



Department  
for Education

# **Model Agreement**

**Early years provision free of charge and  
free childcare**

**June 2018**

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## Section 1: Overview

- 1.1. This model agreement from the Department for Education sets out the department's expectations on what should be included in agreements between local authorities and providers (provider agreements) and refers to early years provision free of charge (sections 7 and 7A of the Childcare Act 2006) and free childcare (section 2 of the Childcare Act 2016) as the 'free entitlement(s)' or 'free hours' or a 'free place'.
- 1.2. The model agreement applies to the 15 hour entitlement for the most disadvantaged two-year-olds, the 15 hour entitlement for parents of three- and four-year-olds (the universal entitlement) and the 30 hours entitlement for working parents of three- and four-year-olds (the extended entitlement).
- 1.3. The model agreement has been developed in partnership with early years providers and local authorities. It is intended to bring greater consistency to provider agreements across all local authorities and all types of providers.
- 1.4. The department expects the standard headings and wording provided in Section 2 to be used in all provider agreements. Local authorities should then include further detail to set out local level process where indicated.
- 1.5. This document does not provide guidance on how providers operate their private businesses, including charges for provision over and above a child's free hours. Local authorities should not intervene where parents choose to purchase additional hours of provision or additional services providing that this does not affect the parent's ability to take up their child's free place.
- 1.6. This model agreement will be kept under review and updated as necessary.

### Who is the model agreement for?

- 1.7. This model agreement is for:
  - Local authorities
  - Early years providers who are referred to as 'providers' and include:
    - Early years providers and childminders registered on the Ofsted Early Years Register;
    - Childminders registered with a childminder agency that is registered with Ofsted;
    - Independent Schools and Academies taking children age two and over and which are exempt from registration with Ofsted as an early years provider.
- 1.8. The parental declaration at Annex A is for:
  - Early years providers, as set out above
  - Parents

## Supplementary provisions

- 1.9. This model agreement sets out the department's expectations on what should be included in provider agreements for delivery of the free entitlements. It is not otherwise intended to replace, supersede or negate the requirements or expectations set out in legislation, other published statutory guidance and government advice and using the model agreement does not prevent local authorities from exercising their statutory powers to include other requirements.
- 1.10. Local authorities and providers must comply with all relevant legal obligations
- 1.11. Local authorities should develop their provider agreements in line with their own legal advice, however the department recommends that local authorities include the following provisions:
  - A right to unilaterally vary the agreement to reflect changes in legislation and departmental guidance.
  - A clause stating that references to legislation will be to that legislation as amended from time to time, without express change in the model agreement and/or provider agreement.
  - Freedom of Information provisions.
  - Termination and enforcement clauses, to cover all enforcement stages up to and including termination of the agreement. The local authority should also make clear that they do not waive the right to act if they do not act immediately (a slower evidence based approach may be required on occasion).
  - An obligation to comply with all relevant legislation.
  - Provisions for dealing with data protection and confidentiality.
  - An obligation to take out and maintain adequate levels of insurance.
  - Provisions dealing with how funding must be accounted for and recorded for audit purposes.
  - A clear process for resolving any disputes.
- 1.12. The local authority cannot impose requirements which subject the quality of the early years provision, or services provided by the childminder agency, to a quality assessment process by the local authority; or require the provider to attend any training or other quality improvement programme, other than any training or quality improvement programme identified in an early years provision inspection report.

## **Legal framework and statutory guidance**

1.13. The following frameworks and legislation underpin this model agreement:

- Early Education and childcare, Statutory guidance for Local Authorities 2017
- Childcare Act 2006
- Childcare Act 2016
- Equality Act 2010
- School admissions code 2014
- Statutory framework for the early years foundation stage 2014
- Local Authority, (Duty to Secure Early Years Provision Free of Charge) Regulations 2014
- The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- Special educational needs and disability code of practice: 0 to 25 years 2015
- Data Protection Act 2018

## **Section 2: Provider agreement requirements and standard wording**

- 2.1 Local authorities should ensure every provider agreement is clear and transparent.
- 2.2 Local authorities are required to have due regard to this model agreement in the exercise of their duty under s7(1) of the Childcare Act 2006 and regulation 39 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016
- 2.3 The expected headings and wording to be used in every provider agreement are set out below and, unless there is good reason not to, should be used in every provider agreement.

