



# Early Years Guidance for Nottinghamshire Maintained and Academy Schools

September 2022

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## 1. Introduction

At a time when schools are considering lowering the age range to admit, 2, 3 and 4 year olds, governing bodies will have to explore new delivery structures.

This guidance is for all schools including maintained, Academy and Free Schools; it aims to set out the current opportunities to deliver the full childcare entitlement of 30 hours for 3 and 4 year olds. In addition, some schools will also be considering lowering the age group further to admit the most vulnerable 2 year olds in relation to their 15 hour entitlement.

The current government has identified early education and increased access to high quality early education and care as key priorities. Not only will working families benefit by an increased free entitlement, the addition of 2 year old hours for the most disadvantaged aims to close the educational gaps at the earliest opportunities.

The Childcare Act (2006) and (2016) requires all Local Authorities to ensure a sufficiency of early years provision, free of charge, for eligible children aged 2 and all 3 and 4 year olds. The Act also requires that Nottinghamshire County Council (NCC) ensures there is sufficient childcare for working parents, parents undertaking studying or training and for disabled children. NCC has the role of managing the childcare market and would always encourage schools, where possible, to look to work in partnership with any existing local Private, Voluntary or Independent (PVI) early years and childcare providers, such as pre-schools, nurseries and childminders to meet the needs of the local community.

Nottinghamshire County Council has produced this guidance as a toolkit for maintained schools considering lowering their age range to provide early education and or childcare for 2 year olds and/or 3 and 4 year olds. The guidance will also be of use to academies and free schools wanting to deliver early years provision. The guidance comes in the form of a series of sections and gives useful contacts within NCC for initial advice and ongoing support.

It will also be useful for those schools wanting to make arrangements to meet the extended free childcare entitlement of an additional 15 hours per week or an additional 570 hours over the year for working parents of 3 and 4 year-olds, which was introduced in September 2017. The extended free childcare can be delivered by the school itself or in partnership with a PVI early years provider or childminders, operating on the school premises or in other premises close by.

The guidance will also incorporate advice for schools on how to respond to parent and childcare provider "rights to request" school based childcare where;

- a) parents' requests that the school that their child attends considers establishing wraparound and / or holiday childcare, and
- b) childcare providers' requests to use school facilities for wraparound and / or holiday provision at times when the school is not using them.

## 2. Useful Contacts

Schools that require advice and guidance can contact relevant NCC departments. Support is available from Early Childhood Services for both maintained and Academy Schools; other local authority services are available for maintained schools and for Academy schools that buy back services from the council.

Useful resources and sources of support are available throughout this guidance document.

NCC Team	Advice Topics	Contact Details
<b>Early Childhood Services</b>	<ul style="list-style-type: none"> <li>• General support and guidance about all early years provision.</li> <li>• Curriculum</li> <li>• Legal requirements in relation to staffing ratios and space</li> <li>• Ofsted registration requirements</li> <li>• Area data about existing providers and early years places required within a locality</li> <li>• Business Sustainability</li> <li>• Access to the Early Years Quality and Attainment Service</li> <li>• Access to Early Years training and workforce development</li> </ul>	<p><b>Email:</b>  <a href="mailto:earlychildhoodservices@nottsc.gov.uk">earlychildhoodservices@nottsc.gov.uk</a></p> <p><b>Telephone:</b>            0115 977 2510</p> <p><b>Website:</b>  <a href="https://www.nottinghamshire.gov.uk/care/early-years-and-childcare/early-childhood-services">https://www.nottinghamshire.gov.uk/care/early-years-and-childcare/early-childhood-services</a></p>
<b>Support to Schools - Education Improvement Service</b>	<ul style="list-style-type: none"> <li>• Early Years in school support</li> <li>• Support for school leadership teams</li> <li>• EYFS networks and training for schools</li> <li>• Moderation of EYFSP</li> </ul>	<p><b>Email:</b>  <a href="mailto:info@em-edsupport.org.uk">info@em-edsupport.org.uk</a></p> <p><b>Telephone:</b>            0115 98040129</p> <p><b>Website:</b>  <a href="http://www.em-edsupport.org.uk">www.em-edsupport.org.uk</a></p>
<b>Support to Schools - School Families Support Service (SFSS)</b>	<ul style="list-style-type: none"> <li>• The service comprises of 4 teams which includes an Early Years Team. Their remit is for children with a range of complex special educational needs and disabilities from birth to the end of key stage 1 (approximately 7 years of age). The team comprises specialists who work with children with complex learning needs, communication and interaction needs/autism spectrum disorder. They are able to provide the following:</li> <li>• Advice and support for schools and early years providers</li> <li>• Staff training</li> <li>• Advice and support for parents and carers</li> <li>• Specialist support and teaching in homes and early years settings</li> <li>• Transition planning</li> </ul>	<p><b>For Early Years SFSS</b></p> <p><b>Email:</b>  <a href="mailto:SFSS.SEV@nottsc.gov.uk">SFSS.SEV@nottsc.gov.uk</a></p> <p><b>Telephone:</b>            0115 804 1232</p> <p><b>For the Communication &amp; Interaction, Cognition &amp; Learning or Sensory Teams</b></p> <p><b>Email:</b>  <a href="mailto:Sfss.sjr@nottsc.gov.uk">Sfss.sjr@nottsc.gov.uk</a></p> <p><b>Telephone:</b>            0115 854 6464</p>

<b>Support to Schools - School Place Planning</b>	<ul style="list-style-type: none"> <li>Any proposed reduction of space currently used to provide statutory education</li> </ul>	<p><b>Email:</b> <a href="mailto:Place.Planning@nottsc.gov.uk">Place.Planning@nottsc.gov.uk</a></p> <p><b>Telephone:</b> 0115 977 2573</p>
<b>Finance</b>	<ul style="list-style-type: none"> <li>Funding</li> <li>Budget planning in relation to different delivery models and business planning</li> </ul>	<p>Your usual Finance Business partner or</p> <p><b>Email:</b> <a href="mailto:cyp.finance@nottsc.gov.uk">cyp.finance@nottsc.gov.uk</a></p> <p>or</p> <p><b>Telephone:</b> 0115 977 2211</p>
<b>HR</b>	<ul style="list-style-type: none"> <li>Employment issues</li> <li>TUPE</li> </ul>	<p>Your usual HR contact link or</p> <p><b>Email:</b> <a href="mailto:hrdutydesk@nottsc.gov.uk">hrdutydesk@nottsc.gov.uk</a></p> <p>or</p> <p><b>Telephone:</b> The Duty Desk on 0115 9774433</p>
<b>Property</b>	<ul style="list-style-type: none"> <li>Change of use</li> <li>Physical changes, adaptations, extensions - all must be reported to property. NCC remains the 'landlord'</li> <li>Any changes to lease arrangements of any current outside provider</li> </ul>	<p><b>Email:</b> <a href="mailto:Corporate.property@nottsc.gov.uk">Corporate.property@nottsc.gov.uk</a></p> <p><b>Telephone (NCC Customer Services)</b> 0300 500 80 80</p>
<b>Legal</b>	<ul style="list-style-type: none"> <li>Employment contracts</li> <li>Legal advice for schools</li> </ul>	<p><b>Email: (NCC Customer Services)</b> <a href="mailto:enquiries@nottsc.gov.uk">enquiries@nottsc.gov.uk</a></p> <p><b>Telephone (NCC Customer Services)</b> 0300 500 80 80</p>
<b>Insurance, advice and support</b>	<ul style="list-style-type: none"> <li>Any new insurance risks identified</li> </ul>	<p><b>Email: (NCC Customer Services)</b> <a href="mailto:enquiries@nottsc.gov.uk">enquiries@nottsc.gov.uk</a></p> <p><b>Telephone (NCC Customer Services)</b> 0300 500 80 80</p>
<b>Regional Schools Commissioner</b>	<ul style="list-style-type: none"> <li>Approval of changes to open academies and free schools, including changes to age ranges</li> </ul>	<p>Regional Schools Commissioner for East Midlands and the Humber</p> <p><b>Email:</b> <a href="mailto:emh.rsc@education.gov.uk">emh.rsc@education.gov.uk</a>.</p> <p><b>Website:</b> <a href="https://www.gov.uk/government/people/john-edwards--2">https://www.gov.uk/government/people/john-edwards--2</a></p>

## 3. HR Guidance

### 3.1 School led direct or indirect delivery

If a governing body decides to either directly manage a school led provision or set up a limited company, School Company, or Community Interest Company, then the steps below should be followed:

**Schools should seek HR support and guidance at the earliest opportunity, via the contact details in Section 2.**

- Seek full governing body approval
- Prepare a business plan
- Scope and establish an affordable staffing structure in line with early years staffing ratios. Template job descriptions can be provided
- Ensure that all job descriptions are job evaluated
- Consult with existing employees of the school
- Undertake recruitment and selection processes in line with Nottinghamshire County Councils Recruitment and Selection Policy for Schools.

