

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITY (DUTY TO SECURE EARLY YEARS PROVISION FREE OF
CHARGE) (AMENDMENT) REGULATIONS 2010

2010 No. 301

1. This explanatory memorandum has been prepared by the Department for Children, Schools and Families (“DCSF”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

Section 7 of the Childcare Act 2006 (“the 2006 Act”) requires English local authorities (“LAs”) to secure that early years provision of a prescribed description is available free of charge for prescribed periods for children of a prescribed age below compulsory school age. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 (“the Principal Regulations”) prescribe those matters. This instrument amends the Principal Regulations to increase the prescribed periods.

3. Matters of special interest to the Joint Committee on Statutory Instruments or the Select Committee on Statutory Instruments

None

4. Legislative Context

4.1 Section 7(1) of the 2006 Act places a duty on English LAs (defined in section 106 of the 2006 Act) to secure that early years provision of a prescribed description is available free of charge for prescribed periods. The duty is in respect of children under compulsory school age who have attained a prescribed age.

4.2 Section 7(2) of the 2006 Act requires that in discharging their duty under section 7(1), LAs must have regard to any guidance given by the Secretary of State. Guidance has been issued in the form of the Code of Practice on The Provision of Free Nursery Education Places (“the Code of Practice”)¹.

4.3 The Principal Regulations are made under section 7 of the 2006 Act. Regulation 2 of the Principal Regulations prescribes that English LAs must secure that free of charge early years provision is available from early years providers who deliver the Early Years Foundation Stage - that is those who, under Part 3 of the 2006 Act, are registered with Ofsted or are schools which are exempt from registration. Regulation 3 prescribes that the periods during which an English LA must ensure that such early years provision is available free of charge are no fewer than 38 weeks in a year and for 12 ½ hours during each of those 38 weeks. The year commences on the day on which the child attains the age prescribed in regulation 4. The effect of regulation 4 is that a child becomes eligible for the free entitlement at the commencement of the school term that follows the child’s 3rd birthday.

4.4 This instrument amends regulation 3 of the Principal Regulations to increase to 570 hours in each year the amount of free provision that the LA must secure is available and to prescribe that this must continue to be available over a minimum of 38 weeks in each year. 570 hours is equivalent to 15 hours per week over 38 weeks. Prescribing an annual amount of hours means that LAs are able to make the hours available over more than 38 weeks of the year.

¹ The Code of Practice can be found at: <http://www.dcsf.gov.uk/everychildmatters/publications/0/1747/>

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Since April 2004 all three and four year olds² have been entitled to free, quality-assured, part-time early years provision³ (“the free entitlement”). This is a universal entitlement which benefits all eligible children regardless of their circumstances. January 2009 figures show that virtually all four year olds and 92% of three year olds benefit from some free provision. Free places are provided by a range of providers in the private, voluntary and independent (“PVI”) and maintained sectors, for example: maintained nursery schools, nursery classes in maintained schools, independent schools, day care settings, playgroups and registered childminders in an accredited network.

7.2 In December 2004 the Government published the 10 year childcare strategy *Choice for parents; the best start for children*⁴ in which they committed to increase the free entitlement to 38 weeks in all sectors from April 2006 and, by 2010, to increase the free entitlement from 12 ½ hours a week to 15 hours a week for 38 weeks of the year, and enable more flexible access to the free entitlement. This was on the basis that a flexible free entitlement would continue to promote child outcomes but also allow parents more flexible access, in order to support them to access employment and training options and contribute to the drive to reduce poverty.

7.3 In *Next Steps for Early Learning and Childcare*⁵ published in January 2009, the Government committed to ensuring that parents will have more choice to access the free entitlement flexibly by “stretching” the entitlement over more than 38 weeks, enabling them to access fewer hours per week over more weeks of the year. This will support parents to cover holidays, keep costs constant and help them to budget more effectively. The amendment made by this instrument by prescribing an annual number of hours is a first step towards giving effect to that policy.

7.4 This policy is rooted in evidence of the positive benefits of regular early learning and childcare for children. The Effective Provision of Pre –School Education project⁶ found that high quality early years provision has a significant impact on child outcomes particularly for those

² 5 year olds can also access the free entitlement where they have not yet reached compulsory school age. “Compulsory School Age” is defined at Section 8 of the Education Act 1996 (c. 56) 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.

³ Early Years Provision is defined at section 20 of the Childcare Act 2006 (c.21) (“the 2006 Act”) as the provision of childcare for a young child. Section 19 of the 2006 Act provides that a child is a “young child” from the date of their birth until the 1st September immediately following their 5th birthday.

⁴ *Choice for parents; the best start for children* can be found at:

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

⁵ *Next Steps for Early Learning and Childcare* can be found at:

<http://publications.dcsf.gov.uk/default.aspx?PageFunction=productdetails&PageMode=publications&ProductId=DCSF-00173-2009&>

⁶ *Effective Provision of Pre-School Education Project: Final Report - A Longitudinal Study Funded by the DfES 1997-2004* can be found at:

<http://www.dcsf.gov.uk/rsgateway/DB/RRP/u013144/index.shtml>

children from more disadvantaged backgrounds. The survey also found that, while the greater the number of months spent receiving early years provision the greater the benefit to the child, full time attendance led to no better gains than part time attendance.

7.5 The amendment to the Principal Regulations will not require the free entitlement to be provided in a pattern of 15 hours per week for 38 weeks. However, LAs are currently required to deliver the free entitlement as 12 ½ hours per week for 38 weeks, a delivery pattern that is well established. DCSF anticipates that initially most LAs will deliver the increased entitlement as 15 hours per week for 38 weeks, unless they are able to provide fewer hours per week over more than 38 weeks and this is requested by parents.

7.6 We intend to make clear in the new Code of Practice that LAs should deliver the extension as 15 hours per week for 38 weeks of the year where there is demand for this pattern of provision. However, the new Code of Practice will also make clear that where there is demand for fewer hours of free provision over a greater number of weeks than 38, and LAs are able to secure this, LAs can now deliver the provision in this way.

8. Consultation outcome

8.1 In May 2009 the DCSF issued the first stage of its consultation on amending the Principal Regulations to increase the free entitlement and on producing a new Code of Practice for LAs on the delivery of the free entitlement. This took the form of a discussion paper which focussed on key themes - quality; flexibility; and delivery in partnership. 254 responses were received from a range of providers in the maintained and PVI sector, and from LAs and national organisations. DCSF also consulted widely with stakeholders from the sector, LAs and parents through a series of events and workshops. Responses reflected concerns around funding for early years provision but were broadly in support of draft proposals on flexibility, quality and partnership. The consultation documents and the government responses to the discussion phase can be found at:

<http://www.dcsf.gov.uk/consultations/index.cfm?action=conResults&external=no&consultationId=1676&menu=3>

8.2 Responses to the discussion paper informed drafts of this instrument and the new Code of Practice, which the DCSF published for formal consultation between October 2009 and January 2010. 203 responses were received from early years providers in all sectors, LAs and national organisations. There were no comments relating to the draft Regulations although a few respondents were concerned that the instrument would impact on the level of funding they receive to deliver the free entitlement⁷. This is not the case as the amendment made by this instrument is simply to set out the amount of free provision that LAs must ensure each eligible child can access. The level of funding to providers to deliver the free entitlement remains a matter for each LA to determine.

9. Guidance

In March 2010 the DCSF will publish the new Code of Practice for LAs on delivery of the free entitlement. This statutory guidance will come into force in September 2010 along with the amendments to the Principal Regulations.

10. Impact

10.1 An Impact Assessment is attached to this Memorandum.

⁷ The government responses to the formal consultation will be published in March as the DCSF is still preparing responses to points relating to certain aspects of the new Code of Practice. However, the responses relating to points raised about this instrument are available from the DCSF using the contact details given in paragraph 13 of this Explanatory Memorandum, if required prior to publication in March.

