

A Code of Practice on the Provision of Free Nursery Education Places for Three- and Four-Year-Olds



Contents

Foreword	4
Executive Summary	6
1 The Current Early Years Legal Framework	8
2 The Childcare Bill	10
3 The 2006 Code of Practice	12
4 Other Requirements	14
5 The Free Entitlement	16
6 Key Principles	18
7 Determining Eligibility for a Free Place	20
8 How the Free Entitlement is Funded	22
9 Delivering the Longer Term Vision	24
10 Choice and Flexibility	26
11 Availability	30
12 Quality	34
13 Affordability	38
Annex A: The Directory of Providers	40
Annex B: Funding PVI Providers	42
Annex C: Useful Addresses/Publications	44

Foreword

The ten-year strategy, 'Choice for parents, the best start for children', sets out our long term vision for ensuring that every child gets the best start in life and parents have more choice about how to balance work and family life. That vision is being placed on a statutory footing through the Childcare Bill currently before Parliament.

Research has proved conclusively that the earliest years of a child's life are crucial to their development: laying the foundations for success at school and in later life, and helping to ameliorate the effects of poverty and disadvantage. It is a time when children need stability and continuity through high quality care and learning activities. Despite the overwhelming research evidence, the reality for many children has been a hotchpotch of formal and informal care and education as parents try to juggle the demands of work and family responsibilities. The new Early Years Foundation Stage will ensure continuity, support quality and deliver improved outcomes for all children, across every area of learning and development from birth to the start of Key Stage 1 and beyond.

I want to pay tribute to the work of local authorities and providers in helping us achieve the cornerstone of our reforms: a free early education place for all three- and four-year-olds. Together, we have changed the pattern and availability of early years provision beyond recognition since 1997. At that time, access to free early education provision varied widely according to geographical location and integrated early education and childcare places were few and far between.

We are now entering an exciting new phase – one that will deliver real choice and flexibility for parents and the best possible outcomes for children. The Childcare Bill represents a truly landmark achievement. For the first time ever, it will enshrine in law parents' legitimate expectation of accessible high quality childcare and early years provision. It will also confirm the vital role of local authorities as strategic leaders, working in partnership across all sectors to shape the future provision of childcare and delivery of early childhood services, raising quality of provision, improving outcomes for all young children and reducing inequalities.

The needs of children and their parents are rightly at the heart of our reforms, with local authorities as their champions, planning and securing the delivery of high quality local services which truly reflect local needs. By 2010 parents can expect to see: a Sure Start Children's Centre delivering and coordinating a wide range of services in every community; childcare and a range of extended services available in, or accessible through, all our schools; a diverse mix of providers delivering an enhanced core free entitlement for three- and four-year-olds; and, importantly, a single quality framework.

This Code of Practice underpins the delivery of the free entitlement. It is already clear from the high take-up that it is valued by parents. According to the latest data (January 2005), approximately 96% of three-year-olds and virtually all four-year-olds are now benefiting from at least some free provision. But there is more to be done. As a first step, from 2006 the minimum free entitlement of 12.5 hours a week will be extended from 33 to 38 weeks. Over the coming months we will be consulting on how best to phase and implement our commitment to further extend the free entitlement to 15 hours a week and enable parents who wish to do so to access the free entitlement across a minimum of three days. The aim is to ensure a better fit between the needs of working families and the learning and developmental needs of all children.

I recognise that the sheer scale and pace of change we are seeking can seem daunting and that the Government does not have all the answers. It is vital, therefore, that we continue to work together in a spirit of genuine partnership to ensure that the framework we are putting in place will stand the test of time. These are exhilarating times for those who have long championed the vital contribution of high quality childcare and early years provision to children's learning and development.

We are making sure that funding matches our commitments. Through the new Dedicated Schools Grant we have secured that local authorities will be guaranteed funding for all children taking up the free entitlement on a consistent basis, and across all settings. The guaranteed unit of funding per child will increase by at least 6% in each of the next two years. Above and beyond the free entitlement, the 2004 Spending Review will enable overall spending across the Sure Start agenda to reach almost £1.8bn by 2007-08, around double the total for 2004-05 – an average annual increase of 24% in real terms. A significant investment. But in our view a right and proper investment in one of our most valuable future assets – our children.



Beverley Hughes

Executive Summary

This Code of Practice constitutes statutory guidance on the delivery of the free early learning and development entitlement for three- and four-year-olds.

It applies to England only and comes into force on 1 April 2006.

The Code also contains information about longer-term measures to implement the changes outlined in the ten-year strategy: 'Choice for parents, the best start for children'. This was published in December 2004 and set out the Government's long-term vision for ensuring that every child gets the best possible start in life. The Childcare Bill will, subject to Parliamentary approval, provide a comprehensive statutory framework underpinning that vision. It will place new duties on local authorities to shape and support the development of integrated early education and childcare (to be known as early years provision) in their local area. The aim is to make early years provision more flexible, sustainable and responsive to the needs of the community. This will enable parents to find early years provision locally that meets the learning and developmental needs of their children and enables them to make real choices about how to balance work and family responsibilities.

With effect from 1 April 2006, in line with the commitments in the ten-year strategy, the minimum free entitlement for three- and four-year-olds of 12.5 hours a week will be extended from 33 to 38 weeks. The aim is to create a level playing field for maintained and non-maintained providers by ensuring that parents receive the same basic offer regardless of the setting their child attends. It will address the long-standing anomaly whereby children attending maintained settings typically received a funded place equating to 38 weeks a year, while those attending settings in the private voluntary and independent sector (PVI) received only 33 weeks.

This Code will remain in force until 2008-09 when it will be replaced by new statutory guidance reflecting the provisions in the Childcare Bill. Looking further ahead, and subject to further consultation, the minimum entitlement will be further extended by April 2010 to 15 hours a week for 38 weeks in all settings. By this time, the Government has also committed to enabling parents who wish to do so to take up the free entitlement more flexibly. Final details have still to be determined. However, we presently envisage that parents will be able to choose to take up the free entitlement across a minimum of three days. They will also be able to purchase additional provision to balance work and family responsibilities.

Local authorities and providers should take this opportunity to review the ways in which they deliver their services and consider whether these best meet the needs of the children and families in their area. It is not expected that all providers will be required to meet any request for a particular combination of free hours, rather that local authorities will have a responsibility to assess local demand and secure that overall provision matches that demand. Working in partnership with local authorities and other delivery partners, the further extension to the free entitlement will be carefully phased in with a view to securing a universal roll-out by April 2010.

The approach to implementation and phasing of the increase to 15 hours and expectations around flexibility have yet to be finalised. The Department will consult and work closely with delivery partners to secure that it is effectively planned and appropriately resourced. In the meantime, this Code of Practice is intended to encourage and support local authorities and providers to respond creatively and work positively towards implementing the vision set out in the ten-year strategy. It sets out the broad statutory framework and the key principles to which local authorities and delivery partners should have

regard when delivering the free entitlement. It has been structured and revised to reflect the four key themes underlying the ten-year strategy:

- choice and flexibility
- availability
- quality
- affordability

It also takes into account views expressed during consultation. A summary of consultation responses has been placed on the Sure Start website:

www.surestart.gov.uk

The Current Early Years Legal Framework

1.1 The School Standards and Framework Act 1998 and underpinning regulatory framework places a duty on local authorities to secure sufficient nursery education provision (whether or not by them) for three- and four-year-olds.

