



**Official Response to the  
Government consultation**

**EYFS Space  
Requirements**

**July 2025**

## About **Community Union**

This is an official response on behalf of members of **Community Union**

Community is a general Trade Union affiliated to the TUC. We provide legal and casework support to our members and regularly engage with them in determining our response to policy proposals.

Community's Education and Early Years sector represent thousands of serving teachers and support staff, headteachers, lecturers, nursery and early years workers, nannies and other education professionals in schools and academies, nurseries and early years settings, colleges and universities across the whole of the UK.

This evidence was submitted to the Department for Education on behalf of our members and as such represents the views of a wide range of individuals from different backgrounds across England and the UK.

The information shared within this response may be used and quoted as appropriate for the purposes it was gathered, with Community Union acknowledged as the contributor. We would be happy to discuss the comments in this response further, please contact us using the details supplied.

This Official Response will be published on our website following the close of the consultation period.

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## Summary Comments

Community is supportive of the Government's Opportunity Mission and the actions it is taking to provide more spaces to meet the demands of a working population and we agree that making effective use of space within schools and nurseries is the solution to fulfilling this priority as long as it can be achieved whilst protecting the high standards and quality of provision that the sector currently provides.

Decisions taken by the previous Government have caused many settings to be unviable and consequently close. It is vital that settings are properly funded to ensure that they are viable businesses and these proposals would potentially allow more children to be cared for in smaller spaces with fewer staff. But there are concerns that more early years places with outdoor provision included in space allocations and without proper guidelines, safeguards and rules to define what this looks like, could lead to overcrowding in indoor spaces during inclement and cold weather which would place the safety of staff and children at risk.

Community is hugely support of efforts to widen access to free-flow learning which has been shown to be highly effective across both early years and reception class learning with teachers noting the impact it has on developing independence and decision-making skills, as well as social and emotional development which was particularly impacted by social isolation mandated during COVID-19.

From a building perspective it also allows a constant supply of fresh air into the building which in certain settings, can have positive health benefits away from the pollutants of large urban and city recreational areas.

Despite this, the consequence of climate change is an increase in the frequency of heatwaves, wildfires, heavy rainfall and flooding in the UK, which threatens the health of the population. This extreme weather means that shelter and shade are critical in outdoor spaces but also highlights the importance of suitable indoor space should the outdoor space prove to be unsuitable or dangerous.

It is worth noting that the availability of outdoor spaces is at a premium in many schools and early years settings, especially in urban areas and inner cities such that settings without outdoor spaces make careful use of public outdoor spaces to support the wellbeing and development of their children. Therefore, for the benefit of all children and their staff, we would support leaving the current space requirements as is.

## Respond online

To help us analyse the responses please use the online system wherever possible. Visit [DfE consultations on GOV.UK](#) to submit your response

## Section 1 - Options for consultation

Relevant to: all early years providers in England only who are legally required to comply with either the childminder EYFS framework or the group and school-based EYFS framework.

Intention: To give providers the flexibility to increase capacity in settings where there is demand for additional places and where the physical structure allows.

**The current indoor space requirements at section 3 of the EYFS for group and school-based providers are as follows:**

*The premises and equipment must be organised in a way that meets the needs of children. Providers must meet the following indoor space requirements\* where indoor activity in a building(s) forms the main part of (or is integral) to the provision:*

- *Children under two years: 3.5 m<sup>2</sup> per child*
- *Two year olds: 2.5 m<sup>2</sup> per child*
- *Children aged three to five years: 2.3 m<sup>2</sup> per child*

*\* These judgements should be based on useable areas of the rooms used by the children, not including storage areas, thoroughfares, dedicated staff areas, cloakrooms, utility rooms, kitchens and toilets.*

**The current indoor space requirements at section 3 of the EYFS for childminders is as follows:**

*The premises and equipment must be organised in a way that meets the needs of children. Providers must meet the following indoor space requirements where indoor activity in a building(s) forms the main part of (or is integral to) the provision:*

- *Children under two years: 3.5m<sup>2</sup> per child.*
- *Two-year-olds: 2.5m<sup>2</sup> per child.*
- *Children aged three to five years: 2.3m<sup>2</sup> per child.*

*\*These judgements should be based on useable areas of the rooms used by the children, not including storage areas, thoroughfares, dedicated staff areas, cloakrooms, utility rooms, and toilets. Childminders should consider what areas within their kitchens are safely usable.*

We are asking for your views on two proposed options:

This section includes questions regarding the 2 potential options:

1. Include free-flow outdoor space in the EYFS space requirements (without a cap)
2. Include free-flow outdoor space in the EYFS space requirements (but with a cap on how much providers can use this to increase their capacity to try to mitigate against any overcrowding). This is our preferred option.