- 10.2 The amendments made by this instrument will not adversely impact on business, charities or voluntary bodies. The effect is to increase the amount of free early years provision that LAs are required to secure is available for eligible children in their area, but providers are not obliged to deliver this. Furthermore, extra funding has been made available to LAs to commission the extra hours from providers who are willing to make that provision.
- 10.3 This instrument impacts on the public sector as it requires LAs to ensure that all eligible children in their area can access an increased number of hours of free early years provision each year. However, the extended entitlement is fully funded. £590 million has been made available to LAs over 2008-11 to fund the additional 2 ½ hours per week of provision that will be required, and flexible delivery. This funding is over and above that which all LAs currently receive through the Dedicated Schools Grant (a ring-fenced grant from DCSF to fund education for 3 – 16 year olds).

11. Regulating small business

- 11.1 The DCSF consulted in 2005 on the proposal to increase the free entitlement to 15 hours a week for all eligible children by 2010 and to enable more flexible access to the free provision. There were some concerns about the impact of the increased free entitlement on the sustainability of providers, including small businesses in the childcare sector. The DCSF has sought to meet these concerns by setting out a staged process of implementation over the last 3 years, giving LAs the time to learn from pathfinders about the impact of the increased free entitlement and to find sustainable, practical ways of delivering the 15 hours and increased flexibility. In September 2010 roll-out will be complete and all eligible children in all LAs will be able to access the increased, flexible, free entitlement.
- 11.2 The legislation does not apply directly to small business as, although private, voluntary and independent early years providers have an important role in the free entitlement market, the Principal Regulations, as amended by this instrument will not require early years providers to deliver the free entitlement and they can choose not to do so.

12. Monitoring & review

- 12.1 Government Offices will support all LAs to implement the increased free entitlement and monitor compliance from September 2010. Failure to implement the increase in the free entitlement will result in an LA being in breach of its statutory duty.
- 12.2 In the future, data on the expected increase in take up and hours will be collected through the existing Early Years and School Census data collection mechanisms and funding for this will be provided accordingly. This data from pathfinder LAs has already demonstrated an increase in take-up of the free entitlement as a result of the implementation of the flexible extension.
- 12.3 Using this data we will review whether any further action is required and the legislation may be amended accordingly.

13. Contact

Jennifer Robson at the Department for Children, Schools and Families, Tel: 0207 783 8568 or e-mail: Jennifer.Robson@dcsf.gsi.gov.uk, can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency:

Title: Impact Assessment of the increase of the free entitlement for 3 and 4 year olds to 15 hours per week, with increased flexibility

Stage:

Version:

Date: 14/09/09

Related Publications: This Impact Assessment will be published alongside a new draft Code of Practice for delivering the free entitlement, a response to the first round of consultation on this Code, a draft set of draft regulatory changes to Section 7 of the Childcare Act 2006 and an Equalities Impact Assessment.

Available to view or download at:

<http://www.dcsf.gov.uk/consultations>

Contact for enquiries: Gregory.thompson@dcsf.gsi.gov.uk

Telephone:

What is the problem under consideration? Why is government intervention necessary?

Evidence is clear that high quality pre-school education is beneficial for children's cognitive and social development - second only in influence to parenting style. In addition, formal childcare can enable parents, especially lone parents, to work, improving family income and reducing child poverty. However, credit constraints and imperfect information can cause parents to under consume pre-school education. To help overcome this, all 3 and 4 year olds are entitled to 12.5 hours per week of free early learning for 38 weeks of the year until they reach compulsory school age. Currently take-up is 95%, but only 60% take the full allocation. This has not improved for some time. Evidence suggests that more hours are needed to maximise developmental benefits and flexibility would increase use.

What are the policy objectives and the intended effects?

We are increasing the free entitlement from 12.5 to 15 hours from September 2010, delivered more flexibly. The intention is that more children will access the optimal amount of provision and that there will be an improvement in child development with lasting effects throughout primary school and beyond. We expect those from disadvantaged families to benefit most and the gap to narrow as a result. The intention is also to better enable parents to work or train, and reduce child poverty.

What policy options have been considered? Options were considered around increasing provision to 20 hours per week, and expanding free provision down the age range. The 20hrs option was ruled out in the short term due to costs. In terms of 0-2s, the evidence is clear that 2 year olds, especially those from disadvantaged backgrounds, benefit from quality provision, but the benefits for younger children are less clear. We have started to rollout, in parallel, a 2 year old free offer, beginning with the most disadvantaged. For the 3&4 year old free entitlement, two options were pursued: 1) Do nothing, and 2) Extend provision to 15 hours, delivered more flexibly. The Effective Provision of Pre-School Education (EPPE) study, along with international research, provides the rationale for option 2, expanding government investment in the sector. EPPE found that attending provision part-time (15hrs) at ages 3&4 is optimal for boosting children's cognitive and social attainment. Pursuing option 1, to do nothing, would not have impacted on the existing entitlement of 12.5 hours. However, as the 15 hours pathfinders have demonstrated, sticking with this option would have meant no increased hours which have the potential to support parents back to work and training or to further support child outcomes. Also, crucially, it would not have increased flexibility of access which, combined with the additional hours, emerging data from pathfinders suggests is attracting more parents to the free entitlement, with take-up of the entitlement 1.7% higher in pathfinder LAs. This likely includes families, some of which will be amongst the most disadvantaged, which historically have never taken up the entitlement (overall take-up of the 12.5 hours has remained fairly static at 95%).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

There was an evaluation of the 34 pathfinder local authorities rolling out the 15 hours with increased flexibility, which took place between April 07 and Aug 08. Learning is being captured on an ongoing basis, with plans to evaluate more fully in due course, dependent on funding.

Ministerial Sign-off For SELECT STAGE Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option:	Description:
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Annual cost to providers of delivering extended hours once roll out of extension is complete from September 2010. The evidence base explains that the figure used is an overestimate. £590 million is being made available to local authorities through the Standards Fund over April 2008-11 to compensate providers for the roll out of the extension. See Annex A for full summary.			
	One-off (Transition)	Yrs				
	£					
	Average Annual Cost					
	£ 249,393,897				Total Cost (PV)	£2,323,478,241
Other key non-monetised costs by 'main affected groups' There will be costs to some providers of delivering the entitlement more flexibly, most of which are transitional rather than ongoing. There is funding through the Standards Fund and the early years capital grant (£640m over 2008-11) to meet these. In the future, the expected increase in take up and hours will be captured through the existing Early Years and School Census mechanisms and provided for. Local authorities will be expected to pass on funding via new single funding formulae which will introduce the principle of participation-led funding across the sector.						

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' The impacts are not easily quantified, although we do know that children's outcomes can be significantly boosted by regular access to part-time early years provision (15hrs/wk according to EPPE). Lifetime returns to 5A*-C GCSEs compared to no GCSEs (£45,000) suggest the benefits would outweigh total costs if 5,542 extra children gained 5 GCSEs at C or above-0.7% of the 805,462 children currently receiving the free entitlement.			
	One-off	Yrs				
	£					
	Average Annual Benefit (excluding one-off)					
	£				Total Benefit (PV)	£
Other key non-monetised benefits by 'main affected groups'. There is an equity benefit in improved GCSE attainment by disadvantaged groups and significant benefits of additional lone parent employment in savings in transfer payments and reduced child poverty. There are also wider benefits of educational attainment which are not covered in detail here, including better health, greater choice for women who want to work and family wellbeing.						

Key Assumptions/Sensitivities/Risks Estimates of costs are sensitive to the assumptions used on take up of the additional 2.5 hours. Hourly cost of delivery is an overestimate so the total monetised cost figure is an overestimate of the cost of extended hours. Risk to benefits if flexibility does not lead to significant increase in take up or additional lone parent employment.

