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STATUTORY INSTRUMENTS

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**2018 No. 794**

**The Childcare (Disqualification) and Childcare  
(Early Years Provision Free of Charge) (Extended  
Entitlement) (Amendment) Regulations 2018**

**Part 1 Introductory provisions**

**Citation and commencement**

**1.** These Regulations may be cited as the Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 and come into force on 31st August 2018.

**Part 2 Childcare (Disqualification) Regulations 2018**

**Interpretation**

**2.—(1)** In this Part—

“the Act” means the Childcare Act 2006;

“the 1989 Act” means the Children Act 1989<sup>(1)</sup>;

“the 2000 Act” means the Criminal Justice and Court Services Act 2000<sup>(2)</sup>;

“direction” means a direction made, or which has effect as if made, under section 142 of the Education Act 2002 on the grounds set out in subsection (4)(a), (b) or (d) of that section<sup>(3)</sup>;

“relevant order” and “senior court” have the same meanings as in section 30(1) of the 2000 Act<sup>(4)</sup>;

- (2) In this Part a person (“P”) has been “found to have committed” an offence if P has been—
- (a) convicted of that offence;
  - (b) found not guilty of that offence by reason of insanity;
  - (c) found to be under a disability and to have done the act charged against P in respect of such an offence;
  - (d) on or after 6th April 2007, given a caution by a police officer in respect of an offence which P has admitted; or

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(1) 1989 c. 41.

(2) 2000 c. 43.

(3) Section 142 was repealed by section 63(2) and, paragraph 1 of Schedule 10 to the 2006 Act, subject to savings and transitional provisions specified in articles 4(2), (3) and (7) of [S.I. 2009/2611](#).

(4) Section 30 was repealed by section 63(2) of, and paragraph 1 of Schedule 10 to the 2006 Act, subject to savings specified in article 5 of [S.I. 2012/2231](#).

(e) on or after 8th April 2013, given a youth caution by a police officer, in respect of an offence which P has admitted<sup>(5)</sup>.

(3) In this Part a person (“P”) has been found to have committed an offence that is “related to” an offence if P has been found to have committed an offence of—

- (a) attempting, conspiring or incitement to commit that offence; or
- (b) aiding, abetting, counselling or procuring the commission of that offence.

### **Revocation**

3. The Childcare (Disqualification) Regulations 2009<sup>(6)</sup> are revoked.

### **Care of children and offences against children or adults**

4.—(1) Subject to paragraphs (10) and (11) and regulation 10, a person (“P”) is disqualified from registration under any of Chapters 2 to 4 of Part 3 of the Act if any of paragraphs (2) to (9) apply.

(2) Any of the orders or other determinations specified in Schedule 1 has been made—

- (a) with respect to P;
- (b) which prevents P from being registered in relation to any facility in which children are looked after or from being involved in the management of or otherwise concerned with the provision of any such facility; or
- (c) with respect to a child who has been in P’s care.

(3) An order has been made with respect to P under section 104 of the Sexual Offences Act 2003<sup>(7)</sup>.

(4) P has been found to have committed an offence against a child within the meaning of section 26(1) of the 2000 Act<sup>(8)</sup> despite the offence being repealed.

(5) P—

- (a) has been found to have committed any offence specified in paragraph 1 of Schedule 2 or an offence that is related to such an offence; or
- (b) falls within paragraph 2 of that Schedule,

despite the fact that the statutory offences in that Schedule have been repealed.

(6) P has been found to have committed any offence involving bodily injury to, or death of, a child.

(7) P has been found to have committed any offence specified in Schedule 3 or an offence that is related to such an offence.

(8) P has been—

- (a) found to have committed any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4<sup>(9)</sup> to the 2000 Act or an offence that is related

<sup>(5)</sup> Section 66ZA of the Crime and Disorder Act 1998 in relation to youth cautions was inserted by section 135 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and this came into force on 8th April 2013.

<sup>(6)</sup> [S.I. 2009/1547](#), amended by [S.I. 2010/2582](#), [S.I. 2011/1740](#), [S.I. 2011/2581](#), [S.I. 2013/1465](#), [S.I. 2014/1921](#) and [S.I. 2018/48](#).

<sup>(7)</sup> [2003 c. 42](#). Section 104 was repealed in relation to England and Wales by section 113(1) of, and paragraphs 1 and 3 of Schedule 5 to the Anti-social Behaviour, Crime and Policing Act [2014 \(c. 12\)](#) (“the 2014 Act”) and repealed in Scotland by section 39(1)(a) of the Abusive Behaviour and Sexual Harm (Scotland) Act [2016 \(asp. 22\)](#) (“the 2016 Act”). For transitional provisions and savings see sections 114(1), (2), (4)–(6) of the 2014 Act and section 40 of the 2016 Act.

