

EXTENDING ELIGIBILITY FOR THE FREE EARLY EDUCATION ENTITLEMENT FOR TWO YEAR OLDS

DEPARTMENT FOR EDUCATION GUIDANCE ON ASSESSING ELIGIBILITY FOR A FREE PLACE

Introduction

1. This guidance has been developed in conjunction with the LGA and the Home Office and is intended solely to support local authorities in establishing whether a two year old is eligible for a free early education place under the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014.
2. This guidance will be in effect for the period 1 September 2019 to 30 November 2019 to be trialled by local authorities. It will then be reissued taking into account any feedback received during the trial period.
3. If you have any queries about the guidance or any feedback you'd like to provide, please email: earlyyears.entitlements@education.gov.uk. We monitor the in-box on a daily basis and would appreciate you using this email address so that we can monitor the number and nature of the queries submitted.
4. This guidance covers three groups of children who will be eligible for a free place:
 - a. Children of Zambrano Carers;
 - b. Children of families with no recourse to public funds with a right to remain in the UK on grounds of private and family life under Article 8 of the European Convention on Human Rights (ECHR);
 - c. Children of a subset of failed asylum seekers (supported under section 4 of the Immigration and Asylum Act 1999 – 'the 1999 Act').

Zambrano Carers

5. In this context, a Zambrano Carer is the primary carer of a British citizen child or dependent adult where requiring the primary carer to leave the UK would force that British citizen to leave the European Economic Area (EEA).
6. The criteria someone must satisfy before qualifying as a Zambrano Carer are outlined within either:
 - (i) regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052)¹; or
 - (ii) the definition of 'person with a Zambrano right to reside' within Annex 1 to Appendix EU of the Immigration Rules².

¹ The criteria in regulation 16(5) are that:

- (a) the person is the primary carer of a British citizen ("BC");
- (b) BC is residing in the United Kingdom; and
- (c) BC would be unable to reside in the United Kingdom or in another EEA State if the person left the United Kingdom for an indefinite period.

² <https://www.gov.uk/guidance/immigration-rules/immigration-rules-appendix-eu>

7. Although Zambrano Carers have no recourse to public funds, they are allowed to work in order to facilitate the primary care of the child or dependent. The children of Zambrano Carers will be eligible for a free place if their parents or carers (as defined in [Home Office guidance](#)) meet similar low level income requirements to others eligible to the scheme (e.g. a net income threshold of £15,400.)

Families granted immigration leave on the basis of Article 8 and subject to a condition that they have no recourse to public funds

8. Similarly, we are extending eligibility to children whose families have a right to be in the UK on grounds of private and family life under Article 8 ECHR with no recourse to public funds. These families are entitled to work and so to be eligible for a free place the parents or carers must also meet the low level income requirements of the scheme.

Children of those supported under S4 of the 1999 Act

9. We are also extending eligibility to children whose families receive support under section 4 of the 1999 Act because they are temporarily unable to leave the UK and would otherwise be destitute. As such, they satisfy the low income requirements to be eligible for the entitlement.

Steps to be taken in assessing eligibility for a free place

10. We expect the numbers of these two year olds to be small. We do not expect local authorities to undertake outreach work to identify these children but where children in these circumstances come to the attention of the local authority they should be funded for a free place if their parents want one.
11. The two year olds from the new groups of families will be recorded on the early years census or school census (depending on the type of provider where they are taking up their funded place) and local authorities will receive funding for these children through the Dedicated Schools Grant in the same way as they receive funding for all children taking up a funded place. We will provide further information on completing the school and early years census for these children in due course.
12. We expect local authorities to assess eligibility of children from these groups of families for a free place. The Department for Education has developed a sample application form for local authorities to use to collect the information needed to determine a child's eligibility for a free place. Local authorities are of course free to use their own application forms / paperwork / systems to determine a child's eligibility for a free place. Local authorities are reminded that it is good practice to have a privacy notice when collecting personal data to meet their data protection responsibilities. Local authorities may wish to seek their own advice on whether their data processing arrangements are in line with GDPR / DPA.

Age of the child

13. This applies to all two year olds regardless of which of the groups set out in paragraph 4 of this guidance the child falls in. Children are eligible from the dates set out below.

- a. Children born in the period 1st January to 31st March: the start of term beginning on or following **1st April** after the child's second birthday;
- b. Children born in the period 1st April to 31st August: the start of term beginning on or following **1st September** after the child's second birthday;
- c. Children born in the period 1st September to 31st December: the start of term beginning on or following **1st January** after the child's second birthday.

Children with special educational needs (SEN) and children who have left care

14. This applies to all two year olds regardless of which of the groups set out in paragraph 4 of this guidance the child falls in. A child is eligible for a free 2 year old early education entitlement place if they have an Education, Health and Care plan or have left care through an adoption order, special guardianship order or a child arrangements order which specifies with whom the child is to live.

A. Children of Zambrano Carers

Local authorities may wish to familiarise themselves with published [Home Office guidance](#) on the right to reside under regulation 16 and [Appendix EU of the Immigration Rules](#)

15. There are 5 non-economic criteria that have to be met for a two year old to be eligible for a free early education place when a person is claiming Zambrano Carer status³.