Price Base Year 2010	Time Period Years 10	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £
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What is the geographic coverage of the policy/option?				England	
On what date will the policy be implemented?				September 2010	
Which organisation(s) will enforce the policy?				Local Authorities	
What is the total annual cost of enforcement for these organisations?				£	
Does enforcement comply with Hampton principles?				Yes/No	
Will implementation go beyond minimum EU requirements?				Yes/No	
What is the value of the proposed offsetting measure per year?				£	
What is the value of changes in greenhouse gas emissions?				£	
Will the proposal have a significant impact on competition?				Yes/No	
Annual cost (£-£) per organisation (excluding one-off)		Micro	Small	Medium	Large
Are any of these organisations exempt?		Yes/No	Yes/No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)				(Increase - Decrease)	
Increase of	£	Decrease of	£	Net Impact	£

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Impact Assessment of the extension of the free entitlement for 3 and 4 year olds to 15 hours per week with increased flexibility

Introduction

Evidence is clear that all children benefit from access to high quality early learning and childcare, and children from disadvantaged backgrounds have the most to gain. To give every child the best possible start in life we have worked hard with local authorities and providers partners to give all families access to a core of free provision. It is critical that these places are available when families need them and are flexible enough to support parents who work, a premise which relies on a diverse and sustainable childcare market that offers parents choice in how and where they take up their free entitlement.

The 10-Year Childcare Strategy (2004) committed to increasing the amount of free provision on offer to 15 hours by 2010, and also making sure this is delivered more flexibly to meet demand. The changes will be enacted by amending regulations pertaining to Section 7 of the Childcare Act 2006, which requires local authorities to secure a prescribed amount of early education provision free of charge.

This assessment looks at the impact of the extension of free entitlement for 3 and 4 year olds from 12½ to 15 hours per week, with more flexible delivery.

Background

Since April 2004 all 3 and 4 year olds have been entitled to a 12½ hours per week of free early learning and childcare. In April 2006 this offer was extended from 33 to 38 weeks per year. This provides every child with two years of free provision before they reach compulsory school age; a core building block of a child's learning and development. *The 10-Year Childcare Strategy* set out the Government's plans to increase the entitlement for 3 and 4 year olds from 12½ hours per week to 15 flexible hours per week of free early learning and childcare by 2010.

The free entitlement has legal foundation; Section 7 of the 2006 Childcare Act places a duty on local authorities to secure a certain amount of free early years provision and to have regard to the Code of Practice when meeting this duty. The Act superseded the duty in 118 of the School Standards and framework Act 1998 on local authorities to secure sufficient nursery education. As this did not constitute a change in the level or way it was provided an impact assessment was not necessary. These regulations have been amended to reflected the increase in the free entitlement from 12.5 to 15 hours a week, or 570 hours in a year, to be delivered over a minimum 38 weeks.

95 per cent of all 3 and 4 year olds currently take up some of their free hours each week, showing that the vast majority of families value the benefits that the Free Entitlement provides for their children. We expect that the changes we are making – both in terms of increasing flexibility of access and giving families additional hours – will allow for the offer to meet more families' needs and will assist with our wider work to increase take-up.

Following consultation on the 2006 Code of Practice the preferred option was to introduce the increase to the free entitlement gradually. Since April 2007, 34 Pathfinder local authorities have been phasing in a 15 hour entitlement and assessing the demand for more flexible patterns of delivery. Under the new entitlement in these pathfinder authorities, take-up has increased. Learning from this group has informed the sector to prepare to deliver the new offer while retaining the benefits of a diverse market. The extended entitlement has been available to the 25% most disadvantaged children in every LA from Sept 2009 and will be a universal entitlement from September 2010.

The Free Entitlement for 3 and 4 year olds from September 2010

(i) National parameters

15 hours free provision per week, for 38 weeks of the year, or 570 hours in a year.

The draft Code of Practice for the flexible extension sets out flexibility as being within the following

national parameters:

- Minimum session length of two and a half hours
- Maximum session length of ten hours
- Full entitlement to be taken up over no fewer than 3 days of the week
- Access to the full 15 hour entitlement across no more than 2 providers

(ii) Core Offer of Flexibility for Parents

The consultation on the draft Code of Practice, from Oct '09 to Jan '10, set out a minimum Core Offer that would be in place in all local authorities for any parent who wants it. This Core Offer defined models of access to the flexible entitlement as:

- 3 hours per session, over 5 sessions of the week
- 5 hours per session, over 3 sessions of the week.
- 6 hours per session for two days, and one 3 hour session on the third day (for consultation)
- 9 hour session plus two days of 3 hour sessions (for consultation)

The revised Code, to be published in March 2010, will take into account responses on the Core Offer as set out above.

(iii) Local assessment of Parental Demand

LAs should actively assess parental demand for patterns of flexible access to the entitlement beyond these core models, including for sessions of different lengths or at different times of day, i.e. over lunchtimes. LAs should work with local providers in all sectors to agree with them the contribution they can make to a local flexible offer. Though we recognise that not all providers will contribute the same degree of flexible provision, we do expect LAs to challenge providers to be as flexible as possible. LAs should not enforce on providers delivery of the free entitlement on an hourly basis, but should encourage providers to become more flexible in how they deliver their sessions.

(iv) "Stretching" the offer

Our longer term aim, as set out in Next Steps for Early Learning and Childcare (January 2009) is that all parents who want it will be able to access their entitlement for fewer hours per week over more weeks of the year. This is to support parents in accessing cover over holiday times and to increase the regularity of payments, making them easier to manage. Local authorities are advised in the draft new Code of Practice to prepare for implementation in 2012. It is not expected that a stretched entitlement will be available in every provider but should be available to parents who want in each local authority.

Purpose and intended effect

Objective

The free entitlement for 3 and 4 year olds is critical in helping achieve the best possible outcomes for children and is the Government's major investment in the early years. It supports Government's commitment to reduce the number of children living in poverty (PSA9), increase achievement of all children (PSA10) and narrow the achievement gap in educational achievement between low income and disadvantaged children and their peers (PSA11). Increasing the flexibility and extending the number of hours on offer is an opportunity to enhance the benefits offered by the current entitlement by extending its reach and flexibility and ensuring children have access to the optimal number of hours for supporting positive development.

The extended offer will also support parents' and carers' access to work, education or training, by giving them more choice in when children take up their entitlement and offering them more hours free. This has potential to support objectives around reducing child poverty, gender equity and support work/life balance and wider family well-being.

Rationale for government intervention

There is a strong international evidence base which sets out the benefits of early learning and childcare provision for children. In the UK, the DCSF-funded longitudinal research study of 3,000 children, The Effective Provision of Pre-school Education (EPPE) project has shown that pre-school experience, particularly high quality provision, enhances children's all round, cognitive, language and social development. Disadvantaged children in particular can benefit significantly from good quality pre-school experiences, giving them a developmental boost at entry to primary school, improving outcomes and narrowing inequalities. The positive effects of higher attainment at school will produce a more skilled workforce, which in turn will have a positive effect on this country's economy.

We want to ensure that the free entitlement provides for the best possible outcomes for children, but also supports parents to work or train because we know that employment is the most effective route out of poverty for families. In general, the sector is responding to the ever-changing patterns of employment which are demanded of families, by giving them more choices. For example, the number of full daycare providers has increased by 74 percent since 2001. But to ensure that all families are able to choose provision that meets their needs, the free offer has to become more flexible.

Extended hours and flexible provision will be more responsive to changing patterns of employment and will complement the right to request flexible working, which is available to mothers and fathers of all children aged 16 and under. This is important because, while we know that the free entitlement is extremely popular (with 95% take-up), some of the families that need it most do not access it and up to 40% of families do not take up the full hours they are entitled to.