### 3.2 Schools moving from an external provider to school-led provision

**Schools should seek HR and finance support and guidance at the earliest opportunity, via the contact details in Section 2.**

If a school and its governing body are considering taking over running an existing early years provision that may have been run by a private, voluntary or independent provider then they must be aware that any staff working for that provider may be eligible for TUPE transfer.

The school will be required to complete a business plan, this should scope the challenge and outline a carefully costed delivery model. The LA will then consider the information from the business plan, to ensure the School can demonstrate that the proposals have been fully costed and are sustainable into the future, based on known and expected occupancy of the early years provision.

HR will allocate a HR Business Partner who will assist and support the school with the process described below.

### 3.3 TUPE Legislation

TUPE stands for the Transfer of Undertakings (Protection of Employment) Regulations 2006. TUPE is the main piece of legislation governing the transfer of staff when the business or organisation in which they are employed move to another business or organisation. Broadly speaking, the regulations are designed to protect the rights of employees being transferred, enabling them to retain the same terms and conditions, with continuity of service, as in their employment on the day of the transfer.

It is considered that employees who are significantly i.e. wholly or mainly involved in the work (of the transferring economic entity) would transfer.

The new employer cannot use the transfer itself as a reason to change the terms and conditions of transferring staff. Any changes must not be because of the transfer unless there is an economic, technical or organisational reason. If such a course of action were to be considered the new employer (the governing body) would need to undertake discussions and formal consultation with

the employees and their representatives prior to the transfer. The governing body is also responsible for consulting on any impact to existing employees. Any proposed changes will therefore be subject to consultation as they are at the moment.

An employee's service/continuous employment is not broken by a TUPE transfer. The date on which continuous service started with the old employer will continue to be the date which is used to calculate statutory employment rights.

### **3.4 Consultation Process (TUPE)**

TUPE legislation places a requirement on the current employer to inform employees and their elected representatives of a proposed transfer of staff to a new employer. Consultation is also required where there are measures to be taken as a result of the transfer. A consultation meeting should be planned and delivered by the existing employer/organisation, who should seek HR support and advice from within their own organisation.

Following the consultation meeting, the existing employer should send the employees affected by the transfer a letter setting the parameters for the transfer. A sample letter is available.

### **3.5 Informing the staff and trade unions**

The obligation to inform the employees affected by the proposal to transfer the provision lies with the current provider. However, it would be good practice for the school to meet with the employees and ensure that the employees of the existing provision are aware of the proposals and the impact of any measures.

The existing provider should also notify its recognised Trade Unions of the school's proposal. A list of the secretaries of the Nottinghamshire County Council recognised trade unions is available along with a template letter.

There is a requirement to inform any staff affected by the transfer, so there will be a duty to inform existing staff in school of the proposal. There is an additional duty to consult existing staff in school if any measures to be taken may impact upon them, for example if upon transfer there is a business reason to restructure staffing.

### **3.6 Planning the consultation meeting with the recognised trade unions**

The current provider should decide upon a date and time to meet with the employees, Trade Unions and representatives from the school. Ensure the Trade Unions are invited with 10 days' notice.

The current provider should agree the agenda for the consultation meeting with the head teacher and how the meeting will be managed to ensure a joined up approach. It is recommended that you jointly agree an agenda and format for the meetings with the HR Business Partner. The current provider should invite existing employees by letter to the TUPE Staff Consultation meeting.

### **3.7 Measures**

A measure is not specifically defined within the TUPE regulations but in the broadest sense it shall include any action, step or arrangement which is likely to affect employees who are potentially transferring employment. A measure can, therefore, be taken by either the transferor (current employer) or the transferee (new employer). A failure to consult on proposed measures could result in significant compensatory payments to all staff post transfer, which would be the responsibility of



the governing body to pay from the school budget if appropriate HR advice is not sought and followed.

The current employer is responsible for the consultation with staff and the recognised trade unions over the transfer and any proposed measures. Discussion is, therefore, needed with the current provider over any possible changes to terms & conditions. Measures have included;

- Proposed restructures, post and pre-transfer
- Different consultation arrangements with the TU's post transfer, and
- The unavailability of salary sacrifice schemes post transfer.

Schools should meet with the current provider as soon as possible to seek clarification about any measures. The schools governing body, through the HR Service of Nottinghamshire County Council is required to provide the trade unions with statutory information about the proposed transfer and consult on any implications on the salary Sacrifice scheme and what the School intends to do to replace them or offer alternatives.

### **3.8 Format of meetings**

The following is a proposed format for the consultation meeting:

#### **Current Employer**

- Introduces speakers, including TU members who are in attendance
- Agenda for the meeting
- Sets context of the move from current Provider to the school and refer to letters already sent providing information to staff and trade unions
- Timescales for the transfer
- Explain how any further information will be made available.
- Arrange for a record of the key issues and responses to be noted and circulated after the meeting.

#### **HR Officer / Head Teacher jointly**

- Discuss any measures that are being taken – e.g. proposed restructures
- Invite questions (any questions that cannot be answered at the meeting can be answered later and fed back via HT).

#### **Head Teacher**

- Make a pre agreed response to discussion on measures and explain what the current employer is planning (if anything) to do about them
- Respond to any other issues as necessary.

Following the consultation meeting it is essential to keep staff informed about any updates or additional issues throughout the remaining consultation period. The current employer should follow up correspondence as appropriate. It is also important to keep a record of any consultation responses.

### **3.9 Due Diligence Staffing Information**

The school will need to obtain Information about who the employees are, their terms and conditions, and what liabilities the school is inheriting. This will enable the school to assess and plan for the new cohort of employees. For example, it may need to increase budgets to cope with

remuneration obligations or change arrangements to adopt adjustments that the current provider has made for disabled employees.

The current provider should supply this statutory information at an early stage so that any gaps or inaccuracies can be identified. In normal circumstances this should be made available 28 days before the date of transfer.

The current providers are required to provide the following information in relation to transferring employees:

- their age and identity;
- their particulars of employment, required to be given to employees under s.1 of the Employment Rights Act 1996;
- information on disciplinary procedures taken against, or grievance procedures taken by, employees within the previous two years in circumstances where a code of practice issued under part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 that relates exclusively or primarily to the resolution of disputes applies (including the ACAS code of practice on disciplinary and grievance procedures);
- information on any court or tribunal case, claim or action brought by an employee against the transferor within the previous two years, and any case, claim or action that the transferor has reasonable grounds to believe that an employee may bring against the transferee arising out of his or her employment with the transferor; and information about collective agreements that will transfer.
- Whether or not there are reasonable grounds for a transferor to believe that an employee may bring a case, claim or action is a judgment call for the transferor. It is unlikely to be necessary for the transferor to provide details of anything less concrete than an express threat of a case, claim or action.
- TUPE prescribes that employee liability information must:
  - be delivered in writing or made available in a readily accessible form, for example a spreadsheet;
  - be up to date at a specified date no more than 14 days before it is notified to the School;
  - be notified to the school no fewer than 28 days before the transfer, except where there are special circumstances making this not reasonably practicable; and
  - be updated in writing if there are changes after it has been provided.

This information can be notified in more than one instalment or given indirectly through a third party. The HR Service can provide a format of the required information to the transferor on request.

It is good practice for the current provider to discuss with the school how it will provide the information, as part of the planning process. For example, it might be easier if the current provider discloses staff handbooks and sample contracts of employment in their entirety, rather than extracting the relevant parts and putting them into a separate document. Agreeing the disclosure parameters at an early stage will help to ensure that the information is as useful as possible and should help to avoid disputes.

### **3.10 Position Administration and Payroll**

Once the consultation process is complete and all the due diligence information has been collated the school will need to contact the BMS Organisation and Position Management Team to arrange for the new posts and structure to be set up on the payroll system. Once the new posts have been established the school will need to use the due diligence information provided in order to notify

Payroll Services to set up the employees in the posts to ensure that they are paid. The school will need to be mindful that employees will be transferring over on their existing terms and conditions so it might be necessary to set up new pay codes therefore this will need to be built into the timescales and adequate notice given to payroll.

