption /modification and the impact on the child or family of withdrawing the free entitlement, particularly where the family may be disadvantaged. Local authorities should use criteria consistent with those used to determine whether to fund exemptions at provider level when deciding whether or not it will provide funding for that child for the free entitlement.

4.25 In all cases, the local authority **should** include in their Provider Agreements the circumstances under which the local authority will fund the provider if they have been granted an exemption /modification. They **should** also ensure providers are aware that they should inform the local authority when the provider has granted exemptions /modification for children attending their setting.

Incentivising and supporting quality through the Single Funding Formula

4.26 All local authorities **must** implement their Early Years Single Funding Formula (EYSFF) from April 2011. Local authorities **should** use the EYSFF to support and promote quality and foster a culture of continuous quality improvement. Local authorities should consider how the EYSFF can support their local quality improvement needs, or incentivise good quality, and should refer to the Practice Guidance on Implementing the EYSFF (DCSF, July 2009).

Chapter 5: Funding the Free Entitlement

Vision

Free entitlement funding should be provided on a fair and transparent basis to providers in order to support sustainability and promote good practice, especially in relation to quality and flexibility. Funding should follow the child, rather than support empty places. All families with 3 or 4 year old children should be offered their free entitlement place with no charges or conditions of access.

To fund the free entitlement:

Local authorities **are required** in legislation :

- To secure **free** early years provision for all eligible three and four year olds in their area.
- To fund early years provision in all sectors using a locally-determined, transparent formula – the Early Years Single Funding Formula (EYSFF) – from April 2011 onwards, or from April 2010 if part of the pathfinder scheme.

Local authorities **should**:

- Support sustainability and promote good practice by funding providers on a fair and consistent basis.
- Fund children who access the free entitlement across more than one provider on a pro-rata basis, making clear to parents that they cannot choose which provider receives the funding.
- Ensure that eligible children are provided with the free entitlement as soon as they start at a provider, including when changing provider late in the term.
- Support providers to set out clearly in billing, which of the hours attended have been provided free, and that this is not represented as a monetary discount or grant.
- Ensure providers are not penalised through short term absences of children through withdrawing funding but use their discretion where absence is recurring or for extended periods.

How the Government funds local authorities

5.1 Funding for all sectors delivering the free entitlement is provided through the ring-fenced Dedicated Schools Grant (DSG), which supports the majority of education provision for children aged 3-16. The DSG is based on a guaranteed unit of funding for each local authority, multiplied by the pupil numbers in the January census counts for each authority. There is no specific

ring-fence for early years provision within the DSG.

5.2 The Department consulted between March and May 2010 on how the DSG will be allocated after 2011. Local authorities **should** ensure they are up-to-date with guidance which follows this review. However, the basic principle of a guaranteed per pupil unit of funding for each authority, with no differentiation for type of setting, will remain unchanged. It is proposed that the formula used to calculate the unit of funding should take into account a basic entitlement, additional educational needs, high cost pupils, sparsity and an area cost adjustment. There would be separate phase related blocks, including one for early years, but these would carry no implication that local authorities should have similar allocation patterns.

5.3 In order to support forward planning at a strategic and provider level, local authorities **should**, where possible, adopt an approach to the allocation of funding similar to the multi-year DSG cycle. Forward-planning is further supported by adjustments to final allocations according to the latest Early Years Census and Pupil Level Annual Schools Census (PLASC).

How local authorities fund providers

5.4 Local authorities must identify an Early Years budget locally from within the DSG on a multi-year basis.

5.5 Local authorities **should** make clear to providers that funding is for free early years provision for eligible 3&4 year olds only, in line with delivery of the EYFS learning and development and welfare requirements (including minimum ratio requirements), and is not intended to cover costs of additional services the provider may wish to offer, nor subsidise provision for younger children accessing the setting.

From April 2011 – the Early Years Single Funding Formula

5.6 From April 2011, all local authorities **must** fund providers from all sectors on the basis of single, transparent, locally defined, participation-led funding formulae – the Early Years Single Funding Formula (EYSFF).

5.7 Formulae **must** be composed of either a single base rate or multiple base rates differentiated by type of provider according to unavoidable cost differences, plus supplements. Local authorities **must** include a deprivation supplement and **should** also consider building in supplements which incentivise flexibility and quality.

5.8 From April 2011, local authorities **must** count pupils attending provision, at least on a termly basis, in order to support participation-led funding. Local authorities must also adjust budgets to reflect fluctuations in participation within the financial year, across all sectors.

