



Department  
for Education

# **Equality assessment**

**Consultation: An Early Years National  
Funding Formula and changes to the  
way the three-and four-year old  
entitlements to childcare are funded**

**August 2016**

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# The Public Sector Equality Duty

1. The Equality Act 2010 identifies the following as protected characteristics for the public sector equality duty:
  - Age
  - Disability
  - Gender Reassignment
  - Pregnancy and Maternity
  - Race (including ethnicity)
  - Religion or belief
  - Sex
  - Sexual orientation
  
2. Under Section 149 of the Equality Act 2010, the Secretary of State is under a duty to have due regard to the need to:
  - a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
  - b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
    - take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
    - encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.
  - c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it, in particular the need to:
    - tackle prejudice, and
    - promote understanding.

## What we are proposing in this consultation package

3. This Government is committed to giving children from all backgrounds the best start in life. We are expanding our free childcare programme and we will be investing over £1 billion more per year in childcare by 2019-20. The Manifesto commitment to expand the free entitlement, from 15 to 30 hours a week for working parents, will reduce the cost of childcare for working families and break down the barriers to work so that parents who want to return to work, or work more hours, can do so.
4. To deliver the extended entitlement, and ensure that all children can continue to benefit from high quality early learning, we need to get the funding right. We have committed to increasing the average hourly rate paid to providers for delivering the entitlements; £300 million per year is included in the £1 billion extra annual funding for a significant uplift to funding rates.
5. But more funding, even if it is at record levels, is only part of the answer. This consultation turns to *how* that funding will be distributed. We must ensure that funding is allocated transparently across the country, in a way that channels funding to local areas with the children of the greatest needs and providers with the greatest costs. Once local authorities have received this funding, we must ensure that the great majority of it then reaches providers and that it is allocated between providers on a fair basis so they have a sustainable footing on which to meet the requirements of parents in their community and the needs of children in their care.
6. The current system does not do this very effectively. It features unjustified variation in the funding rates paid to different local areas and, even within the same area, to different providers. We now have a unique opportunity to change this.
7. We are confident that the introduction of an early years national funding formula, combined with reforms at the local level, would deliver a funding system which is fair for children, parents, providers and local authorities. The reforms would incentivise providers to deliver 30 hours of free childcare and enable them to thrive and expand. They would support parents who want to return to work or work more hours if they wish. And they would enable all children, whatever their background and individual needs, to access the high quality early learning and childcare they deserve.
8. As fairness and sufficient funding is at the heart of our proposed reforms, children of all characteristics will attract hourly funding that covers the cost of the childcare they need. Adults (staff, volunteers and business owners) likewise will be funded fairly in a system that is transparent, straightforward and accountable.
9. We believe our proposals would bring about a necessary balance and levelling across areas that have been significantly underfunded or overfunded historically. While the former stand to receive significant increases in funding; the latter would face reductions in their hourly funding rates. These will however be mitigated by a funding floor that limits any reductions in local authority hourly funding rates to 5% in the first year and 10% overall. We would carefully transition each aspect of major

reform to limit turbulence in local areas – but we acknowledge that change, whether in hourly rates or funding formula design, will be felt nevertheless.

10. This assessment will consider whether the changes brought about as a result of our proposed reforms will have an impact on people with protected characteristics. It will consider, also, the extent to which our reforms advance equality of opportunity between people who share a protected characteristic and people who do not share it.
11. This is the first time we have consulted on early years funding reform proposals. In summary, the consultation will propose:

### **Early years funding reform proposals:**

- To reform the funding system to deliver affordable, flexible and high quality childcare for all parents and children – including those with disabilities and with special educational needs.
- To have a fairer funding system for both the existing universal three- and four-year-old entitlement (for all parents) and the extension to 30 hours (for working parents).
- To introduce a national funding formula for the early years from 2017-18 (how money is allocated from Government to local authorities).
- To use factors in the national formula including the incidence of children with additional needs and relative costs of delivery.
- To reform the existing approach of local early years funding formulas (how money is allocated from local authorities to childcare providers) and maximise the amount of money to providers and therefore the children in their care.