### **3.11 Personnel files**

The current provider is also required to provide the school with the personnel files of all employees who transfer to the School. The Personnel file must include:

- Recruitment Documentation
- Right to Work documentation
- Job Description
- Contract of Employment
- Training record

### **3.12 Final letter to staff**

Once the transfer is complete the current employer will need to send a letter to the transferred staff confirming that the transfer is complete with the effective date of transfer.

### **3.13 Safer Recruitment Checks**

The schools will also need to complete its own DBS and right to work checks and ensure this information is placed on the schools Single Central Record.

## 4. Early Years Foundation Stage

The Early Years Foundation Stage (EYFS) sets standards for the learning, development and care of children from birth to 5 years old. All schools and Ofsted-registered early years providers must follow the Statutory Framework for the EYFS, including childminders, preschools, nurseries and school reception classes. This framework is mandatory for all early years providers in England.

The EYFS Framework supports an integrated approach to early learning and care. It gives all professionals a set of common principles and commitments to deliver quality early education and childcare experiences to all children.

As well as being the core document for all professionals working in the foundation years, the EYFS framework gives parents confidence that regardless of where they choose for their child's early education, they can be assured that the same statutory commitments and principles will underpin their child's learning and development experience.

For full details of the EYFS, please refer to the Statutory Framework for the Early Years Foundation Stage: <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

### 4.1 Assessment

Assessment plays an important part in helping parents, carers and practitioners to recognise children's progress, understand their needs, and to plan activities and support. Ongoing assessment is an integral part of the learning and development process.

There are 2 points when a summative assessment is a **statutory** responsibility.

- i. The progress check at age 2. Where possible, this check and the healthy child check, completed by health visitors, should inform each other and support integrated working.
- ii. At the end of the foundation stage – The EYFS profile

For full details of these duties, please refer to the Statutory Framework for the Early Years Foundation Stage: <https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

You may also find the following documents useful for the completion of the progress check at age 2 and for the integrated working with health visiting, when necessary:

<http://www.nottinghamshire.gov.uk/care/early-years-and-childcare/childcare-providers/free-providers>

- 2 year progress summary template

## 5. Ofsted

The Small Business, Enterprise and Employment Act (2015), by amending The Childcare Act (2006), has removed the requirement for schools to register their early years provision for two-year-olds separately with Ofsted, so long as it meets certain requirements.

Schools wishing to take advantage of the exemption will need to meet the criteria, which is set out in the Childcare Act 2006 (as currently applied to three and four-year old provision).

### 5.1 Ofsted Registration

Generally, most providers of childcare are required to be registered with Ofsted. However, if the provision is run directly by a School, where the staff are employed by the School Governors, then it will come under the School's own Ofsted registration and does not need to register separately. A School run provision operating under the School's registration will still need to meet the relevant requirements for the Early Years Register and Childcare Register.

Compulsory registration:

- Early Years Register – Where there is childcare for children aged from birth to 31st August following their fifth birthday, the provision must be registered with Ofsted on the Early Years Register.
- Compulsory Childcare Register – Where there is childcare for children aged from 1st September following their fifth birthday, up to the age of eight, the provision must register on the Compulsory part of the Childcare Register with Ofsted.

Voluntary registration:

- If the provision provides care for children aged eight to 18, they may opt to register with the Voluntary part of the Childcare Register.

If Ofsted registration is required, the registration process can take around 12 weeks if you are registering on the Childcare Register only and can take up to 26 weeks to register on the Early Years Register.

All Ofsted registered childcare must have a staff member with a 12 hour paediatric first aid qualification present and available at all sessions, as well as a trained Designated Safeguarding Lead. All other staff must have child protection training and all staff involved in preparation of food must have received food handling and hygiene training.

Early Years providers are expected to provide a special educational needs and disabilities co-ordinator (SENDCO) and all staff must have a satisfactory enhanced DBS disclosure-Full details of the registration requirements, where applicable, can be obtained from Ofsted:

<https://www.gov.uk/guidance/childminders-and-childcare-providers-register-with-ofsted/daycare-childcare-on-non-domestic-premises-registration>

### 5.2 Ofsted Inspections

**Early Years Register:** Ofsted inspect Early Years providers according to the requirements set out in the Early Years Foundation Stage using the Education Inspection Framework (Early Years Inspection handbook).

The report includes judgments in the following 5 areas:

- overall effectiveness
- the quality of education
- behaviour and attitudes
- personal development
- leadership and management.

<http://www.ofsted.gov.uk/early-years-and-childcare/our-early-years-childcare-work/how-we-inspectproviders-early-years-register>

**Childcare Register:** Ofsted inspect providers on the Childcare Register to check that they comply with all the requirements of registration. Ofsted do not make any judgments about the quality of the provision or give grades.

Ofsted measure whether the provider is meeting the requirements of registration in one of three ways:

- Met
- Not met – and notice to improve
- Not met – and enforcement measures taken

The provider receives a letter containing their findings. Ofsted also publish the letter on this website. <http://www.ofsted.gov.uk/early-years-and-childcare/our-early-years-childcare-work/how-we-inspectproviders-childcare-register>

Maintained schools and academies and non-association independent schools that have Early Years Foundation Stage provision are given a separate grade for that provision as part of school inspections conducted under section 5 of the Education Act 2005 (as amended by the Education Act 2011). This contributes to the judgement about the overall effectiveness of the school.

## 6. Premises and Property

There should be clear discussion between all parties involved to agree some ground rules for the use of the premises.

Consideration should be given to the space allocated for the delivery of childcare - for example, is there room for storage of equipment? Is there a separate area for art and craft activities? Is there a quiet/rest area available? What provision is available for preparation of snacks?

### 6.1 Outdoor Play Space

Consideration needs to be given to the availability of outdoor play space, and ideally, an area should be designated for use whilst in session. This will ensure that areas used for any extra-curricular activities are not affected by the childcare provision.

### 6.2 Safety & Security

All play areas - both indoor and outdoor - should meet appropriate safety standards. Clear arrangements for parents dropping off and collecting children, must be made.

It may be useful for the childcare to have its own doorbell or intercom system. There should be a designated entrance/exit point for parents and children using the service.

### 6.3 Early Years Foundation Stage requirement for premises:

Premises and equipment must be organised in a way that meets the needs of the children. In registered provision, providers must meet the following indoor space requirements:

- Children under two years: 3.5 square metres per child.
- Two year olds: 2.5 square metres per child
- Children aged three to five years: 2.3 square metres per child.

Providers must access an outside play area or, if that is not possible, ensure that outdoor activities are planned and taken on a daily basis (unless circumstances make this inappropriate, for example unsafe weather conditions). Providers must also follow their legal responsibilities under the Equality Act 2010, for example, making reasonable adjustments.

Providers must ensure that there is an area where staff may talk to parents and or carers confidentially, as well as an area in group settings for staff to take breaks away from area being used by children.

Where the school are running the provision in room(s) wholly or partially funded by Early Years, a Service Level Agreement, which will detail the rooms/space being used for Early Years will be entered into. For advice and support, please contact [earlychildhoodservices@nottsc.gov.uk](mailto:earlychildhoodservices@nottsc.gov.uk).

Where a third party is intending to use part of the School premises to operate Childcare provision, it is important that a written agreement is put in place to protect the legal rights of all parties including Nottinghamshire County Council and to ensure that each party understands their responsibilities. A lease or licence will be required detailing the hours and area occupied, and lists responsibilities for both the school and the early years provider. NCC Property will be involved in this process if it is a Nottinghamshire County Council owned site. Please refer to your Early Years Project Officer who will liaise with colleagues in Property for further guidance.

Where a third-party provider is already operating on a school site by way of a formal lease or licence agreement, the school **must** seek advice from their Early Years Project Officer before opening up a competing nursery or wrap around provision.

NCC Property will negotiate the appropriate rent/fee for your area and provide guidance with regard to charging for overhead costs (electricity, gas, water).

A lease agreement will be required if the Childcare provider intends to extend / build / develop an area on the (Council owned) school site. Please refer to your Early Years Project Officer for further advice.