1.2 The current broad legal framework is as follows:

Section 118 School Standards and Framework Act 1998

Places a duty on local authorities to ensure sufficient nursery education provision for children of the prescribed age. It requires local authorities, in pursuance of this duty, to have regard to any guidance given by the Secretary of State.

Regulation 2 Education (Nursery Education and Early Years Development) (England) Regulations 1999

Prescribes the age of the children in relation to whom local authorities' duty to secure sufficient provision applies. Regulation 2 was amended by the Education (Nursery Education and Early Years Development) (England) (Amendment) Regulations 2003. Since 1 April 2004 this duty has applied to three- and four-year-olds

Section 153 Education Act 2002

Says that local authorities must have regard to any guidance given by the Secretary of State when making arrangements with private, voluntary and independent providers for the provision of nursery education in pursuance of their duty under Section 118 of the School Standards and Framework Act 1998.

Section 89 Education Act 2002

Says that local authorities, school governing bodies, headteachers and any person providing funded nursery education must secure the delivery of the National Curriculum for England (so far as it relates to the Foundation Stage) in respect of the pupils for whom the funded nursery education is provided.

The Childcare Bill

- 2.1** The Childcare Bill, introduced in the House of Commons on 8 November 2005, will implement the proposals outlined in the ten-year strategy for childcare, 'Choice for parents, the best start for children', published in December 2004. Subject to Parliamentary approval the Bill will:
- require local authorities to improve the outcomes of all children under five and reduce inequalities in their outcomes by ensuring early years services are integrated and accessible
 - give local authorities the lead role in facilitating the childcare market to ensure it meets the needs of working parents, in particular parents who wish to use the childcare element of the Working Tax Credit and parents with disabled children
 - ensure mothers and fathers have access to the full range of information they may need as parents by placing a broader duty on local authorities to provide a wide range of information to support parents
 - introduce the Early Years Foundation Stage (EYFS), bringing together key elements of current separate requirements for children from birth to five. All early years providers will be required to deliver the EYFS, ensuring a consistent, high quality integrated care and education experience for all children, regardless of the setting they attend
 - lead to a reformed, simplified, childcare and early years regulation framework to reduce bureaucracy and focus on raising quality
 - require all registered early years settings to deliver the Early Years Foundation Stage, ensuring a consistent, high quality experience for all children, regardless of the setting they attend
 - ensure that childcare settings catering for school-age children will be judged against a streamlined set of common Ofsted Childcare Register (OCR) standards. These OCR standards will be compulsory for all settings caring for children under eight and any settings offered as part of an extended school. Other providers may join the register on a voluntary basis.

2.2 The Bill takes into account responses to consultation on the ten-year strategy and to consultation on legislative proposals conducted in 2005. The measures will reinforce the vital role of local authorities as strategic leaders, shaping the future provision of childcare and delivery of early years services, raising quality and improving outcomes for all young children. The level of childcare and early years provision developed by local authorities and their partners has been increased through significant government investment since 1997. Through measures in the Bill, the Government will put in place an underpinning legislative framework so that this enhanced provision is sustained and its continued development will reflect local needs and circumstances.

The 2006 Code of Practice

- 3.1** This Code is effective from 1 April 2006 and replaces all previous guidance on the delivery of the free entitlement. It applies to England only and constitutes the Secretary of State's statutory guidance to local authorities under Section 118 of the School Standards and Framework Act 1998 and Section 153 of the Education Act 2002. It sets out the general principles the Secretary of State expects local authorities to follow in fulfilling their statutory responsibilities. Those principles are applicable across all settings and in all sectors.
- 3.2** It also contains guidance on local authorities' specific responsibilities in relation to the delivery of free places by private, voluntary and independent (PVI) providers. However, it is not intended to prescribe matters which are rightly for local determination. Local authorities, working together with local providers, are best placed to plan and coordinate local provision in ways that best meet the needs of children and families living in their area.

3.3 Although local authorities may adopt alternative procedures and processes, these must secure the delivery of their statutory obligations and should be consistent with the broad principles outlined in this Code. The Education Act 1996 makes provision for the Secretary of State to make legally enforceable directions to any local authority that fails to perform a statutory function or acts unreasonably in the exercise of that function.

3.4 In fulfilling their responsibilities, the Secretary of State expects local authorities to consult regularly with parents, local delivery partners and other relevant local agencies so that their views can be taken into account in developing local policies and provision.

Other Requirements

- 4.1** The **1976 Race Relations Act** outlaws racial discrimination and covers statutory and non-statutory early years organisations and provision.
- 4.2** Local authorities and other listed public authorities must also comply with the provisions of the **Race Relations (Amendment) Act 2000** in meeting their statutory responsibilities. Those provisions include a general duty to have regard to the need to:
- eliminate unlawful racial discrimination
 - promote equality of opportunity
 - promote good relations between people of different racial groups
- 4.3** While private, voluntary and independent settings are not bound by the race equality duty which applies to listed public authorities, the principles of equity and justice underpinning the law should be applied as good practice. Where provision is overseen, coordinated or advised by the local authority or a partnership with local authority membership, the local authority will have responsibility to ensure the duties are fulfilled.
- 4.4** Further guidance on the Race Relations (Amendment) Act is available from the Commission for Racial Equality: www.cre.gov.uk. Further information on promoting race equality in early years is available from the Sure Start website: www.surestart.gov.uk/surestartservices/inclusionandwellbeing/equalityanddiversity/
- 4.5** Additionally, the **Disability Discrimination Act (DDA) 1995** and the **Special Educational Needs and Disability Act 2001** apply to local authorities and providers of early years services whether or not they are in receipt of Government funding. These Acts require all providers to comply with two main duties:
- a. not to treat a child with disabilities “less favourably”
 - b. to make “reasonable adjustments” for children with disabilities

- 4.6** Private, voluntary and independent settings are bound by the law on disability discrimination. While they will not be bound by the new duty to promote disability equality unless they are carrying out functions of a public nature, the principles of equity underpinning the law should clearly be applied as good practice. Where provision is overseen, coordinated or advised by the local authority or a partnership with local authority membership, the local authority will have responsibility for ensuring that the duties are fulfilled.
- 4.7** The Disability Rights Commission has produced codes of practice and these provide further guidance. They are available from the Commission website: www.drc.org.uk
- 4.8** There are differences in the way these duties apply to schools and other providers of childcare and early education. Detailed advice on the responsibilities of early years settings is available in the guidance document 'Early Years and the Disability Discrimination Act 1995 – what service providers need to know'. It is available from the National Children's Bureau (020 7843 6029). It is also available on the Sure Start website: www.surestart.gov.uk/surestartservices/inclusionandwellbeing/sendisability/resourcessendisability
- 4.9** Providers in receipt of funding for the provision of free early education places must have regard to the Special Educational Needs (SEN) Code of Practice, must have an SEN policy which promotes inclusion and covers admissions, and must appoint a setting-based Special Educational Needs Co-ordinator (SENCO). The SEN Code of Practice can be obtained by calling DfES Publications on 0845 602 2260 and quoting reference number DfES 581/2001.

