

EDUCATION ACT 2011

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Early Years Provision

Section 1: Free of charge early years provision

58. *Section 1* inserts three new sections into Part 1 of CA 2006.
59. *Subsection (2)* replaces the existing section 7 in CA 2006. As with the old section 7, the new section places a duty on English local authorities to secure that certain early years provision is available free of charge for certain young children in their area. Early years provision is defined in section 20 of CA 2006 as being childcare for a young child (a child from birth up to the 1st September after the child turns five).
60. Currently, the regulations made under section 7 require local authorities to secure 15 hours per week of free early years provision for all three and four year olds. The new section 7 will enable the regulations to retain this universal entitlement for children of those age-groups whilst also extending the requirement on local authorities to secure free early years provision for a targeted group of two year olds.
61. The regulations under the new section 7 will be able to define an entitlement for children based on criteria other than age, such as criteria related to the family's economic circumstances as the Government intends for two year olds. Under the current section 7 it is only possible to require local authorities to secure free early years provision for all children of a prescribed age.
62. The new section 7 enables the Secretary of State to set out in regulations the nature of the early education, the description of children for whom it must be made available, and to make other provision about how the local authority must make it available. This can include the amount of early education to be made available and the timing of it (for example, whether there is a minimum number of weeks in a year over which it should be available, or certain times of the day at which it must be made available).
63. *Subsection (3)* inserts new sections 13A and 13B into CA 2006. New section 13A allows tax credits information held by Her Majesty's Revenue and Customs (HMRC) and social security information held by the Department for Work and Pensions (DWP) to be supplied to the Secretary of State, and ultimately to local authorities in England (new section 13A(5)), for use in determining eligibility of children for free early years education under section 7 of CA 2006. The information received by the Secretary of State can only be passed to local authorities and only for the purpose of determining eligibility. *Subsection (4)* allows for information held by HMRC to be supplied directly to local authorities. *Subsection (6)* allows information also to be supplied to a contractor exercising the function of determining eligibility on behalf of the local authority. The sharing of data allowed under this section will enable easier checking of eligibility by local authorities, for example through an electronic database containing the relevant information. This new section mirrors that in section 110 of EA 2005 which allows

*These notes refer to the Education Act 2011 (c.21)
which received Royal Assent on 15 November 2011*

data to be shared for the purposes of determining eligibility for free school meals and free school milk.

64. New section 13B makes unlawful disclosure of information received under section 13A and relating to an individual a criminal offence. New section 13B(2) sets out the circumstances in which disclosure is authorised, including where the individual consents to its disclosure. This provision is similar to section 182 of the Finance Act 1989 and section 123 of the Social Security Administration Act 1992, which impose criminal sanctions for the unauthorised disclosure of information held by HMRC and DWP.
65. *Subsection (4)* repeals a transitional provision in CA 2006 which is no longer needed.