## 7. Funding Streams and Accounting

### 7.1 What Early Years Funding is available?

- **3-4 year olds** - All three and four year old children are entitled to a free early education place for 570 hours per year, equivalent to 15 hours per week if delivered during term time. This is known as their 'universal entitlement'. Schools providing early education will receive funding at the local hourly rate based on 39 weeks per year. From September 2017, this entitlement increased to 30 hours a week (or an additional 570 hours per year) for 3 and 4 year olds with working parents.
- **Early Years Pupil Premium** –This provides an additional top up per hour for the most disadvantaged 3 and 4 year olds. Schools will be required to demonstrate to Ofsted how they have used the pupil premium to improve attainment for this group.
- **2 year olds** – Parents and carers who claim a range of welfare benefits are eligible for free early education places for 570 hours per year, equivalent to 15 hours per week if delivered during term time.

Accounting for early years can vary depending on the provision in your school. It is important to ensure that this is accounted for correctly. To discuss this please speak to your nominated contact in School Finance on 0115 9772211.

Information in relation to hourly funding rates is available from [earlychildhoodservices@nottsc.gov.uk](mailto:earlychildhoodservices@nottsc.gov.uk). Funding rates are reviewed annually.

### 7.2 Funding and Quality Judgments

Only early years providers rated as 'good' or 'outstanding' are able to receive funding for eligible 2 year olds. NCC will apply the same quality criteria for the delivery of any early years provision for 2 year olds by schools.

School-run Early Years provision will be included in the whole school inspection – although the separate effectiveness of the early years provision judgment will now include all exempt provision. Governor-run exempt provision must therefore be treated in the same way as maintained school provision.

## **8. Nottinghamshire Early Years Provider Agreement**

All Local Authorities are responsible for the distribution of early years funding to providers who deliver funded childcare places for eligible children.

Nottinghamshire's Early Years Provider Agreement is based on the national agreement first published by the Department of Education in March 2017 and updated in June 2018 and the outcome of previous local audits of the early years funding. The agreement applies to all early years providers and sets out the council's expectations and supports available in the delivery of funded early years places.

The agreement has been approved by the Nottinghamshire Early Years Consultation Group and the Nottinghamshire Schools Forum and any amendments are also approved in this way.

All early years providers are expected to sign and return a copy of the provider agreement to early childhood services each time that the agreement is reviewed and updated in order for funding to continue.

The Nottinghamshire Early Years Provider Agreement can be found at [Free Early Years Place Providers | Nottinghamshire County Council](#) along with additional/supporting information.

## **9. Support and Training for the Early Years Sector**

### **9.1 Information for Professionals**

Every child deserves the best possible start in life and the support that enables them to fulfill their potential.

Nottinghamshire County Council's aim is to continue to support early years providers to make a difference for children, young people and their families; improve outcomes for children and develop diverse, high quality childcare provision with relevant and appropriate training.

All early years providers across Nottinghamshire are offered training, a range of briefings and workforce development opportunities led by Nottinghamshire County Council.

### **9.2 Training and Development Opportunities**

Information about training opportunities and programmes are available at <http://www.nottinghamshire.gov.uk/care/early-years-and-childcare/providers/early-years-training>

Places can be booked using Eventbrite (the link is available on the training webpage above).

Please read the application process guidelines before submitting your application.

Should you have any other training needs that the current training programme does not cover, please let us know by emailing [earlychildhoodservices@nottscc.gov.uk](mailto:earlychildhoodservices@nottscc.gov.uk)

Information about networks, conferences and training provided by Education Improvement is available at <http://www.nottinghamshire.gov.uk/cpd>

### **9.3 Early Years Provider Networks**

A number of practice-based networks for all early years providers are held every term within each district. There are Early Years Forums, SENCO, Language Leads, Safer Settings Networks and Provider (Owner and Manager) briefings. They provide opportunities for early years providers to receive support and information; explore and share ideas around common themes of practice.

### **9.4 Early Childhood Services Bulletin**

A Nottinghamshire Early Childhood Services Bulletin is published regularly and provides updates on national and local policy and practice. The bulletin is distributed to all schools that are registered for early years funding via e-mail.

### **9.5 Early Years Consultation Group**

The Early Years Consultation group is the formal body for all consultations in relation to early years undertaken by Nottinghamshire County Council. The membership includes representation from all early years providers and from each district of the county, including 3 representatives from schools.

## 9.6 Support, guidance and training to Schools

Nottinghamshire County Council's expert team of Specialist Teachers, Early Years Advisors and Early Years Project Officers offer consultancy to schools on a broad range of topics in support of raising the quality of provision and the attainment of children aged 0-5 years.

What we offer:

- Bespoke school based training for all foundation stage practitioners.
- Support and advice around developments in the Early Years sector. For example: 30 hour funding and 2 year olds in school.
- Support for those new to Early Years Foundation Stage through training and consultancy.
- Advice and guidance on developing good/outstanding early years practice and provision.
- Advice to head teachers and governing bodies on lowering their age range (currently free to schools)
- Advice and signposting to ensure business sustainability for early year's provision (currently free to schools).

To enquire about this offer please contact [earlychildhoodservices@nottscc.gov.uk](mailto:earlychildhoodservices@nottscc.gov.uk) with the recommended subject line being: "Support to Schools".

## 10. Safeguarding

The Local Authority has overarching responsibility for safeguarding and promoting the welfare of all children and young people in their area and shall comply with its requirements under the 1989 and 2004 Children Acts.

Early Years Providers must ensure a lead practitioner takes responsibility for safeguarding and all staff must have training to identify signs of abuse and neglect. The Provider shall have regard to the 'Working Together to Safeguard Children' 2018 guidance. In addition, the Provider shall:

- I. ensure their employees are suitable for working with children, are recruited in line with a Safe Recruitment policy, ensuring that all those involved in the appointment of staff have undertaken safer recruitment training
- II. identify a Deputy Safeguarding Lead in the event of the Safeguarding Lead being absent
- III. make sure that training is available to all staff with updates in line with Nottinghamshire Safeguarding Children's Partnership (NSCP) requirements and in accordance with Nottinghamshire County Council's Safeguarding Training Pathway
- IV. make sure systems are in place for managing any allegations made against adults working with children

Early Years Providers shall adhere to the Nottinghamshire Safeguarding Children's Partnership (NSCP) Safeguarding Children Procedures as detailed on the website: [Welcome to the Interagency Safeguarding Children Procedures \(proceduresonline.com\)](http://www.nottinghamshire.gov.uk/interagency-safeguarding-procedures)

Early Years Providers shall make a referral to the Disclosure and Barring Service where a member of staff is dismissed where they have harmed a child or put a child at risk of harm.

Early Years Providers shall comply with the Local Authority's Early Help Processes to ensure that the individual needs of children, particularly those most vulnerable, are identified early and are appropriately met. Further information can be found in the Pathway to Provision guidance available on the Council's website: <http://www.nottinghamshire.gov.uk/caring/childrenstrust/pathway-to-provision>

NCC have produced a Safeguarding Evaluation Tool which has been designed to ensure that the provision and practice are compliant with current legislation. This can be accessed from [earlychildhoodservices@nottsc.gov.uk](mailto:earlychildhoodservices@nottsc.gov.uk)

The Early Childhood Services team provide Safer Settings- Designated Safeguarding Lead networks in each locality termly, in addition to the Nottinghamshire Safeguarding Children's Partnership (NSCP) training.

Information about training opportunities and programmes are available at <http://www.nottinghamshire.gov.uk/care/early-years-and-childcare/providers/early-years-training>

## 11. Special Educational Needs and/or disabilities (SEND)

The key legislative and statutory guidance which applies to children in the early years is the same as for those of statutory school age. These are namely, the Children and Families Act 2014, the SEND Code of Practice (January 2015) and the Equality Act 2010.

The Children and Families Act 2014 introduced significant changes and reforms to the previous framework for supporting children and young people with SEND. The age range covered by the legislation has been extended and now includes children and young people from birth to 25 years. Statements of Special Educational Needs have now been replaced by Education, Health and Care Plans for those with the most complex needs, for whom statutory monitoring might be required.

The categories of support for children whose level of need sit below the level of a statutory plan have also changed. Early Years Action and Early Years Action Plus have now been replaced by a single SEN Support category. The SEN Code of Practice: 0 – 25 years (January 2015) continues to advocate that schools and settings apply a graduated approach to making provision for children with SEND. This should comprise of four stages of action – Assess; Plan; Do; and Review. It is important that this cycle of action is revisited in order to identify the best way of securing good progress.