The Free Entitlement

- 5.1** The free entitlement may be delivered by a range of providers including schools, nursery schools and classes, private and voluntary sector providers, independent schools and accredited childminders who are part of a quality assured network. Local authorities should ensure a suitably diverse range of providers in line with parental choice, offering uniformly high quality provision.
- 5.2** Local authorities should ensure that parents of all three-year-olds are able to access the minimum free entitlement for up to two years before they reach compulsory school age. Parents can access as little or as much of the minimum entitlement as they choose and may take up their free entitlement at more than one provider.
- 5.3** Compulsory school age is defined in **Section 8 of the Education Act 1996** as the beginning of the term following a child's fifth birthday. The prescribed dates are set out in the **Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607)**. In practice, the application of local arrangements for school admission enables many children to commence full-time education before reaching compulsory school age.

Minimum entitlement from April 2006

- 5.4** With effect from 1 April 2006, in line with the commitments in the Ten Year Strategy, **the minimum free entitlement for three- and four-year-olds of 12.5 hours a week will be extended from 33 to 38 weeks in all settings.**
- 5.5** This will create a level playing field between maintained and non-maintained providers by ensuring that parents receive the same basic offer regardless of the setting their child attends. It will address the long-standing anomaly whereby children attending maintained settings typically receive a funded place over the school year (equating to 38 weeks a year) while those attending settings in the private voluntary and independent (PVI) sector receive only 33 weeks.
- 5.6** The Department has arranged for additional resources of approximately £82 million to be made available to local authorities in 2006-07 and 2007-08 through the new Dedicated Schools Grant, specifically to support the delivery of the new 38-week entitlement. As an interim measure, because the increase in weeks will primarily affect PVI providers, the Department has allocated the additional resources on the basis of the number of children receiving the free entitlement in PVI settings.

Transitional issues: summer term 2006

- 5.7** Local authorities, working with providers, have a responsibility to ensure that all three- and four-year-olds in their area are able to access a full 38-week entitlement with effect from April 2006. In particular, they must ensure that children attending PVI settings benefit from an increase in funded provision with immediate effect from the start of the summer term.
- 5.8** It is for local authorities, in the light of local patterns of delivery and organisation, to determine how the additional weeks should be apportioned across the financial year. However, as a minimum, local authorities should adhere to the principle that, wherever practicable, eligible children attending PVI settings as at April 2006 should receive a comparable entitlement to those taking up the free entitlement in maintained settings. Over the 12-month period commencing 1 April 2006, all children should receive the full 38-week annual entitlement, regardless of setting.
- 5.9** The Department recognises that some providers are not open for 38 weeks and may not be able to offer the full entitlement, particularly in the first year – although they should be encouraged to do so wherever possible. Local authorities must nevertheless secure that there are sufficient 38 week places to meet parental demand. There is nothing to prevent parents from taking up a lesser free entitlement at the provider of their choice and providers should be funded accordingly. However, the local authority and the provider concerned have a responsibility to inform parents about the implications of their decision – in particular, that the local authority may not be able to fund top-up provision at an alternative provider.

Key Principles

- 6.1** Local authorities should have regard to the following principles when planning and managing the delivery of the free early education offer.
- In all cases, the needs and best interests of the child should be paramount.
 - All provision should be informed by and consistent with the five outcomes set out in 'Every Child Matters' and given a statutory basis in the Children Act 2004: being healthy; staying safe; enjoying and achieving; making a positive contribution; achieving economic wellbeing.
 - The free entitlement should be delivered to consistently high standards and provide planned learning activities to help children to progress towards achieving the early learning goals, in line with the principles and practice described in the 'Curriculum Guidance for the Foundation Stage'.
 - In fulfilling their responsibilities in managing the delivery of the free entitlement local authorities should monitor local demand and take-up. They should also encourage and support providers to deliver the free entitlement flexibly in line with parental demand wherever it is practicable to do so, providing this does not compromise the needs and best interests of the child.
 - Local authorities and providers should adopt an inclusive approach, promote equality of opportunity and ensure there is no discrimination.

- Children with a disability or special educational need should, where appropriate and possible, be given the support they need to attend a mainstream setting.
- Local authorities should seek to maximise take up of the free offer by looked-after children and children at risk of becoming looked after. They also have a responsibility to identify and reach out to particularly disadvantaged and hard to reach groups within their local community with a view to maximising take up of the free entitlement and improving outcomes.
- Parents **cannot** be charged for any part of the minimum **free** entitlement either directly or indirectly.
- Local authorities should fund both maintained and PVI sector providers delivering the free entitlement fairly, transparently and equitably.
- Local authorities should ensure that admissions policies for compulsory school-age children do not unfairly influence parents' choices when their children are three and four.

Determining Eligibility for a Free Place

- 7.1** Local authorities should use the following nationally prescribed dates for determining eligibility for the free entitlement.

A child born on or between	Will become eligible for a free place from
1 April and 31 August	1 September following their third birthday
1 September and 31 December	1 January following their third birthday
1 January and 31 March	1 April following their third birthday

7.2 These dates are consistent with those used for determining the commencement of compulsory education and are designed to ensure that every child is able to access two years of free part-time early education before reaching compulsory school age. However, actual starting dates may vary in line with locally determined term dates. In practice, depending on local arrangements for admission to school, many children start full-time education in school reception classes before reaching compulsory school age.

7.3 A child moving to England from another country is entitled to free nursery education on the same basis as any other child regardless of whether they have British citizenship.

How the Free Entitlement is Funded

- 8.1** With effect from 1 April 2006, all funding for under-fives, including the delivery of the free entitlement in both maintained and non-maintained sector providers has been consolidated within the new ringfenced Dedicated Schools Grant (DSG).
- 8.2** The DSG provides a clearer and more consistent basis for funding schools and other delivery partners charged with delivering the free entitlement. It is based on a guaranteed unit of funding multiplied by the pupil numbers in the January counts for each authority. This means that all three- and four-year-olds in each local authority area are funded by Government at the same rate, regardless of the setting they attend. It also provides greater certainty about education funding, including the free entitlement by removing it from the local government finance system and paying it direct to local authorities as a grant, which they must spend on schools, other local delivery partners and other schools-related provision.
- 8.3** The grant will normally be allocated to local authorities on a multi-year basis to match the spending review settlements received from the Treasury. Local authorities are encouraged to adopt a similar multi-year cycle in determining the rate at which PVI providers should be funded to deliver the free entitlement. This will help local authorities, schools and other providers do more forward planning and make better, more strategic, local decisions.
- 8.4** In 2006-07 the guaranteed unit of funding per child will increase by 6.8% on average and by 6.7% on average in 2007-08. Actual increases will vary but each authority will receive a minimum of 6.4% in 2006-07 and 6.1% in 2007-08. Final allocations will be adjusted to take into account the latest available data on children taking up the free entitlement as reported through the Early Years Census and PLASC and will be determined by May 2006. This will enable authorities to plan ahead with confidence in the knowledge that they will be fully funded for all children taking up the offer.

