

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (PROVISION OF INFORMATION ABOUT YOUNG CHILDREN)
(ENGLAND) (AMENDMENT) REGULATIONS 2015

2015 No. 1696

1. This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

Early years providers¹ are required to supply prescribed information about young children in their care to the Secretary of State and their local authority collected through the annual Early Years Census. This instrument introduces a requirement on all childcare providers to also include information about the Early Years Pupil Premium in that return including whether provider is in receipt of the Early Years Pupil Premium in respect of an eligible child and the reason why a child is eligible.

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

None

4. Legislative Context

4.1 The Childcare (Provision of Information About Young Children) (England) Regulations 2009 (“the 2009 Regulations”) made under section 99 of the Childcare Act 2006 (“the 2006 Act”) prescribe the individual child information that early years providers can be required to supply to the Secretary of State and their local authority.

4.2 The 2009 regulations apply to all providers of early years provision including childminders, private nurseries, nurseries within a maintained school and those providing alternative provision. A body providing early years provision is someone registered with Ofsted or exempt from registration because they are a school².

4.3 Regulation 16 (10) of the School and Early Years Finance (England) Regulations 2014 (“the 2014 Regulations”) places a requirement on local authorities to allocate to each provider in its area an allocated amount for each child who is eligible for the Early Years Pupil Premium. Regulation 16 (11), (12) and (13) of the 2014 Regulations set out the criteria for those eligible for the Early Years Pupil Premium and the local authority’s

¹ Defined in the Education Act 1996 (ss19-20) as a provider of childcare for a young child. A child is a young child during the period beginning with his birth and ending immediately before the 1st September next following the date on which he attains the age of five.

² Section 34 of the Childcare Act 2006.

duty in respect of early years providers who have eligible children in their settings. Regulation 16(14) places a similar duty on a local authority to include in the amount to be allocated for relevant early years provision or community early years provision in its area³ a fixed amount for each looked after child aged three or four years old in the local authority's area ("fixed amount"). The guidance to local authorities refers to the fixed amount as EYPP.

4.4 These Regulations amend the 2009 Regulations so that early years providers can be required to supply the information about children who receive the Early Years Pupil Premium and fixed amount to the Secretary of State and to the local authority via the Early Years Census.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

- 7.1 Local authorities have a duty under section 7 of the 2006 Act to secure 15 hours early years provision free of charge for all three and four year olds and for two year olds who meet the eligibility requirements set in regulations made under section 7. This is known as funded early education. Local authorities receive funding to deliver funded early education from central government through the Dedicated Schools Grant ("the DSG").
- 7.2 In April 2015 the Government introduced the Early Years Pupil Premium ("EYPP"), which is additional funding for disadvantaged three and four year old children. In 2015-16, £50 million has been committed to fund this programme.
- 7.3 Children are eligible for the EYPP if they are receiving the early education entitlement for three and four year old children; and if they fall within one or more of the following categories: (a) they meet the criteria that are used to assess eligibility for free school meals, or (b) if they have left care through adoption, special guardianship or through child arrangements orders. Every child looked after by the local authority is also entitled to be allocated a fixed amount for relevant early years or community early years provision. (See the full criteria in The School and Early Years Finance (England) Regulations 2014 (regulations 11-14)).

³ See regulation 2 of the 2014 Regulations.

- 7.4 The aim of the EYPP is to close the gap between children from disadvantaged backgrounds and their peers by providing funding to early years providers to help them raise the quality of early education that a child receives. Research shows that high quality early education makes a difference to children's academic attainment. For example⁴ high quality pre-school can improve Key Stage 2 English results and is equivalent to about a term and a half's progress; the benefits of pre-school are higher for pupils from disadvantaged backgrounds.
- 7.5 Local authorities are responsible for eligibility checking. They will decide how to do this to meet local needs. In most cases, providers will identify potentially eligible children and will ask parents to supply information about their status. There is no requirement on a parent to provide information about their child's eligibility. If a provider is not aware of a child's eligibility they cannot claim EYPP for that child. With parental consent, the provider will then share that information with the local authority, which will run the checks, to make sure that the parents meet the eligibility criteria. The local authority will then inform the provider which children are eligible and will pass funding onto the provider for each eligible child. These checks will take place once a year. More information is provided in the guide for local authorities⁵. Providers should keep information about which children are eligible because they have to use the extra funding to support that child.
- 7.6 Local authorities were funded by the Department for Education for 2015 using an estimated number of eligible children based on the projected number of children in each local authority area who will participate in early education and free school meal take-up rates for 4-6 year olds as a proxy for eligible children. A mid-year paper-based collection will take place in autumn 2015. The data will be returned to the Department for Education via local authorities. In order to ensure that local authorities are funded for the EYPP accurately, the government needs accurate information on the number of children in receipt of the EYPP. The extra information from the census will inform future allocations to local authorities. Census information is already used to inform allocations to local authorities for the funded early education entitlement
- 7.7 Currently all early years providers are required to submit early years census data directly to their local authority for children in their area who are receiving government funded early education. Information is provided on how many children are receiving funded early education including how many hours they are receiving and where they are receiving that education. The Department collects this information through the Early Years Census. Further information on the process for collecting this data is available in the guide for local authorities to which the providers also refer. Local authorities may also provide their own guidance to providers⁶. The data is published annually in a Statistical First Release ("the SFR")⁷. The data collected is also used to calculate each local