### **Key local authority responsibilities**

- 2.4 Local authorities must secure a free entitlement place for every eligible child in their area.
- 2.5 The local authority should work in partnership with providers to agree how to deliver free entitlement places.
- 2.6 The local authority should be clear about their role and the support on offer locally to meet the needs of children with special educational needs and/or disabilities (SEND) as well as their expectations of providers.
- 2.7 The local authority must contribute to the safeguarding and promote the welfare of children and young people in their area.

### **Key provider responsibilities**

- 2.8 The provider must comply with all relevant legislation and insurance requirements.
- 2.9 The provider should deliver the free entitlements consistently to all parents, whether in receipt of 15 or 30 hours and regardless of whether they opt to pay for optional services or consumables. This means that the provider should be clear and communicate to parents details about the days and times that they offer free places, along with their services and charges. Those children accessing the free entitlements should receive the same quality and access to provision.
- 2.10 The provider must follow the EYFS and have clear safeguarding policies and procedures in place that link to the local authority's guidance for recognising, responding, reporting and recording suspected or actual abuse.

- 2.11 The provider must have arrangements in place to support children with special educational needs and/or disabilities (SEND). These arrangements should include a clear approach to identifying and responding to SEND. Providers should utilise the SEN inclusion fund and Disability Access Fund to deliver effective support, whilst making information available about their SEND offer to parents.

## Safeguarding

- 2.12 The local authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area. They have a number of statutory functions under the 1989 and 2004 Children Acts which make this clear, and the 'Working together to safeguard children' 2015 guidance sets these out in detail.

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/592101/Working\\_Together\\_to\\_Safeguard\\_Children\\_20170213.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/592101/Working_Together_to_Safeguard_Children_20170213.pdf)

- 2.13 The provider must follow the EYFS and have clear safeguarding policies and procedures in place that are in line with local guidance and procedures for responding to and reporting suspected or actual abuse and neglect. A lead practitioner must take responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The provider must have regard to 'Working Together to safeguard Children' 2015 guidance.

## Eligibility

- 2.14 The provider should check original copies of documentation to confirm a child has reached the eligible age on initial registration for all free entitlements. The provider can retain paper or digital copies of documentation to enable the local authority to carry out audits and fraud investigations. Where a provider retains a copy of documentation this must be stored securely and deleted when there is no longer a good reason to keep the data. Please refer to the data privacy guidance set out in Annex A: Parent declaration, part 6.
- 2.15 The provider should offer places to eligible two-year-olds on the understanding that the child remains eligible until they become eligible for the universal entitlement for three- and four-year-olds.
- 2.16 The local authority must ensure that a child has a free entitlement place no later than the beginning of the term following the child and the parent meeting the eligibility criteria for the free entitlements.
- 2.17 Alongside the 30 hours eligibility code, which is the child's unique 11-digit number, and original copies of documentation (see 2.14), a provider must acquire written consent from, or on behalf of, the parent to be able to receive confirmation and future notifications from the local authority of the validity of the parent's 30 hours eligibility code.
- 2.18 Once a provider has received written consent from the parent, they should verify the 30 hours eligibility code with the local authority.

- 2.19 The local authority will confirm the validity of 30 hours eligibility codes to allow providers to offer 30 hours places for eligible three- and four-year-olds. The local authority will provide a validity checking service to providers to enable them to verify the 30 hours eligibility code. The Eligibility Checking Service (ECS) allows all local authorities to make instant checks for code validity.
- 2.20 Thereafter, the local authority should complete audit checks to review the validity of eligibility codes for children who qualify for 30 hours free childcare at 6 fixed points in the year, both at half-term and at the end of term across the year (in line with the dates as listed at table A below). It is the local authority's responsibility to notify a provider where a parent has fallen out of eligibility and inform them of the grace period end date.