8.5 Included within those increases, the Department has allocated an additional £82 million in 2006-07 and 2007-08 to meet the additional costs arising from the extension of the free entitlement from 33 to 38 weeks. In the light of consultation, and as an interim measure, the Department has allocated these additional resources on the basis of the actual number of children receiving the free entitlement in PVI settings. This money is not intended to cover the extension to 15 hours or to support the delivery of a more flexible entitlement. These further extensions of the offer will be fully funded, but no decisions have yet been made about the approach to implementation or timings for roll-out.

8.6 It is a matter for individual local authorities to determine the rate at which they will fund PVI providers to deliver the free entitlement. However, given that all under-fives in an authority area are funded from the centre at the same rate, local authorities should, in the Secretary of State's view, adopt a similar principle at local level. At the very least they should be able to demonstrate to providers and parents that local provision is funded equitably, taking due account of local needs and circumstances. Further guidance on arrangements for paying PVI sector providers to deliver free places can be found in **Annex B**.

Delivering the Longer Term Vision

- 9.1** The free entitlement for three- and four-year-olds represents a landmark achievement. It is greatly valued by parents. According to January 2005 data, around 96% of three-year-olds and virtually all four-year-olds are taking up at least one free session. However, in some areas, there is only limited choice for parents because the free entitlement is available only on a rigid stand-alone sessional basis. This can mean that parents have to negotiate and juggle a complex mix of informal and/or formal childcare around the core free entitlement. Not only is this unlikely to provide a high quality joined-up experience for the child, it also fails to meet the needs of working parents. It may also deter parents from taking up paid work or training opportunities, thus failing to help break cycles of poverty.
- 9.2** The Government has committed to extending the free entitlement to 15 hours a week for 38 weeks a year by 2010. Parents who wish to do so will also be able to take up the free entitlement more flexibly across a minimum of three days. They will also be able to purchase the additional integrated provision they need to enable them to balance work and family responsibilities.
- 9.3** It is clear from responses to consultation on this Code of Practice that delivering these additional commitments may be particularly challenging for some providers, especially those currently offering stand-alone sessional provision. But it will also present real opportunities to consider how best to meet the needs of working families and deliver better outcomes for children. That is not to say that all providers will be required to meet every parental request for flexibility, rather that local authorities will have a responsibility to assess local demand and plan provision accordingly.

- 9.4** Ministers have noted concerns about the capacity of some PVI providers to deliver the extended flexible offer because of constraints on the availability or suitability of premises, and concerns about the potential impact on long-term sustainability. There are similar concerns about the capacity of schools to deliver the flexibility that parents need to help them balance work and family life. To support local authorities in planning to meet future parental demand for flexibility the General Sure Start Grant will support capital investment of £116 million in 2006-07 and £114.4 million in 2007-08
- 9.5** Subject to Parliamentary approval, the Childcare Bill will also address the current unhelpful distinction between early education and childcare. It is evident that young children do not distinguish between education and care – neither should we. The Government’s long term ambition is to put in place a comprehensive, joined-up early years framework that is built around the needs of the child. What matters to children – and their parents – is not the label, but that services should be of high quality, delivered by appropriately qualified adults and tailored to meet the learning and development needs of every child.
- 9.6** These are complex issues and the Department is committed to working closely with local authorities and delivery partners in addressing them. The Department will undertake further consultation on a comprehensive suite of statutory guidance for 2008-09 and beyond. This Code of Practice will form part of that suite of guidance.

Choice and Flexibility

- 10.1** The Government is committed to giving parents greater choice about how to balance their work and family responsibilities. It is therefore important that overall provision is planned and delivered so as to provide real choice for families in ways that meet their needs and circumstances, as well as supporting the learning and development needs of children.
- 10.2** The proposed increases in parental leave and the introduction of rights to request more flexible working arrangements will provide parents with more opportunities to make planned choices about the most appropriate pre-school provision for their child. Families have diverse backgrounds, needs and circumstances. Some groups are often excluded and disadvantaged. It is important, therefore, that local authorities look proactively at how best to ensure early years provision, including the free entitlement, is delivered through a diverse range of high quality providers offering different services and opportunities which reflect the needs of the local population.
- 10.3** In the meantime, local authorities already have considerable local flexibility to determine how best to plan and organise the delivery of the free entitlement in ways that meet the needs of parents and children. Specifically, local authorities may fund providers to deliver two free sessions in one day. In such circumstances, the free entitlement may include the lunch period or other break providing this is specifically planned and structured to support children's overall learning and development. Local authorities should also consider how they can support or broker partnerships between different providers to develop integrated packages of care which provide a consistent experience for the child.

The role of local authorities in promoting choice and flexibility

10.4 Local authorities have a key role in delivering choice and flexibility for parents. Alongside their statutory duties with regard to the provision of the free entitlement, Local authorities should be planning more broadly their strategy for securing the delivery of high quality, integrated local services for children and families. That strategic role will be further strengthened through specific new duties to be introduced through the Childcare Bill to secure that early childhood services in their area are integrated. The aim is to bring together early education, childcare, health and family support services so that all key services which support the needs of families with young children are accessible to parents through Sure Start Children's Centres. Children's centres will play a major role in leading this coordination. The Government is well on the way to meeting the commitment to deliver a children's centre serving every community. The Secretary of State looks to service providers from all sectors to work in partnership to achieve the delivery of coherent services both through these centres and beyond.

10.5 In discharging their existing statutory responsibilities in relation to nursery education, local authorities should work in partnership with providers to:

- support flexible delivery of the free entitlement as part of a wider integrated early education and childcare service, taking into account parental demand and the needs of children
- encourage the development of additional extended services to meet the needs of parents and children
- enable and support the inclusion of children with special educational needs and/or a disability
- ensure accessible and responsive provision that reflects the cultural background, religion and needs of all ethnic groups within the local population
- ensure provision is inclusive by undertaking proactive outreach to maximise take-up by particularly disadvantaged and socially excluded groups. Such groups include looked-after children and children from homeless families or with a parent who is disabled, is a teenager, has a mental illness, is abusing substances, is in prison or is experiencing domestic violence
- ensure that sufficient places are available for those parents who only want to access the free entitlement
- ensure that parents have a choice from a range of maintained and non-maintained providers
- ensure parents have the information they need to make choices that enable them to balance work and family commitments while feeling confident in the quality of provision

Choice and Flexibility

Information for parents

10.6 Local authorities are particularly well placed to ensure that parents receive the information they need to make choices. Currently the core business of Children's Information Services (CISs) includes provision of information to parents on the free early learning and development entitlement for three- and four-year-olds. Through the Childcare Bill, the Government is proposing to place a duty on local authorities to make information available to parents which includes all services, facilities and publications which may be of benefit to parents or children. Early years services will remain at the heart of information services work, and in the statutory guidance, the intention is to recommend that local authorities make information available through a wider range of outlets, including Sure Start Children's Centres and extended schools. Many authorities are already disseminating information more broadly in this way.

