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STATUTORY INSTRUMENTS

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**2013 No. 3193**

**CHILDREN AND YOUNG PERSONS, ENGLAND**

**The Local Authority (Duty to Secure Early Years  
Provision Free of Charge) Regulations 2013**

*Made* - - - - *16th December 2013*  
*Laid before Parliament* *19th December 2013*  
*Coming into force* - - *1st September 2014*

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 2013 and come into force on 1st September 2014.

(2) In these Regulations—

“the 2006 Act” means the Childcare Act 2006;

“eligible child” means a young child—

- (a) who is within section 512ZB(4) of the Education Act 1996(2);
- (b) whose parent (within the meaning given by section 6(6) of the 2006 Act) is entitled to working tax credit under Part 1 of the Tax Credits Act 2002(3) by virtue of an award which is based on an annual income not exceeding £16,190;
- (c) who has a statement of special educational needs made under section 324 of the Education Act 1996(4);

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(1) 2006 c. 21. Section 7 was substituted by section 1(2) of the Education Act 2011 (c. 21). See section 106 for the definitions of “prescribed” and “regulations”.

(2) 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 This section was substituted, together with sections 512 and 512ZA, for section 512 as originally enacted by section 201(1) of the Education Act 2002 (c. 32) and amended by paragraph 16 of Schedule 3 to the Welfare Reform Act 2007 (c. 5), by section 26 of the Child Poverty Act 2010 (c. 9) and by paragraph 39 of Schedule 2 to the Welfare Reform Act 2012 (c. 5).

(3) 2002 c. 21.

(4) Section 324 was amended by paragraph 77 of Schedule 30 to the School Standards and Framework Act 1998 (c. 31), by section 9 of the Special Educational Needs and Disability Act 2001 (c.10) and by paragraph 43 of Schedule 21 to the Education Act 2002 (c. 32).

- (d) who is entitled to disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992<sup>(5)</sup>;
- (e) who is looked after by a local authority under section 22(1) of the Children Act 1989<sup>(6)</sup>;  
or
- (f) who has previously been looked after by the local authority under section 22(1) of the Children Act 1989 and is no longer so looked after as a result of the making of one of the following orders—
  - (i) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002<sup>(7)</sup>;
  - (ii) a special guardianship order within the meaning given by section 14A(1) of the Children Act 1989<sup>(8)</sup>;
  - (iii) a residence order within the meaning given by section 8(1) of the Children Act 1989;

“term” means a term the dates of which have been set under section 32 of the Education Act 2002<sup>(9)</sup>.

### **Prescribed early years provision**

2. The prescribed early years provision for the purposes of section 7(1) of the 2006 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(1) of the 2006 Act (duty to implement Early Years Foundation Stage) applies.

### **Prescribed description**

3.—(1) For the purposes of section 7(1)(b) of the 2006 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.

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(5) 1992 c. 4. Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999 (c. 30).

(6) 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).

(7) 2002 c. 38.

(8) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002 (c. 38).

(9) 2002 c. 32.

### **Availability of early years provision**

4.—(1) For the purposes of section 7(1) of the 2006 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 Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2012(10) are revoked.

16th December 2013

*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.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 7 of the Childcare Act 2006 (“the 2006 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(1) of the 2006 Act applies. Section 40(1) of the 2006 Act applies to early years providers providing early years provision in respect of which they are required by the 2006 Act to be registered with Her Majesty’s Chief Inspector of Education, Children’s Services and Skills, and early years providers providing early years provision at certain schools and who are exempt, in certain circumstances, from the requirement to be registered.

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 must have attained the age of two and meet certain eligibility criteria.

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 2012.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.