There is also opportunity, through investment in the free entitlement, to drive quality improvement in all local authorities and childcare settings. Evidence shows that high quality is crucial to achieve the best outcomes for children. The Early Years Foundation Stage, which ensures that all types of registered provision are covered by the same quality standards, was introduced in September 2008 and already provides a framework for excellence which should help give parents confidence that whatever hours they choose to access for their child, settings will be providing a quality experience. The new draft Code of Practice sets out how local authorities can concentrate funding – including the extension of provision proposed here - on the best quality providers to deliver the free entitlement, through a process which also safeguards sufficiency and accessibility of the offer. Through this process, providers who are not of the best quality will be supported to improve, leading to an overall increase in quality locally by ensuring those most in need are supported.

Consultation

The consultation on the Ten-Year Strategy allowed a range of stakeholders to comment on the ambition to increase the free entitlement for 3 and 4 year olds. Within Government the DCSF consulted with:

- Her Majesty's Treasury
- Her Majesty's Revenue & Customs
- Department for Work and Pensions
- Local Authorities
- Government Offices for the Regions

A full public consultation was carried out on the 2006 Code of Practice (which describes the current free entitlement and eligibility for it) and on the EYFS, which came into force in September 2008.

This impact assessment is part of the government's commitment to consult on the new Code of Practice and amended regulations to increase the free entitlement to 15 hours with more flexible access, to come into force in September 2010. Public consultation will be a vital factor to ensure the effective delivery of increased flexible early learning places, informing us about the barriers and challenges to implementing a more flexible offer as well as identifying the practical guidance that the new Code should provide on how local authorities can best secure an extended, flexible entitlement.

The consultation process took place in two stages.

Stage 1: May 2009 - July 2009: A discussion paper which sought views on broad topics, particularly flexibility, quality and working in partnership.

Stage 2: From Oct 2009. Formal public consultation on draft Code of Practice, draft Impact Assessment and draft Regulations.

The revised Code will be published in March 2010, to allow LAs maximum lead-in time to delivery of the extended, flexible offer from September 2010, when the new Code will come in to force.

As a result of the introduction of EYFS in September 2008, we were required to make a consequential, technical change to regulations in order to ensure that the delivery of the free entitlement for 3 and 4 year olds continues to be in legislation.

The Minister gave an undertaking to complete this impact assessment on the extended 2.5 hours and increased flexibility when we consult on the regulations to support the extension.

Flexible Extension Pathfinders

The Department is working closely with two waves of pathfinder authorities, who have been delivering 15 flexible free hours, 20 since April 2007 and a second wave of 14, from September 2008. These pathfinders have been phasing in a 15 hour entitlement and assessing the demand for more flexible patterns of delivery. Learning from them has demonstrated the value of extending provision and making it more flexible, and will enable local authorities across the country to establish robust systems to support the delivery of the increased entitlement.

This pathfinder group has seen an increase in take up of the free offer which is very encouraging. Even though take up of the free offer is very high for the universal entitlement, at around 95%, pathfinder local authorities recorded take up that was 1.7 percent higher on average than non-pathfinder authorities in the January 2009 early years census. Take up by three year olds is 2.1 percent higher and four year olds 1.2 percent higher. In addition, there has been an increase in hours taken up by those previously taking up less than their full entitlement, particularly amongst 3 year olds where there has been a 1.8% growth in hours taken up. This suggests parents are increasingly attracted to the free entitlement with the availability of additional hours and increased flexibility and we have had anecdotal information to suggest some parents find it 'worth their while' now the offer has been enhanced.

Other key findings from pathfinders, recorded as part of an evaluation which took place in the summer of 2008, include:

- The implementation challenges identified prior to implementation were largely overcome and participating providers were generally positive about the new entitlement
- Key challenges for providers included: altering staff rotas (48%), new billing arrangements for parents (34%) and curriculum planning. These challenges were overcome with planning and local authority support.
- Providers offered a range of flexibility, with some providers offering parents a wide choice, though some were limited to unmovable challenges such as availability of space or shared premises.
- Only one-third of providers involved reported requiring parents to use their entitlement over 5 days, suggesting the majority of providers were able to offer some degree of flexibility. 57% of providers responding allowed parents to use their entitlement over 3 days and 58% of parents preferred to access it in this way (this is an increase from the 2007 Childcare and Early Years survey which showed only 16% take-up over 3 days)
- The largest proportion of providers evaluated (42%) reported that the new entitlement had no impact on their finances. A further 24% reported their finances were healthier since they started delivering the extended entitlement. A minority (8%) reported a negative impact on finances but attributed this to ongoing issues related to early years funding levels rather than specifically because of the extended entitlement.
- 37% of providers involved in the evaluation experienced increased demand from parents as a result of offering the extended entitlement. Take up was highest in the morning.

- The maintained sector experienced specific challenges around teacher contracts, and also their role in delivering early years provision, but were engaged through sector-specific support from LAs. There were a number of examples of maintained providers who had overcome these challenges and often went on to act as advocates for the new entitlement for their sector. .
- Private sector providers expressed concerns around funding relating to the free entitlement but have worked with pathfinder authorities to ensure the extension is offered in financially-viable blocks.
- Voluntary and community sector providers were overall enthusiastic about the extended entitlement, and have addressed challenges around premises of changing their premises type, to enable them to deliver the extension. Pathfinder local authorities often sought to support delivery of the extension in these sectors through facilitating partnerships with other providers.
- The majority of parents were satisfied with the flexibility offered to them by their provider, with satisfaction particularly high in the PVI sector (76%) compared to the maintained sector (49%).
- Parents were overwhelmingly positive about the effects on their children of accessing early years provision. Commonly cited benefits were: improved social skills (96%), communication skills (91%) and impact on behaviour (72%).
- Parents also reported benefits to themselves of the availability of the free entitlement, including enabling them to work or it becoming worthwhile to work (48%). It was also clear parents viewed the entitlement as enabling them to access employment or training options and improve the financial wellbeing of families. It is likely the extension to the entitlement will enhance these impacts.

Costs and benefits

Funding

The extension to the entitlement is being funded through a new investment of £590m of revenue funding, across 2008-11, which is being allocated to local authorities through the Standards Fund and includes both funding for the additional provision and to deliver more flexibly. Local authorities must prioritise securing sufficient extended provision but can use the remainder of the funding to support increased flexibility. This funding is separate to funding for the current entitlement of 12½ hours, which is funded over 2008-11 through the Dedicated Schools Grant with other education funding for 3-16 year olds. The reason for separating these funding streams is to ensure that the funding for the extended hours was ringfenced, so spending in the pathfinder phase could be accurately tracked and additional transitional costs could be accounted for.

In addition to this, there is £642m of capital funding available to local authorities over the same period, a significant further investment in early years which was announced in November 2007 and is in addition to the capital funding specifically for the development of Sure Start Children's Centres and for extended services in schools, announced as part of the School Capital Settlement.

The early years capital grant is aimed at helping settings to make adjustments to increase flexibility, as well as to improve the quality of provision and increase access for all children. Therefore, although it is not solely to be used for the implementation of the flexible extension to the free entitlement, we expect it to cover any necessary adaptations to settings, such as provision of fridges to enable settings to provide lunches, rest areas for children who are there for longer days and adaptations to give easier access to outdoor space. Our expectation is that the majority of the grant is used for improvements to the environment in private, voluntary and independent (PVI) settings as this is where the majority of adaptations are needed, although spending on the maintained sector is not precluded and it will be for local authorities to ascertain local need and use their discretion. In order to maximise the benefits to the sector, we have enabled local authorities to carry this funding over between years if required.

Flexibility funding

Most of the costs associated with providers offering more flexible access to the free entitlement are transitional; while they will need some resource to address them in the short term they will not require

ongoing funding. Both the Standards Fund investment and the early years capital funding are funding sources available to fund these elements in the current spending period.

There should not be significant ongoing financial burdens on providers as a result of the new offer; local authorities have a critical role to broker arrangements that balance parents' needs with providers' capacity to deliver. We expect many authorities to work with providers who are able to be most flexible first, whilst supporting those who have barriers to overcome in terms of delivering flexibly, using available funding from both the Standards Fund allocations to specifically support flexibility, and the available capital funding. The new offer should not, therefore, put provider sustainability in jeopardy.

