



Briefing Note: Extension to the Pupil Premium Grant for the financial year April 2021-March 2022 for children from specified NRPF households

This note explains a recent legal claim which has resulted in the extension of the 2021-2022 Pupil Premium Grant, the context for which being the temporary extension of FSM to children from certain NRPF groups.

The note will address what the Pupil Premium Grant is and how eligibility is usually determined, the temporary extension of FSM to children from certain NRPF groups and the basis for the extension to the Grant.

Background

The Pupil Premium Grant ("the Grant") is extra money schools can claim for each of their pupils who meets the Department for Education's eligibility criteria which is most typically that they are claiming free school meals ("FSM") or have done so at any stage in the preceding six yearsⁱ.

Although schools can decide for themselves how to spend the Grant, its overarching purpose is to ensure additional funding reaches the most economically disadvantaged pupils in order to promote their educational attainment.

The amounts in question are by no means insignificant: primary schools can recover £1,345 a year and secondary schools £955 a year for each eligible pupil.

The Grant is paid in block instalments to schools during each financial year which runs from April to March. The amount paid is based on census data completed by schools which amongst other matters records how many pupils they had on their roll who were at that time - or at any point since the last term census - eligible for FSM.

For the forthcoming financial year commencing April 2021, the actual amount received will be based on the numbers of said pupils who were recorded in the school census dated 1 October 2020 as being eligible for FSM between 17 January 2020 and 1 October 2020 plus other pupils who were eligible for FSM prior to this period but within the preceding six years.

Historically, children from No Recourse to Public Funds (NRPF)ⁱⁱ households were not eligible for the Grant because, by definition, their parents were prevented from claiming the benefits which passported entitlement to FSM. This is despite the fact that children within this group are growing up amongst the poorest households in society.



Extension of FSM to children from certain NRPF households

In April 2020 last year, following a threat of legal action, the Secretary of State for Education agreed to temporarily extend FSM to children from certain NRPF households as specified in guidanceⁱⁱⁱ and set out below:

- Children of Zambrano Carers i.e. non British/ non EEA parent(s) who have a British child;
- Children of families who have leave to remain in the UK on grounds of private and family life under Article 8 of the European Convention on Human Rights but who are subject to a condition that they have NRPF;
- Children of families receiving support under Section 17 of the Children Act 1989 because they have NRPF.;
- Children with parents supported under section 4 of the Immigration and Asylum Act 1999.

This meant that while schools were generally closed during the first lockdown, eligible children were entitled to the £15 per week supermarket vouchers whilst at home or could receive free school meals if they were able to attend school.

Although this extension was implemented as a temporary measure in light of the Covid 19 pandemic, following a further threat of judicial review, in September 2020 the Secretary of State agreed to continue the extension whilst a departmental review was carried out into whether to make the extension permanent.

This meant that when schools reopened for the Autumn term 2020 the extension remained in place and has done so ever since, including when schools closed again this year and now that they have reopened.

Extension of the 2021-2022 Grant and who can benefit?

As a result of judicial review proceedings, the Secretary of State agreed to extend the pupil premium for the financial year April 2021-2022, so as to mirror the criteria for the NRPF FSM extension, and has agreed to implement an application process whereby eligible schools can make claims for the 2021-2022 pupil premium grant.

The precise terms of settlement have been incorporated into a sealed court order which is available on our website.

This explains that schools should be able to recover the Grant for each and every pupil on their roll who, on the Autumn 2020 school census (i.e. 1 October 2020), were eligible for FSM under the aforementioned temporary NRPF extension at any time from when the extension was implemented until 1 October 2020.

This means they do not need to have been eligible on the date of 1 October 2020, provided they were eligible at some stage beforehand after the extension was implemented.



How can schools claim this Grant?

For schools with pupils who are now eligible for the 2021-2022 because of this concession, the Secretary of State has decided to adopt an alternative applications process on the basis that this is more practical than asking schools to amend the census data which was previously submitted on 1 October 2020 but which would not have included FSM eligible children under the temporary NRPF extension.

In lawyers' correspondence, the Secretary of State has stated that whilst,

"The payment schedule may not align with the core pupil premium allocation ... the Secretary of State will ensure that overall, and subject to making a claim through the prescribed process, schools will receive a total allocation of pupil premium which reflects the decision to treat pupils who were eligible for FSM under the temporary extension as 'eligible' for the purposes of calculating the pupil premium grant for 2021-22".

The Government recently announced the implementation of a process by which schools and academies can apply for additional pupil premium funding^{iv} by using the following **online form and Guidance:**

<https://form.education.gov.uk/service/nrpf>

The deadline to submit these claims is **5 PM on 30 June 2021.**

We appreciate this is not much time to submit the claims and therefore encourage organisations to share this briefing note with schools, NGOs and Local Authorities to ensure as many claims are made as possible.

Why the 1 October 2020?

The cut-off date of 1 October 2020 is the same as that which has been applied to children who were eligible for FSM under the usual statutory framework. This is because, as explained, the money allocated in each financial year is based on information recorded in the preceding census information. Before Christmas 2020, the Department for Education decided that the 2021-2022 Grant more generally would be allocated according to the data recorded in the 1 October 2020 census. Children from NRPF backgrounds should not be disadvantaged compared to their counterparts who do have recourse to public funds, therefore.

How long will the extension to both FSM and the Grant last?

The temporary extension to FSM remains in force until such a time as the Secretary of State either agrees to permanently extend FSM or formerly decides not to and decides to end the extension.

In the event that the review does not lead to the permanent extension of FSM, we are poised to resume a judicial review challenge against the primary legislation which sets



out the criteria for FSM on the grounds that it is incompatible with affected children's ECHR rights.

So far, the Secretary of State has only committed to extending the Grant for the 2021-2022 financial year and so it remains to be seen what will happen thereafter. Our view is that notwithstanding what happens in relation to FSM, the Grant should be permanently extended to the same groups at a minimum and any decision to the contrary is challengeable.

Practical advice for claiming FSM

Please see the relevant Guidance for more information^v which further explains the eligibility criteria for the temporary extension and emphasises that schools could use flexibility and discretion when verifying children's eligibility. A template form^{vi} is provided on their website in case of assistance although schools and LAs may also have their own forms.

For further information

For further information about the claim, please do not hesitate to contact Clare Jennings (clare@matthewgold.co.uk), Rachel Etheridge (rachel@matthewgold.co.uk) and Olivia Halse (Olivia@matthewgold.co.uk)

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ⁱ This policy paper provides general information about the Grant: <https://www.gov.uk/government/publications/pupil-premium/pupil-premium>

ⁱⁱ By NRPf we mean that their parent(s) were ineligible for mainstream benefits because they either did not have leave to remain in the UK or, if they were lawfully in the UK, this was subject to a restriction that they could not claim benefits.

ⁱⁱⁱ <https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/guidance-for-the-temporary-extension-of-free-school-meals-eligibility-to-nrpf-groups>

^{iv} <https://www.gov.uk/government/publications/esfa-update-2-june-2021/esfa-update-local-authorities-2-june-2021>

^v <https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance/guidance-for-the-temporary-extension-of-free-school-meals-eligibility-to-nrpf-groups>

^{vi} <https://www.gov.uk/government/publications/covid-19-free-school-meals-guidance>