5.9 In addition, local authorities **must** provide all providers with an

indicative budget at the beginning of the financial year which broadly reflects anticipated participation. For further guidance on participation-led funding, please refer to *Implementing the Single Funding Formula: Practice Guidance* (DCSF, July 2009).

5.10 Local authorities **should** note the presumption against closure of maintained nursery provision as set out in statutory guidance (*Closing a Maintained Mainstream School* - Education and Inspections Act 2006).

Pre-April 2011: moving towards full implementation of the Early Years Single Funding Formula

Pathfinder local authorities:

5.11 Local authorities who have been invited to join the pathfinder scheme **must** follow the guidance under sections **5.6-5.10** from April 2010. Pathfinders **should** also review learning and resources materials throughout the year in order to learn from each others' experiences.

Non-pathfinder local authorities:

5.12 Delivery of the 15 hours, flexible entitlement, as set out in this Code, commences in September 2010. Non-pathfinder authorities **should** use 2010-11 as a transitional year and an opportunity to consult further with stakeholders and work with their Government Office and the Department to prepare for implementation in April 2011. Local authorities **should** use learning resources shared by the pathfinders to support their work towards implementation in 2011.

The private, voluntary and independent sectors:

5.13 Non-pathfinder local authorities continue to be responsible for deciding how to fund private, voluntary and independent settings. When allocating funding, local authorities **should** take into account provider sustainability and how the provider is contributing to the local flexible offer. All funding decisions **should** be fair, open, transparent and consistent.

The maintained sector:

5.14 Local authorities **should** move towards a participation-led funding model in the maintained sector unless there are specific cases relating to the viability of school provision.

5.15 Provided that all proposed changes affect schools covering fewer than 50% of pupils, local authorities can also amend or remove the Minimum Funding Guarantee, subject to Schools' Forum approval.

What the free entitlement means to families

Free at the point of delivery

5.16 As set out in chapter 1, local authorities **must** ensure that free provision is available for all eligible children and therefore **must** ensure no fees or conditions of access are levied against parents accessing their entitlement. Local authorities **should** ensure that parents who choose to purchase additional hours can be clear from their bills what the charges are in relation to and can easily identify their free provision.

5.17 Local authorities **should** make clear to parents that they may not always get their preferred pattern of free entitlement provision at their provider of choice, although parental preferences are, of course, one of the factors that local authorities should take into account in planning their local offer of flexibility.

The practicalities of funding the free entitlement

Take-up of the free entitlement across 2 providers or 2 LAs

5.18 Local authorities **should** fund each provider (across all sectors) on a pro-rata basis according to the amount of free provision taken up at each provider. If a child attends two providers and receives in total more than the minimum free entitlement, the local authority **should** apportion the amount of funding payable in respect of that child, based on the number of free hours accessed at each provision. Local authorities **should** make clear that a parent does not have a right to choose which provider is funded through the free entitlement.

5.19 If a child accesses free provision at 2 providers in different local authorities the local authorities **should** agree between themselves who will receive the funding. In cases where this cannot be resolved between the 2 local authorities in question the Department will allocate the funding to the local authority in which the child is resident based on the child's post code. Where a child splits their 15 hours of free provision between 2 providers in the same local authority, the local authority **should** ensure that each provider records the number of funded hours on the Early Years Census / PLASC.

Staggered intakes

5.20 Where providers operate a policy of staggered intakes, or settling-in periods, to the free entitlement, local authorities **should** work with providers to ensure consistency across these intake periods and, wherever possible, set a local maximum period for inducting a child into a setting.

Early entry into reception class

5.21 Whilst compulsory school age does not start until the beginning of the

term after a child turns five, many local authorities offer children the opportunity of starting reception class in the maintained sector earlier in that academic year. From 2011 children will be entitled to enter reception in the September after their fourth birthday. Children of 'free entitlement' age who have already been admitted to primary school and are attending reception class are not, for funding purposes, considered to be accessing the free entitlement and therefore **should** be funded separately through schools funding.

Children who move or start late in the term

5.22 Local authorities **should** ensure that, from parents' perspective, eligible children are provided with the free entitlement as soon as they start at a provider, including if they change provider late in the term – unless this breaks the terms of the parental declaration (see 6.15). Local authorities **should** ensure that parents are not expected to pay for any part of their free entitlement if the child starts after the headcount date and **should** ensure that providers are funded accordingly to enable this.

