Changes to childcare entitlements regulations following removal of OE judgements from maintained schools (including maintained nursery schools) and academies

Following our email to you on Thursday 24 October, we are providing a further update on the impact of the removal of Overall Effectiveness (OE) judgements on the childcare entitlements for 2024/25.

**Academy and maintained school early years settings in 2024/25:**

LAs will be aware that the regulations governing the childcare entitlements currently enable LAs to refuse to make arrangements with, or terminate funding for, providers judged ‘inadequate’ by Ofsted for their overall effectiveness for all entitlements or ‘requires improvement’ for overall effectiveness for the disadvantaged 2-year-old entitlement. Subject to Parliament, amendments to the regulations governing the funded childcare entitlements will come into effect on 20 December 2024 in response to the removal of OE judgements for state schools (including maintained schools, maintained nursery schools, academies and non-maintained special schools). We will amend the statutory guidance accordingly in the new year.

The regulations will be amended to reflect that, in relation to school inspection reports without OE judgements:

* For all the entitlements, LAs will not be required to make arrangements with state schools inspected on or after 2 September 2024 when Ofsted judges the provider to require ‘significant improvement’ or ‘special measures’.
* For the disadvantaged 2-year-old entitlement:
  + LAs will also not be required to make arrangements with state schools inspected on or after 2 September 2024 when Ofsted judges the **early years provision** to be less than ‘good’.
  + This additional trigger does not apply to maintained nursery schools (who do not have a separate judgement for early years provision), the trigger for these providers is an Ofsted judgement of requiring ‘significant improvement’ or ‘special measures’.
* For all entitlements, LAs are also required to include provision in their provider agreements enabling them to terminate the arrangements if the provider achieves the Ofsted judgments above. This does not apply to maintained schools (including maintained nursery schools) because of the different relationship between the LA and the schools it maintains.

**Childminders and Private, Voluntary and Independent Providers in 2024/25:**

There have been no changes to Ofsted grades for Childminders and Private, Voluntary and Independent (PVI) Providers. Childminders and PVI providers will continue to receive OE judgements and childminder agencies will continue to receive an ‘effective’ or ‘not effective’ grade. The entitlements regulations and statutory guidance remain applicable in the same way to these providers.

**Future changes to single headline grades in early years:**

DfE and Ofsted will work in partnership with the sector to develop alternative reporting arrangements for Childminders and PVI Providers. We expect that the new arrangements will take account of the unique characteristics of the sector but will broadly reflect the report card approach that is being developed for schools. It should be stressed that the government is committed to replacing OE judgements in all the remits that Ofsted inspects.

**Q&A**

*Includes questions raised in the 25 October LA webinar.*

1. **What should my Local Authority do before the regulation amendments are made?**

If the inspection report is for a childminder or Private, Voluntary and Independent (PVI) provider, these providers will continue to receive Overall Effectiveness judgements. The entitlements regulations and statutory guidance remain applicable in the same way to these providers.

If the inspection report is a new report for early years provision at a state school, inspected on or after 2 September 2024, an OE judgement will not have been awarded. Local Authorities should look to the terms of their provider agreement between the Local Authority and the individual provider. Local Authorities are advised to seek their own legal advice on these individual provider agreements.

1. **Does this affect any previous funding decisions?**

Previous funding decisions from Local Authorities will remain. The removal of OE judgements only applies to early years provision at state schools (maintained schools, maintained nursery schools, academies and non-maintained special schools) who have been inspected from 2 September 2024 onwards.

1. **What has changed between the previous regulations and this latest update?**

In this update to regulations we have;

* **For the working parent and universal entitlements:** Replaced ‘inadequate’ overall effectiveness judgement with ‘significant improvement’ or ‘special measures’ judgements as the prompt for LA powers to withdraw funding or not grant new funding for nursery places at state schools inspected on or after 2 September 2024.
* **For the disadvantaged two-year-old entitlement:** Replaced a ‘good’ or better overall effectiveness judgement with ‘good’ or better in the Early Years provision judgement as the prompt for state schools inspected on or after 2 September 2024. Where these providers receive an Early Years judgement below ‘good’, LAs are not required to make arrangements with them and must include provision in their provider agreements enabling them to terminate existing funding. Maintained nursery schools do not receive separate early years judgements and therefore decisions on funding for the disadvantaged 2-year-old entitlement will be made according to ‘significant improvement’ or ‘special measures’ judgements from Ofsted.

There were some differences in the way the two sets of entitlements regulations applied in relation to maintained schools (including maintained nursery schools). We are taking this opportunity to align the two sets of regulations so that the entitlements regulations do not limit the requirements that LAs can impose on maintained schools as part of their arrangements with them, and LAs are not required to include provision in their agreements enabling them to terminate the arrangements with maintained schools. The duty for LAs to make arrangements with a provider of the parents’ choice applies in the same way whether the provider is a maintained school or not.

