

Official Response to the Government consultation

Eligibility for the free early education entitlement for two-year-olds from families with no recourse to public funds

20 May 2022

1. About this consultation

This consultation seeks views on changes to the eligibility criteria for the free early education entitlement for disadvantaged two-year-olds, namely whether there are other groups of families with no recourse to public funds¹ (NRPF) whose children should be eligible for the free early education entitlement; and the possible impact of any extension on people who share protected characteristics.

2. About Community Union

This response was prepared by:

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On behalf of

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In Autumn 2020, Voice – the Union for Education Professionals became a section of Community Union. The Education and Early Years section represents teachers, lecturers, tutors, school support staff, early years and childcare professionals in workplaces throughout the UK.

3. The response

The results of the consultation and the Department's response will be [published on GOV.UK](#).

4. Respond

This response was submitted to - nrpf.consultation@education.gov.uk

5. Deadline

The consultation closes on 20/05/2022.

¹ See page 8 of Home Office guidance - [Public funds \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

6. Background and context

6.1 The early years are crucial for children's development and for establishing the foundations for future success. This government is committed to ensuring that every child, regardless of their background or any additional needs they may have, has access to high quality education in their earliest years, which enables them to progress confidently to the next stage of their education and onwards through life. Making sure all children have access to high quality education is vital to Levelling Up and spreading opportunity, and particularly supports the Levelling Up education mission to make sure that 'by 2030, 90% of all primary school children in England will achieve the expected standard in reading, writing and maths, with the percentage of children meeting the expected standard in the worst performing areas improving by a third'.

6.2 The core purpose of the two-year-old early education entitlement is to improve educational outcomes for the most disadvantaged children. The early years present a key opportunity to make sure that all children develop the strong cognitive, social and emotional foundations on which future success is built. The proportion of children achieving a good level of development has risen from 51.7% in 2013 to 71.8% in 2019. However, too many children still fall behind early and it is hard to close the gaps that emerge. Disparities in child language capabilities are recognisable in the second year of life and are having an impact by the time children enter school. Once children start behind, they stay behind, leading to costly interventions later in their school career and potentially through life.

6.3 This entitlement ensures that disadvantaged children can benefit from an early start in education. The Effective Pre-School, Primary and Secondary Education (EPPSE) study³ shows that:

- *Pre-school influenced outcomes throughout primary school. At age 11, a high quality pre-school was particularly influential for boys, pupils with SEN, and disadvantaged pupils.*
- *Pre-school is of particular importance to children from disadvantaged backgrounds, particularly for those with a less stimulating home learning environment or from families where the parents were poor or had no qualifications.*
- *The benefit of attending any pre-school was equivalent to 41 points at GCSE which represents the difference between getting 7 GCSE at 'B' grades versus 7 GCSE at 'C' grades, or 7 'C' grades versus 7 'D' grades etc*

6.4 That is why in September 2013⁴ the Government introduced 15 hours a week of free early education for 38 weeks of the year to two-year-olds from families in receipt of specified benefits or who were looked after by the local authority, in order to address the inequality of access to early education.

³ <https://www.ucl.ac.uk/ioe/research-projects/2019/mar/effective-pre-school-primary-and-secondary-education-project-eppse>

⁴ [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) Regulations 2012 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

6.5 This entitlement was further extended in September 2014 to children in low income working families, children with a statement of Special Educational Needs or an Education, Health and Care Plan, children in receipt of Disability Living Allowance and children who are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangements order which specifies with whom the child is to live. In April 2018⁵, the eligibility criteria were changed to reflect the introduction of Universal Credit.

⁵ [The Local Authority \(Duty to Secure Early Years Provision Free of Charge\) \(Amendment\) Regulations 2018 \(legislation.gov.uk\)](#)

7. The free early education entitlement for two-year-olds

7.1 Eligible two-year-old children are entitled to 570 hours a year of free early education over no fewer than 38 weeks of the year (which equates to 15 hours a week for 38 weeks of the year)⁶. Over 1.1 million two-year-olds have taken up a free place since 2013. This sits alongside the 15 hours a week of free early education that all three- and four-year-olds are entitled to, as well as the additional 15 hours a week (30 hours in total) for three- and four-year-old children of eligible working parents (subject to income-related eligibility criteria). Families arriving in England under the Ukraine Family Scheme or the Local Sponsorship Scheme for Ukraine will be able to access the two-year-old entitlement as long as they meet the eligibility criteria set out at para 12.2.