Nottinghamshire County Council has produced a leaflet which provides further information about SEN Support and applying a graduated approach. This is available via Nottinghamshire's SEND Local Offer website, which is itself part of a larger website called Notts Help Yourself:

[https://search3.openobjects.com/mediamanager/nottinghamshire/fsd/files/send\\_support\\_leaflet\\_parent\\_carer\\_july\\_17\\_1.pdf](https://search3.openobjects.com/mediamanager/nottinghamshire/fsd/files/send_support_leaflet_parent_carer_july_17_1.pdf)

Nottinghamshire's SEND Local Offer ([www.nottinghamshire.sendlocaloffer.org.uk](http://www.nottinghamshire.sendlocaloffer.org.uk)) provides information about services, support and provision that are available within Nottinghamshire to support children and young people with additional needs. This includes provision and support delivered by the public, private and voluntary sectors. This includes maintained nurseries who are also required to co-operate with the local authority and should ensure that their provision forms a part of that offer.

All Early Years Providers (including schools) are required to have regard to the SEND Code of Practice: 0 – 25 years -

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/398815/SEND\\_Code\\_of\\_Practice\\_January\\_2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/398815/SEND_Code_of_Practice_January_2015.pdf). It is therefore important that schools and settings are familiar with this document. (A publication entitled "Early years: guide to the 0 to 25 SEND code of practice. Advice for early years providers that are funded by the local authority" may be helpful in developing an understanding of what is required - [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/350685/Early\\_Years\\_Guide\\_to\\_SEND\\_Code\\_of\\_Practice\\_-\\_02Sept14.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/350685/Early_Years_Guide_to_SEND_Code_of_Practice_-_02Sept14.pdf).)

In addition to the general principles set out in Chapter 1 of the SEND Code of Practice, there is a specific section for Early Years providers in Chapter 5. This makes it explicit that all children are entitled to an education that enables them to:

- achieve the best possible outcomes including educational outcomes
- become confident young children with a growing ability to communicate their own views and be ready to make the transition into compulsory education

The Code of Practice emphasises the importance of early identification and making appropriate provision as the most effective ways of improving long-term outcomes for children.

The SEND Code OF Practice also places high importance on listening to and understanding parental concerns and those of the children themselves. The notion of the voice of the parent and child and their involvement in decision-making processes is made explicit in the Principles that underpin the Code set out in Chapter 1. EY's practitioners may need to think creatively about how they collect the views of very young children with SEND, especially if they are non-verbal, it will be important to ensure that this is done in a meaningful way. This also fits with a person-centred approach, which is a hallmark of the SEND reforms.

Some requirements apply to all settings and others specifically to maintained nursery schools. It is important therefore that schools offering Early Years provision are clear of their statutory obligations. In summary they **must** undertake the following:

- use their best endeavours to make sure that a child with SEN gets the support they need
- ensure that that children with SEN engage in the activities of school alongside children who do not have SEN
- designate a teacher to be responsible for co-ordinating SEN provision (the SEN co-ordinator or SENCO)
- inform parents when they are making special educational provision for a child

They **must** also report on:

- the implementation of their SEN policy
- the arrangements for the admission of disabled children
- the steps being taken to prevent disabled children from being treated less favourably than others
- the facilities provided to enable access to the school for disabled children, and
- their accessibility plan showing how they plan to improve access over time

All early years providers have additional statutory duties under the Equality Act 2010 and guidance on these duties can be found in Chapter 5 of the Code of Practice. Early Years providers **must not** discriminate against, harass or victimise disabled children, whether consciously or unconsciously. They are required to make "reasonable adjustments" to obviate any disadvantage. This duty is anticipatory which means that consideration needs to be given in advance to the child's needs and to what adjustments might be required. This has particularly implications for settings at the point of transition and transfer, whether these are between different schools or settings or are occurring within the setting itself. Additional guidance can also be found in the Introduction to the Code of Practice found in Chapter 1. The emphasis is on inclusive practice and removing barriers to learning.

Nottinghamshire as a local authority is committed to the notion of inclusion and enabling children to be full participants in their schools and wider communities. The County Council's education support services, such as Schools and Families Specialist Services and the Education Psychology Service are intended to work alongside schools and settings to support the meaningful inclusion of children with SEND.

## 12. Statutory Assessments and Data Collection

For information about statutory assessment requirements for EYFS see section 4.1

### 12.1 Early Years Moderation

Moderation can be described as a dialogue between teachers and other professionals, to agree and make judgments about what children understand, know or can do, and the extent to which they are consistent in demonstrating their understanding, knowledge and skills. This takes place both internally (within school) or externally through locality networks in partnership with other schools and early years settings.

### 12.2 Early Years Foundation Stage (EYFS) Data Collection

EYFS Profile data is collected and analysed by the NCC Performance and Intelligence team at Nottinghamshire County Council. Analysis will soon be available from the Nottinghamshire Insight website and accompanies the Joint Strategic Needs Assessment chapter 'Early Childhood Services'.

For further details, please contact the NCC Performance, Intelligence and Policy Team  
T: 0115 977 2892

### 12.3 Early Years Portal

The Early Years Portal is a secure method of transferring data. The Early Years Portal can be used by schools to submit their Early Years Pupil Premium applications and also to download their statements with regard to Early Years Pupil Premium payments (see 12.5 for more detailed information).

Most schools will have already accessed this but if you do not have a login, please request one from [CFCS.Systems@nottscc.gov.uk](mailto:CFCS.Systems@nottscc.gov.uk)

From autumn 2017 and the introduction of 30 hours extended entitlement, schools wishing to claim this will need to submit their termly headcount via the Early Years Portal, rather than the previous data collection method of Erica (see 13.5). Schools needing to claim for a funded two year old (see 13.4) will also need to submit via the Early Years Portal.

### 12.4 Early Years Headcount process

As ever we need to rely on all schools returning accurate and complete information by the required deadlines. The information is required to ensure there is no double funding of children. If you have no eligible two, three or four year olds please send us an email stating that your school has a nil return. This will mainly apply to special schools.

All schools should be implementing the county admission policy, as summarised here:

- **4 year olds** may be admitted by all schools; these children can be attending a nursery class, an early years class or a reception class
- **3 year olds** may be admitted to approved nursery units or foundation stage units
- **2 year olds** who can produce a letter of eligibility or a valid voucher number may be admitted and funded if the school is operating a separately ofsted registered 2 year facility, or if they have successfully gone through the process to lower the school's age range. 2 year olds who are not deemed eligible by the local authority will not be funded.
- Children on waiting lists must not be included on any headcount return.



- Schools are also reminded that places for a new term should be offered and accepted before the end of the previous term. Please tell parents of these children to inform any independent sector provider that their child currently attends and that the school will be claiming the free entitlement in the new term. This measure will help ensure that independent providers are not financially disadvantaged by trying to claim for children who then move onto school part way into term.

Instructions on how to create your termly headcount data are sent out on the first day of each term via the virtual schools mailbox and by e-mail to academies.

If you wish to claim **Early Years Pupil Premium** for any **part time 3 or 4 year olds**, then please also complete the proforma included with the instructions (sent on the virtual schools mailbox). If you do not provide a complete set of information, we cannot perform the EYPP check. If you have submitted parent data and received EYPP for children in a previous term, then you need not submit the data again. Your EYPP for previous terms is available for viewing in the Provider Portal (note: this is different from the Schools Portal). Most schools will have already accessed this but if you do not have a login, please request one from [CFCS.Systems@nottsc.gov.uk](mailto:CFCS.Systems@nottsc.gov.uk)

For further details, please contact The Early Years Data team on 0115 977 2510

### **12.5 Self-Update module**

The Self-Update is a module on the Early Years portal which allows all early years providers to update their occupancy data each term. This enables the local authority to maintain an overview of early education and childcare places available across the county and enables them to ensure there are sufficient early years and childcare places for eligible 2 year olds, 3 and 4 year olds eligible for extended hours. Data will be collected each term, usually during January, June and October.

### **12.6 Better Start**

This module requires all early years providers to transfer progress tracking data for children eligible for supplementary funding, such as EYPP (Early Years Pupil Premium), DAF (Disabled Access Funding), Deprivation supplement etc. The data is used to supplement EYFSP data and informs the LA where resources are required to support improved outcomes for the most vulnerable children. Providers are informed via portal messages when data should be submitted each term.

## 13. Delivery Models

Governing Bodies will need to carefully consider which model of delivery is appropriate to their context. Government guidance, supported by NCC's own guidance, is quite clear that childcare need not be delivered by schools themselves and there are several options which schools should consider.

When exploring delivery models for early years provision, schools must contact Early Childhood Services who will be able to advise and help the school to progress the model to implementation. [earlychildhoodservices@nottscc.gov.uk](mailto:earlychildhoodservices@nottscc.gov.uk) or 0300 500 80 80.