Criterion 1: The carer must not be a British citizen or an exempt person⁴

Criterion 2: The child must be a British citizen

Criterion 3: The carer must be a direct relative or legal guardian of the child (as defined in the [Home Office guidance](#) at pages 44-45)

Criterion 4: They must have primary responsibility for the care of the child (primary care can be shared between two relatives)

Criterion 5: There are no other members of the carer's family in the UK or EEA who could look after the child

³ It is possible that the parent or carer [of the two year old] has acquired Zambrano Carer status because of their primary caring responsibilities for a dependent British citizen who is not the two year old. If you have any difficulty in assessing eligibility in such cases please contact us via the email address at the top of this guidance in the first instance.

⁴ as outlined by regulation 16(7) of the EEA Regulations or the definition of 'person with a Zambrano right to reside' within Annex 1 to Appendix EU of the Immigration Rules.

16. We have suggested the types of evidence local authorities may wish to use to establish that the carer / child meets the eligibility criteria.

Derivative Residence Card

17. Where the UK remains a member state of the EU, and until the end of any implementation period, Zambrano Carers are not required to apply to the Home Office for confirmation of their status. However, they may choose to apply for a derivative residence card as confirmation of a derivative right of residence in order to prove, for example:

- a. their right to reside in the UK
- b. their right to re-enter the UK
- c. their entitlement to take up employment in the UK
- d. their right to rent in the UK

18. There are several forms of derivative right to reside and being a Zambrano Carer is only one of them. A derivative residence card confirms the existence of a derivative right of residence, but does not specifically state that the person is a Zambrano Carer. As such, the derivative residence card may need to be considered alongside other forms of evidence (set out below) to ensure the derivative right is based on Zambrano and to assist in assessing eligibility of the child for a free place.

Criterion 1: Carer is not a British citizen or exempt person

- Passport
- Birth certificate

Criterion 2: The child is a British citizen

- Current British citizen passport
- UK birth certificate showing birth in the UK on or after 1 January 1983 and evidence that either parent was either a British citizen or settled in the UK at the time of the birth

Criterion 3: Carer's relationship to the child

- Evidence that the person meets the definition of 'direct relative' or 'legal guardian' in the [Home Office guidance \(pages 44 and 45\)](#)

Criterion 4: Person has primary responsibility for care of the child

19. The questions below may be useful in assessing whether the person has primary responsibility for care of the child. It should be noted that two relatives can exercise joint primary care.

Questions:

- Does your child live with you 7 days a week?
- If not, how many days a week does s/he live with you?
- Are social services involved in deciding where your child should live?

- Is there a court order over the care of your child?
- Are there different arrangements for childcare during school holidays?
- Do you buy their clothes and shoes, food and toiletries?
- Do you do their washing?
- Do you care for them when they are ill or take them to routine medical appointments?

20. This is not an exhaustive list of questions and local authorities are free to adapt the question / use alternative questions depending on the circumstances of the case.

Criterion 5: There are no other family members who could care for the child (this does not include where the child is being cared for by two joint primary carers)

- Parent / carer declaration
- Information from social services

21. This is not an exhaustive list and local authorities are free to consider alternative forms of evidence depending on the circumstances of the case.

B. Children of families with no recourse to public funds with a right to remain in the UK on grounds of private and family life under Article 8 of the European Convention on Human Rights

22. Article 8 of the European Convention on Human Rights (ECHR) protects a person's right to respect for their private and family life. Article 8 is a right that is concerned with an individual's need to live and develop in a social environment and to maintain relationships with others. Families with the right to remain in the UK under Article 8 are allowed to work. In order to qualify for a free place for their two year old, the parent (and their partner if they have one) must meet the income threshold.

Evidence of right to remain in the UK under Article 8:

- Letter from Home Office granting leave to remain in the UK together with a biometric residence card

Assessing income to be eligible for a free place (applies to Zambrano Carers and Article 8 families only)

23. Although Zambrano Carers have no recourse to public funds they are allowed to work. Families granted immigration leave on the basis of Article 8 with no recourse to public funds are also entitled to work. In both cases the parent or carer (and their partner if they have one) must meet the income threshold (£15,400) to be eligible for a free place for their two year old.

- P60

- Pay slip
- Letter from employer or bank

24. The evidence suggested here is not exhaustive and local authorities are free to use alternative evidence.

C. Families supported under s4 of the Immigration and Asylum Act 1999

25. Section 4(2) of the Immigration and Asylum Act 1999 allows for support to be provided by the Home Office to refused asylum seekers. To qualify for s4 support refused asylum seekers must be destitute and meet a narrow set of criteria. The support consists of accommodation and £35.39 a week via a pre-paid Visa card (ASPEN card). If the child is in a family receiving support under s4 the child is entitled to a free place.

Evidence of support under s4 of the Immigration and Asylum Act 1999:

- Letter from the Home Office confirming s4 support
- Valid ASPEN card