Reclaiming funding for absent children

5.23 Local authorities **should not** penalise providers if a child is booked to attend the setting but is unexpectedly absent for a single session or short period. However, local authorities **should** use their discretion where absence is recurring or for extended periods and should set out their policy on this in their Provider Agreements (see 6.11). Before seeking to reclaim funding, local authorities may wish to consider factors such as whether there is a parental declaration in place (see 6.15), whether the setting could fill the place or use it more flexibly as an alternative, and whether the absence will impact on staffing.

Funding children with special educational needs

5.24 Where children with SEN, on the advice of the local authority and provider, access their free entitlement for fewer than their full 15 hours, local authorities may want to consider whether to fully fund that place, enabling the 'surplus' funding to be used to better support the child, for example to increase staff ratios. Before making this decision, local authorities **should** consider: the impact on the child and setting of not doing so; the views of parents, whether there are alternative funding streams available specifically to support SEN children and whether any additional funding they provide is sustainable. This **should not** apply to children with SEN whose parents have chosen to access fewer hours.

Withdrawal of funding from providers

5.25 Under Section 9 of the Childcare Act 2006, local authorities are given the power to place conditions of funding on providers of childcare (other than the governing body of a maintained school). Local authorities **should** consider carefully any conditions which would result in a particular provider or

group of providers who would otherwise be eligible to receive funding being excluded. Any conditions **should** be negotiated and agreed formally with the provider, be proportionate and take account of any administrative burdens such conditions would place on providers.

5.26 If a provider fails to meet the conditions set by the local authority, the local authority may require the repayment of the whole or part of the funding they have paid in respect of free places. Providers do not have to meet any such conditions for any period during which they are not claiming funding or in respect of any children for whom they are not claiming funding or in respect of any provision offered for which they are not claiming funding. However, they are still required to meet other requirements in legislation under the Childcare Act 2006, for example to deliver EYFS.

5.27 Local authorities **should** put in place Provider Agreements (see 6.11) with *all* providers delivering the free entitlement. As a last resort, local authorities **should** consider whether to withdraw funding from providers who do not uphold the agreement. However where there is demand for a setting or its places are needed to uphold sufficiency, support **should** be offered to enable providers delivering the free entitlement to meet the conditions of the Agreements and continue to deliver.

Administration

5.28 Local authorities **should** put in place proportionate auditing and accounting procedures to ensure that funding paid in respect of free places is administered appropriately. This should include requiring providers to make copies of their accounts relating to the free entitlement available to the local authority on request and keeping a record of attendance of all children for whom they provide funded places. Local authorities **should** set out their policy on audit and accounting arrangements in their provider agreements.

Charges for meals

5.29 Providers can make a reasonable charge for meals provided to children during the day. However, as local authorities are legally required to secure **free** provision, they **must** work with providers to ensure that they do not place any conditions of access on the entitlement including payment for meals. For some parents, charges for meals may present a significant barrier, which in practice denies children access to the free entitlement. Local authorities **should** work with providers to ensure that, where children are accessing the free entitlement over the lunch period, any charge that a provider makes for lunch has been agreed with parents in advance, and that parents are given the option of providing a packed lunch if this would be more affordable.

Local authorities are required to provide Free School Meals for children who are registered pupils of a maintained school, who attend free provision both before and after lunch and whose parents are in receipt of specified benefits. See Annex for full details of the eligibility criteria.

5.30 Local Authorities **should** use their discretion about whether to provide funding to the setting for lunches for children accessing their free entitlement over the lunch period in PVI settings whose parents would find the cost of providing a lunch an unacceptable financial barrier to their child accessing the free entitlement. Local authorities are not required to make this funding available.

5.31 Where children are provided with meals, snacks and drinks during their free entitlement hours, local authorities **should** support providers to ensure they are healthy, balanced and nutritious.

Chapter 6: Delivery in Partnership

Vision

To ensure the mixed market for childcare continues to thrive, and to meet the diverse needs of children and families, it is important to embed strong partnership working between government, local authorities, providers and parents. Embedding a partnership approach, which balances parental demand with provider capacity, and is underpinned with transparent processes, is fundamental for delivery of a flexible free entitlement.