In 2007 it was announced that all local authorities would be required to design implement a single early years funding formula, to fund the free entitlement. Since April 2009, this has been introduced in 9 pilot local authorities. The early years single funding formula (EYSFF) presents an opportunity to meet any longer-term costs of supporting flexibility through funding. The EYSFF is designed to support the flexible extension and be a transparent and equitable way of funding providers, with far greater transparency about what it costs to deliver the free entitlement. There will be opportunity for local authorities, which have identified a particular need to build capacity around flexibility, to include in their formula supplements which incentivise and support providers to become more flexible, in accordance with local demand. Guidance on flexibility supplements forms part of the *Practice Guidance on Implementation of the Early Years Single Funding Formula*, published by the Department in July 2009.

The EYSFF was intended to be implemented in every local authority from April 2010 and local authorities were preparing for this challenging deadline. However, information from providers, parents and local authorities themselves highlighted concerns about the potential disruption to the early years sector that an under-developed formula could cause. The Minister has therefore decided that LAs will not be required to implement their EYSFF until April 2011. The Department invited those local authorities that believe they will be ready to implement their EYSFF from April 2010 to continue as planned and join a new wave of pathfinders for 2010-11.

Pathfinders for 2010-11 were announced in mid-February 2010 and can be found at www.dcsf.gov.uk/everychildmatters/earlyyears/fundingreform/fundingreform. By taking this approach, the Department can build on the experience of the 9 pilot local authorities that implemented their formulae in April 2009 and, working with then and the new wave of pathfinders, gather further learning and good practice which can be used to support the remaining local authorities to implement successfully in April 2011.

The new offer is intended to attract even greater take up than the present entitlement and in pathfinder authorities is already doing so. Post-September 2010, take up between 12.5 and 15 hours will be reflected in the Early Years and Schools Censuses and funded as one with the current entitlement. Additional take-up as a result of increased flexibility will be funded accordingly. Whether this is as part of the Dedicated Schools Grant, as in the current spending review period, is subject to the review currently in train.

Sectors and groups affected

The costs and benefits of the increased flexible entitlement will fall to:

- Over 1.2 million 3 and 4 year olds and their families
- Close to 39,000 private, voluntary, independent and maintained sector childcare providers in England, including individual childminders, playgroups, small businesses, large chains, Sure Start Children's Centres and schools
- 152 top-tier local authorities

As part of this Impact Assessment the Government has produced an estimate of the economic value of the costs of the increase to 15 hours per week. In order to do this, a statistical model was developed using Early Years Census data from pathfinder authorities to track groups of children taking up different amounts of free entitlement (e.g. 10-12.5 hours a week), to see what proportion of children in each hourly group took up 12.5-15 hours after the extension. Using this data, we estimated the number of children in 2008-9 who would take up 15 hours if the extension was fully rolled out as 651,159 (80.1% of

the total of 805,462 children taking up the entitlement). Section 52 data returns on LA spending for 2008-9 were then used to estimate the cost of this to providers. According to this data, the average LA expenditure delegated to early years providers (£/learner) is £1,915. By dividing this figure by the annual number of hours of a 12.5 hour free entitlement place over 38 weeks of the year (475), it is possible to estimate the hourly cost of delivering the free entitlement as being around £4. Multiplying this by our estimate of the additional numbers of 2.5 hour sessions, over and above the current 12.5 hours, likely to be taken up the extension was fully rolled out in 2008-9, produces an estimate of the total cost of the extension, if fully rolled out, of around £250 million per annum.

It should be noted this figure is an overestimate as 2008-9 section 52 data returns already include the first wave of pathfinder funding for 34 local authorities (over 20% of the total), which means a calculation of the hourly rate based on 12.5 hour sessions will be overestimated. In addition, section 52 data returns include some full time childcare places for 4 year olds funded by local authorities, which are not possible to distinguish from free entitlement places, which will also lead the hourly cost to be overestimated. Finally, it should be noted that the hourly rate used is an average, and this average is significantly pulled up by a small number of high cost maintained nursery schools so will not be reflective of the hourly rate received by most maintained or PVI providers.

In addition to the estimated costs of extended hours, there will also be a cost to some providers in delivering the entitlement more flexibly due to administrative costs involved in employing additional staff or contracting staff to work additional hours. Increased flexibility can also be expected to increase demand for free entitlement places. Evidence we have received from 17 pathfinder authorities suggests there has been a significant increase in staff in maintained settings in some authorities, but no increase in maintained setting staff in most authorities or in the PVI sector in any authority. Opening and closing times remained unchanged in most settings, although some local authorities did report a need to alter staff hours. Local authorities did in general report a significant increase in demand for free entitlement places, although of widely varying size. Due to the small sample size, and the different way data was collated by each authority, it is difficult to draw robust conclusions from this evidence, and not possible to place a monetary value on the additional cost of delivering flexibility.

Through the Standards Fund allocations, from 2010-11, the first year when all LAs implement the extended entitlement to 100% of eligible children from the September term, the rollout is fully funded. £340m is available in this financial year to support the extension, which exceeds the £250m annual cost of funding extended provision, and also reflects a significant amount available for increasing flexibility.

In addition, an Equality Impact Assessment will consider the implications for disability equality, gender equality and race equality of the proposals. In the context of the free entitlement, the most relevant considerations here are the impact on black and minority ethnic groups and on parents and children with disabilities.

PARENTS

Benefits

There are clear benefits to all parents from the new offer, as it gives them more free hours to use. The Early Years Census 2008 recorded that over half of families accessing the free offer purchased additional hours on top of this, so there will be a clear and immediate financial benefit for these families, increasing gains to work and reducing poverty in low income and workless households. By offsetting costs of childcare during core hours (e.g. lunchtimes and 8-9 am) the extended entitlement will enable families, especially those on lower incomes, to purchase more childcare (privately or with help through tax credits).

The increased flexibility of the entitlement has potential to benefit all parents of 3 and 4 year olds; by giving them more say in when and how they take up their entitlement they will be better placed to meet their work/life balance needs and access the offer. Even though take up of the current free offer is high, we know from evidence such as the Parents' Childcare Survey that a significant number of parents are dissatisfied with the opening times of their provider. Enhanced flexibility will assist them to create a package of care for their children that suits their circumstances, preferences and working patterns. (Although it should be noted that parents will continue to have the option of accessing as little or as much of the entitlement as they wish.)

Increasing the entitlement to 15 hours per week coupled with the ability to access their provision more flexibly will give parents – and particularly mothers - a real choice about balancing work and family life and will enable more parents, who want to, to access work, education or training. Estimates using the 2004 Families and Children' Survey suggest that between 221,000 and 456,000 parents would return to work; and between 96,000 and 124,000 parents would work longer hours if sufficient childcare were available. An increase in the number of parents working will result in a reduction in the number of children living in workless households and an increase in family income, reducing child poverty. In addition to the income benefits to families, there are wider benefits of reducing child poverty, which is associated with significantly greater risk of poorer lifelong outcomes in terms of educational attainment, health and safety, and being a victim or perpetrator of crime.⁸ It has been estimated child poverty costs the UK £25 billion per annum.⁹ If all these parents return to work or work longer hours, we estimate that they will generate an overall increase in income of between £1,773 million to £4,433 million.

As well as benefiting parents universally, we expect the changes to the entitlement to help those groups of parents who are most in need. Evidence suggests that a lack of accessible and affordable childcare is a barrier which prevents a small proportion of parents of young children, particularly mothers, from entering or rejoining the workforce. We know that the 5% who currently do not take up the free entitlement include some of the most disadvantaged. We expect the new offer to make it easier for this group to access training or employment, both by making it more cost-effective to work or train by offering 15 hours free and by offering patterns of access which are convenient. We know from pathfinders that accessing the offer over three days in particular was popular.