Contribution of providers in delivering choice and flexibility

10.7 Nationally, around 37,000 settings are currently involved in delivering the free early years entitlement. This includes schools, nursery schools and a range of private, voluntary and independent (PVI) providers, including accredited childminders who are part of a quality assured network. Individual providers will inevitably have a close relationship with parents and carers and, consequently, are well placed to gauge what kind of provision they are seeking. Local authorities should encourage, advise and support providers to:

- actively engage with parents to seek views about the way in which services are delivered and how these might be delivered more flexibly to meet identified needs
- allow parents to take up the free entitlement to secure a better fit with working patterns
- respond positively and creatively to requests from parents by developing new services to meet their needs
- develop positive and mutually beneficial links with other providers, including childminders, and other formal and informal carers, to better enable parents to arrange childcare that suits their needs and circumstances
- ensure that admission procedures and administrative processes underpinning the free entitlement are clear, transparent, inclusive and equitable

Inclusion

- 10.8** Local authorities have an important role in supporting providers to ensure they reach out to and include children with a disability and/or special educational needs, children from minority ethnic groups, including Gypsies/Travellers and refugees and asylum seekers, looked-after children, children from disadvantaged and socially excluded groups such as families with a parent who is homeless, a teenager, mentally ill, disabled, misusing substances, in prison or experiencing domestic violence.
- 10.9** Local authorities also have an important role in ensuring settings are aware of the law on discrimination and its requirements and implications and in assisting settings to promote equality of opportunity and eliminate unlawful discrimination. In all settings the educational programme should value and reflect diversity and prepare children to live in a multi-ethnic society, to value difference and respect children from diverse backgrounds. Resources should reflect the background of different communities. Settings should monitor the take-up and achievement of different groups, examine the reasons for discrepancies and revise their approach when necessary. As far as possible, staff in settings should reflect the communities they serve.
- 10.10** All children in the Foundation Stage should have the opportunity to progress flexibly in an inclusive early learning environment through the stepping stones and to work towards the Early Learning Goals. Providers should identify children's individual needs at an early stage and plan to meet each child's needs, including those who need additional support or have particular needs or disabilities.
- 10.11** In a setting where the majority of children do not speak English, the educational programme provided should help children acquire competence in English as soon as possible, building on their developing understanding and skills in other languages. Before including a provider in their Directory, local authorities should ensure that the educational programme includes the use of English in all areas of learning.
- 10.12** Local authorities have a responsibility for ensuring that settings also support appropriately the social and emotional development and self confidence of all children.
- 10.13** Staff should have access to training which will help them to develop their understanding and awareness of diversity, equality and how to identify and respond to the particular needs and backgrounds of all children. The focus should be on removing barriers for children where these already exist and on preventing learning difficulties from developing.

Availability

- 11.1** Local authorities have a clear statutory responsibility to secure sufficient nursery education. Under the provisions in the Childcare Bill, this duty will be replaced by a new duty to secure a prescribed amount of free early years provision (integrated education and care) for children in their area. They also have a key role in planning, commissioning, coordinating and managing the delivery of local childcare provision. Local authorities and children's trusts have a crucial part to play in securing the delivery of the Sure Start vision to achieve better outcomes for children, parents and communities.
- 11.2** Wherever possible, local authorities should ensure that the free entitlement and childcare provision is flexible, joined up and tailored to meet the needs of local children, local parents and the local community. That means actively seeking the views of parents, understanding their needs and the developmental needs of children, understanding the composition of the local population and the impact of service provision on all groups, and responding creatively and innovatively to changing patterns of demand.
- 11.3** Parents need an accessible free part-time place that is close to their home or place of work. Local authorities should therefore monitor local patterns of demand and take up with a view to ensuring that sufficient places are available in the areas needed. Although parental preference should be taken into account wherever it is practicable to do so, the Secretary of State recognises that there can be no guarantee of a place with a particular provider.
- 11.4** In future the Government aims to deliver for all families with children up to 14 (or 16 if the child is disabled) who need it an affordable flexible high quality childcare place that meets their circumstances. The provisions in the Childcare Bill currently before Parliament will support this vision by giving local authorities a new duty to secure sufficient childcare for working parents. The general duty to provide sufficient nursery education will be replaced by an individual entitlement for every child to receive a prescribed amount of early years provision. Subject to Parliamentary approval, the new legislation will be in place by 2008.

11.5 In the meantime, the Secretary of State looks to local authorities to:

- review overall early education and childcare provision and assess demand on a regular basis
- work with local providers and parents to ensure that there are sufficient places overall, and that those places are in the right geographical areas and, as far as possible, deliver the kind of joined-up services that parents and children need. In doing so they should have particular regard to the needs of those who are disabled
- encourage effective and mutually beneficial partnerships between PVI and maintained sector providers
- consider the scope for building additional childcare services around existing provision of stand-alone early education places. The Government has provided additional funding for this purpose through the General Sure Start Grant from 2006.

Admission to full-time education

11.6 Responsibility for determining a school's admission arrangements rests with the admission authority (normally the local authority for community and voluntary controlled schools and the governing body for voluntary aided and foundation schools). When determining the arrangements for primary schools that admit pupils below compulsory school age, the admission authority should make it clear that:

- the arrangements do not apply to those being admitted for nursery education
- parents of children admitted to a school nursery will still need to apply for a place at the school if they want their child to transfer to a reception class
- attendance at the nursery cannot guarantee admission to the school
- parents can defer the date of admission to the school until later in the school year or until the child reaches compulsory school age in that school year

11.7 Admission authorities should not give priority in their arrangements to children attending the school's nursery or otherwise imply that parents have to enrol their child at the nursery in order to secure a school place. This can disadvantage families who have recently moved into the area or who chose to take up the free entitlement at an alternative local provider.

Availability

11.8 More generally, local authorities should encourage schools and school admission authorities to take into account the totality of provision for three- and four-year-olds in their area when making changes to arrangements for admission to full-time education. The Secretary of State would not normally expect schools to include three-year-olds in school reception classes. However, in exceptional circumstances and as part of development of a local authority-supported Foundation Stage Unit or Sure Start Children's Centre on site, it may be possible to combine nursery and reception classes. In these circumstances the local authority must be fully satisfied that appropriate support measures are in place to ensure that all children's individual learning and personal, social and emotional needs are met and provision is fully consistent with the aims and principles of the Foundation Stage.

The Directory of Providers

11.9 Local Authorities should keep an up-to-date Directory of all providers within their area who are eligible to claim funding for free early education places (**see Annex A**). This requirement will be reviewed in the light of the new Ofsted registration procedures outlined in the Childcare Bill. For the time being, local authorities should continue to maintain the local Directory and ensure that it is made available to Ofsted and the Secretary of State on request. Providers should not receive funding in respect of any period for which they are not included in the local Directory.

11.10 Local authorities may attach reasonable conditions to inclusion in the Directory to ensure providers meet the quality standards outlined in this Code of Practice. Any such conditions should be agreed formally between the local authority and the provider concerned. As a minimum, a local authority should ensure that providers:

- are registered by Ofsted (if they provide childcare that requires registration)
- offer accessible early education at premises within the local authority area
- provide inclusive services which will include identifying a setting-based SENCO and operating an inclusion policy in line with the SEN Code of Practice
- promote equality of opportunity through all their policies, procedures and practices
- deliver the Foundation Stage curriculum in line with the principles and practice set out in the guidance
- submit to inspection by Ofsted
- have access to the support of a qualified teacher
- ensure staff take advantage of appropriate continuing professional training and development
- maintain records about children receiving the free entitlement and make that information available to the local authority on request
- provide parents with clear written information about any fees or charges for additional services

- 11.11** Local authorities may set other local conditions providing these are reasonable. They should nevertheless consult with and have regard to the views of delivery partners before imposing any new conditions. If a provider fails to meet any such condition, the local authority may require the repayment of the whole or part of any funding provided in respect of the provision of free places. In the Secretary of State's view it would not be reasonable to impose conditions which are specifically intended or would have the effect of making a particular category of providers ineligible for inclusion in the Directory.