Before you respond to questions 16-27, which relate to options 1 and 2, we would like you to understand what we mean by free-flow. It is important that you take the proposed definition of free-flow into consideration when answering questions in relation to the first and second options.

### **DfE proposed definition of free-flow outdoor space**

*"Free-flow outdoor areas may also be included in these measurements for children aged 2 years and above. For an area to be defined as 'free-flow', doors to the outdoor area must be open and the outdoor area accessible to children at all times. Children must have safe access in all weathers including having adequate shelter and shade. The area must be suitably equipped to meet the health, safety, wellbeing, learning and development needs of all children."*

### **Option 1: Include free-flow outdoor space in the space requirements (without a cap).**

In the November 2023 Early Years Provider Pulse Survey, including free flow outdoor space in requirements was the most popular option across all provider types. The survey showed that 69% group based, 65% school-based and 71% childminders would use flexibilities in space requirements to look after greater numbers of children. This option could allow those providers who have the physical structure to meet the definition of 'free flow' outdoor space to increase the number of children in their setting. It would involve including the following change (wording) in the EYFS:

#### **Proposed new wording:**

- *"Free-flow outdoor areas may also be included in these measurements for children aged 2 years and above. For an area to be defined as 'free-flow', doors to the outdoor area must be open and the outdoor area accessible to children at all times. Children must have safe access in all weathers including having adequate shelter and shade. The area must be suitably equipped to meet the health, safety, wellbeing, learning and development needs of all children".*

### **Option 2 (preferred option): Include free-flow outdoor space in the space requirements (but with a cap on how much providers can use this to increase their capacity to prevent overcrowding, for example).**

Option 2 was not tested in the November 2023 provider pulse survey. It introduces a safety net around including free flow outdoor space in space requirements and mitigating some of the potential risks around overcrowding set out below. It could allow those providers who have the physical structure to meet the definition of 'free

flow' outdoor space to increase the number of children in their setting.

For example, with a 10% cap, a setting with a maximum capacity of 80 children (based on existing indoor space requirements and the age of the children in the setting at a specific time) could take 8 additional children (provided that the additional useable free-flow space is large enough to meet the required space measurements for the additional number of children).

**Proposed new wording:**

- *“Free-flow outdoor areas may also be included in these measurements for children aged 2 years and above. For an area to be defined as ‘free-flow’, doors to the outdoor area must be open and the outdoor area accessible to children at all times. Children must have safe access in all weathers including having adequate shelter and shade. The area must be suitably equipped to meet the health, safety, wellbeing, learning and development needs of all children.*
- *The additional number of children a setting using free flow outdoor space can cater for, must be no more than X% of the maximum capacity allowed based on existing indoor space requirements.*

**Potential benefits to implementing options 1 and 2 include:**

There are several potential benefits to including free flow outdoor space in the current space requirements. For example, it would allow for a greater number of additional children to be looked after where settings have the space to accommodate this and there is the demand for places. This helps support access to early years provision for families. There is also evidence that outdoor space is particularly beneficial to children’s development, which if well used can be supported by these options. Caring For Our Children (2019)<sup>5</sup> advises settings that as much fresh outdoor air as possible should be provided in the rooms, and Mustapa et. al (2014)<sup>6</sup> review of evidence finds that playing in natural environments stimulates children’s senses and helps further develop and improve cognitive skills.

**Potential risks to implementing options 1 and 2 include:**

There are also potential risks to including free flow outdoor space in the space requirements. Whilst research cited above indicates the benefits of outdoor space, it is important it is used appropriately. For example, were a provider to overcrowd their

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<sup>5</sup> American Academy of Paediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs. 4th ed. Itasca, IL: American Academy of Pediatrics; 2019

<sup>6</sup>

setting this would reduce available space, which we know has an important role in developing children's social and communication skills as well as physical skills<sup>789</sup>. Space is particularly important for children with SEND<sup>10</sup> and from disadvantaged backgrounds<sup>11</sup>. This risk can be mitigated by option 2 (introducing a cap on the number of places that can be offered).