<sup>(8)</sup> Section 26 was repealed by section 63(2) of, and paragraph 1 of Schedule 10 to the Safeguarding Vulnerable Groups Act [2006 \(c. 47\)](#), subject to savings specified in article 5 of [S.I. 2012/2231](#).

<sup>(9)</sup> Schedule 4 was repealed by section 63(2) of, and paragraph 1 of Schedule 10 to the Safeguarding Vulnerable Groups Act [2006 \(c. 47\)](#).

to such an offence, despite the fact that the statutory offences in that Schedule have been repealed; or

- (b) charged with any offence, committed against a person aged 18 or over, mentioned in paragraph 2 of Schedule 4 to the 2000 Act or an offence that is related to such an offence in respect of which a relevant order has been imposed by a senior court, despite the fact that the statutory offences in that Schedule have been repealed.

(9) P shall not be disqualified from registration in respect of any order, determination or offence if—

- (a) P has successfully appealed against the order, determination or conviction;
- (b) a caution in respect of that offence has been withdrawn or set aside; or
- (c) a direction based wholly or in part on the offence has been revoked.

(10) P shall not be disqualified from registration by virtue of paragraph (2) in respect of any refusal or cancellation of registration under the provisions set out in paragraph 19(c) of Schedule 1 if—

- (a) the refusal or cancellation is in respect of registration with a childminder agency; or
- (b) the sole reason for the refusal or cancellation of registration was the failure to pay any fee prescribed under Part 3 of the Act.

(11) P shall not be disqualified by virtue of paragraph (2)—

- (a) if an order is made under which P themselves was placed in the care of a designated local authority or similar body, or
- (b) where P is a foster carer or adoptive parent of a child, and that child is or was made the subject of a care order, unless the order is made as a result of P's care of that child.

### **Overseas offences**

5.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration under any of Chapters 2 to 4 of Part 3 of the Act if P has been found to have done an act which—

- (a) constituted an offence under the law in force in a country outside the United Kingdom; and
- (b) would constitute an offence requiring disqualification from registration under these Regulations if it had been done in any part of the United Kingdom.

(2) In paragraph (1) P has been “found to have done an act which constituted an offence” if, under the law in force in a country outside the United Kingdom—

- (a) P has been convicted of an offence (whether or not P has been punished for it);
- (b) P has been cautioned in respect of an offence;
- (c) the court exercising jurisdiction under that law has made in respect of an offence a finding equivalent to a finding that P is not guilty by reason of insanity; or
- (d) that court has made in respect of an offence a finding equivalent to a finding that P is under a disability and did the act charged against P.

(3) A person shall not be disqualified from registration under paragraph (1) in respect of a any finding if, under the law in force in the country concerned, such finding has been reversed.

(4) An act punishable under the law in force in a country outside the United Kingdom constitutes an offence under that law for the purposes of this regulation however it is described in that law.

**Protection of Children Act list**

6. A person who is included in the list kept under section 1 of the Protection of Children Act 1999<sup>(10)</sup> (list of those considered by the Secretary of State unsuitable to work with children) is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act.

**Direction in relation to the employment of teachers etc**

7.—(1) Subject to regulation 10, a person (“P”) is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act if any of the following provisions of this regulation apply to P.

(2) P is subject to a direction.

(3) P’s name is on any list kept for the purposes of regulations made under article 70(2)(e) or 88A(1) and (2)(b) of the Education and Libraries (Northern Ireland) Order 1986<sup>(11)</sup>.

**Persons barred from regulated activity relating to children**

8. A person who is barred from regulated activity relating to children within the meaning of section 3(2) of the Safeguarding Vulnerable Groups Act 2006<sup>(12)</sup> is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act.

**Persons living on premises where a disqualified person lives or works**

9. Subject to regulation 10, a person who lives—

- (a) in the same household as another person who is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act; or
- (b) in a household in which any such person is employed,

is disqualified from registration under Chapters 2, 3 and 4 of Part 3 of the Act to work in domestic premises<sup>(13)</sup>.