### a. School working in partnership with local provider/s

Schools with existing PVI providers (including childminders) on site or operating nearby will usually strengthen the existing partnership arrangements to secure places for 2, 3 and/or 4 year olds. Most working parents of 3 and 4 year olds will already be using other providers to meet their childcare needs. These arrangements will meet the extended free childcare entitlement for working parents of 3 and 4 year olds.

Working closely with local PVI providers and childminders, where many young children will already be accessing both early education and childcare, ensures effective planning for the transition into statutory schooling. It should be noted that NCC's admissions arrangements do not give priority of a school place to reception children who attend any early years provision linked with any school.

Any category of school can invite an early years provider onto the school site. If there is capacity within the school, a provider could operate from an empty classroom or a separate building on the campus. A lease or license will be negotiated. The early years provider is usually expected to pay for the set up costs.

The provision can be organised as a standalone group that is completely independent from the school and is simply co-located. (This process can also be adapted for schools wishing to invite another type of childcare provider on site, such as an out of school club or holiday play scheme). Since January 2016 childminders can register with Ofsted to work from school sites and could run before school, after school and in the holidays. They could also run early years provision from the school site outside of term time.

NCC Early Childhood Services will work alongside colleagues in School Place Planning and Admissions to ensure there are enough early years places.

### b. School directly delivering new provision

Schools have a legally defined age range which specifies the ages of children that they are allowed to admit.

A new provision could operate as a Foundation Stage Unit or as a standalone provision where children from the reception class are taught in a separate classroom.

With a 'school led' delivery model, the Head teacher will retain overall responsibility for the delivery of the early years provision. This may require school to develop new staffing structures to ensure that 15 hours per week can be delivered for eligible 2 year olds and all 3 and 4 year olds over a 38 week period. Schools can look at other patterns of delivery to ensure that eligible 3 and 4 year old children can access an additional 570 hours of LA funded childcare each year – 30 hours funded sessions.

Schools should note that funded provision for 2 year olds in Nottinghamshire would normally only be available where the provision is rated as good or outstanding by Ofsted.

This option requires the school to directly employ new staff or extend the employment relationship with existing school employees. For many schools the former may appear to be the simplest option, as it means the Head and the Governing Body managing and employing staff under a new contract of employment. Overall, responsibility for arrangements, including changes to job descriptions, hours of work and pay would be determined by the governing body. Line management arrangements would normally fall within the remit of the Head Teacher, but may be delegated to others in the school management team

The Governing Body decides which early years and childcare services to provide, in accordance with section 27 of the 2002 Education Act. The delivery of these services however may be delegated to an employee of the school. Generally, staff deployed in relation to the services would be employed by the local authority in community and voluntary controlled schools (and therefore employed under local authority terms and conditions). In foundation and voluntary aided schools, additional staff would be employed by the Governing Body directly. Guidance on staffing ratios can be found in the link to the Early Years Foundation Stage in section 15 of this guidance.

Accountability to Ofsted for the delivery of provision rests with the Head Teacher and the Governing Body. The responsibility for safeguarding and managing the staff rests with the Head Teacher. The head teacher and Governing Body also manage any staffing reductions, with any redundancy liability usually falling to the Local Authority.

Pros	Cons
Simple to set up and operate using existing staff and processes, including payroll.	Concerns about restricted advertisements for additional work and pressure placed on staff to undertake this role.
Existing or new staff employed on established conditions of employment and pay rates	Expensive to operate due to higher wages and on-costs.
Head/Governors have close control and direct line management	Potential imbalance between affordability and financial sustainability of operation
Insurance issues resolved through existing mechanisms (subject to additional premiums)	Responsibility for managing staffing reductions rests with the Head Teacher with any redundancy liability fall to Local Authority/School budgets.
DBS processes controlled by the school	Difficult to obtain funding if business plan cannot demonstrate sustainability.
The EYFS allows Schools to operate a 2:26 ratio for 3 and 4 year olds, where a qualified Teacher is present	Any losses are carried in schools budget
Legislation allows Schools to change the age range of children attending by 2 years	Possible difficulty with staffing over school holidays
Income generation for School	Potential issue with TUPE should the School wish to hand over the running of the provision in the future.

There must be a teacher with Qualified Teacher Status (QTS) leading a nursery class for children aged 3 and 4. The adult to child ratio must be no more than 1:13. A foundation stage practitioner, with a full and relevant level 3 qualification works alongside the teacher, with the children. There must always be 2 members of staff with up to 26 children aged 3 and 4. The staff to child ratio for 2 year olds is 1:4.

Children in a nursery class or foundation stage unit are registered as pupils on the school roll and must be included on the Schools' Census.

## Maintained Schools Changing Age Range

It is important for schools to initially conduct a business case assessment which takes into account a number of issues before making any decision. This should include the consideration that childcare cannot be funded from the school budget and any new development must demonstrate that it will be self-financing.

Schools should bear in mind that early years and childcare occupancy can fluctuate term by term and year by year. However, staffing, the biggest cost will be relatively fixed due to legal childcare ratios, which vary depending on the age of the child. If a school decides to directly manage a school led provision, the initial actions should be as follows;

- Seek full governing body approval
- Notify Early Childhood Services and Schools Place Planning who can advise on sufficiency of existing provision, location and delivery planning and the process.
- Determine which process must be followed to lower the age range of school \* see below
- Notify usual Schools Finance contact and seek advice
- Seek HR support at the earliest opportunity to ensure appropriate guidance is provided.

\*Pages of the 12, 13 and 14 of the guidance **Making significant changes ('prescribed alterations') to maintained schools Statutory guidance for proposers and decision-makers', DfE, October 2018** details the change of age range process and will help you to identify who the proposer would be e.g. Governing Body or Local Authority. Please refer to this guidance to identify which process- statutory or non-statutory is applicable to your school.

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/756572/Maintained\\_schools\\_prescribed\\_alterations\\_guidance.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756572/Maintained_schools_prescribed_alterations_guidance.pdf)

Once your initial assessments have been considered and it is agreed that the school would like to proceed with lowering the age range and where it is identified that the statutory process must be followed then the next actions should be;

- Prepare a full business case including establishing an affordable staffing and fee structure in line with early years staffing ratios (seek HR and finance advice as appropriate).
- Send the completed business case to your Finance and HR Business Partner, Early Years Project Officer and Pupil Place Planning
- If the business case is approved by all the above NCC services, then the Local Authority will start the Statutory Process as detailed in the table below:

The statutory process for making prescribed alterations to schools has four stages:

Stage	Description	Timescale	Comments
Stage 1	Publication (statutory proposal/notice)		
Stage 2	Representation (formal consultation)	Must be 4 weeks	As set out in the 'Prescribed Alterations' regulations
Stage 3	Decision	LA should decide a proposal within 2 months otherwise it will fall to the Schools Adjudicator	Any appeal to the adjudicator must be made within 4 weeks of the decision
Stage 4	Implementation	No prescribed timescale	It must be as specified in the published statutory notice, subject to any modifications agreed by the decision-maker

Once the Statutory Process had been followed and the proposal has been approved by the Local Authority you must then;

- Make arrangements for the necessary changes to be made to the school's record in the department's GIAS/Edubase system. These changes must be made no later than the date of implementation for the change and can be input in advance, once a decision is made.
- Ensure that all new job descriptions for posts are Job Evaluated (seek HR advice)
- Undertake recruitment and selection processes in line with Nottinghamshire County Council's Recruitment and Selection Policy for Schools.
- Ensure that the Statutory Framework for the Early Years Foundation Stage is followed and that all statutory requirements are met as detailed in section 4,5 and 6 of this guidance.

### **Changes that can be made outside of the statutory process**

In certain circumstances Governing Bodies of foundation and voluntary schools can propose an age range change of up to 2 years (except for adding or removing a sixth form) by following the non-statutory process.

In the initial stages, please notify Early Childhood Services and Schools Place Planning who can advise on sufficiency of existing provision, location, delivery planning, the process and consultation with other local early years providers.

The DFE expects that in making a change of age range that LAs and GBs will work together and will:

- Liaise with the trustees of the school, and in the case of schools designated as having a religious character the diocese or relevant diocesan board, or any other relevant faith body, to ensure that a proposal is aligned with wider place planning/organisational arrangements, and that any necessary consents have been gained
- Not undermine the quality of education provided or the financial viability of other 'good' and 'outstanding' schools in the local area
- Not create additional places in a local planning area where there is already surplus capacity in schools, taking the quality and diversity of the provision into account as well as cross boundary impacts
- Ensure open and fair consultation with parents, any affected educational institutions in the area (e.g. primary schools and other Early Years Providers) and other interested parties.
- Consult with the LA to ensure the proposal is aligned with local place planning arrangements
- Secure any necessary funding
- Have identified suitable accommodation and sites
- Have secured planning permission and/or agreement on the transfer of land where necessary.