To secure delivery:

*Local authorities **are required** in legislation to*

- Assess the local childcare market
- Provide information, advice and assistance to parents and prospective parents about childcare and other child-related services and facilities
- To provide information, advice and training to childcare providers

Local authorities should:

- Ensure a fair and level playing field in delivery of the free entitlement, based on their local market
- Build strong partnerships with and between providers.
- Regularly engage with parents and providers to ensure delivery is reflective of parental demand and provider capacity
- Ensure settings are aware of their responsibilities in promoting equality in the free entitlement for children with disabilities and special educational needs
- Consider the needs of disadvantaged and hard-to-reach groups and work with providers to reflect the diversity of communities in provision of the entitlement
- Use Provider Agreements to embed commitments on flexibility, quality and working together
- Encourage providers to use Parental Declarations with parents, which will build stability into the flexible offer for parents and providers

Securing Sufficiency and market management

6.1 The Childcare Act 2006 requires local authorities to assess the sufficiency of childcare in their areas and to secure sufficient provision for working families. It also states that the assessment process must be repeated at least every 3 years, and local authorities should keep their assessments under review in the meantime. The next round of assessments, and

accompanying action plans, are due to be completed by April 2011. DCSF guidance on securing sufficiency, published in 2007, set an expectation that local authorities should facilitate, manage and support their local childcare markets to secure continuous improvement in how they meet parental needs and use resources. The Government aims to strengthen the link between the sufficiency duty and local authorities' responsibility to manage actively their local childcare market (including the free entitlement) in the forthcoming sufficiency assessment and action planning guidance. This will support local authorities deliver accessible, affordable and high quality provision for parents, sustainability for providers and an efficient use of the resources available to them.

Fair and level playing field

6.2 Local authorities can deliver the free entitlement through a range of providers, including nursery schools and classes, private and voluntary sector providers, independent schools and networked childminders, depending on their local market. Local authorities **should** ensure their free entitlement market reflects parental choice, local demand for flexibility and is of consistently high quality.

6.3 Where a provider is open for fewer weeks of the year, or fewer hours per week, than the minimum entitlement (15 hours per week over 38 weeks), this does not prevent them from delivering the free entitlement, assuming they meet other eligibility criteria. Local authorities **should** fund these providers only for the weeks or hours they can deliver, and should ensure parents who choose these settings are aware they will receive less than their full entitlement. The local authority does not have an obligation to fulfil the rest of the entitlement quota at another provider, where parents have chosen providers offering less than the minimum entitlement, though local authorities may use their discretion to fund additional hours. Local authorities **should not** fund providers offering less than the minimum entitlement without good reason (see 2.13).

Partnership delivery of the free entitlement

6.4 Securing the best possible outcomes for children means delivering an entitlement which is high quality, flexible and accessible, and gives parents choices about what is best for their children. This requires a strong partnership approach between local authorities and providers in all sectors, to enable them to assess and meet demand according to their local circumstances and market.

6.5 Local authorities **should** work towards securing strong local partnerships in delivery of the free entitlement. Local authorities should ensure that the partnership is based on negotiation and mutual agreement between local authorities and providers in all sectors. To maximise the effectiveness of the free entitlement and ensure that parental demand and provider capacity are fully considered in shaping the local offer, local

authorities **should** support partnerships on 4 levels, between:

- 1) Local authorities and providers
- 2) Providers and parents
- 3) Local authorities and parents
- 4) Providers working with other providers

6.6 Local authorities **should** adopt an inclusive approach which will ensure that key principles around flexibility, quality and accessibility are embedded in their local provision. Local authorities should also ensure that partners are aware of their responsibilities in delivering the flexible free entitlement.

1) Partnerships between local authorities and providers

Directory of Providers

6.7 Local authorities **should** maintain and keep up-to-date a local Directory of Providers in receipt of funding to deliver the free early education entitlement. Providers should not receive free entitlement funding for any period when they are not included on the Directory. Local authorities should make available to providers information about how to join the Directory (including any conditions that they must meet).

Local authorities **should** ensure that providers inform Ofsted and the local authority whenever there is a material change in their particulars, for example a change of ownership or premises. Where a provider's details change substantially, local authorities should use their judgment to determine whether the changes effectively amount to a new provider. If a change in provider details mean that the provider can no longer deliver the free entitlement the provider should be removed from the Directory.

LAs **should** ensure that providers are aware of the process for withdrawing from delivering the free entitlement and should ensure that if a provider chooses to withdraw they inform individual parents by letter giving at least a term's / 3 months notice to enable parents to make alternative arrangements. If a provider later wishes to be re-admitted to the Directory the local authority should consider the original reasons for withdrawal and be mindful of the impact on children and parents of further change. Local authorities may want to consider whether re-admission should be based on quality, flexibility and sustainability.