**Waivers**

10.—(1) Subject to paragraph (4), where a person (“P”) would be disqualified from registration by virtue of regulation 4, 5, 7(1) and 7(3) or 9 but has disclosed to the Chief Inspector the facts which would otherwise cause P to be disqualified, the Chief Inspector may give consent to waive the disqualification for any or all of the following purposes—

- (a) voluntary registration under Chapter 4 of Part 3 of the Act;
- (b) the provision of early years or later years provision to which section 76 applies;
- (c) direct concern in the management of early years or later years provision to which section 76 of the Act applies;
- (d) employment in connection with the provision of early years or later years provision to which section 76 of the Act applies;
- (e) registration as an early years childminder agency or a later years childminder under Part 3 of the Act;

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(10) 1999 c. 14. Section 1 of this Act was repealed by paragraph 8 of Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), subject to savings and transitional provisions specified in articles 5 and 6 of S.I. 2009/2611.

(11) 1986 No. 594 N.I. 3. Sections 70(2)(e) and section 88(2)(b) were amended by S.I. 2007/1351.

(12) 2006 c. 47.

(13) “Domestic premises” is defined in section 98 of the Act as “premises which are used wholly or mainly as a private dwelling”.

- (f) appointment as a director or other officer of, or partner in, an early years childminder agency or a later years childminder agency, or membership of the governing body of such an agency;
- (g) direct concern in the management of an early years childminder agency or a later years childminder agency;
- (h) work for an early or later years childminder agency in any capacity which involves entering premises on which early years provision is being provided.

(2) When the Chief Inspector gives consent under paragraph (1), P shall not, in respect of the facts so disclosed, be regarded as disqualified from registration for the purposes specified in the Chief Inspector's consent.

(3) Any consent given by the Chief Inspector under paragraph (1) shall be in writing and shall specify the extent to which the disqualification from registration is waived.

(4) In relation to a person who would be disqualified from registration by virtue of regulation 4(4), this regulation shall not apply where a court has made an order under section 28(4), 29(4) or 29A(2) of the 2000 Act(14).

## **Appeals**

11. Any determination made by the Chief Inspector as to whether to give consent under regulation 10 is a prescribed determination for the purposes of section 74(2) of the Act.

## **Duty of disclosure**

12.—(1) A person who is registered under Chapter 3 or 4 of Part 3 of the Act (in this regulation a “registered person”) must provide the following information to the Chief Inspector or, in the case of a person who is registered with a childminder agency, to that agency—

- (a) details of any order, determination, conviction or other ground for disqualification from registration made or applying in relation to a person listed in paragraph (2) which results in that person being disqualified from registration under these Regulations;
- (b) the date when the order, determination or conviction was made or when any other ground for disqualification from registration arose;
- (c) the body or court by which the order, determination or conviction was made and the sentence, if any, imposed;
- (d) in relation to an order or conviction, a certified copy of the relevant order or court order.

(2) The persons in respect of whom the information referred to in paragraph (1) must be provided are—

- (a) the registered person; and
- (b) any person who lives in the same household as the registered person or who is employed in that household.

(3) The information referred to in paragraph (1) must be provided to the Chief Inspector or to the childminder agency, as the case may be, as soon as reasonably practicable, but in any event within 14 days of the time when the registered person became aware of that information or would have become aware of it if the registered person had made reasonable enquiries.

(4) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account by the Chief Inspector or, in the case of a person who is registered with a childminder agency, that agency, in the exercise of functions under Part 3 of the Act.

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(14) Sections 28(4), 29(4) and 29A(2) were repealed by Schedule 10 to the Safeguarding Vulnerable Groups Act 2006 (c. 47), subject to savings specified in article 5 of S.I. 2012/2231.

(5) Any allegation that a registered person has failed to meet the requirements prescribed in this regulation may be taken into account in any proceedings under Part 3 of the Act.

## Part 3 Amendment of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016

### **Amendment of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016**

**13.** The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016<sup>(15)</sup> are amended as follows.

**14.** In regulation 2(1), insert in the appropriate places—

““foster parent” means—

- (a) a local authority foster parent within the meaning of section 105(1) of the Children Act 1989<sup>(16)</sup>;
- (b) a local authority foster parent within the meaning of section 197 of the Social Services and Well-Being (Wales) Act 2014<sup>(17)</sup>;
- (c) a person approved as a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009<sup>(18)</sup>; or
- (d) a foster parent within the meaning of Article 27(3) of the Children (Northern Ireland) Order 1995<sup>(19)</sup>,” and

““responsible local authority” means—

- (a) the local authority looking after the child in accordance with section 22(1) of the Children Act 1989; or
- (b) where the child is looked after by a local authority within the meaning of regulation 3(2)(b), (c) or (d), the local authority discharging its duty under regulation 33 to secure the early years provision;”.