## Consideration of the protected characteristics identified in the Equality Act 2010

12. The Equality Act 2010 identifies eight protected characteristics, as set out in Paragraph 1. Our consultation document will include a question of whether respondents foresee the proposed reforms having any negative impact on:

- eliminating unlawful discrimination, harassment, victimisation and any other conduct prohibited by the Equality Act;
- advancing equality of opportunity between people who share a protected characteristic and people who do not share it; or
- fostering good relations between people who share a protected characteristic and people who do not share it.

13. We will carry out a second equality analysis alongside our Government Response to the consultation to share the findings of these responses.

### Age

14. We are not aware of any evidence that our proposed funding reforms, including introducing an early years national funding formula, would impact upon children or adults (employees or business owners) of particular ages disproportionately. Age groups are distributed evenly across the country and the childcare service for which providers are funded must meet exactly the same requirements as the service they provide for any other age of child and regardless of whether the child attracts Government funding.

15. The extended entitlement for three- and four-year-olds is additional support designed specifically to help working families with the affordability of childcare. Working parents who want to access early education and childcare for their *younger* children will be eligible to apply for Tax-Free Childcare, which will save up to 2 million families up to £2,000 per child on their annual childcare bill. Some lower income families can access the 15 hour entitlement when their child is two, as well as other forms of support with childcare costs when their children are younger, such as the childcare element of working tax credit (to be replaced by the childcare element of Universal Credit).

### Disability

16. The proposed reforms will support our strong view that no child should have access to their free childcare entitlements restricted or denied because of a disability or

special educational need (SEN). The childcare service for which providers are funded must meet exactly the same general requirements as the service they provide for any other age of child, regardless of additional needs.

17. In practice, we know there is much work to be done in terms of access. In 2014 the Parliamentary Inquiry into childcare for disabled children<sup>1</sup> found that 41% of parents who responded to the inquiry said their children did not access the full 15 hours of the free entitlement for early education for three and four year olds. We believe that the proposed funding changes will lead to better access to, and better outcomes from, the early years entitlements for children with disabilities or SEN.
18. In the consultation document, we recognise that there are issues with the way the funding system works at present to support children with disabilities and children with SEN. We set out tangible proposals to tackle these issues and invite the early years sector to give us their views on these.

## **Disabled children**

19. Early education for disabled children is, in the main, supported by funding outside the early years block of funding. Local authorities should continue to support settings to provide childcare to disabled children through use of the high needs block within the Dedicated Schools Grant. The Government is clear that the high needs block is for children and young people aged 0 -25 years.
20. While this approach should continue, we believe that the introduction of additional targeted Disability Access Funding will, in principle, provide greater recognition to the youngest children with disabilities and, in practice, support providers to make initial reasonable adjustments and build the capacity of the setting to support disabled children. In the consultation, we will seek views on the best means of this funding reaching providers. We want to support providers to use the funding more strategically to increase the capacity of their setting to care for disabled children.
21. Providers will still be required to support all children within their setting as per their duties under the Equality Act 2010 and work with their local authority when additional support is required for complex needs that go beyond that which they are expected to provide for.

## **Special educational needs (SEN)**

22. High quality childcare in the early years has a significant impact on outcomes for children and these experiences are even more important for children with SEN in their earliest years. Early identification and early intervention can have a positive

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<sup>1</sup> Parliamentary Inquiry into childcare for disabled children (2014)  
<http://councilfordisabledchildren.org.uk/sites/default/files/field/attachemnt/parliamentary-inquiry-into-childcare-web.pdf>

impact on life chances and outcomes. However, in 2015, the early years foundation stage profile results showed that the gap between children with SEN and other children achieving a good level of development in the Early Years Foundation Stage has widened from 47.1ppts in 2014 to 50.4ppts in 2015.