Appeals procedure

- 11.12** Local authorities should have procedures for dealing with appeals from any providers rejected for inclusion or facing removal from the Directory. Such appeals should normally be heard before removal from the directory.
- 11.13** Local authorities should similarly put in place appeals procedures for parents who are not satisfied that their child has received their free entitlement.
- 11.14** All appeal procedures should satisfy public law requirements. In the event that a provider or parent is not satisfied with the way in which their appeal has been conducted or believes the local authority has acted unreasonably, they may make a complaint to the Local Authority Ombudsman. Such complaints will only be considered when the local appeals process has been exhausted.

Childminders

- 11.15** Childminders may also be eligible for funding to deliver the free early education entitlement. In order to receive funding, a childminder should be registered by Ofsted and be accredited as part of a childminder network that meets the requirements of a suitably rigorous quality assurance scheme. The support of a qualified early years teacher should be available both to the network and to individual childminders within it.
- 11.16** Like any other provider, childminders in receipt of funding must submit to inspection by Ofsted and must deliver a range of activities and experiences which will enable children to work towards the Early Learning Goals as described in the joint DfES/QCA publication, 'Curriculum Guidance for the Foundation Stage.' Childminders may claim funding in respect of all eligible children for whom they provide free nursery education. This may include their own children.

Quality

12.1 Parents have a right to expect that the free entitlement will be delivered to the same high standards regardless of the setting their child attends. The Effective Provision of Pre-School Education Project (EPPE), a five-year longitudinal study, found compelling evidence of the positive effects of high quality pre-school provision for all children and in particular for disadvantaged children. It found that good quality pre-school experiences are directly related to better cognitive, social and behavioural development. (See www.ioe.ac.uk/cdl/eppe/.)

The role of Ofsted in promoting quality

12.2 Effective regulation and inspection play a vital part in ensuring that providers meet acceptable minimum standards in the delivery of services, and are encouraged to improve.

12.3 All providers of free early education must submit to inspection by Ofsted and all free early education must be of at least the standard considered satisfactory by an Ofsted inspector.

12.4 Early education provided in schools is subject to the normal school inspection requirements. **The School Standards and Framework Act 1998** also requires the Chief Inspector of Schools to inspect all early education for which funding is received. This forms the basis of Ofsted inspections for PVI providers delivering the free entitlement. Where the provider is also registered to provide daycare, early education and childcare will normally be inspected at the same time.

12.5 Under Ofsted's current early years inspection framework, childcare inspectors who are trained to inspect the Foundation Stage conduct integrated inspections of nursery education and childcare in the PVI sector, and produce a single report. Inspections focus on "what it is like for a child" in a particular setting, in line with the outcomes for children identified in Every Child Matters, and now given a statutory basis in the **Children Act 2004**. Ofsted's judgements for early education continue to be based on the practices and principles set out in the 'Curriculum Guidance for the Foundation Stage', i.e. how well providers help children to make progress along the stepping stones towards the early learning goals.

- 12.6** Ofsted inspectors judge the quality of early education and childcare provision using a four-point grading scale common to Ofsted inspections of maintained education. Inspectors make separate overall judgements on the quality of early education, and the quality of childcare, where both are provided together. The four grades are as follows – outstanding, good, satisfactory, and inadequate. Providers who are judged as inadequate fall into two categories:
- Category 1: those with capacity to improve who will receive a notice of actions needed to improve and have a further inspection within 6-12 months to check on progress.
 - Category 2: those who are judged as needing external help and support from the local authority to bring about the necessary improvement. The next inspection for the latter category will depend on decisions made by the local authority as to whether funding should continue. If funding continues, the inspection will take place between 3-6 months after the date of the last inspection.
- 12.7** All early years and school inspections have a common inspection frequency of three years. Providers judged to be “inadequate” will be inspected more frequently, as outlined above. There are also other “triggers” which may prompt Ofsted to arrange an earlier inspection. PVI providers will normally receive no notice of inspections. Schools and childminders normally receive notification of an inspection a week ahead.
- 12.8** Following an inspection, local authorities should make arrangements to provide appropriate support to help providers overcome any identified issues. This may include requiring providers to produce an action plan outlining how they intend to address any issues identified by inspectors.
- 12.9** In the event that Ofsted judge the provision as inadequate in one or more respects, Ofsted will notify the relevant local authority which may either:
- confirm that the provider should be allowed time to improve their provision, with an Ofsted inspection to check on progress within the timescales set out in 12.6
- or:
- remove the provider from their local Directory of providers, inform Ofsted and withdraw funding at the end of the term, or sooner if circumstances require.
- 12.10** This replaces previous guidance and clarifies that responsibility for deciding whether to withdraw funding to inadequate PVI providers rests with the local authority.

Quality

12.11 Where a provider is removed from the Directory as a consequence of an Ofsted inspection judgement of “inadequate”, they should not be readmitted until the local authority concludes that the issues which led to an “inadequate” grade have been addressed and the provision is of an acceptable standard. The local authority should inform Ofsted that they are satisfied that the standard of provision is at least satisfactory and Ofsted will carry out an early inspection to check this.

Role of the local authority in supporting quality

12.12 Local authorities have a key role in supporting providers to deliver the free early education entitlement to uniformly high quality standards. They also have a legal duty under **Section 79V of the Children Act 1989** to secure the provision of information, advice and training in respect of daycare and childminding. The Secretary of State looks to local authorities to provide a consistent level of support to all providers involved in the delivery of the free entitlement. They should also provide strong support and encouragement to enable the early years workforce to undertake appropriate professional development opportunities.

Quality assurance

12.13 Quality improvement processes can provide an effective means of raising standards in early years provision. In the same way that childminders delivering the entitlement to free nursery education are required to participate in a network that is part of a quality assurance scheme, local authorities may also require other providers of nursery education to participate in a quality assurance scheme as a condition of funding. Such decisions should depend on the merits of particular quality assurance schemes in use or under development, and their ability to improve service provision by encouraging providers to undertake further training and professional development, and through self evaluation, reflective practice, mentoring and advice. Decisions should not depend on the continuation of the Department’s Investors in Children “kitemark” scheme, which is currently under review.

Delivering the Foundation Stage curriculum

12.14 In delivering the free entitlement all providers should plan and provide learning activities to help children to progress towards achieving the early learning goals, in line with the principles and practices set out in the joint DfES/QCA publication, 'Curriculum guidance for the Foundation Stage' (copies are available from QCA Publications on 01787 884 444).

The Education Act 2002 provides that the Foundation Stage is part of the National Curriculum. From 2008 and subject to Parliamentary approval the Childcare Bill will remove the Foundation Stage from the National Curriculum and put in place the Early Years Foundation Stage (EYFS). The EYFS will have the same legal status as the Foundation Stage currently has under the National Curriculum and will apply to all early years providers that have to register with Ofsted, as well as independent, maintained and non-maintained special schools with provision for children from the age of three to the end of the academic year in which they turn five.