6.8 Local authorities **should** not refuse entry to the Directory solely on the grounds that there are already sufficient providers delivering the free entitlement. There is nothing to stop a new provider setting up and receiving funding to deliver the free entitlement for 3 and 4 year olds providing that they can meet the standards and eligibility requirements set out in this Code and meet any funding conditions which the local authority may apply so long as the conditions do not discriminate against a particular provider or group of

providers. It is up to local authorities to decide how they allocate funding to providers for start-up, sustainability etc. Although local authorities cannot stop businesses entering the market, they can choose not to fund or support those they believe are unlikely to be sustainable without on-going financial support.

6.9 Section 13 of the Childcare Act 2006 **requires** local authorities to provide information, advice and training to childcare providers or those intending to provide childcare (including those providers who are / will deliver the free entitlement). The local authority can impose such charges as they consider reasonable for the provision of information, advice and training, based on providers' circumstances and the need to secure sufficient childcare.

6.10 Local Authorities **should** have procedures for dealing with appeals from any providers rejected for inclusion in or facing removal from the Directory. Such appeals **should** normally be heard before removal from the Directory unless circumstances require immediate removal from the Directory, for example due to welfare concerns. The appeals procedure should satisfy public law requirements. In the event that a provider is not satisfied with their treatment under this appeals procedure they may make a complaint to the Local Authority Ombudsman, after the local appeals process has been exhausted.

Provider Agreements

6.11 As part of the eligibility process for inclusion in the Directory of Providers, local authorities **should** establish Provider Agreements with providers in all sectors which are in line with the quality standards and principles outlined in this Code. Agreements with providers other than the governing body of a maintained school are sometimes referred to as Delegated Conditions and with the maintained sector it is expected that Provider Agreements might form part of discussions between local authorities and schools around their service level agreements.

6.12 Local authorities should consult with providers in different parts of the sector, before drawing up Agreements, and consider the best ways of doing so – for example, large local authorities or those with high rurality might use a web-based consultation, or discussions with representatives of the sector. Local authorities **should** then ensure that the Agreements set out:

- 1) The conditions under which the provider will deliver the free entitlement, which should include
 - That it will be entirely free at the point of delivery
 - The flexibility that the provider has committed to as part of the local, flexible offer
 - The quality status and improvement needs of the provider
 - How the setting will work with disadvantaged families and children with SEN and /or a disability.
- 2) The commitments the local authority has made to supporting the setting, which should include:

- How and when the provider will receive funding
 - How quality improvement will be supported
 - How the local authority will work with the setting to increase flexibility
 - How the local authority will work with the setting to target disadvantaged families and children with SEN and /or a disability.
- 3) How the local authority and the provider will work together in partnership, for example, how regularly they will meet, when Agreements will be reviewed etc.
 - 4) How local authorities will work with providers to gather and share information about parental demand, which will contribute to local authority sufficiency assessments and development of a local, flexible offer.
 - 5) The circumstances in which funding for the free entitlement may be withdrawn, if providers fail to meet the terms of Agreement or do not demonstrate commitment to any processes put in place by the local authority to support the provider to continue to receive funding.

6.13 Where a local authority makes arrangements with a provider (other than the governing body of a maintained school) to provide childcare, section 9 of the Childcare Act 2006 requires the local authority to secure that the provider meets any requirements imposed, and these may include a requirement to repay the funding if any specified conditions are not satisfied by the provider. Local authorities **should** consider carefully any conditions which would result in a particular provider or group of providers who would otherwise be eligible to receive funding being excluded. Any conditions should be negotiated and agreed formally with the provider, be proportionate and take account of any administrative burdens such conditions would place on providers. In relation to maintained schools, where terms of the Agreements are not being met, local authorities **should** engage in discussions with school improvement partners, where appropriate taking into account service level agreements.

Children leaving a setting

6.14 Local authorities **should** promote with all providers the use of an electronic form for providers to notify the authority that a child accessing free early years provision has left the setting. Local authorities may design their own notification form or refer to the example available online in the Free Entitlement Support Pack, at:

<http://www.dcsf.gov.uk/everychildmatters/earlyyears/localauthorities/lapractice/entitlement/flexibleresources/flexibleresources/>

Local authorities **should** provide an email address for return of these forms.

2) Local authority support for partnership between providers and parents

Parental Declarations

6.15 Parents can access as little or as much of the free entitlement as they choose. Local authorities **should** work to ensure this does not impact on the manageability of the entitlement for a provider. Local authorities **should** support providers to establish Parental Declarations with parents, which set out the hours and patterns of access to the free entitlement that the parent and provider have agreed to, usually on a termly / 3 monthly basis.