**Table A:**

<b>Date Parent receives ineligible decision on reconfirmation:</b>	<b>LA audit date:</b>	<b>Grace Period End date:</b>
1 Jan – 10 Feb	11 February	31 March
11 Feb – 31 March	1 April	31 August
1 April – 26 May	27 May	31 August
27 May – 31 August	1 September	31 December
1 September – 21 October	22 October	31 December
22 October – 31 December	1 January	31 March

## **The Grace Period**

- 2.21 A child will enter the grace period when the child's parents cease to meet the eligibility criteria set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016, as determined by HMRC or a First Tier Tribunal in the case of an appeal.
- 2.22 Local Authorities will be able to access information about whether a child has ceased to meet the eligibility criteria and entered the grace period via the Eligibility Checking Service. The grace period end date will automatically be applied to eligibility codes.
- 2.23 The local authority should continue to fund a place for a child who enters the grace period as set out in the Early Education and Childcare Statutory guidance for Local Authorities 2017.
- 2.24 Bedford Borough will continue to fund until the Grace Period end date, providing the child is already attending a setting.

## **Flexibility**

- 2.25 Provision must be offered within the national parameters on flexibility as set out in Section A2 of Early Education and Childcare Statutory guidance for Local Authorities.

- 2.26 The provider should work with the local authority and share information about the times and periods at which they are able to offer free entitlements to support the local authority to secure sufficient stretched and flexible places to meet parental demand in the local authority. The provider should also make information about their offer and admissions criteria available to parents at the point the child first accesses provision at their setting.
- 2.27 Bedford Borough will fund at settings according to the request on the Parent Declaration form for up to the maximum permitted hours per term/year

## **Partnership working**

- 2.28 Partnerships should be supported by local authorities on four levels between:
- i. Local authorities and providers
  - ii. Providers working with other providers, including childminders, schools and organisations
  - iii. Providers and parents
  - iv. Local authorities and parents
- 2.29 The local authority should promote partnership working between different types of providers, including childminders, across all sectors and encourage more providers to offer flexible provision, alongside other providers.
- 2.30 The provider should work in partnership with parents, carers and other providers to improve provision and outcomes for children in their setting. An interactive toolkit has been developed to help providers set up or join a partnership, maximise the benefits of working together and tackle the challenges joint working can bring.
- <http://www.familyandchildcaretrust.org/dfes-30-hour-mixed-model-partnership-toolkit>
- 2.31 The provider should discuss and work closely with parents to agree how a child's overall care will work in practice when their free entitlement is split across different providers, such as at a maintained setting and childminder, to ensure a smooth transition for the child.

## **Special educational needs and disabilities**

- 2.32 The local authority must strategically plan support for children with special educational needs and/or disabilities (SEND) to meet the needs of all children in their local area as per the Special Educational Needs and Disability code of practice: 0 to 25 years (January 2015).
- [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf)
- 2.33 The provider must ensure owners and all staff members are aware of their duties in relation to the SEND Code of Practice and the Equality Act 2010.
- 2.34 The local authority must be clear and transparent about the support on offer in their area, through their Local Offer, so parents and providers can access that support.

- 2.35 The provider should be clear and transparent about the SEND support on offer at their setting and make information available about their offer to support parents to choose the right setting for their child with SEND.

## **Social mobility and disadvantage**

- 2.36 The local authority should promote equality and inclusion, particularly for disadvantaged families, looked after children and children in need by removing barriers of access to free places and working with parents to give each child support to fulfil their potential.
- 2.37 The provider should ensure that they have identified the disadvantaged children in their setting as part of the process for checking EYPP eligibility. They will also use EYPP and any locally available funding streams or support to improve outcomes for this group.

## **Quality**

- 2.38 The Early Years Foundation Stage (EYFS) statutory framework is mandatory for all schools that provide early years provision and Ofsted-registered early years providers in England. The EYFS sets the standards that all early years providers must meet to ensure that children learn and develop well and are kept healthy and safe.
- 2.39 Ofsted are the sole arbiter of quality for all free entitlements and Ofsted and inspectorates of independent schools have regard to the EYFS in carrying out inspections and report on the quality and standards of provision.
- 2.40 Local authorities have a legal duty to provide information, advice and training on meeting the requirements of the EYFS, meeting the needs of children with SEND and on effective safeguarding and child protection for providers who are rated less than 'Good' by Ofsted or newly registered providers.
- 2.41 Provision must be offered in accordance with the national parameters on quality as set out in Section A3 of Early Education and Childcare Statutory Guidance for Local Authorities and the EYFS statutory framework.