Settings may also incur additional costs (such as higher heating bills or the cost of employing additional staff to care for more children) and it would be for providers to determine whether the benefits (such as additional revenue from delivering additional places) outweighs any associated costs. Providers should be aware that any non-compliance with the EYFS (including in relation to any free-flow requirements in the future) may affect their suitability to remain registered with Ofsted or their childminder agency.

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<sup>7</sup> [Motor competence and characteristics within the preschool environment - PMC \(nih.gov\)](#)

<sup>8</sup> [Full article: The physical indoor environment in ECEC settings: children's well-being and physical activity \(tandfonline.com\)](#)

<sup>9</sup> [Measuring the quality of movement and play in Early Years settings](#)

<sup>10</sup> American Academy of Pediatrics, American Public Health Association, National Resource Center for Health and Safety in Child Care and Early Education. Caring for Our Children: National Health and Safety Performance Standards; Guidelines for Early Care and Education Programs. 4th ed. Itasca, IL: American Academy of Pediatrics; 2019

<sup>11</sup> [Making Connections with Their World](#)

## Questions relating to option 1: Include free-flow outdoor space in the space requirements (without a cap).

**16. Are you in favour of option 1  
(to include free flow outdoor space without a cap)?**

YES / **NO**

**17. What do you see as the benefits of introducing this change, if any?**

*Not more than 300 words*

Free flow has been shown to be a highly effective mode of teaching and learning in the early years with many school reception classes embracing it with positive effects on child development and outcomes. Teachers note that it fosters independence and enhances decision making skills, promoting social and emotional development which can be lacking in small children and was especially important following the impact of COVID-19.

From a building perspective it also allows a constant supply of fresh air into the building which in certain settings, can have positive health benefits away from the pollutants of large urban and city recreational areas.

**18. What do you see as the risks of introducing this change, if any?**

*Not more than 300 words*

The proposal states that “*children must have safe access in all weathers including having adequate shelter and shade.*” This will be difficult to mandate in many inner-city settings which make use of compact, communal outdoor spaces that are not directly accessible from the indoor spaces due to corridors, flights of stairs and due to the need to share the space with children of other ages.

In order for indoor/outdoor free-flow to be properly implemented there cannot be any restrictions such as limited numbers in the outdoor area due to limited space. There are other things which would get in the way of free-flow, such as rooms or outdoor space being upstairs - even up a very small flight of stairs, or the garden being accessed through the hallway (which would then have to be supervised at all times). These would all need to be addressed before free-flow learning could take place.

With either of the proposed options consideration would need to be given to the fact there would be more children and staff occupying the same physical space as was the case before the change and the proposals need more details on how this will be managed.



**19. Are there any changes you want to suggest to maximise the benefits and/or mitigate the risks of introducing this change?**

*Not more than 300 words*

As mentioned above, Community is supportive of free-flow learning, whether or not this includes outdoor spaces, and we would encourage all settings to ensure that any outdoor space they do have is available to be used by all and therefore we do not think it is appropriate for it to be included in space calculations. By operating in this way, a whole nursery setting could benefit from once outdoor provision rather than it being restricted to just the one class that has direct access.

Many nurseries only have a very small outdoor space, which makes it very difficult for children to come and go as they please. Although these settings will employ free-flow learning within their provision, access to outdoor spaces will be limited and we fear that under these proposals this would place them in potential breach of the EYFS definition of 'free-flow'.

In a similar way if a garden or outdoor space could be free-flow, but didn't have enough shaded or covered areas, its use would have to be limited in really hot, sunny weather, which again may place the setting in breach.

We would appreciate further detailed guidance on how these proposals could be interpreted and implemented.