6.16 Local authorities **should** work with providers to agree the conditions under which parental declarations can be amended or broken; for example:

- If the family leaves the area
- If the family's circumstances change, i.e. a new job / unemployment.
- Child with long term sickness
- To accommodate changing shift patterns
- Provision not appropriate to the child's needs

3) Local authorities consulting with and involving parents

Parental choice

6.17 Local authorities **have a statutory duty**, under section 12 of the Childcare Act 2006, to provide information, advice and guidance to parents to enable them to make informed choices about the providers that best meet their needs and those of their child.

6.18 Local authorities **should** work with providers to deliver the free entitlement in a way which gives parents choice about how and where they access it. Local authorities should deliver the entitlement through a diverse range of providers according to their local market, offering different patterns of flexibility in response to changing demand and local authorities should publish their Local Offer of flexibility (see 3.8). Free places should be of high quality and easily accessible

6.19 Parents may *choose* to access their free entitlement at a provider which offers less than the minimum entitlement (i.e. an independent provider which is open for fewer than 38 weeks). The local authority **should** make clear to the parent that this means they may not get their full entitlement, but may use their discretion about whether to broker the remainder of the entitlement in partnership with another provider.

6.20 Local authorities **must** have regard to the School Admissions Code of Practice which came into force on 10th February 2010 and applies to all maintained schools. When determining the arrangements for primary schools

that admit children below compulsory school age, the admission authority **must** make it clear that:

- a) the arrangements do not apply to those being admitted for nursery provision including nursery provision delivered in a co-located children's centre;
- b) parents of children who are admitted for nursery provision must apply for a place at the school if they want their child to transfer to the reception class;
- c) attendance at the nursery or co-located children's centre does not guarantee admission to the school; and
- d) parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year;
- e) parents can request that their child attends part-time until the child reaches compulsory school age.

See Annex for full details of admission to school of children below compulsory school age.

Disadvantaged families

6.21 Local authorities **should** ensure that the free entitlement is sufficiently flexible and accessible to meet different families' needs in relation to their entitlement, particularly:

- o Children from low income families
- o Armed Forces' families
- o Children with a disability and /or special need
- o Children from minority ethnic groups including Gypsies /travellers, refugees and asylum seekers
- o Looked after children
- o Children from disadvantaged and socially excluded groups such as families with a parent who is homeless, a teenager, mentally ill, disabled, misusing substances, in prison or experiencing domestic violence.

6.22 Local authorities **should** work with providers to monitor the take up and achievement of different community groups and use this information to target more effectively those who are not taking up their free entitlement.

6.23 To reflect the diversity of some communities, local authorities **should** consider how best to support settings to employ staff that, as much as possible, reflect the communities they serve.

6.24 Where parents want their children to benefit from more than 15 hours of early years provision a week, local authorities **should** provide information through the FIS about sources of financial support to help low income families do so – for example, the childcare element of the working tax credit.

Special Educational Needs and Disability

6.25 Local authorities **should** ensure settings are accessible and welcoming for disabled children. Settings should provide appropriate support to enable disabled children to achieve their full potential in the early years. Capital funding has been made available to local authorities to support settings to make adjustments to the flexibility of their settings to increase access for all children and improve the quality of provision. Local authorities should consult with parents about the needs of their child in accessing their free entitlement.

6.26 Local authorities **must** ensure they meet their duties under equality legislation to promote equality for disabled children and should ensure settings are aware of their responsibilities in promoting equality of opportunity and legal duties to not discriminate against disabled children. Local authorities **should** ensure that providers in receipt of funding for the free entitlement have regard to the SEN Code of Practice (chapter 4 - *Identification, Assessment and Provision in Early Education Settings*) and appoint a setting based SENCO. Currently paragraph 4.15 of the SEN Code sets out the role of a settings based SENCO. There is a range of resources available to support greater inclusion of children with SEN and disabled children at the National Strategies website:

<http://nationalstrategies.standards.dcsf.gov.uk/earlyyears>

and the Every Child Matters website:

<http://www.dcsf.gov.uk/everychildmatters/earlyyears/>

6.27 A benchmarking tool has been developed through the Disabled Children's Access to Childcare programme which is intended to help local authorities assess their provision for children with disabilities. All local authorities are encouraged to use this benchmarking tool as part of their childcare sufficiency assessment. The tool is available at www.togetherfdc.org

Appeals

6.28 Local authorities **should** put in place complaints procedures for parents who are not satisfied that their child has received their free entitlement in the correct way, as outlined in Chapter 2. All complaints procedures should satisfy public law requirements. In the event that a parent is not satisfied with the way in which their complaint has been dealt with or believes the authority has acted unreasonably, they may make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted.