- Where a school is designated as having a religious character, they have the consent of the trustees of the school, the diocese or relevant diocesan board, or any other relevant faith body, where appropriate.
- Once a decision on the change has been made, the proposer is responsible for making arrangements for the necessary changes to be made to the school's record in the department's GIAS/Edubase system. These changes must be made no later than the date of implementation for the change and can be input in advance, once a decision is made.

### **Academies Changing Age Range**

Academy trusts proposing to make a significant change must submit a proposal for change to the DFE and follow the required process, in advance of the change being made.

The DFE expect academy trusts to only provide additional places in academies that have an overall Ofsted rating of good or outstanding. Where this is not the case the academy trust should submit a 'full business case' to the department and set out its reasons for expansion, and how education will be improved.

Academy trusts should work collaboratively with LAs, dioceses and other schools in the area, to ensure that there is a co-ordinated approach to place planning and delivery. The DFE has a strong expectation that academy trusts will support LAs to meet the Sufficiency Duty by providing additional places where they are needed and reducing the number of places offered where they are surplus to requirements.

Significant change applications are made either through the 'fast track' or 'full business case' route. The required route will depend on the type of change being proposed, and for eligible fast track changes, on whether the academy trust meets the fast track criteria

In most cases the Regional Schools Commissioner (RSC) will decide (on behalf of the Secretary of State) whether proposals are in line with the needs of the local area

Before submitting a significant change application, academy trusts should:

- Notify Early Childhood Services and Schools Place Planning who can advise on sufficiency of existing provision, location and delivery planning and the process.
- Determine whether the change you are proposing is eligible for the fast track application route.
- Confirm all the required capital funding is in place
- Ensure financial due diligence has been undertaken
- Conduct a fair and open local consultation and ensure that it has been undertaken with relevant stakeholders, including the LA

**Making significant changes to an open academy-** Departmental advice for academy trusts  
This guidance is for academies wishing to make major changes to their school. This includes changing the schools age range and gives detailed information on the process that must be followed.

<https://www.gov.uk/government/publications/making-significant-changes-to-an-existing-academy>

### **c. School indirectly delivering new provision**

This option requires school to set up a separate organisation, controlled by the governing body, where the childcare element is kept detached from day to day school operations and budgets.

A governor-run preschool, nursery or foundation stage unit uses the powers given in the 2002 Education Act to governors to set up and run extended services. The preschool provision could be organised as a foundation stage unit or as a standalone group. Essentially this type of provision is similar to a voluntary sector preschool where the governors or school trustees take on the same role as a voluntary management committee. Preschools admit children between the ages of 2 and 4.

As it is a separate organisation, then the school would not have to lower its age range. Governor-run preschools, nurseries and foundation stage units with 2, 3 and 4 year olds in primary, infant and nursery schools do not need an Ofsted registration. Any provision for children aged under 2 will need separate registration.

The Early Years Foundation Stage statutory framework allows governor-run preschools to operate with a 1:8 ratio and to be exempt from registration i.e. they will be like a nursery class but without the requirement to have a qualified teacher and there will be no need for the school to extend the age range.

Children in a governor-run preschool are not registered pupils on the school roll. The Early Years Census is completed for governor-run preschools. Children in governor-run provision are not entitled to FSM, even if they meet the eligibility criteria.

Although desirable there is not a requirement to have a teacher with QTS leading a governor-run or academy run preschool. In a governor-run preschool, if there is a person with QTS, Early Years Professional Status, Early Years Teacher Status or another suitable level 6 qualification working directly with the children a 1:13 ratio applies for 3 and 4 year olds.

If the provision does not have these staff there must be at least a 1:8 ratio for 3 and 4 year olds and a 1:4 ratio for 2 year olds. At least one member of staff must hold a full and relevant level 3 qualification and at least half of all other staff must hold a full and relevant level 2 qualification.

Schools should note that funded provision for 2 year olds in Nottinghamshire would normally only be available where the provision is rated as good or outstanding by Ofsted.

There are a number of routes to achieve this “arms-length” governor-led approach;

#### **Voluntary Management Committee**

Under a Voluntary Management Committee all members of the committee are jointly and severally liable for any debts incurred by the organisation. Whilst insurance cover is available to mitigate this liability, generally speaking, that cover is invalidated if member acts negligently or irresponsibly;

#### **Community Interest Company**

This has the advantage of limiting the board’s liability (apart from negligence) but, in retaining “quasi-charitable” status would leave open many options for external funding;

#### **Limited Company**

This limits the liability of the board (apart from negligence), but without charitable status. This can restrict access to many sources of funding.

If a school decides to indirectly deliver a school led provision via one of the above organisations, the initial actions should be as follows;

- Seek full governing body approval
- Notify Early Childhood Services who can advise on sufficiency of existing provision, location and delivery planning.
- Seek HR support at the earliest opportunity to ensure appropriate guidance is provided.
- Prepare a business case
- Scope and establish an affordable staffing structure in line with early years staffing ratios.
- Seek advice from Ofsted on requirement to register the provision.
- Ensure that all new job descriptions for posts are Job Evaluated
- Consult with existing employees of the school.
- Undertake recruitment and selection processes in line with Nottinghamshire County Council's Recruitment and Selection Policy for Schools.

It is likely that a school employee would be involved in the day to day management of the provision and is dependent on volunteers who make up the management committee or board having the time to make the necessary commitment. It is likely that staff employment would remain a matter for the Governing Body.

The organisation, rather than the School has responsibility managing its own payroll, bank account and producing its own accounts. These should all be independent of the school budget.

Pros	Cons
Keeps childcare completely separate from local authority or school funding arrangements	May take time to set up initially
Head Teachers, Governors or parents can choose to be represented on the controlling board and may therefore continue to influence the way in which childcare is delivered.	Annual returns may be required
Affordable (industry-norm) pay scales will support financial sustainability	Will establish differential pay scales and terms and conditions between staff involved delivery of childcare services and those staff in school
Staff not employed on NCC contracts of employment	Will need own bank account
Potential rental income for the school	Parental participation may be limited
Any liability for employment termination costs not the responsibility of the school or local authority. The employing body will become responsible for any employment termination payments e.g. redundancy, unfair dismissal awards.	Possible difficulty with staffing over school holidays



#### **d. School setting up new provision when existing preschool is closing**

Occasionally, an existing early years or childcare provision on the school site may no longer wish to or no longer be able to continue to operate. This could be due to low numbers attending, reducing viability or as a result of an organisation disbanding, for example due to the inability to recruit a management committee. In such circumstances, schools should initially contact NCC's Early Childhood Service for advice. A School cannot take over the running of a PVI provision, a school can however set up new provision, for the same children and often employing the same staff.

Many complex employment and legal issues will need to be considered and the Early Childhood Service will be able to support the school to make a decision, with an understanding of the circumstances leading up to the existing provider ceasing to provide the service. Schools should understand that this is not a quick process.

When a preschool has voted to close and a school is setting up a school-run or governor-run provision the following issues must be addressed:

- **Transfer of undertakings (Protection of Employment) (TUPE)**

School will need very specific advice from HR regarding TUPE, as staff working for the existing provider will potentially be entitled to transfer to the new organisation (the school) providing the childcare service. This means that all staff employed through the preschool will transfer to the management of the Governing Body on the first day the service opens. The inherited staff team may not fit with the staff requirements of the new provision; where this is the case school will need to restructure. It is essential that both school and preschool take independent advice on TUPE. For maintained schools this could mean NCC would have to take on any liabilities, including redundancy entitlements for transferring employees. For further information, see the specific information in Section 3.