**15.** After regulation 3(3)(b) insert—

- “(ba) during any period when the child is placed with a foster parent under section 22C(6)(a) or (b) of the Children Act 1989;
- (bb) during any period when the child is placed with a foster parent under section 81(6)(a) or (b) of the Social Services and Well-Being (Wales) Act 2014;
- (bc) during any period when the child is placed with a foster parent under section 80 of the Adoption and Children (Scotland) Act 2007<sup>(20)</sup>;
- (bd) during any period when the child is placed with a foster parent under Article 27(2)(a) of the Children (Northern Ireland) Order 1995;”.

**16.** In regulation 4, at the beginning insert—

“(A1) This regulation does not apply in relation to a child falling within regulations 3(3)(ba) to (bd).”.

<sup>(15)</sup> S.I. 2016/1257, amended by S.I. 2017/1160.

<sup>(16)</sup> 1989 c.41. The definition of ‘local authority foster parent’ was substituted by regulations 55 and 106(a) of S.I. 2016/413.

<sup>(17)</sup> 2014 anaw 4. The definition of ‘local authority foster parent’ was substituted by regulations 294 and 319(a) of S.I. 2016/413.

<sup>(18)</sup> SSI 2009/210 to which there are amendments not relevant to these Regulations.

<sup>(19)</sup> S.I. 1995/755 (N.I.2). To which there are amendments not relevant to these Regulations.

<sup>(20)</sup> 2007 asp 4.

17. After regulation 4 insert—

**“Specified conditions relating to the parent, and any partner of the parent, of the child – foster parents**

**4A.**—(1) This regulation applies in relation to a child falling within regulations 3(3) (ba) to (bd).

(2) For the purposes of section 1(2) of the Act, a parent of the child must meet the following five conditions.

(3) The first condition is that the parent is a foster parent and has the child placed with them.

(4) The second condition is that the main reason, or one of the main reasons, the parent of the child seeks the free childcare referred to in section 1(1) of the Act is to enable the parent, or any partner of the parent, to work.

(5) The condition in paragraph (4) is treated as being met in relation to any person to whom any of the cases in regulation 8(1)(a) to (m) or 9(1)(b) applies.

(6) The third condition is that the parent of the child is in work.

(7) In paragraphs (4) and (6) “work” means—

(a) in relation to the parent and their partner, where the partner is also the child’s foster parent, paid work outside their role as a foster parent; and

(b) in relation to the partner of the parent, where the partner is not the child’s foster parent, qualifying paid work.

(8) For the purposes of this regulation the parent is also treated as being in work if—

(a) the person—

(i) has accepted an offer to work on or before the date of the declaration made in accordance with regulation 13; and

(ii) expects the work to start within 31 days of that date; or

(b) the person—

(i) is absent from work on unpaid leave on the date of the declaration made in accordance with regulation 13; and

(ii) expects to return to work within 31 days of that date.

(9) The fourth condition is that—

(a) the parent; and

(b) any partner of the parent, where the partner is also the child’s foster parent,

has had confirmation from the responsible local authority that the responsible local authority is satisfied that taking up paid work outside their role as a foster parent is consistent with the child’s care plan.

(10) The fifth condition is that the parent does not expect their adjusted net income to exceed £100,000 in the relevant tax year.

(11) The condition in paragraph (10) is treated as not being met by any parent if—

(a) the parent has made, or expects to make, a claim under section 809B of the Income Tax Act 2007<sup>(21)</sup>(claim for remittance basis to apply) for the relevant tax year, or

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(21) 2007 c.3.

(b) the parent expects section 809E of that Act (application of remittance basis in certain cases without claim) to apply to the parent for the relevant tax year.

(11) Where a parent of the child has a partner, that partner must also meet the condition in paragraphs (6) and (10).

(11) In this regulation—

“adjusted net income” has the meaning given by section 58 of the Income Tax Act 2007;

“care plan” means—

- (a) the ‘care plan’ as defined by regulation 2 of the Care Planning, Placement and Case Review (England) Regulations 2010<sup>(22)</sup>;
- (b) the ‘care and support plan’ as defined by regulation 2 of the Care Planning, Placement and Case Review (Wales) Regulations 2015<sup>(23)</sup>;
- (c) the ‘child’s plan’ prepared in accordance with regulation 5 of the Looked After Children (Scotland) Regulations 2009; or
- (d) the written record of the arrangements for the child’s care made under regulation 3 of the Arrangements for the Placement of Children (General) Regulations (Northern Ireland) 1996<sup>(24)</sup>;

“the relevant tax year” means the tax year in which the declaration by the parent or the parent’s partner is made.”.