⁴ Sylva, K et al (2008) Final Report from the Primary Phase: Pre-school, School and Family Influences on Children's Development during Key Stage 2 (Age 7-11) EP

⁵ <https://www.gov.uk/early-years-pupil-premium-guide-for-local-authorities>

⁶ <https://www.gov.uk/guidance/early-years-census>

⁷ <https://www.gov.uk/government/statistics/provision-for-children-under-5-years-of-age-january-2015>

authority's DSG to ensure that local authorities have the correct funding to ensure that every eligible two year old and all three and four year olds can take up their funded early education place. The data items in the early years census are only those items that are essential and likely to be held by most providers. Providers may submit data in electronic or paper format. Local authorities are responsible for ensuring the accuracy of the data before submitting it to the Department for Education.

- 7.8 The amendment to the 2009 Regulations will require providers to also provide additional information through the census in respect of a child for whom they are already providing information, and for whom they are in receipt of the EYPP or fixed amount including the reason why a child is eligible. As local authorities are responsible for eligibility checking, they will know how many children are eligible in a setting at the beginning of the year but they will not know whether those children are attending the setting. The information the provider will send to the local authority through the census will be about children who are both eligible and taking up their place at the time of the census.

8. Consultation outcome

- 8.1 There was a public consultation on proposals for the introduction of the EYPP between June and August 2014. The consultation document referred to the collection of data on the EYPP and the fixed amount through the census. Four hundred and sixty one individuals or organisations responded to the consultation, the majority of which were providers or representative bodies, and there were no concerns raised about the collection of data on the EYPP through the census. Also 89% of respondents agreed with the specific proposal for an additional census count in October 2015 to assess take up of the EYPP, and to adjust funding to take account of actual take up. A government response to the consultation was published in October 2014⁸.

9. Guidance

- 9.1 Guidance for local authorities on completing the Early Years Census is available at - <https://www.gov.uk/government/publications/early-years-census-2016-guide>.

10. Impact

- 10.1 There are 26,268 private voluntary and independent ("PVI") settings offering government funded early education for three and four year olds.⁹ Providers already collect and are required to return data to local authorities on the number of hours of early education that children in this age group receive. The proposal will not impose a significant burden on providers as all they will be required to do is to specify which of those children for whom they already collect data is eligible for the EYPP and the basis for eligibility. This data is

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https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367359/Early_years_pupil_premium_government_response_FINAL.pdf

⁹ <https://www.gov.uk/government/statistics/provision-for-children-under-5-years-of-age-january-2015>

already held by providers, both so that they know which children they must support through the EYPP and because as part of an Ofsted inspection providers will be expected to identify which children in their care are eligible for the EYPP. This will enable inspectors to assess how the provider has used the EYPP to improve the individual child's outcomes. Assuming an hourly labour cost of £13.55 and assuming that it takes all PVI providers an average of between 15 and 30 min to complete the additional box on the census, this will equate to total annual costs for all providers of between £88,982 - £177,965. We estimate that there will be no one-off costs to providers because the information is already held by them and they are already required to complete the Early Years Census and the Alternative Provision Census.

10.2 The impact on the public sector is same as in paragraph 10.1.

10.3 A final stage impact assessment has not been prepared because the legislation has a low cost impact on the business sector. This approach was confirmed by the Regulatory Policy Committee.

11. Regulating small business

11.1 The legislation applies to small businesses such as private, voluntary and independent providers of childcare including childminders. The returns made by the providers to the Department via local authorities will enable the Department to calculate accurately the level of EYPP the Department then allocates to each local authority for distribution to providers. The regulatory change is therefore concerned entirely with the dispersal of public funding (EYPP) to settings providing a public service (early years education) on behalf of a public authority (the Department). We therefore consider that by virtue of section 22(4)(c) of the Small Business, Enterprise and Employment Act 2015 ("the 2015 Act") the impact on business activities is considered out of scope and it is therefore not necessary to publish a business impact target.

12. Monitoring and review

12.1 The Department is required to report annually to the Office for National Statistics on the cost of all our data collections and this is something with which the Department fully engages. In addition guidance to local authorities is reviewed at least annually.

12.2 As stated in paragraph 11.1, the impact on business activity is considered out of scope by virtue of section 22(4)(c) of the 2015 Act because the regulatory provision makes provision in connection with the giving of grants or other financial assistance by or on behalf of a public authority. For the same reason it is considered that the duty to review regulatory provisions in secondary legislation does not apply by virtue of 28(3)(c) of the 2015 Act. Therefore no review clause has been drafted for these amendments.

13. Contact

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