## **Business planning**

- 2.42 The local authority should clearly set out the documentation that they need to receive from providers to support payment and delivery of free entitlements and the timetable which providers should follow when submitting their documentation, this includes setting out the importance of timely and accurate census returns.
- 2.43 The local authority should not charge providers disproportionate penalties for providing late or incomplete information leading to additional administration in the processing of free entitlements. Any charges should be reasonable and proportionate to the inconvenience or costs incurred to the local authority as a result of the lateness and local authorities will ensure charges are clearly communicated to providers.

- 2.44 The local authority should not carry out audit regimes which are disproportionate or are unnecessarily burdensome to providers.
- 2.45 The provider should ensure they submit timely and accurate information, including, but not limited to, headcount data, census data, parental declarations and invoices, as per the financial guidelines of their local authority. Failure to do so may result in inaccurate, delayed or suspended funding.
- 2.46 The provider should maintain accurate financial and non-financial records relating to free entitlement places and should give the local authority access on reasonable notice to all financial and non-financial records relating to free entitlement places funded under the provider agreement, subject to confidentiality restrictions.

## Charging

- 2.47 Government funding is intended to cover the cost to deliver 15 or 30 hours a week of free, high quality, flexible childcare. It is not intended to cover the cost of meals, consumables, additional hours or additional services.
- 2.48 The provider can charge for meals and snacks as part of a free entitlement place and they can also charge for consumables such as nappies or sun cream and for services such as trips and musical tuition. Parents should therefore expect to pay for these, although these charges must be voluntary for the parent. Where parents are unable or unwilling to pay for meals and consumables, providers who choose to offer the free entitlements are responsible for setting their own policy on how to respond, with options including waiving or reducing the cost of meals and snacks or allowing parents to supply their own meals. Providers should be particularly mindful of the impact of additional charges on the most disadvantaged parents.
- 2.49 The provider should deliver the free entitlements consistently so that all children accessing any of the free entitlements will receive the same quality and access to provision, regardless of whether they opt to pay for optional hours, services, meals or consumables.
- 2.50 The local authority should not intervene where parents choose to purchase additional hours of provision or additional services, providing that this does not affect the parent's ability to take up their child's free place. The provider should be completely transparent about any additional charges.
- 2.51 The provider should publish their admissions criteria and ensure parents understand which hours/sessions can be taken as free provision. Not all providers will be able to offer fully flexible places, but providers should work with parents to ensure that as far as possible the pattern of hours are convenient for parents' working hours.
- 2.52 The provider can charge parents a deposit to secure their child's free place but should refund the deposit in full to parents within a reasonable time scale.
- 2.53 The provider cannot charge parents "top-up" fees (any difference between a provider's normal charge to parents and the funding they receive from the local authority to deliver free places) or require parents to pay a registration fee as a condition of taking up their child's free place.

2.54 The provider should ensure their invoices and receipts are clear, transparent and itemised, allowing parents to see that they have received their free entitlement completely free of charge and understand fees paid for additional hours. The provider will also ensure that receipts contain their full details so that they can be identified as coming from a specific provider.

## **Funding**

2.55 The local authority should pay all providers, particularly childminders, monthly by September 2018 unless a provider requests and the local authority agrees to continue an existing alternative sustainable method of payment.

2.56 The provider should accurately complete and submit headcount and other necessary data returns by the agreed date to support the local authority to make payment.

2.57 Please see Appendix 1 of the Provider Agreement for funding processes and guidelines for claiming NEF

## **Compliance**

2.58 The local authority can carry out checks and/or audits on providers to ensure compliance with the requirements of delivering the free entitlements.

2.59 Please see Appendix 2 of the Provider Agreement for financial and accounting arrangements

## **Termination and withdrawal of funding**

2.60 Suspension of registration by Ofsted or a breach of statutory requirements or safeguarding issues may result in the termination of the arrangement and withdrawal of funding.