12.15 The Primary National Strategy has produced a publication setting out the key elements of effective practice (KEEP) to support effective work with young children and families in early years provision. It supports local authorities to strategically plan and evaluate training and professional development to provide high quality early years provision that effectively supports children's learning and development. 'KEEP' is available from DfES publications on **0845 6022260**.

Towards a new joined-up quality framework

12.16 Subject to Parliamentary approval of the relevant provisions set out in the Childcare Bill, the Department will put in place a new single quality framework – the Early Years Foundation Stage (EYFS), for children from birth to five. The EYFS will take an integrated approach to care and education, reflecting the way children learn and develop and the way childcare services operate. The new EYFS will combine Birth to Three Matters and the Foundation Stage, and elements of the national standards for under-eights daycare and childminding. The framework will help practitioners plan learning and development activities for children based on observation of their progress, so ensuring that care and learning is right for each child at each stage of their development.

Affordability

- 13.1** The Government aims to ensure that all parents are able to afford flexible, high quality childcare that is appropriate to both their child's and their own needs. What an individual family considers affordable inevitably varies greatly according to a range of factors, including parental income, the ages of their children, work patterns and personal preferences. The cost of childcare is also affected by regional and local differences and by the differing quality and pricing structures of providers.
- 13.2** The offer for three- and four-year-olds delivers a guaranteed free entitlement for all parents, regardless of circumstances or income. The free entitlement therefore already makes a significant contribution to affordability by reducing the number of hours for which parents may need to pay. Extending the free entitlement to 38 weeks will ensure that all children receive the same minimum entitlement regardless of the setting they attend.
- 13.3** Local authorities have a responsibility to ensure that there are sufficient places available to meet parental demand in their area. However, local authorities will need to factor into planning assumptions that some parents will not need or wish to access additional services and will only wish to take up the free entitlement.

Charges for additional services

- 13.4** Local authorities should ensure that the basic entitlement is free at the point of delivery. The free entitlement is a guarantee of a free place. It is not a voucher; neither should it be regarded as a parental subsidy.
- 13.5** Providers should not levy any fee in respect of the free entitlement nor should they charge parents fees in advance for the free entitlement to be refunded at a later date. Providers that normally charge fees should reduce the fees by the amount that they would normally charge for those sessions if the child was not accessing a free place.
- 13.6** Providers can charge for additional services. The level of such fees is a private matter for agreement between the provider and the parent. However, parents should not be required or expected to take up additional services in order to access a free place. Parents who do choose to take up additional services should not be charged any more for those services than parents of children who are not accessing a free place. Above all, arrangements for charging for additional services should be clear and transparent.
- 13.7** Local authorities may attach conditions to funding paid to PVI providers to ensure that the basic entitlement is free at the point of delivery.

Annex A – Directory of Providers

- 1 Local authorities must maintain and keep up to date a local directory of providers eligible to deliver the free early education entitlement. This should be made available on request.

Eligibility

- 2 The following providers can be included in the local Directory of Providers:
 - those registered by Ofsted as a daycare provider under the Children Act 1989 (or a daycare provider exempt from such registration)
 - an independent school registered with the DfES
 - a non-maintained special school
 - a Portage service
 - a registered childminder working within a quality assured network and accredited as delivering the Early Learning Goals linked to the Foundation Stage Curriculum
 - non-maintained local authority providers, for example, local authority day nurseries and family centres should be included in the Directory as if they were private, voluntary or independent sector providers

- 3 Local authorities are encouraged to include maintained sector providers in the Directory of Providers. They should in any event be treated as if they are so included with regard to the general delivery principles in this Code of Practice.

Reasonable Conditions

- 4 Local authorities may attach reasonable conditions to funding to ensure providers meet the quality standards and principles outlined in this Code of Practice. However,

they should consider carefully any conditions which would result in a particular provider or group of providers who would otherwise be eligible being excluded from the Directory.

- 5 If a provider fails to meet the conditions set by its local authority, the authority may require the repayment of the whole or part of any funding they have paid in respect of the provision of free places.
- 6 Providers need not meet any such conditions for any period during which they are not claiming funding, or in respect of any children for whom they are not claiming funding, or in respect of any sessions provided in addition to those for which they are claiming funding.

Adding providers to the Directory

- 7 Local authorities should provide clear and transparent information to any provider seeking to be included in the Directory. Providers should pay no charge for consideration or entry to the Directory.
- 8 Before including a provider in their Directory, the local authority should:
 - satisfy themselves that the provider is based in their area
 - satisfy themselves that the provider fits into one of the categories of providers eligible to join the directory and request documentary evidence of this e.g. Ofsted registration certificate
 - satisfy themselves that the provider is able to meet any agreed local conditions
- 9 As a minimum, local authorities will need to record, for each provider in their Directory, the address of the premises where the

education is provided, the name, address, email address and telephone number of the contact responsible for administration, the details of the bank account into which funding is to be paid, their unique reference number and any Ofsted registration number.

- 10** Providers should inform Ofsted and their local authority whenever there is a change in their material particulars e.g. a change of ownership or premises. Local authorities should update their Directory promptly thereafter. Where a provider's details change substantially, local authorities should judge whether this may mean the provider has effectively become a new setting.
- 11** Providers may be included in their local authority's Directory in advance of inspection, on condition that they submit to inspection by Ofsted at the earliest possible opportunity.
- 12** Providers should only be refused admission to the Directory if they fail to meet the standards and eligibility requirements set out in this code and/or any conditions imposed by the local authority. A provider should not be rejected on the basis that there is sufficient provision already in the area.
- 13** Where a provider's application is rejected, local authorities should give the provider a written explanation of the decision and ensure that all paperwork is retained. They should also have procedures for dealing with appeals from any providers rejected for inclusion. The appeal procedures should satisfy public law requirements. In the event that a provider is not satisfied with their treatment under this appeals procedure, they may make a complaint to the Local Authority Ombudsman after the local appeals process has been exhausted.

The central database of providers

- 14** The DfES maintains a central directory of non-maintained providers using information collected during the annual Early Years Census. All providers delivering the free entitlement should be allocated a unique reference number by their local authority for use in reporting census data. Data on take-up in the maintained sector is collected through the pupil level annual school census (PLASC).

Independent schools

- 15** All independent schools must be registered with the Department for Education and Skills.

Removing providers from the Directory

- 16** Local authorities may remove providers from the Directory if they cease to meet any conditions set or withhold reasonable cooperation from the local authority in delivering its statutory responsibilities. Local authorities may also remove a provider from the Directory if, on the advice of Ofsted, their provision is judged inadequate.
- 17** In such cases the local authority should inform the provider in writing before the removal is effected and notify them of arrangements for appeal.
- 18** To ensure that the central database is kept up to date, local authorities should inform the DfES, via the annual Early Years Census, of any providers who have been removed from the Directory.