7.2 As set out in the 2014 regulations, two-year-olds are eligible for 15 hours of free early education if:

1. the parent(s) are entitled to one of the following benefits:
 - Income Support
 - income-based Jobseeker's Allowance (JSA)
 - income-related Employment and Support Allowance (ESA)
 - Universal Credit – if a parent is entitled to Universal Credit and they have an annual net earned income equivalent to and not exceeding £15,400
 - Tax Credits and they have an annual income of not exceeding £16,190 before tax
 - the guaranteed element of State Pension Credit
 - provided through part 6 of the Immigration and Asylum Act
 - the Working Tax Credit 4-week run on (the payment you get when you stop qualifying for Working Tax Credit)
2. the child has a statement of special educational needs made under section 324 of the Education Act 1996;
3. the child has an Education, Health and Care plan prepared under section 37 of the Children and Families Act 2014;
4. the child is in receipt of Disability Living Allowance under section 71 of the Social Security and Contributions and Benefits Act 1992;

⁶ See: [Help paying for childcare: Free education and childcare for 2-year-olds - GOV.UK \(www.gov.uk\)](https://www.gov.uk/help-paying-for-childcare)

5. they are looked after by a local authority (under section 22(1) of the Children Act 1989) or by a local authority in Wales within the meaning given by section 74(1) of the Social Services and Well-being (Wales) Act 2014
6. they are no longer looked after by a local authority as a result of an adoption order, a special guardianship order or a child arrangement order (within the meaning of section 8(1) of the Children Act 1989 or section 74(1) of the Social Services and Well-being (Wales) Act 2014) which relates to either or both of the following:
 - with whom the child is to live;
 - when the child is to live with any person.

7.3 No recourse to public funds means that the individual / family cannot access specified welfare benefits (for example, Universal Credit, housing benefit, disability living allowance) and public housing. These are set out in section 115 of the Immigration and Asylum Act 1999⁷ and paragraph 6 of the Immigration Rules⁸ although some exceptions apply.

7.4 Unlike the universal 15 hour free early education entitlement which is available to all three- and four-year-olds regardless of their immigration status, when the entitlement for two-year-olds was first introduced, two-year-old children from families with no recourse to public funds were not entitled to a free place unless they fell into one of the groups listed at para 12.2, numbers two to six .

7.5 In September 2019, eligibility for the two-year-old early education entitlement was extended to two-year olds from three groups of families with no recourse to public funds that came to the government's attention. Children from these families are likely to be in a similar position in terms of economic or financial need to families already eligible (for example, families in receipt of specified benefits or low income families) but who, because of their immigration status, are unable to benefit from the entitlement.

7.6 The groups are:

- a. Dependent children of Zambrano Carers⁹;

⁷ [Immigration and Asylum Act 1999 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1999/33/section/115)

⁸ [Immigration Rules part 6: self-employment and business people - Immigration Rules - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/immigration-rules-self-employment-and-business-people)

⁹ A Zambrano Carer is the primary carer of a British citizen child or dependent adult where requiring the primary carer to leave the UK would force that British citizen to leave the European Economic Area (EEA).

- b. Children of families with no recourse to public funds with a right to remain in the UK on grounds of private and family life under Article 8 of the European Convention of Human Rights¹⁰; and
- c. Children of families supported under section 4 of the Immigration and Asylum Act 1999¹¹.

7.7 In September 2020, following a temporary extension of eligibility during the Covid-19 pandemic, the government permanently extended eligibility to two-year-olds from families in receipt of support under section 17 of the Children Act 1989¹².

¹⁰ Article 8 of the European Convention of Human Rights states that everyone has the right to respect for his private and family life, his home and his correspondence. It goes on to state there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others. Immigration rules have made provision for those granted leave to remain in the UK on Article 8 family and private life grounds to have a condition attached to their leave to remain in the UK prohibiting them from having access to the public funds.

¹¹ Section 4 of the Immigration and Asylum Act 1999 provides support for failed asylum seekers as they would otherwise be destitute and they are temporarily unable to leave the UK. This form of support is only available to those who would otherwise be destitute, so those receiving it are in a similarly economically disadvantaged position as other families eligible to the entitlement to free early education for two-year

¹² This Act places a duty on local authorities to “safeguard and promote the welfare of children within their area who are in need; and so far as is consistent with that duty, to promote the upbringing of such children by their families, providing a range and level of services appropriate to those children’s needs.” Services are tailored to the needs of the family and can include accommodation, assistance, financial aid or other services

8. Extending the free entitlement to all NRPF groups

8.1 The government is proposing that the eligibility criteria for the entitlement to 15 hours a week of free early education for two-year-olds should be further extended to include other disadvantaged two-year-old children from families who have no recourse to public funds.

8.2 The rationale for extending eligibility is that the most disadvantaged two-year-olds should be able to access early education regardless. The government has already accepted this principle in extending to the groups mentioned at paragraphs 7.6. The government believes it is reasonable to extend access to early education to disadvantaged children in other no recourse to public fund households.

8.3 Our proposed groups of families with no recourse to public funds the government has identified are set out below. Two-year olds from these families would be eligible for the free early education if they are disadvantaged and have a comparable household income to those families who do have recourse to public funds and other eligibility criteria are met.

8.4 Chen Carers: A Chen carer is a primary carer of a self-sufficient EEA citizen child. The child must have sufficient resources to prevent them from becoming a burden on the social assistance system, and they must have comprehensive sickness insurance. Chen carers are able to work.

8.5 Spouse Visas: A spouse visa allows married partners of UK citizens to immigrate to the UK. Among other conditions, the couple must be legally married, and the sponsoring partner must earn more than £18,600 per year or have enough savings to be able to support the spouse visa holder. Spouse visa holders are able to work.