**18.** In regulation 8—

- (a) in the title after “paid work” insert “and work outside role as a foster parent”;
- (b) for paragraph (2) substitute—

“(2) Subject to paragraphs (3) and (4) where the person falls within regulation 4, or is not a foster parent but falls within regulation 4A, the person is regarded for the purposes of these Regulations—

- (i) as in paid work during the period in paragraph (1), and
- (ii) as having, for each week of that period, expected income from that work equal to the minimum weekly income.

(2A) Subject to paragraphs (3) and (4) where the person is a foster parent within regulation 4A, the person is regarded as being in paid work outside their role as a foster parent.”; and

(c) in paragraph (3)—

- (i) at the end of sub-paragraph (a) omit “or”; and
- (ii) after sub-paragraph (a) insert—

“(aa) the person was in paid work outside their role as a foster parent; or”.

**19.** In regulation 9—

- (a) in the title after “paid work” insert “and paid work outside role as a foster parent”;
- (b) for sub-paragraph (1)(a) substitute—

“(a) a person (“P”) has—

- (i) a partner who is in qualifying paid work, or

<sup>(22)</sup> S.I. 2010/959, to which there are amendments not relevant to these Regulations.

<sup>(23)</sup> S.I. 2015/1818, to which there are amendments not relevant to these Regulations.

<sup>(24)</sup> S.I. 1996/453.



- (ii) a partner who is in paid work outside their role as a foster parent; and”;
- (c) for paragraph (2) substitute—
  - “(2) For the purposes of the Act—
    - (a) where P falls within regulation 4 or is not a foster parent and falls within regulation 4A, P is regarded as—
      - (i) being in paid work during that period, and
      - (ii) as having, for each week of that period, expected income from that work equal to the minimum weekly income;
    - (b) where P falls within regulation 4A, P is regarded as in paid work outside their role as a foster parent.”; and
  - (d) in paragraph (3) after “qualifying paid work” insert “or paid work outside their role as a foster parent”.
- 20.** For regulation 11(a) substitute—
  - “(a) be—
    - (i) the parent with whom the young child in respect of whom the declaration is being made normally lives, or that parent’s partner, or
    - (ii) the foster parent with whom the young child in respect of whom the declaration is being made is placed.”.
- 21.** For regulation 13 substitute—
  - “(1) Where a declaration is being made in accordance with regulation 11(a)(i), the declaration must—
    - (a) be in the form specified by the Commissioners;
    - (b) be made to the Commissioners in accordance with regulation 14; and
    - (c) include information specified by the Commissioners—
      - (i) to identify the person making the declaration, and any partner of that person;
      - (ii) to identify the young child in respect of whom the declaration is being made; and
      - (iii) to determine whether the young child is a qualifying child of working parents.
  - (2) Where a declaration is being made in accordance with regulation 11(a)(ii), the declaration must be in the form specified by the responsible authority.”.
- 22.** For regulation 14(1) substitute—
  - “(1) A declaration made in accordance with regulation 13(1) must be made by electronic communications.”.
- 23.** In regulation 15—
  - (a) in paragraph (2)(a) omit “or”;
  - (b) after paragraph (2)(a) insert—
    - “(ba) the responsible local authority under regulation 17A, or”;
  - (c) in paragraphs (6), (7), (8) and (9) after “Commissioners” insert “or responsible local authority”.
- 24.** In regulation 16—
  - (a) at the end of regulation (3)(a) omit “or”;

(b) after regulation (3)(a) insert—

“(ba) the responsible local authority under regulation 17A, or”.

(c) at the end of regulation (4)(a) omit “or”; and

(d) after regulation (4)(a) insert—

“(ba) the responsible local authority under regulation 17A, or”.

25. For the heading of Chapter 4 of Part 2 substitute—

“Chapter 4

*Determinations”.*

26. After regulation 17 insert—

**“Determination by the responsible local authority**

**17A.** Where a person makes a declaration in accordance with regulation 13 or a reconfirming declaration in accordance with regulation 16, the responsible local authority must make a determination as to whether the criteria in section 1(2)(b) and (d) of the Act are met in relation to the child in respect of whom the declaration is made.”.

27. Before regulation 18 insert—

**“Application to determinations made under regulation 17**

**18ZA.** Regulations 18 to 32 apply in relation to determinations made by the Commissioners under regulation 17 only.”.

Signed by authority of the Secretary of State for Education

28th June 2018

*Nadhim Zahawi*  
Parliamentary Under Secretary of State  
Department for Education