4) Providers working in partnership with each other

6.29 Local authorities **should** support parents to exercise their choice to access the free entitlement through a maximum of 2 providers, which may operate in different sectors. Local authorities should give particular

consideration to how partnership arrangements can serve families who wish to take up their free entitlement at a provider offering fewer than the minimum 38 weeks a year, or 15 hours a week.

6.30 To support partnership arrangements, local authorities **should** facilitate an agreement being put in place between the providers which outlines the responsibilities of both. As well as agreements setting out how information will be shared and the providers will communicate with one another, local authorities **should** support providers working in partnership to agree how to minimise issues such as:

- Curriculum planning, to ensure the child receives the breadth of the EYFS experience. The EYFS guidance states that where children receive education and care in more than one setting, practitioners must ensure continuity and coherence by sharing relevant information with each other and with parents.
- Arrangements for transferring children from one setting to another.
- Pro-rata funding allocations, decisions on which should be made by the local authority and communicated clearly to each provider. Parents should also be made aware that they cannot choose which provider receives the funding.

ANNEX

SUMMARY OF THE KEY PROVISIONS IN THE CHILDCARE ACT 2006 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.
- **Sections 6 & 11** require local authorities to **assess the local childcare market and to secure sufficient childcare.**
- **Section 7** places a duty on local authorities to **secure free early years provision** for eligible 3 and 4 year olds in their area.
- **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 not other provider is able or 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 & 49-98** reform and simplify the **childcare and early years regulation framework.**
- **Section 99** allow for the **collection of information about young children**

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

- From 1st September 2008, s7 of the Childcare Act 2006 placed a **legal duty** on local authorities in England to **secure free early years provision** for eligible 3 and 4 year olds (and 5 year olds who are not yet of compulsory school age) in their area.

Under s7(2) of the Childcare Act local authorities **must** have regard to **statutory guidance** issued by the Secretary of State when fulfilling their duty under s7. Statutory Guidance has been produced in the form of *The Code of Practice on the delivery of free early provision for 3 and 4 year olds* (published by the Department for Children Schools and Families in March 2010) which comes into force on 1st September 2010

Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 (S.I. 2008/1724) made under s7 (1) of the Childcare Act 2006 prescribe the **type** and **amount** of free provision and the **age of children to benefit** from free provision. These Regulations came into force on 1st September 2008.

Type of free provision

- Local authorities **must** ensure that the prescribed amount of free early years provision is available for each eligible child in their area from providers who are under a duty to deliver the Early Years Foundation Stage (the EYFS - established under s.39 of the Childcare Act). That is: Providers who are either a) registered on the Ofsted Early Years Register (under s.40 of the Childcare Act) or b) schools which are exempt from registration on the Ofsted Early Years Register (under section 34(2) of the Childcare Act) that is, certain maintained schools, approved non-maintained special schools or independent schools; **and not from** providers that are exempted from delivering the EYFS learning and development requirements under s.46(1) or (2) of the Childcare Act.
- The regulations **do not legally require** local authorities to fund providers who have an exemption from the EYFS or to fund provision for a child who has been exempted from the EYFS. Local authorities have discretion whether to fund such provision and the amount of such provision that they wish to fund.
- (The process by which early years providers and parents may, in certain circumstances, apply for exemptions/modifications from elements of the EYFS learning and development requirements is set out in the *Early Years Foundation Stage (Exemptions from Learning and Development Requirements) Regulations 2008* (SI 2008/1743).

Age of children to benefit from free provision

- Children become eligible for the free entitlement from the beginning of the next school term 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
 - Children born in the period 1st April to 31st August: 1st September following the child's third birthday
 - Children born in the period 1st September to 31st December: 1st January following the child's third birthday
- These dates are consistent with those used for determining the commencement of compulsory education and ensure that every child is able to access two years of free provision before reaching compulsory school age. Once a child reaches compulsory school age, the local authority is no longer **required** to fund free provision for the child.
- Although they are not **required** to do so, local authorities are not prevented from making available free provision to a child before the child becomes eligible (i.e. before the start of the next school term after the child's third birthday).

Amount of free provision

- The regulations require local authorities to make free provision available for 570 hours a year over no fewer than 38 weeks of the year, which equates to 15 hours in respect of each of those weeks.
- Local authorities can choose to fund additional free provision over and above the minimum free entitlement and this discretion is not affected by the regulations.

[Increase to amount of free provision:](#)

The Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2010 (S.I. 2009/ 301) amend the “Principal Regulations” to **increase the amount** of free provision each eligible child is entitled to and came into force on 1st September 2010.