The introduction of the extended entitlement and the new communications associated with it should raise levels of awareness amongst workless families about their entitlement. This should help to increase the take up of the free entitlement places. The Department will be working with Government Offices, local authorities and providers to establish the most effective way of promoting the extended entitlement to parents, particularly those who do not currently take up the entitlement, or who may benefit particularly from the extended hours.

The cost of childcare is a particular barrier to work for lower income families, both for non-working mothers wanting to work 16 hours or more a week and for working mothers already working between 1-15 hours a week, who may wish to work more. It will also be a key issue of concern for the parents of disabled children and for disabled parents. Disabled children may require specialist care or equipment increasing the cost of provision. In addition, disabled people in work are disproportionately in low paid jobs, making the costs and flexibility of childcare an increasingly important factor in decisions to take up, or remain in employment. In addition, it means parents who work 16 hours and claim Working Tax Credit pay for only one hour of childcare.

Risks to benefits

While we are working hard with the sector to ensure that the needs of more families are met, we recognise that flexibility on offer will vary across the country. Not every provider will offer flexibility in a way that suits each parents needs and much will be dependent on the availability and suitability of places. Some parents will require the free entitlement to cover shift work or atypical hours i.e. weekends/overnight and, while we certainly do not preclude the free entitlement being offered at these times, this may not always be available locally. We have been clear that flexibility does not mean an individualised offer for every parent. However, we will set a clear expectation that the Core Offer, as a minimum, is available in every local authority, and that Las must negotiate with providers, encouraging them to be more flexible to meet parental demand for other patterns of access to the entitlement.

The use of parental contracts between providers and parents may be one way of building stability in to delivery of a more flexible offer, and local authorities will be encouraged to support providers to establish contracts with parents which agree, usually on a termly basis, the way in which they will access their entitlement.

⁸ HMT/DWP/DCSF, *Ending Child Poverty: Everybody's Business*, 2008

⁹ Joseph Rowntree Foundation, *Estimating the costs of child poverty*, 2008

CHILDREN

Benefits

Children's outcomes will likely improve through increased use of high quality early education. Findings from EPPE show the benefits:

- on children's outcomes in maths and reading at age 11;
- on socio-behavioural outcomes at age 11;
- on children's independence and concentration, which in turn led to children achieving better than expected in reading and maths relative to their background.

Universal free provision removes the financial barrier of accessing high quality early learning -allowing children from all social groups to learn and develop together. Increasing the free entitlement to 15 flexible hours will further ensure all children have the best start in life, regardless of their background or family income.

Although it will take time for the children who have had access to the free entitlement to demonstrate the long-term benefits, there are already positive signs emerging; the latest Foundation Stage Profile results show that 4 percent more children achieved a good level of development at age five than the previous year and the gap in outcomes between disadvantaged children and their peers has narrowed for the first time.

The extension to 15 hours is likely to be highly beneficial additional provision for children from workless families, who are less likely to be purchasing provision on top of current free hours. And, of course, there will be benefits to children who are now accessing the offer for the first time, as the enhanced flexibility meets their families' needs. We have been working to encourage the 5 percent of families who do not access the offer to do so and are encouraged by the findings from pathfinder authorities that their take up was 1.7 percent higher on average than in non-pathfinder areas; 2.1 percent higher for three year olds and 1.2 percent higher for four year olds.

Improvements in educational attainment brought about by the flexible extension are hard to quantify but will have significant long term economic benefits. On average, the additional lifetime earnings associated with gaining 5 GCSEs at A*-C compared to no GCSEs is £45,000. This estimate was made using the assumptions and sources below:

- All analyses based on Labour Force Survey data (LFS) for 2004 and 2005 (pooled) for England only
- Working age span of 18-64 years for males and 18-59 years for females
- A comparison group which pools together those with no qualifications and those with below L2 qualifications as their highest qualification level [source: internal analysis]
- 2% Real Earnings growth. Page 25, Paragraph 5.44, Bullet 3, Footnote 7 of *The Green Book (2003)*.
- 25% Non-wage labour costs, the additional cost of employment.
- 3.5% Discount Rate for the first 30 years, 3.0% thereafter as per HMT's *The Green Book (2003)*. The discount rate has been included in the calculation so that lifetime earnings are given in NPV terms.

Thus, in order for the estimated benefits to outweigh the £250 million cost of the flexible extension, only around 5,542 additional children would have to gain GCSEs at C or above. This represents 0.7% of the total number of children currently taking up the free entitlement. This estimate is conservative, as it does not take into account the wider (non-financial) benefits of improved educational attainment for the individual and society (e.g. better health). There is also an equity benefit in improving the attainment of disadvantaged children.

Findings from the evaluation of the pathfinder local authorities suggested a large proportion of parents identified positive effects of children accessing early years provision, benefits likely to increase with the flexible extension. Parents reported:

- An improvement in children’s social skills.
- Longer sessions useful in preparing older children for school
- Most mentioned that their children’s vocabulary had greatly improved.

Disadvantaged children, in particular, can benefit significantly from good quality pre-school experiences, giving them a developmental boost at entry to primary school¹⁰. Research has shown that the quality of childcare and early years provision matters in terms of children’s intellectual and socio-emotional development. High quality childcare has been associated with benefits for children’s development, with the strongest effects for children from disadvantaged backgrounds. Increasing the amount and flexibility of the provision will make it more accessible to these families, producing benefits in cognitive, language and social development.

Risks to benefits

Increased flexibility may mean longer sessions some children as parents will be able to use more of their free hours over a shorter period of time i.e. 6hrs+6hrs+3hrs per week. EPPE suggests that children get the most benefit from accessing their free places in a pattern that supports the ethos of ‘little and often’. The extended entitlement will still allow families to choose little and often patterns, but in a more flexible way than previously, and with more hours overall. If the through the new emphasis on flexibility we had promoted complete flexibility, parents could potentially have chosen to take up all of their hours in one session thereby diminishing the benefits. However, the national parameters that the entitlement must be accessed within will provide some safeguards to access being provided ‘little and often’, thereby protecting children’s best interests.

There is no evidence to suggest that, if adhering to the principles rooted in the EPPE research – that provision is effective in short bursts often – that there is any disadvantage to children who receive provision during ‘atypical’ hours or that their ability to learn during these times is inhibited. In the evaluation of pathfinders providers said they could see no difference in children’s learning or outcomes which related to the times of day when they were accessing provision. And to safeguard any negative effects, the Early Years Foundation Stage sets high standards for care across the early years and gives providers a play-based learning framework which is applicable at all times of day.

PROVIDERS

Benefits

Occupancy

The likelihood of generating additional business is a clear incentive for providers of all types to deliver free entitlement places; we know from the Early Years Census 2008 that over half of families accessing a free entitlement place purchased additional hours as well (57%). Providers who are able to cater for parents’ requirements for flexibility are likely to benefit most.

Providers may also see increased occupancy rates and full daycare providers in particular may find that increased flexibility and additional hours allows them to fill less popular slots, as parents become more aware that they can access their entitlement at different times of day.

The maintained sector, in some pathfinder areas, have also seen increased occupancy with more flexible provision, and this can be viewed as a way for that sector to mitigate any challenging effects of the move to participation-led funding following the implementation of the Single Funding Formula.

Partnership

The new draft Code of Practice is clear on the importance of partnership at local level – between local authorities and providers as well as between different providers, and between providers and parents. The flexible extension will provide an opportunity for providers to consider how, by working in partnership with those in any sector, to better meet parents’ needs, and deliver the free entitlement in a way which also suits their business needs. For parents, partnership will also bring greater flexibility and choice.

¹⁰ The Effective Provision of Pre-School Education (EPPE) 2003

The draft Code also sets a clear expectation that partnership and local negotiation between local authorities and providers is key to securing a flexible local offer which balances effectively meeting parental demand with provider capacity. The suggested tools to underpin partnerships – namely Provider Agreements between LAs and providers in all sectors, and parental contracts which set out agreed patterns of flexibility with parents – will provide a consistent process for negotiating and managing how the local flexible offer will be delivered. Not every provider will be expected to deliver complete flexibility.