2.61 Please see Appendix 3 of the Provider Agreement for procedure for removal of providers from Bedford Borough Council's directory or providers

## **Appeals process**

2.62 A provider may be denied approval to offer the free entitlements or have their funding withdrawn as set out above. The provider can appeal against that decision.

2.63 Please see Appendix 4 of the Provider Agreement for Appeals Procedure

## **Complaints process**

2.64 Please see Appendix 5 of the Provider Agreement for Complaints from parents and the public

- 2.65 The Provider should ensure they have a complaints procedure in place that is published and accessible for parents who are not satisfied their child has received their free entitlement in the correct way, as set out in this agreement and in Early Education and Childcare Statutory guidance for Local Authorities.
- 2.66 If a parent or provider is not satisfied with the way in which their complaint has been dealt with by the local authority or believes the local authority has acted unreasonably, they can make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local complaints procedures have been exhausted

## **Additional Explanatory Notes for Local Authorities and Providers**

### **Data Protection**

Data from which it is possible to identify children (in any medium, including within a MIS) is personal data. Such personal data must be managed in accordance with the requirements of the Data Protection Act 2018 (the Act) Data Controllers must ensure that their data handling rules comply with the Act and that staff understand these. Local authorities should advise providers about their responsibility to hold data in accordance with the Act including the requirement to issue parents with a fair processing notice explaining how their data and data about their child is to be used.

The Act puts in place safeguards regarding the use of personal data by organisations, including the department, local authorities and schools. The Act gives rights to those (known as data subjects) about whom data is held, such as pupils, their parents and teachers. This includes:

- the right to know the types of data being held
- why it is being held
- to whom it may be communicated that

A 'privacy notice' is a good way to be able to meet data subjects' rights and therefore the department recommends that these are used to explain to children and staff how their data is being used in the census collections including the school workforce, early years census and school census. The department has drafted template privacy notices providers and local authorities may wish to use. However, the template notices will need to be reviewed and, where necessary, amended to reflect business need. Ideally the privacy notice will include to the gov.uk webpage on how the department collects this link and shares data.

It is strongly recommended that the privacy notice be included as part of an induction pack for staff and made available to parents via the provider's website, as well as potentially featured on the staff notice board / intranet. They do not need to be issued on an annual basis as long as new children and staff are made aware of the notices and they are readily available electronically or in paper format.

## **Legal Duties under the Data Protection Act 2018 (the Act): data security**

Providers and local authorities have a legal duty under the Act to ensure that personal data is processed securely. Processing is the collection, handling (use), storage, transmission and deletion of data. Further information is available from the Information Commissioners Office.

If personal data is not properly safeguarded it could damage your reputation and compromise the safety of individuals. Your responsibility as a data controller / processor extends to those who have access to your data beyond your organisation if working on your behalf, that is, if external IT suppliers can remotely access your information.

<https://www.ncsc.gov.uk/guidance/10-steps-cyber-security>

<http://www.nationalarchives.gov.uk/information-management/training/responsible-for-information-csl-course/>

It is vital that all staff with access to personal data understand the importance of protecting it; that they are familiar with your security policy; and that they put security procedures into practice. It is recommended that you provide appropriate initial and refresher training. Further information on handling data security is available

[https://www.gov.uk/government/publications/cloud-software-services-and-the-data-protection-act#\\_blank](https://www.gov.uk/government/publications/cloud-software-services-and-the-data-protection-act#_blank)

### **Annex B: Developing the model agreement**

- The model agreement has been developed following feedback from local authorities and providers about the administrative burdens as a result of each local authority developing a provider agreement with each childcare provider in their area for delivering early education entitlements for two-, three- and four-year-olds. This is particularly the case for providers working across more than one area, with some chains working across more than 80 local authorities.
- This has also led to inconsistent and varied agreements therefore we have also developed the model agreement to bring consistency as far as possible in provider agreements by including standard headings and wording, which the department expects local authorities to include in all provider agreements.
- The model agreement is not a 'one-size fits all' contract as the department cannot dictate local level process. We have therefore developed the agreement by balancing the need for consistency against allowing flexibility for local authorities to tailor agreements and include local processes.
- The department developed the model agreement by working collaboratively with early years providers, early years sector representatives and local authorities, who provided both contributions and challenge throughout developing the model agreement.