**20. Do you think the wording below adequately describes free-flow access and takes into account the health, safety and wellbeing of all children?**

*"Free-flow outdoor areas may also be included in these measurements for children aged 2 years and above. For an area to be defined as 'free-flow', doors to the outdoor area must be open and the outdoor area accessible to children at all times. Children must have safe access in all weathers including having adequate shelter and shade. The area must be suitably equipped to meet the health, safety, wellbeing, learning and development needs of all children."*

**YES** / NO

**21. Are there any changes you would suggest to the wording of the proposed free-flow requirement that still aligns with the free-flow principle of children being able to safely use the outside area at all times?**

*Not more than 300 words*

There are no particular changes to the proposed wording of the free-flow requirement that we would suggest, but Community would recommend that some exemplar and guidance material is provided to ensure the specifics and details are clear for settings as we have concerns that the ability of a setting to keep children, staff and visitors safe in all weathers would be severely compromised by these proposals and that this is a risk they should not be required to take.

**Questions relating to option 2: Include free-flow outdoor space in the space requirements (but with a cap on how much providers can use this to increase their capacity, for example to prevent overcrowding).**

**22. Are you in favour of option 2 (to include free flow outdoor space but with a cap, for example to prevent overcrowding)?**

YES / **NO**

**23. If you agree with introducing a cap, at what level should it be set?**  
[TICK ONE BOX ONLY]

- a. 5%
- b. 10%
- c. 15%
- d. Other – 0%**

**24. What is the reason for your ideal cap?**

*Not more than 300 words*

As previously mentioned, Community is supportive of free-flow learning, whether or not this includes outdoor spaces, and we would encourage all settings to ensure that any outdoor space they do have is available to be used by all and therefore we do not think it is appropriate for it to be included in space calculations. By operating in this way, a whole nursery setting could benefit from once outdoor provision rather than it being restricted to just the one class that has direct access.

With either of the two options there would be more children, and therefore more staff in the existing available space. This would put pressure on the resources, toys and equipment and require staff to be even more vigilant due to the increased number of children and risks spaces, especially covered areas, becoming crowded and cramped.

It is not clear from the proposals how the 'cap' will work in practice and whether this relates to the number of children a whole setting can have or the number of children a specific room within that setting can have. For example, a setting that can have 50 children might be allowed 5 more children, but in many settings only one room has free-flow provision, meaning that one room would need to accommodate those extra children creating problems as children progress through the setting.

More consideration needs to be given to the impact this proposal will have on ratios. For example, if there is a setting or a room has 15 two-year olds, the percentage increase above would allow only one more child, but this would require an additional adult in order to remain in ratio.

**25. What do you see as the benefits of introducing this change, if any?**

*Not more than 300 words*

There are lots of benefits to children having free-flow access to learning activities both indoor and outside, but these have to improve learning for children and be safe and practical.

**26. What do you see as the risks of introducing this change, if any?**

*Not more than 300 words*

With either of the two options there would be more children, and therefore more staff in the existing available space. This could cause crowding issues, especially if, as suggested in 'Option 2' there is a cap on numbers because although the number of children would be capped, it would still require additional adults in order to maintain safety and working within ratios.

Furthermore this could actually reduce access to outdoor spaces if, as suggested, free flow only applies when children have unimpeded access to an outdoor area. This may mean that only one class is able to use the outdoor space to the detriment of other classes in the setting who cannot access the outdoor space without traversing steps, corridors or other physical restrictions or safety provisions.

The proposals contained here do not go into enough detail to explain how this will work in practice, how additional staffing will be recruited or details about funding streams to cover additional costs. Recruitment and retention still remains the biggest barrier to providing early years as there are simply not enough qualified staff to meet current demand.

Additional children and staff could also have a detrimental impact on those with SEND who require larger personal spaces, and those with neurodiversity who would benefit from quiet spaces which will be more difficult to secure with greater pupil numbers.

**27. Are there any changes you want to suggest to maximise the benefits and/or mitigate the risks of introducing this change?**

*Not more than 300 words*

As mentioned above, Community is supportive of free-flow learning, whether or not this includes outdoor spaces, and we would encourage all settings to ensure that any outdoor space they do have is available to be used by all and therefore we do not think it is appropriate for it to be included in space calculations with or without a cap. By operating a shared outdoor space, a whole nursery setting could benefit from one outdoor provision rather than it being restricted to just the one class that has direct access.