Childminders who deliver the free entitlement may benefit particularly from stronger local partnerships. Those who may not be able to or do not want to deliver the full entitlement of 15 flexible hours per week may have increased scope for working in partnership with other settings or offering atypical services so that they would be able to access free entitlement funding. Childminders will be key to securing greater flexibility and the Code will encourage all LAs to establish childminder networks as well as setting an expectation that childminders delivering the free entitlement should be qualified to at least level 3.

Support for Quality Improvement

The draft Code of Practice sets out clearly the expectation that (pending consultation) local authorities should seek to deliver the free entitlement through the highest quality providers, identifying them through the existing Early Years Quality Improvement and Support Programme, which is funded by the Department and includes the support of local Early Years Consultants. This stands to benefit all providers, and all those accessing childcare, driving quality at local level, by helping LAs identify the settings most in need of quality improvement support, and targeting resources accordingly. This will ensure that decisions on supporting and incentivising quality – including through supplements in the Early Years Single Funding Formula (from April 2011 in all local authorities), will be based on local market need, but through a process which is consistent at national level. This will particularly benefit large provider chains which are currently subject to funding decisions made on different quality criteria in different LAs.

Capital funding

Providers may also be eligible to access capital funding via the local authority, with which to adapt their setting to deliver a more flexible offer. This will benefit their businesses beyond the free entitlement hours they offer. The Government has made available £642m of capital funding to local authorities to help settings make adjustments which will enable them to become more flexible, increase accessibility for children and also improve the quality of their provision. Our expectation is that the majority of this funding will be spent on the PVI sector, though spending on the maintained is not precluded.

Single Funding Formula

In April 2011 all LAs will be required to introduce their Early Years Single Funding Formula to fund the free entitlement. The single funding formula is designed to support the flexible extension and to address inconsistencies in how the offer is currently funded across the maintained and PVI sector. The formula will be a transparent and equitable way of funding providers, and will be participation-led in all sectors. Legislative changes enable local authorities to implement a single funding formula by removing the split in early years funding at the local level and creating one 'pot' of funding that will be more equitably distributed. As a result of the postponement of the formal implementation of the EYSFF, the regulations introduced through the Apprenticeships, Skills and Learners Act will not be laid for the time being. Under existing regulations, local authorities can implement any formula they wish for the PVI sector. For the maintained sector, local authorities should be moving towards participation-led funding where this is not already in place (unless for the purposes of sustainability in a setting). Where local authorities move to participation funding for maintained settings, they need to adhere to a single pupil count in January and not adjust budgets within the year.

There will also be opportunity for local authorities to include in their formula supplements which recognise local needs to incentivise or support, for example, flexibility or quality. All LAs will be required to include the disadvantage supplement, to provide additional support through funding for the settings serving the families most in need.

Costs

The Extended Flexible Entitlement

The amount of change required to deliver a longer and more flexible offer will vary across different types of provider. While we have been clear that we will not expect every provider to adapt to be open 8am-6pm or be able to take children flexibly right across the day, there is obviously a risk that parents may 'vote with their feet' if they are using less flexible providers, once they are aware that they can access a more flexible entitlement elsewhere. Local authorities will play a key role in working with providers, enabling them to work together to deliver the extended flexible offer to parents and supporting them to be as flexible as possible, to offer maximum choice to parents without compromising sustainability.

However, the latest Provider Survey findings suggest a large number of providers are well prepared to deliver the extended hours and increased flexibility, particularly full daycare settings which should be able to deliver the increased offer with minimum changes. 84% of full day care providers are already offering the free entitlement over three days, one of the more popular patterns of take up of the extended entitlement in pathfinder LAs.

Independent schools may be unable to deliver the full 38 weeks, or a flexible entitlement. These settings may have to adapt to deliver places more flexibly i.e. areas to provide snacks or lunch and or for sleep time. However LAs should seek to support changes to enable these providers to become more flexible and maintain parental choice in the local free entitlement market. Some independent schools are now delivering holiday provision in order to provide parents with their entitlement of 15 hours per week of free early learning for 38 weeks.

A number of **sessional** providers may also be unable to deliver the extended, flexible entitlement, due in some cases to premises restrictions which leave them physically unable to stay open long enough to offer 15 hours over the week. There is no presumption that these settings should no longer continue to deliver the free entitlement and, where there is parental demand and the setting is of the required quality, local authorities can continue to fund these providers to deliver the 12.5 hours they do currently, and should negotiate with parents and other providers how delivery in partnership may secure for a parent their additional hours elsewhere. We know that there has, in recent years, been shaped by parents' demands for more choice which has been reflected in a move away from sessional provision – the number of full daycare providers has increased by 74 percent since 2001.¹¹

- The most common demand from parents during the pathfinder rollout of the flexible extension was for additional flexibility in the form of 'longer' sessions or earlier/later opening times or session times. In most cases they were not requiring a radical change in opening hours or sessional start/end times. Further, for many parents in pathfinder areas, flexibility was often not their priority, above finding the best provider for their children.

Sustainability

Responses to the consultation on the Ten Year Strategy welcomed the increase of the entitlement but also highlighted concerns from some trade unions, local authorities and providers that funding was not sufficient to cover the cost of delivering more free hours. These concerns have been highlighted again in the discussion phase of consultation on the revised Code of Practice.

Providers have expressed strongly a particular concern over the longer sessions which they will most likely have to deliver in order to offer the additional hours of the extended entitlement and the anticipated impact of this on their businesses. In particular, for providers who currently deliver 3 hour sessions, 2.5 of which are free and the further half hour for which the parent pays, there is concern about the removal of the margin from which they rely on fees to make delivery of the session "affordable". This was linked to the concern that they would be forced to deliver a 2 hour session for parents who wanted it (2 hours being the national lower limit on how the free entitlement can be accessed), leaving the provider with "unsaleable" hours round the edges. These issues could potentially impact on small businesses the most and can be exacerbated by the practice of using free entitlement funding to cross-subsidise the provision for younger age groups. At present, we have only anecdotal information, from providers, about this practice.

¹¹ *Childcare and Early Years Provider Survey 2007*, DCSF, 2008

- In mitigating this issue, it will be up to local authorities to negotiate with individual providers over whether offering a session of the national minimum is a reasonable or necessary expectation. Local authorities will have to take provider sustainability and their duties on delivering sufficient provision to meet local demand into account in these negotiations. In addition, the extension to the free entitlement, potentially an additional half hour per session, is funded through the Standards Fund allocations from 2008-11. This includes funding which local authorities should use to support providers to deliver more flexibly. This funding stream currently mitigates the risk of unsustainability for providers who will no longer have half-hour blocks for which they can charge private fees and can therefore support transitional costs while new business models are established. Through the Standards Fund allocations, transitional and additional costs of delivering increased flexibility are fully-funded.
- The draft Code of Practice seeks to clarify the position set out above and address these issues in several ways. The draft Code makes clear that local authorities must not place on providers any expectation that they will deliver sessions which are unsustainable for their business, and that the provider's contribution to the local flexible offer must be secured through negotiation. The draft Code is also clear that the national limits are not what providers are expected to deliver, nor is there an expectation that they should make the free entitlement available on an hourly, rather than sessional, basis. In addition, the draft Code sets the national lower limit on session length at 2.5 hours, an increase of half an hour, to reflect provider concerns over deliverability of a 2 hour session, and the way that the free entitlement is generally delivered currently. Further, the draft Code sets an expectation that LAs will support providers to establish parental contracts with parents using the settings, to build stability in to delivery of the flexible offer.

Staffing

Maintained/Schools/ Nursery classes have expressed concerns about the need to recruit staff or change terms and conditions of current staff to cover longer hours and more flexible patterns of access to the free entitlement, i.e. over lunchtimes.