23. We have drawn on evidence from the Cost of Childcare Review<sup>2</sup> to identify the key drivers of cost. At the national level (the early years national funding formula) we propose to include an 'additional needs' factor, reflecting the extra costs of supporting children with additional needs to achieve good early learning and development outcomes.
24. Funding channelled through the additional needs factor of the national funding formula will reflect the proportion of children in the local area who receive free school meals, receive disability allowance and/or speak English as an additional language. We believe that these are our best measures of additional needs and some of them are effective proxies for SEN, amongst those recommended by the Isos Partnership report 'Research on funding for young people with special educational needs'<sup>3</sup>. As part of this consultation, we ask for views on whether these are indeed the correct measures and whether each measure is weighted correctly to comprise the formula.
25. At the local level, we want to build on the best practice of local areas and providers who deliver effective support for children with SEN. They tend to have a strategic and clear approach to how funding is allocated to meet children's additional needs. We will therefore propose in this consultation that all local authorities should set up an 'Inclusion Fund' in their local funding systems.
26. We believe that the principle of this fund will help focus local authorities on their strategic role to increase the capacity of their childcare market to appropriately support and develop children with SEN. We believe that the practical structure of the system will support local authorities to work with individual providers to resource support for the needs of individual children with SEN. While in the consultation we do not propose that the Government prescribes the size of the inclusion fund or who would be able to access it, we suggest that local authorities specifically consider how the fund could be used to support children with SEN Support. We propose that details about the fund should be developed in consultation with providers, SEN specialists and parents in the local area.

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<sup>2</sup> Review of Childcare Costs (2015)

<https://www.gov.uk/government/publications/review-of-childcare-costs>

<sup>3</sup> Research on funding for young people with special educational needs (July 2015)

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/445519/DFE-RR470\\_-\\_Funding\\_for\\_young\\_people\\_with\\_special\\_educational\\_needs.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/445519/DFE-RR470_-_Funding_for_young_people_with_special_educational_needs.pdf)

## Gender reassignment, pregnancy and sexual orientation

27. We do not consider these characteristics relevant to children under the age of five and we are not aware that funding levels would differentially affect adults (employees or business owners) with these protected characteristics. We therefore do not believe there to be any direct impact from our proposals.

## Race (including ethnicity)

28. Rather than proposing to include a funding stream in the early years national funding formula that is linked to the broad characteristic of ethnicity, we are proposing to use pupil characteristics that evidence suggests provide the strongest correlation to lower attainment. This approach will directly identify local authorities with young children most likely to need additional support to reach their full potential. Some of these factors, in turn, correlate to ethnicity.

## National funding formula: English as an additional language and free school meals

29. We know that there is a significant overlap between children eligible for **free school meals** (FSM) and black and minority ethnic groups. This means that the protected characteristic of race (including ethnicity) needs to be considered. As there is no FSM data for children in the early years, we are using data for Key Stage 1 and 2 as the best proxy.

30. We propose that 89.5% of the national funding formula should be channelled through a universal base rate. The remaining funding will be allocated to reflect the additional needs of children in the area and we propose that 8% should be directed according to the FSM metric. This is distinct from the Early Years Pupil Premium which remains a separate funding stream outside the funding formula.

31. There is a significant difference in attainment in the early years foundation stage profile between children with **English as an additional language** (EAL) and those with English as a first language. Again, there is a significant overlap between children with EAL and the protected characteristic of race (including ethnicity). For 2015, the early years foundation stage profile results showed that children with English as a first language are more likely than pupils with EAL to get at least the expected levels in all their early learning goals (67% and 56% respectively).

32. In recognition that supporting children with EAL amounts to additional costs for childcare providers, we propose targeting additional resource to the local areas in which those children live to help them achieve good outcomes. We will propose that 1.5% of total early years national funding formula should be directed according to this metric, again to advance equality of opportunity.

