

Guidance for establishing early years provision in Local Authority maintained schools

The purpose of this paper is to share how maintained schools can set up provision for two, three and four year olds.

Schools are able to set up nursery provision in the following ways:

- a. [Education Act 2002 \(legislation.gov.uk\)](https://legislation.gov.uk) section 27 community powers – these powers allow schools to provide any charitable purpose (such as early education) for the benefit of families of pupils at the school, or families who live or work in the locality of the school. The children attending this provision are not usually registered as pupils.
- b. **As a class within your school** – schools who have altered their age-range to include early years, can register the children as pupils.

The guidance in Annex A (below) gives details of the processes involved for schools proposing a change to lower their age range.

Children not yet two

If a school is providing childcare for children who are **not yet two** they must have a separate early years registration. Information relating to this registration process can be found on the Gov.uk website here: [Childminders and childcare providers: register with Ofsted - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/childminders-and-childcare-providers-register-with-ofsted)

Ratios and staffing requirements

Schools offering **school community nursery provision** - under section 27 community powers must comply with the current EYFS statutory framework. See section titled '*Staff:child ratios of Early years foundation stage (EYFS) statutory framework - GOV.UK (www.gov.uk)early years*' for details of ratio and staffing requirements for 2, 3 and 4 year olds.

Census requirements

Children attending S27 school community nursery provision are recorded via the *early years census* as they are not registered pupils of the school.

Children attending a maintained nursery class are registered pupils of the school (2, 3 and 4 year olds depending on the statutory age range of the school) and are recorded via the *school census*.

Funding: how to claim early education funding for 2, 3 and 4 year olds (see link below)

[**How to register for the Provider Portal – Suffolk Learning**](#)

Annex A: **Process for schools proposing to lower their age range**

Background

The document at the link below outlines the alterations that can be made by maintained schools **without** following a statutory process including:

[Making significant changes \('prescribed alterations'\) to maintained schools \(publishing.service.gov.uk\)](https://publishing.service.gov.uk/making-significant-changes-prescribed-alterations-to-maintained-schools)

- *Alteration of upper or lower age limit by **up to two years** (except for adding or removing a sixth form). In particular this will make it easier for schools to offer nursery places to two-year-olds.*

Therefore, under the new regulations, schools will be responsible for their own decisions around size and characteristics but LAs will retain their overarching duty to ensure sufficient high quality school places, along with powers to propose changes to maintained schools where they feel it necessary to meet that duty. Local authorities also have a duty to secure sufficient childcare places.

Governance handbook

<https://www.gov.uk/government/publications/governance-handbook> sets out changes to age, within the "other organisational changes" section. It outlines the changes governing bodies will be able to make and highlights further guidance available for governors.

Further guidance is available here:

[School organisation: local-authority-maintained schools - GOV.UK \(www.gov.uk\)](https://www.gov.uk/school-organisation-local-authority-maintained-schools)

The department **expects** that in making these changes governing bodies will:

- liaise with the LA*(see below) and trustees/diocese (as appropriate) 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 and early years provision in the local area; or
- not create additional places in a local planning area where there is already surplus capacity in schools rated as 'good' or 'outstanding' and
- ensure open and fair consultation** (see below) with parents and other interested parties to gauge demand for their proposed changes and to provide them with sufficient opportunity to give their views. The consultation principles guidance can be referenced for examples of good practice.

[Consultation principles: guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/consultation-principles-guidance)

Before making any changes, governing bodies should ensure that:

- they have consulted with the LA to ensure the proposal is aligned with local place planning arrangements
- they have secured any necessary funding
- they have identified suitable accommodation and sites
- they have secured planning permission and/or agreement on the transfer of land (where necessary)

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- they have the consent of the site trustees or other landowner where the land is not owned by the governing body
- they have the consent of the relevant religious authority (as required) and
- the admissions authority is content for the published admissions number (PAN) to be changed where this forms part of expansion plans, in accordance with the School Admissions Code.

Once a decision on the change has been made the proposer (i.e. LA or governing body) is responsible for making arrangements for the necessary changes to be made to the school's record in the department's GIAS system. These changes must be made no later than the date of implementation for the change.

Separate guidance on how schools and LAs can update GIAS is available at:
[Get Information about Schools - GOV.UK \(get-information-schools.service.gov.uk\)](https://www.gov.uk/get-information-schools)

***Liaison with the Local Authority**

Liaison is important in the context of the Local Authority's duty to secure sufficient high quality childcare places.

Any new provision must be sustainable and be assured that there is a business need. Therefore, for the Local Authority to support any proposal it must be confident that the proposed change is based on evidence of need and is not in direct competition with existing provision.

For the Local Authority to support a proposal for change, a school will be required to provide a business case which should include the following:

- The current Reception class numbers and future arrangements
- The physical space which the school proposes to use where the proposal is to open a Nursery class
- Risk analysis in relation to impact on existing local pre-school provision
- Identification of other provision within the locality
- How the space will be used where the closure of a Nursery class is proposed
- Any financial considerations
- Any other relevant information

The LA (Early Years and Childcare Service with Schools' Infrastructure) will also undertake a review of local provision that will be considered alongside the school's business plan. Taken together, this will provide essential business evidence which should inform the governor's decision and the LA's decision on whether it supports the proposal.

**** The Consultation**

The decision made by the governing body to consult on closing or opening a nursery should be formally recorded in the minutes of a full governing body meeting.

The governors will need to consider who they need to inform/consult with, for example:

- Parents/families – current and prospective
- Councillors – District, County, Parish
- Local MP
- Local Early Years providers – Pre-schools, childminders
- Any other relevant stakeholders

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Brief guidance on a possible consultation process:

Publication

A proposal should contain sufficient information for interested parties to decide on whether to support or challenge the proposed change.

Consultation

The consultation period starts on the date of the publication of the proposal – lasting four weeks, excluding school holidays. During this period, any person or organisation can submit comments on the proposal to the Governors for them to consider before reaching their decision.

Decision

Should be made within a period of two months of the end of the consultation period.

Implementation

No prescribed timescale – but must be as specified in the consultation publication, subject to any modifications agreed by the Governors.