1. **I have views on the upcoming change to the approach to Ofsted grades in EY, how can I share my view?**

The Department for Education and Ofsted are committed to working in partnership with the early years and schools sectors to determine how best to implement the removal of OE judgements across all early years provision over time and develop alternative reporting arrangements, including through Ofsted’s upcoming consultation.

New arrangements will take account of the unique characteristics of early years but are expected to broadly reflect the report card approach that is being developed for schools, aiming to provide a more comprehensive assessment of the effectiveness of a setting in meeting needs of children and maintaining high standards of safety, quality in care and education, and which could work better for the unique nuances of early years and provide a better inspection experience for practitioners.

1. **What is the position in the updated regulations regarding LA maintained schools? How are they different from other providers?**

The regulations apply to maintained schools (including maintained nursery schools) in the same way as to other providers in relation to whether the LA has a duty to make arrangements with a provider of the parents’ choice.

Because of the different relationship between local authorities and the schools they maintain, including the duty for the LA to maintain the schools, there are some differences in the way the regulations apply to maintained schools compared with other providers. In particular:

* Unlike for other providers, LAs are not required to include provision in their arrangements with maintained schools enabling the LA to terminate the arrangements in certain circumstances (including if the provider does not achieve the specified Ofsted judgements); and
* Unlike for other providers, the requirements that LAs can impose on maintained schools are not limited by the entitlements regulations.

1. **Why are these changes being made now when there is further change on the horizon with the introduction of Ofsted report cards?**

We are updating the regulations now to reflect the recent Ofsted reforms on the removal of Overall Effectiveness judgements (also referred to as Single Headline Grades) for state schools. As the Ofsted outcome directly affects LA duties and powers on funding the different Early Years entitlements, the removal of OE judgements needs to be accurately reflected in legislation.

These changes will apply for the 2024/25 academic year as an interim position after the removal of OE judgements. The entitlement trigger will need further review to align with the Ofsted inspection report cards. Once further details are available on this we will work with and communicate with the sector.

1. **If in their most recent inspection a school received ‘good’ in the early years provision, but an overall ‘requires improvement’ in the Overall Effectiveness judgement, which applies?**

For all schools whose most recent inspection report includes an OE judgement, the OE judgement will be the relevant factor, which here would be ‘requires improvement’. The changes are only applicable for state schools inspected on or after 2 September 2024, who no longer receive an OE judgement.

1. **If a primary school registers with Ofsted to take children under 2, how will the nursery provision be viewed if they continue to be inspected separately for under 2s and the 2-4 year olds in the school?**

Where a primary school has nursery provision for under 2s this will continue to be registered with Ofsted separate to the provision in school for children aged 2 to 4. This means the nursery provision will receive two separate inspections and reports. LAs will need to be mindful of both outcomes as there may be two different entitlement triggers. LAs will be able to respond to each inspection individually and any resulting changes will only apply to that specific age range, e.g. under 2s or children aged 2 to 4.

1. **Why are maintained nursery schools subject to a different standard for the disadvantaged entitlement compared to other settings?**

As maintained nursery schools do not receive a separate early years judgement we have opted to take a uniform approach for these settings across the different entitlements so that LAs will not have a duty to make arrangements with a maintained nursery school following an Ofsted inspection that identifies ‘serious weaknesses’ or that ‘significant improvement’ is required. This is a short-term position whilst the Ofsted inspection report cards, and how they interact with childcare entitlements, are developed. In the meantime LAs can also continue utilising existing levers to improve outcomes at maintained nursery schools.

1. **Will the guidance/wording for LA maintained schools/EY apply to Governor led settings?**

If the governor-run provision meets the requirements of section 34(2) CA 2006, it would be exempt from the requirement to register under the Childcare Act 2006 and would be inspected as part of the school. So if the provision:

* Is for children aged 2+
* Is made at the school as part of the school’s activities
* Is run by the proprietor of the school or a person employed by the proprietor
* At least one child is a registered pupil at the school (that child can be a Reception Year pupil in the early years age range, and they do not need to be in the same room)

Then the provision is exempt from the requirement to register, and the new trigger would apply to any new inspections as it is inspected as part of the school.

1. **What if a setting is judged to ‘require significant improvement’ or ‘special measures’ but Early Years remains ‘good’, will LAs have these powers and if so, which?**

The government is committed to increasing educational outcomes and life chances, and high-quality early years provision is important in achieving this, particularly for disadvantaged families and their children. The statutory category of concern, i.e. ‘requires significant improvement’ or ‘special measures’, takes precedence and LAs have powers to terminate or not grant new funding for all EY entitlements in the relevant provision.