33. It is important to acknowledge that some inner city local authorities are among the 38 local areas which stand to see reductions in their hourly funding rates under our proposed national funding formula because they have historically been generously funded. There is a strong link between these areas and black and minority ethnic groups – so again there is an impact on the protected characteristic of race (including ethnicity). The 10% funding floor will however limit this funding correction by a considerable extent, and our transitional arrangements will also act to limit turbulence.
34. It is essential to allocate funding to all childcare providers, and so the children in their care, on a fair basis. The children of inner city local authorities are likely to benefit from the additional needs factor of the national funding formula (the high weighted free school meals metric and the EAL metric). These children will therefore continue to attract higher levels of funding than average (and funding will continue to reach individual children via the Early Years Pupil Premium).

### **Local funding formulas: deprivation supplement**

35. As mentioned above, we know that there is a significant overlap between deprivation and the protected characteristic of race (including ethnicity). At the local level, we propose continuing to require local authorities to channel funding to providers that **serve areas of deprivation**. Evidence confirms that costs are genuinely higher for these providers and this funding will ensure a greater equality of access to the free entitlements for children in the most deprived areas and those in less deprived areas.
36. At present, local authorities are required to include a deprivation supplement in their three- and four-year old funding formulae and they use a variety of metrics to allocate this funding. The majority use the 'income deprivation affecting children index' dataset (IDACI), others use rates of Free School Meals, the Index of Multiple Deprivation, ACORN or a combination. We propose the deprivation factor should continue to be mandatory in local formulae and local authorities should continue to use their own choice of metric for allocating this funding. There is no 'right answer' to be mandated nationally, but rather this is something which should be decided in accordance with local circumstances.
37. We propose that local authorities should retain an amount of discretion over the amount of funding they direct through this supplement (up to a certain overall limit on the proportion of money channelled through supplements). Allowing this discretion reduces local fluctuations and turbulence thus giving providers more funding stability to meet the needs of the children in their care.

## Religion

38. Ofsted does not report figures on the proportion of childcare settings that are run by faith organisations and the Department does not collect this data. We are aware that a concentration of non-Christian faith schools are in inner city areas these areas are more likely than others to lose some early years funding.
39. As mentioned above, the reason these areas will not gain funding is that they have traditionally been generously funded historically, relative to the cost of delivering childcare elsewhere in the country. Losses are limited by a considerable extent, steady transitions will limit disruption and children in inner city areas are likely to attract higher than average levels of funding.
40. However, it is not possible to draw a straightforward conclusion that inner city areas which stand to lose funding will therefore see a disproportionate impact on childcare places offered by faith-led schools. This is because there is a great deal of variety in the mix of school-based and private / voluntary based childcare places from one area to the next.
41. We therefore have no evidence to show whether the introduction of a national funding formula would impact disproportionately on parents choosing a nursery or pre-school run by a faith organisation. Our proposals intend to bring about greater equality of funding per child regardless of their childcare provider or geographical location and this principle of fairness will extend to faith-led childcare providers.

## Sex

42. We are not aware of any evidence that funding levels disproportionately benefit children of a particular sex – gender is distributed evenly across the country and our reforms are designed to bring about fairness across the nation.
43. We acknowledge that females make up the largest percentage of the workforce (and business ownership). The vast majority of providers in the sector stand to see higher funding rates as a result of the funding uplift and reform to maximise funding to providers. In the main, the remaining providers do not lose significantly as a result of redistributive reform. We have no evidence to suggest a greater proportion of female, rather than male, workers (or business owners) could lose rather than gain funding.
44. We believe that our proposals will advance the equality of opportunity between female parents, who wish to return to work or work more hours, and those who do not have maternal caring responsibilities.

## Next steps

45. We welcome views and evidence to inform the Government Response when we will finalise our proposals of reform to the early years funding system. We will review this assessment in the light of responses received and continue to review the impact of our proposals in line with the Public Sector Equality Duty throughout the consultation process.

## Consultation question

Please provide any representations and/or evidence on the impact of our proposals for the purposes of the Public Sector Equality Duty (Equality Act 2010). The protected characteristics are: age; disability; gender reassignment; pregnancy and maternity; race (including ethnicity); religion or belief; sex and sexual orientation.



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Reference: DFE-00186-2016



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