
STATUTORY INSTRUMENTS

2012 No. 2488

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Local Authority (Duty to Secure Early Years
Provision Free of Charge) Regulations 2012**

Made - - - - *27th September 2012*
Laid before Parliament *4th October 2012*
Coming into force - - *1st September 2013*

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 7 and 104(2) of the Childcare Act 2006(1).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012 and come into force on 1st September 2013.

(2) In these Regulations—

“the Act” means the Childcare Act 2006;

“eligible child” means a young child who is—

- (a) looked after by a local authority under section 22(1) of the Children Act 1989(2); or
- (b) within section 512ZB(4) of the Education Act 1996(3).

Prescribed early years provision

2.—(1) The prescribed early years provision for the purposes of section 7(1) of the Act (duty to secure early years provision free of charge) is early years provision that is provided by an early years provider to whom section 40 of the Act (duty to implement Early Years Foundation Stage) applies.

(2) But the prescribed early years provision for the purposes of section 7(1) does not include early years provision in respect of which—

(1) 2006 c. 21. Section 7 was substituted by section 1 of the Education Act 2011 (c. 21). See section 106 for the definitions of “prescribed” and “regulations”.

(2) 1989 c. 41. Section 22(1) was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c. 22), by section 2(2) of the Children (Leaving Care) Act 2000 (c. 35) and by section 116(2) of the Adoption and Children Act 2002 (c. 38).

(3) 1996 c. 56. This section was substituted, together with sections 512 and 512ZA, for section 512 as originally enacted by section 201(1) of the Education Act 2002 (c. 32) and amended by paragraph 16 of Schedule 3 to the Welfare Reform Act 2007 (c. 5) and by section 26 of the Child Poverty Act 2010 (c. 9).

- (a) the Secretary of State has made a direction under section 46(1) of the Act (power to enable exemptions to be conferred); or
- (b) an early years provider has made a determination under section 46(2) of the Act.

Prescribed description

3.—(1) For the purposes of section 7(1)(b) of the Act, a young child is of a prescribed description if the young child meets the conditions in paragraphs (2) or (3).

(2) The condition is that the young child—

- (a) has attained the age of two years at the start of the term beginning on or following the date in paragraph (4); and
- (b) is an eligible child on or after the date in paragraph (4) applicable to the child in question.

(3) The condition is that the young child has attained the age of three years at the start of the term beginning on or following the date in paragraph (4).

(4) The date is—

- (a) in the case of a child who was born in the period 1st January to 31st March, 1st April following the child's birthday;
- (b) in the case of a child who was born in the period 1st April to 31st August, 1st September following the child's birthday;
- (c) in the case of a child who was born in the period 1st September to 31st December, 1st January following the child's birthday.

(5) For the purposes of this regulation, “term” means a term the dates of which have been set under section 32 of the Education Act 2002(4).

Availability of early years provision

4.—(1) For the purposes of section 7(1) of the Act, an English local authority must secure that the prescribed early years provision is available for each young child for a period of 570 hours in any year and during no fewer than 38 weeks in any year.

(2) For the purposes of paragraph (1) and subject to paragraph (3), the first year commences on the date in regulation 3(4) applicable to the child in question, and subsequent years commence on the anniversary of that date.

(3) Where a young child becomes an eligible child on a date after the date in regulation 3(4) applicable to the child in question, the first year commences on the date in regulation 3(4) next following the date on which the young child becomes an eligible child, and subsequent years commence on the anniversary of that date.

Revocations

5. The following Regulations are revoked—

- (a) the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008(5); and
- (b) the Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2010(6).

(4) 2002 c. 32. Section 32 was amended by paragraph 11 of Schedule 2 to [S.I. 2010/1158](#), there are other amendments which are not relevant.

(5) [S.I. 2008/1724](#).

(6) [S.I. 2010/301](#).

27th September 2012

Elizabeth Truss
Parliamentary Under Secretary of State
Department for Education

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 7 of the Childcare Act 2006 (“the Act”) places a duty on English local authorities to secure early years provision free of charge in accordance with regulations. These Regulations prescribe early years provision for young children of a prescribed description.

Regulation 2 prescribes that early years provision which an English local authority must secure free of charge is provision provided by an early years provider to whom section 40 of the Act applies. Section 40 sets out those early years providers who are under a duty to provide the Early Years Foundation Stage.

Regulation 3 prescribes the description of children for whom an English local authority must ensure prescribed early years provision is available free of charge. A child must have attained the age of three or, if the child is within section 512ZB(4) of the Education Act 1996 (provision of free school lunches and milk) or is a child looked after by the local authority under section 22 of the Children Act 1989, must have attained the age of two. The regulation sets out the age of children by reference to school term dates.

Regulation 4 sets out the amount of free prescribed early years provision that English local authorities must make available. They must make available no less than 570 hours in a year over no fewer than 38 weeks.

Regulation 5 revokes the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 and the Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2010.

An Impact Assessment has been produced for this instrument and can be found, with the Explanatory Memorandum, at www.legislation.gov.uk.