It is likely that there will need to be some changes for staff in maintained settings in order to deliver more flexibly; evidence from pathfinder authorities suggests that some needed to alter staff hours as a result of the new offer, although most have not seen an increase in staff numbers. Due to the small sample size, and the different method by which data was collated by each authority, it is difficult to draw robust conclusions from this evidence, and not possible to place a monetary value on the additional cost of delivering flexibility. However, it is worthy of note that increased take up has been much less significant in maintained than in PVI as: a) children in maintained are normally expected to attend for their whole entitlement anyway, so increasing it has less impact on attendance than in PVI and b) most maintained providers offering 15 hour per week are still offering fixed daily sessions (albeit slightly longer sessions) so are largely appealing to the same group of families for whom sessional provision meets their needs."

Childminders

The requirement through the Code for childminders to be part of a network to deliver the free entitlement is potentially prohibitive. However, the new Code is likely (pending consultation) to expect all LAs to establish networks in order to enable childminders to delivery the free entitlement, if they wish to, in order to increase flexibility and parental choice in the local free entitlement offer. The Department is also working with NCMA to ensure negative impact is minimised. The discussion phase of the consultation showed support for proposals that would enable more childminders to deliver the free entitlement.

Postponement to implementation of EYSFF

The second consultation on the draft Code of Practice and draft regulations highlighted some concerns about the risks of delay to implementing the Early Years Single Funding Formula, elements of which may have been viewed as key to successful implementation of the flexible extension in some local authorities. However, the flexible extension remains fully funded for additional hours and flexibility, this is unaffected by the delay to the EYSFF. In addition, for those local authorities implementing from April 2011, there is additional time to secure good, effective consultation with local providers, in order to ascertain true costs of delivering the extended entitlement, and offering providers in all parts of the sector further opportunity to influence the formula.

LOCAL AUTHORITIES

Benefits

Local authorities have a duty under to ensure there are sufficient free early learning places under s7 of Childcare Act. From September 2010 (pending legislation), that will require securing 570 hours of free provision a year for all eligible children, equating to 15 hours per week for 38 weeks of the year.

The Government is committed to ensuring that the duties under the Childcare Act 2006 do not place new, unfunded burdens on local authorities. The increase of the entitlement to 15 hours delivered more flexibly will be funded from an additional £590m 2008-11 paid via the Standards Fund, and future funding levels will be determined through the normal spending review mechanisms.

The new Code of Practice will support LAs to deliver the extension to the free entitlement from September 2010 and LAs are currently learning from pathfinder local authorities which have been delivering the flexible extension in two waves, the first starting in 2007.

Costs

LAs will be expected to take on an increased role in terms of brokering the extended, more flexible entitlement – specifically; negotiating with providers their contribution to a local flexible offer; assessing parental demand for a wider variety of patterns of access; establishing a Core Offer of flexibility for the first time; and brokering partnerships between providers where it is necessary to deliver increased flexibility. The impact of these enhanced responsibilities will be highest throughout the transitional phase and LAs will be supported ahead of implementation, through the revised Code of Practice.

To ensure childminders are eligible to deliver free entitlement places, and increase flexibility by working in partnership with other providers, all local authorities will be expected develop accredited childminder networks. Our expectation is that every Local Authority should look to establish a network. This reinforces the commitment from *Next Steps for Early Learning and Childcare* (January 2009) to examine new approaches to networking – enabling more childminders to access free entitlement funding, to enhance their professional development and the quality of their provision, and helping to ensure a level playing field across different types of providers.

Local authority Families Information Services can expect to have an increased brokering role to ensure parents are able to access their entitlement in a pattern that supports parental demand and provider sustainability – this will require liaison between settings and parents and sharing of this information between LAs and providers will be encouraged. LAs and the FIS will also have a responsibility to ensure parents are aware of the extended entitlement

Early Years Single Funding Formula

91. In April 2011 all LAs will be required to introduce their Early Years Single Funding Formula to facilitate the distribution of funding of the extended, flexible entitlement. The introduction of new participation-led payment mechanisms across all sectors will place additional administrative burdens on local authorities; in the planning period and potentially the transitional period. From April 2009, 9 local authorities have piloted the implementation of the single funding formula, ahead of universal roll-out and guidance based on the learning of those authorities was published in July 2009, in good time to support other LA to finalise their formulas. Following announcement of postponement to full implementation of the EYSFF, which will now be required from April 2011, local authorities who are ready to implement from April 2010 bid to become part of a new wave of pathfinders for 2010-11. A list of pathfinders can be found at www.dcsf.gov.uk/everychildmatters/earlyyears/fundingreform/fundingreform

CENTRAL GOVERNMENT

Benefits

92. The extended entitlement will give greater choices to parents especially those who wish to take up employment or increase the number of hours they work, or access education or training as a route to employment. In turn this can contribute to reducing the number of parents claiming benefits, increase tax revenue and build a more productive workforce. It will support government in meeting Public Service Agreements 9, 10 and 11.

Costs

93. Central government has allocated an additional £590m from the Standards Fund for the period 2008-11, specifically to fund the additional 2.5 hours and flexibility; and an additional £642m – Capital funding (for quality and sufficiency of childcare and for extending the free entitlement). The extent of on-going costs beyond the transitional period will need to be reviewed for the next spending period.

94. Ofsted – some providers may change their registration description in order to be able to deliver more flexible hours, i.e. sessional providers may become full day care providers. This leads to a potential increase in workload for assessors throughout the transitional period.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes/No	Yes/No
Small Firms Impact Test	Yes/No	Yes/No
Legal Aid	Yes/No	Yes/No
Sustainable Development	Yes/No	Yes/No
Carbon Assessment	Yes/No	Yes/No
Other Environment	Yes/No	Yes/No
Health Impact Assessment	Yes/No	Yes/No
Race Equality	Yes/No	Yes/No
Disability Equality	Yes/No	Yes/No
Gender Equality	Yes/No	Yes/No
Human Rights	Yes/No	Yes/No
Rural Proofing	Yes/No	Yes/No

Annex 1: Derivation of monetised cost estimate

The cost estimate used in this Impact Assessment of the extension of hours of free entitlement from 12.5 to 15 per week was derived using the following sources and assumptions:

- A statistical model developed using Early Years Census data from pathfinder authorities that tracked groups of children taking up different amounts of free entitlement (e.g. 10-12.5 hours a week). This was used to see what proportion of children in each hourly group took up 12.5-15 hours after the extension. Using this data, we estimated the number of children in 2008-9 who would take up 15 hours if the extension was fully rolled out as 651,159 (80.1% of the total of 805,462 children taking up the entitlement).
- Section 52 data returns on LA spending for 2008-9 were then used to estimate the cost of the estimated take up of the extra hours to providers. According to this data, the average LA expenditure delegated to early years providers (£/learner) is £1,915. By dividing this figure by the annual number of hours of a 12.5 hour free entitlement place over 38 weeks of the year (475), it is possible to estimate the hourly cost of delivering the free entitlement as being around £4. This was multiplied by our estimate of the additional numbers of 2.5 hour sessions, over and above the current 12.5 hours, likely to be taken up if the extension was fully rolled out in 2008-9, producing an estimate of the total cost of the extension, if fully rolled out in 2008-9, of around **£250 million** per annum.

N.B. The £250 million figure is an overestimate of the total cost of the extension if it were fully rolled out in 2008-9 as 2008-9 section 52 data returns already include the first wave of pathfinder funding for 34 local authorities (over 20% of the total), which means a calculation of the hourly rate based on 12.5 hour sessions will be overestimated. In addition, section 52 data returns include some full time childcare places for 4 year olds funded by local authorities, which are not possible to distinguish from free entitlement places, which will also lead the hourly cost to be overestimated. Finally, it should be noted that the hourly rate used is an average, and this average is significantly pulled up by a small number of high cost maintained nursery schools so will not be reflective of the hourly rate received by most maintained or PVI providers.