- **Charitable Assets (if the preschool has charitable status)**

If the preschool has charitable status then its charitable assets could be transferred to the Governing Body. This includes any redundancy funding. The preschool must seek permission from the Charities Commission to transfer assets (money and resources) that have been raised for the charity. The preschool also need to refer to their constitution to see what that says about closure and asset transfer. Under the constitution held by many childcare organisations and because of Charities Commission regulations, maintained/community or voluntary controlled schools will not be entitled to the transfer of any assets of an existing provider. Asset transfers to Voluntary Aided schools and Academies may be straightforward as there is a trust deed/charitable status that may have broadly the same aims as the preschool. However, if a Voluntary Controlled or maintained school is setting up provision it may be necessary to consider transferring assets to the Friends of the School or PTA as they may have charitable status where the school does not. It may be necessary to change the aims of the FOS/PTA to include the delivery of early education and childcare for the community it serves, and to attain charitable status for that organisation. However, if the preschool has any liabilities, then these will also transfer to the school. Legal advice should be sought, to ensure that school is not taking on liabilities it, and consequently the LA, cannot afford.

- **Buildings**

If the preschool owns the building from where they operate this is also an asset. In some instances there will be a separate group of trustees that over-see the building management from the committee that is responsible for the day-to-day business of running the preschool. It should be established at an early date who has responsibility for what so that developments can happen smoothly and in a timely manner. There may be restrictions around the premises used by the existing provider, even on the school site, so NCC Corporate Property may need to be involved. Many

childcare buildings developed on school sites were funded from central government allocations, via the LA. Dependent on the source of funding, the buildings may have to be continued for childcare use, or be subject to claw-back. There may need to be a lease or a rent payable for the early years space.

#### **e. Childcare on school sites converting to become an academy**

Where a school is converting to become an academy it is important that consideration is given to any early years and childcare services that are run by the current governing body or an on-site PVI provider at the earliest possible stage.

Childcare buildings and spaces are 'red-lined' during any subsequent academy transfer, with such buildings being included on a lease-back to the LA, to ensure ongoing protection of any previous investment in early years and childcare services. Any lease or licence between the LA and the PVI provider will remain in place.

Any outgoing service that is run by the Governing Body must inform parents, the Trustees and Ofsted that the management of the provision will be changing. The incoming academy should consider whether it needs to set up a trading company to manage any provision where the income is in excess of £50 000. This trading arm must register with Ofsted so that the provision can continue uninterrupted. If a trading arm has not been set up then the academy must register with Ofsted or consider extending the age range of the school.

Careful consideration must be given to the timings. Ofsted registration can take up to 26 weeks - so forward planning is essential.

Ideally the service run by the Governing Body would close one day and the academy provision would open the next day. This should be coordinated with the transfer of the staff and assets within the school if possible.

#### **f. Examples of Different Delivery Models**

##### **a. School working in partnership with local provider/s**

**School A** has a private day nursery on site, established several years ago using lottery funding to expand childcare provision in disadvantaged communities. The day nursery takes children from age 6 weeks to age 5 and is open all year round. The day nursery delivers funded places to eligible 2 year olds and all 3 year olds, with the school offering places to funded 4 year olds. The day nursery provides wrap around childcare for any children with working parents, who need hours over and above the current 15 funded hours. This arrangement will continue when the 30 hours becomes available

**School B** has a local Preschool off site, in the same village. The preschool provides funded places for 2, 3 and 4 year olds from a building designed to meet the needs of very young children. The Preschool has a very close working relationship with the school and engages in activities to ensure there is a smooth transition from sessional to full time education for four year olds. The preschool will be able to accommodate any children eligible for the 30 hours of childcare.

**b. School directly delivering new provision**

**School C** is a school in an area where there is no other local childcare provision, they followed the process to lower their age range from 5 to 3. This enabled the school to offer early years sessional places and up to 30 hours to eligible 3 and 4 year olds. The school had no capital or revenue to do this and were advised by NCC on the organisation of their age groups, to meet staff to child ratios and class sizes.

**School D** is a infant and nursery school with falling numbers reorganized their delivery to enable them to offer up to 15 hours to eligible 2 year olds, thereby expanding the pupil base for the school. The school may also be able to offer additional hours to eligible 3 and 4 year olds, as part of the 30 hours programme.

**c. School indirectly delivering new provision**

**School E** had a local preschool in an adjacent community building, not on the school campus. The preschool had difficulties in securing a stable management committee and subsequently closed following a poor Ofsted inspection outcome. The governors of the school set up sub group and, after a gap of only one term, started a governor run preschool in the community building. The preschool had to have an Ofsted registration, as it was not part of the school.

**d. School taking over existing provision**

**School F** were approached by the preschool operating on the school site. The preschool committee had decided to disband the group after a number of difficult and challenging issues experienced by the voluntary management committee. School were advised by NCC HR, with regard to the TUPE of existing staff from the preschool to the school. NCC legal services also advised on the transfer of assets from the charitable preschool into the school charity. NCC Early Childhood Services team supported the school with establishing the delivery model for the early years provision in school. School followed the process to lower their age range and now offers has places to 2 year olds and 30 hours to 3 and 4 year olds.

## **14. Wraparound and Holiday Childcare – Parent and Childcare Provider ‘Rights to Request’**

The Department for Education has produced advice to help maintained schools and academies (including free schools) understand how to respond to:

- a. parents’ requests that the school that their child attends considers establishing wraparound and / or holiday childcare, and
- b. childcare providers’ requests to use school facilities for wraparound and / or holiday provision at times when the school is not using them.

The advice aims to avoid imposing unnecessary burdens on schools and maintains school autonomy, whilst ensuring schools understand the basis on which they should be responding constructively to requests for wraparound childcare. This advice is for maintained schools and academies (including free schools). The advice will also be of interest to parents, childcare providers, including childminders, relevant trade unions and local authorities wishing to understand what schools are expected to do as a result of receiving requests.

### **Policy intention**

The overall aim of this policy is to help parents to work, or work for longer, if they choose to do so, by making more quality childcare available during the week and school holidays. Government will monitor the levels of wraparound and holiday childcare available through schools to see if this departmental advice is sufficient, and if it is not will consider further measures to improve take up.

### **Definitions:**

By ‘wraparound childcare’ we mean before school childcare (for example, breakfast clubs), afterschool childcare (for example, regular provision that runs until 6pm or later). By ‘holiday childcare’ we mean childcare that is available through schools during the school holidays.

These ‘rights to request’ refer to children from Reception up to the end of Key Stage 3 (Year 9). Where there is demand, schools and providers may also want to consider wraparound / holiday childcare for the under 5s – but this provision is not included in the scope of the ‘rights to request’ described in this advice.

A parent’s ‘right to request’ refers only to the school that their child attends. Wraparound and holiday childcare can either be on a school’s site (run directly by a school or in partnership with a provider), or at a nearby school or provider.

Further information can be found at <https://www.gov.uk/government/publications/wraparound-and-holiday-childcare-responding-to-requests>

## 15. Further Information and Useful Links

Early Childhood Services offer advice, guidance and support to both new and existing childcare providers to ensure that they become and remain sustainable.

We can provide templates, tools and signpost you to organisations to support you with your business planning and sustainability.

To find out more please contact Early Childhood Services [earlychildhoodservices@nottsc.gov.uk](mailto:earlychildhoodservices@nottsc.gov.uk)

**Nottinghamshire Early Years Provider webpage** provides further information for providers and professionals including the Nottinghamshire Early Years Provider Agreement, current funding rates, portal and payment information.

[Free Early Years Place Providers | Nottinghamshire County Council](#)

### **Early Years Statutory Guidance**

<https://www.gov.uk/government/publications/early-education-and-childcare--2>

### **Early years (under 5s) foundation stage framework (EYFS)**

<https://www.gov.uk/government/publications/early-years-foundation-stage-framework--2>

### **SEND: guide for early years settings**

<https://www.gov.uk/government/publications/send-guide-for-early-years-settings>

**DfE Early Years Detailed Information (Collection of documents)** <https://www.gov.uk/topic/schools-colleges-childrens-services/early-years>

### **Family and Childcare Trust**

<https://www.familyandchildcaretrust.org/delivering-extended-and-flexible-hours-school-nurseries-toolkit>

### **Nottinghamshire County Council Early Years Information**

[www.nottinghamshire.gov.uk/childcare](http://www.nottinghamshire.gov.uk/childcare)

### **Notts Help Yourself Provider Corner**

<http://www.nottshelpyourself.org.uk/kb5/nottinghamshire/directory/provider.page>

### **The Foundation Years**

<http://www.foundationyears.org.uk/>

### **The Learning Exchange**

[http://www.learning-exchange.org.uk/documents\\_library\\_pages/wraparound/setting\\_up\\_childcare\\_in\\_schools\\_disman\\_tling\\_the\\_barriers](http://www.learning-exchange.org.uk/documents_library_pages/wraparound/setting_up_childcare_in_schools_disman_tling_the_barriers)