8.6 Student Visas (Tier 4 – General): A student visa can be applied for if the applicant is 16 or over, has been offered a place on a course, and has enough money to support themselves and pay for the course. They are able to bring dependents with them as long as the course is a full time postgraduate course of at least 9 months. On a postgraduate course people are permitted to work for a maximum of 20 hours, with some restrictions.

8.7 Work Permit Holders: The tier 2 visa is the main route for skilled workers, and must be sponsored by a UK employer and with a salary of at least £30,000 a year. This visa lasts up to 5 years. Tier 5 visas are for temporary roles and cover a variety of different circumstances – these are not subject to a salary restriction. In all cases, the visa is cut short to a remainder of 60 days if the visa holder loses their job – though they are able to use this time to apply for a different job and apply for the visa again without leaving the country providing they are able to find an employer who is willing to sponsor them.

8.8 Hong Kong BN(O)s: Hong Kong British Nationals from Overseas and their dependents are given the right to remain in the UK, including the right to work and study, for five years.

8.9 Undocumented Migrants: Undocumented migrants are migrants who are within the country illegally – this may be from illegally entering the country, or by overstaying their visa. Undocumented migrants are not able to work.

9. Consultation Questions

9.1 This consultation asks a question to understand whether the list of NRPF families to whom we are seeking to extend eligibility is a comprehensive one. To this end, we would like to understand whether we have captured all the potential NRPF families that should be eligible. In addition, we ask a question to understand the potential impact of extending the entitlement to people who share protected characteristics.

10. Responding to the Consultation

About You

1. What is your name?

Martin Hodge

2. What is your email address?

MHodge@Community-TU.org

3. What is the name of your organisation (if applicable)?

Community Union | Education & Early Years

4. In what capacity are you responding to this consultation?

Official Response on behalf of our Education and Early Years Members
Prepared by Martin Hodge, Head of Education Policy.

Questions

- Q1. Are there other groups of low income or economically disadvantaged families with no recourse to public funds not listed at paragraph 8 whose children should benefit from the free early education entitlement for two-year-olds?

Yes / No / Unsure

- Q2. If yes / unsure please describe in as much detail as possible the families you are thinking about.

The whole funding model for early years needs to be addressed. The current model does not provide sufficient funding into settings for the provision to be considered 'free'. Despite calls for it to be reviewed, this has not happened, and the Government has rejected the recommendations of the Petitions Committee. This single act will continue to see staff struggling with low pay and parents struggling with high fees – a situation that is bringing the sector to its knees.

The cost-of-living crisis is having a catastrophic impact on many households. Children in low and middle-low-income families are particularly at risk since they also are often in jobs which are vulnerable and lacking in long-term security.

The last two years have also been incredibly difficult for families with Action for Children stating that *"in January 2021, around three in ten UK families with children (27%) were living on a lower income than before the pandemic"*.¹

Although paragraph 7.2 outlines those benefits which would lead to receipt of funded childcare places, we also need to consider those who are 'just about managing'. Think tank the Policy Exchange describe this group as *"people who just manage to get by each month but whose resilience to economic shocks is not high"*.²

Given the high cost of childcare, some working families are having to forgo food in order to be able to fund early childcare, simply so they are available for work. According to Sarah Ronan writing in *The Metro*: *"It would cost £62 for a full day of care, typical for a child under two in the South-East. That would work out at over £1,200 every month. My mortgage was £900 each month ... My husband and I did the sums. We did them again, and again, until we decided that we simply could not afford the £1200 bill for full-time childcare. I decided to resign from my job to look after my son full-time."*³

Therefore, we would like to see an additional measure introduced to support those 'Just About Managing'.

1. <https://www.actionforchildren.org.uk/blog/what-is-the-cost-of-living-crisis/>

2. <https://policyexchange.org.uk/news/media-recognition-of-the-impact-of-policy-exchanges-focus-on-the-just-about-managing/>

3. <https://metro.co.uk/2021/07/21/i-resigned-from-my-job-because-i-couldnt-afford-childcare-14936919/>

Equalities Impact Assessment

This section asks for your help in identifying any potential impacts of our proposals on people who share protected characteristics. The protected characteristics are: age, disability, marriage and civil partnership, gender reassignment, pregnancy and maternity, race (including ethnicity), religion or belief, sex, and sexual orientation.

- Q3. Will our proposal to extend eligibility for the free early education entitlement to include two-year-olds from the groups of families with no recourse to public funds identified in this consultation at section 13 (of this consultation document) have an impact on people who share protected characteristics for the purposes of the Public Sector Equality Duty (Equality Act 2010)?

No impact

Positive Impact

Negative impact

Unsure

- Q4. Please explain the reasons for your answer.

We do not believe that this policy proposal sets out to cause discrimination against any individual with a protected characteristic, however, policy regarding childcare and early education always risks having a disproportionate impact upon women.

Evidence shows that two thirds of women undertake childcare compared to a third of men and until fully funded childcare is universally available to all regardless of employment, disability and recourse to public funds there will always be a disproportionate impact on women, many who will need to stay home to care for children, simply because they cannot afford to plug the gap, between the 15 hours of free childcare and the traditional working week.



Department
for Education

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