Although we appreciate that placing a cap on the number of additional children a setting can accommodate to minimise overcrowding, the risks still remain, especially if all of the additional children are using that outdoor space at the same

time – for example on a hot sunny day. The fact the cap will apply to the setting also creates additional complications in rooms due to maintaining safe working practices and ratios

Therefore, we would appreciate further detailed guidance on how these proposals could be interpreted and implemented to ensure that no additional risks or unintended consequences are caused.

## Section 2 – Other questions about the indoor space requirements

We want providers to be able to increase their occupancy, but we do not want any changes to the EYFS statutory frameworks to compromise the safety and welfare of children. This is why we are also seeking views on alternative ideas on how we might change the indoor space requirements, and whether they should remain unchanged.

### Other ways to change the space requirements

**28. Please could you share any alternative ideas (which are alternative to options 1 and 2 above) on how we might change the indoor space requirements to give providers more flexibility to create additional places to meet demand in a way that meets the needs of the children, including any reasons for your ideas?**

*Not more than 300 words*

It is vital that all children have access to suitable outdoor play space. However this should not be exclusive to any one group within the nursery or early years setting to the detriment of other children and classes. Whilst it is right to expect settings to have outdoor space this should be shared unless there is sufficient safe space with appropriate access for all.

### Maintaining the current space requirements

**29. Do you think we should leave the current space requirements as they are?**

**YES** / NO

**What are your reasons for this?**

*Not more than 300 words*

Community is in favour of keeping the current space requirement as it is for a number of reasons highlighted throughout this Official Response. These include:

#### **Health and safety**

Children having safe and unimpeded access to outdoor space in all weathers including having adequate shelter and shade means many settings using shared outdoor spaces that are not directly accessible from the indoor spaces will automatically be unable to implement this proposal.

Furthermore, consideration needs to be given to the fact there could be more children and staff occupying the same physical space as was the case before the change and the proposals need more details on how this will be managed to avoid having a detrimental impact on children's health and staff wellbeing due to

cramped and overcrowded spaces.

**Better quality learning opportunities** arise from having high-quality staff that know the children well. This, and safety, would be put at risk if the ratios were to be further relaxed. Staff working with small groups of children need adequate space away from other groups to build concentration skills and develop focus. This is particularly the case in pre-school classes where school-readiness is already a key learning outcome.

**Better retention of staff**

A well provisioned setting with adequate spaces both indoor and outdoor leads to better behaviour and better learning outcomes for children which contributes to a happier work environment and encourages the recruitment, and crucially the retention of staff.

## Section 3 - Equality impacts

This section asks for your help in identifying any potential impacts of our 2 options on people with particular protected characteristics (as defined by the Equality Act 2010). The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race (including ethnicity), religion or belief, sex, and sexual orientation.

### Question on equality impacts

30. Please outline any comments you may have about the potential impact of these options (either positive and/or negative) on people with particular protected characteristics and any suggestions of how the department and/or settings could mitigate against negative potential impacts?

*Not more than 300 words*

As we have already mentioned earlier, it will be vitally important to consider the impact of these proposals on children (and staff) with SEND and SEMH difficulties.

Many children thrive in routine, but some children find it impossible to function when their routine is disrupted. For children to have access to spaces both in and outdoors under a free-flow system and for this to be disrupted in some way would be likely to cause deregulation issues. Whilst this can and does happen presently, there is a guaranteed minimum amount of space to accommodate staff and children inside which these proposals put at risk.

Children with physical SEND often require additional space, but all children benefit from having a safe and spacious learning environment. The issue with these proposals is the impact they will have on the indoor space. For example, if a setting was allowed eight more children, but those eight did not always choose to be outside, then that means the indoors would be crowded (or vice versa), which could be really detrimental to children with neuro-divergencies or sensory-processing issues as well as being cramped and crowded for all children.

Further, there is the likelihood that this will lead to a two-tier system of provision with early years providers in more well-off areas, who have easy access to outdoor space choosing to implement this versus those who choose not to offer this but to maintain space and advertise this. Early years providers in areas of deprivation, which are usually the regions most in need of early years places, would feel compelled to increase their numbers based on outdoor space, so that they could accommodate more children and remain profitable.

It is difficult to conceive of a way which will not have a negative impact on children and staff, which in turn would have a greater negative impact on the sector as a whole.