- Local authorities **must** secure availability of at least 570 hours of free provision (this works out at 15 hours per week if spread over 38 weeks) for all eligible children in their area over **at least** 38 weeks, in each 12 month period from the date a child becomes eligible until the child reaches compulsory school age.
- Local authorities **must not** condense the free entitlement into less than 38 weeks. However, local authorities are not prevented from “stretching” the provision offering fewer hours over more than 38 weeks when parents want that and the local authority has the capacity to deliver the entitlement in this way.
- Under the current legislation parents do not have the right to demand a particular pattern of provision.

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 5th 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

- Local authorities must have regard to relevant legislation on equality.

SCHOOL ADMISSIONS CODE OF PRACTICE

Local authorities **must** have regard to the following sections of the School Admissions Code of Practice which came into force on 10th February 2010 and applies to all maintained schools.

Admission of children below compulsory school age

For admission to the 2011-12 school year, and subsequent years, admission authorities for primary schools **must** provide for the admission of all children in the September following their fourth birthday. When determining the arrangements for primary schools that admit children below compulsory school age, the admission authority **must** make it clear that:

- f) the arrangements do not apply to those being admitted for nursery provision including nursery provision delivered in a co-located children’s centre;
- g) parents of children who are admitted for nursery provision **must** apply for a place at the school if they want their child to transfer to the reception class;

- h) attendance at the nursery or co-located children's centre does not guarantee admission to the school; and
- i) parents can request that the date their child is admitted to the school is deferred until later in the school year or until the child reaches compulsory school age in that school year;
- j) parents can request that their child attends part-time until the child reaches compulsory school age.

Primary schools with attached nursery class

Where schools have a nursery class attached, separate admission arrangements **must** be published for entry to the nursery. The provisions of this Code do not apply to nursery classes. Published admission arrangements **must** make clear to parents that their child's attendance at the nursery class does not guarantee admission to the school for primary education, and that a separate application **must** be made for transfer from nursery to primary school (as it **must** for transfers from infant to junior schools).

Admission authorities that propose to give priority to children who attend the nursery or the co-located children's centre for nursery provision **should** ensure that families that live nearer the school, those who choose to take up other nursery options or the free entitlement at an alternative local provider, or those who have recently moved to the area, are not unfairly disadvantaged compared to other families.

Admission authorities **should** take into account the totality of provision for three and four year olds in their relevant area when making changes to arrangements for admission to full time education. Three year old children **should not** normally be admitted to reception classes, except where, in exceptional circumstances and as part of development of a local authority supported Foundation Stage Unit or Sure Start Children's Centre on site, there may be good reason to combine nursery and reception classes. If a school wishes to alter its age range to admit a younger age group, it will need to publish statutory proposals.

Deferred entry to primary schools

Admission authorities **must** allow parents of children who are offered a place at the school before they are of compulsory school age to defer their child's entry until later in the school year. Where entry is deferred, admission authorities **must** hold the place for that child and not offer it to another child. The parent would not however be able to defer entry beyond the beginning of the term after the child's fifth birthday, nor beyond the academic year for which the original application was accepted. This **must** be made clear in the admission arrangements for the school.

FREE SCHOOL MEALS

The legislation on free school meals (FSM) only applies to the maintained sector. In order to qualify for FSM a child must

- be a registered pupil of a maintained school
- receiving provision before and after the lunch break and
- From 6 April 2009, their parents must be in receipt of one of the following:
 - Income Support
 - Income-based Jobseekers Allowance
 - an income-related employment and support allowance

- support under Part VI of the Immigration and Asylum Act 1999
- Child Tax Credit (provided they are not entitled to Working Tax Credit) and have an annual income that does not exceed £16,040 (as assessed by Her Majesty's Revenue and Customs). *Note: from 1 May 2009 where a parent is entitled to Working Tax Credit during the four-week period immediately after their employment ceases, or after they start to work less than 16 hours per week, their children are entitled to free school lunches.*
- the Guarantee element of State Pension Credit

Children who receive a qualifying benefit in their own right are also eligible to receive free school meals.

CHANGES TO MAINTAINED PROVISION

Guidance on changes to maintained provision, for example adding or removing a nursery or lowering the age range of the school can be found at <http://www.dcsf.gov.uk/schoolorg/guidance.cfm?id=6>

PUPIL LEVEL ANNUAL SCHOOL CENSUS / EARLY YEARS CENSUS

- Guidance on the Pupil Level Annual School Census (PLASC) and the Early Years Census can be found at <http://www.teachernet.gov.uk/>