Annex B – Payment mechanisms for PVI providers

- 1 Local authorities receive sufficient funding to enable them to provide free early education for three- and four-year-olds through the Dedicated Schools Grant. This ensures that children are funded at the same basic rate (with top ups for deprivation and other local factors) regardless of whether their parents choose to take up their free entitlement in the maintained or non-maintained sector. Local funding arrangements should be transparent and equitable. As far as practicable, local authorities should ensure that all providers delivering the free entitlement are funded on a consistent basis.
- 2 Local authorities, after consultation with local partners, are responsible for determining the rate at which providers will be funded, taking into account local circumstances. If the amount of funding a provider receives exceeds the amount that they would normally charge for the education provided, they may retain the excess providing it is used to support the education of eligible children (for example, staff development costs, additional qualified teaching capacity or the purchase of equipment.) If the amount of funding is less than a provider would normally charge, **they may not require the balance or any top-up payment from the parents.** To do so would undermine the principle that the place is free.
- 3 Local authorities should put in place appropriate arrangements for ensuring that, as far as possible, providers receive funding in a way that minimises potential cash flow difficulties. In doing so, local authorities will need to take account of the payment profile of the Dedicated Schools Grant, which consists of 25 equal instalments, with three in April. Some local authorities make an interim payment at the beginning of term of approximately 50%, based on estimates of the number of eligible children, with a balancing payment as soon as possible after the detailed headcount.
- 4 Local authorities should ensure that settings providing free places are fully informed of how funding is to be claimed and paid.
- 5 If a child attends two or more PVI settings the local authority should pay a pro rata amount of funding to each provider not exceeding 12 hours in total per week. Wherever practicable, local authorities are encouraged to agree similar arrangements in cases where a child takes up the free entitlement in a combination of a maintained sector and PVI setting.

Children changing provision during the term

- 6 Each local authority, after consultation with local delivery partners, should agree a consistent method of ensuring that children commencing with or moving between providers during the course of the term are supported. As far as practicable, they should ensure that parents are not charged for any part of the free entitlement regardless of when and where they choose to take up that entitlement.

Cross-border Arrangements

- 7 Local authorities in England are funded on the basis of the number of children taking up free early education places within their area, regardless of residency. It follows that no child should be refused a funded place on the basis of where they live and there is no case for authorities to be involved in recoupment arrangements for under-fives unless statemented SEN pupils are involved.

Children with statements of special educational needs (SEN)

- 8 For a child with a statement of SEN made under the Education Act 1996, the local authority in whose area the child lives is responsible for maintaining the statement, even if the child attends a provider in another authority's area. Statemented children taking up a nursery education place in any setting should claim nursery education funding in the normal way through the local authority in which the provider is located. However, the provider may separately claim the additional costs of any special educational provision required over and above the basic free entitlement from the local authority responsible for maintaining the statement.
- 9 Where a child has special educational needs and is receiving interventions under Early Years Action or Early Years Action Plus as outlined in the SEN Code of Practice, it is expected that neighbouring authorities will agree consistent treatment and funding of any intervention or additional support to prevent unnecessary delay when such cases arise.
- 10 It may not be appropriate for some children with special educational needs to receive their full early education entitlement. In these cases, the provider, in cooperation with the child's parents or guardians, should seek advice from the local authority maintaining the statement about the amount of provision that would best meet the child's needs. As long as the provider is acting in accordance with this advice, they should be allowed to claim funding for the full minimum entitlement.
- 11 A provider offering the free early education entitlement to a child with a statement of special educational needs should allow the local authority maintaining that statement access to the premises to monitor the provision specified in the statement.

Audit functions

- 12 Local authorities should put in place appropriate auditing and accounting procedures to ensure that funding paid in respect of free places is administered appropriately. This should include requiring providers to:
 - make copies of their accounts available to the local authority on request
 - keep a record of attendance of all children for whom they provide funded places
- 13 Providers should maintain a specific bank account for their setting. The account should be dual-signatory, unless a provider is a sole trader. The local authority should only pay funding into that account.
- 14 Providers should satisfy themselves that claims made for individual children do not exceed the minimum entitlement. Where a provider is notified by the parents or otherwise discovers that a child is attending another provider which is also in receipt of funding, they should immediately inform the local authority in order that the funding may be paid correctly in respect of that child. Providers should also inform the local authority when a child in respect of whom funding has been paid leaves their setting.
- 15 Providers should make sure that all fees and the billing procedures are presented clearly to parents and that the parents are made aware of all charges made for any additional services.

Annex C – Useful addresses and publications

Queries relating to the provision of free nursery education places:

Early Learning and Development Team
Area 2B
Sure Start, Extended Schools and Families Group
Caxton House
6-12 Tothill Street
London SW1H 9NA
E childrens.learning@dfes.gsi.gov.uk

Queries relating to Early Years Census and Unique Reference Numbers:

Early Years Statistical Unit
Department for Education and Skills
Mowden Hall
Staindrop Road
Darlington DL3 9BG
T 01325 392 626
F 01325 392 211
E earlyyears.statisticalunit@dfes.gsi.gov.uk

Independent Schools Registration Team

Department for Education and Skills
Staindrop Road
Mowden Hall
Darlington DL3 9BG
T 01325 392 185
F 01325 392 128
E sarah.smith@dfes.gsi.gov.uk

Ofsted

Early Years Directorate
Alexandra House
29-33 Kingsway
London WC2B 6SE
Helpline at Regional Centres 0845 601 4771
Publications 0700 2637 833

DfES Publications

PO Box 5050, Sudbury
Suffolk CO10 6ZQ
T 0845 602 2260
F 0845 603 3360
E dfes@prolog.uk.com

Working Tax Credit (WTC)

Helpline 0845 300 3900
Website www.hmrc.gov.uk/taxcredits

National Childminding Association

8 Masons Hill, Bromley
Kent BR2 9EY
T 020 8464 6164
F 020 8290 6834
E info@ncma.org.uk
Website www.ncma.org.uk

Useful Publications/Resources

The following publications are available from DfES Publications on **0845 602 2260**:

- 'Special Educational Needs Code of Practice' (Ref: DfES 581/2001)
- 'School Admission Code of Practice' (Ref: DfES/0031/2003)
- 'Birth to Three Matters' (Ref: Birth)

The following publication is available from QCA publications on **01787 884 444**:

- 'Curriculum Guidance for the Foundation Stage'

Information on the Dedicated Schools Grant (DSG) is available from the Teachernet website:

www.teachernet.gov.uk/management/schoolfunding/2006-07_funding_arrangements/DSG200608/

The following publication is available from the HM Treasury website: www.hm-treasury.gov.uk

- 'Choice for parents, the best start for children: a ten-year strategy for childcare'

The following publication is available from the National Children's Bureau on **020 7843 6029** and the Sure Start website at:

www.surestart.gov.uk/ensuringquality/inclusion/sen/senanddisabilityresources

- 'Early Years and the Disability Discrimination Act 1995 – what service providers need to know'



February 2006

A Code of Practice on the Provision of Free Nursery Education Places for Three- and Four-Year-Olds

Further copies of this document can be obtained from:

DfES Publications, PO Box 5050, Sherwood Park, Annesley, Nottinghamshire, NG15 0DJ

Tel: 0845 60 222 60 **Fax:** 0845 60 333 60 **Email:** dfes@prolog.uk.com

Please quote reference: 0175-2006DBW-EN ISBN: 1-84478-671-4

This document can also be downloaded from www.surestart.gov.uk

© Crown copyright February 2006