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DRAFT STATUTORY INSTRUMENTS

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**2016 No.**

**The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016**

**PART 2**

**A qualifying child of working parents**

**CHAPTER 3**

**Declaration in respect of a young child**

**Conditions to be met by the person making the declaration**

**11.** The person who makes the declaration must—

- (a) be the parent with whom the young child in respect of whom the declaration is being made normally lives, or that parent’s partner;
- (b) be in the United Kingdom (within the meaning provided in regulation 12) on the date of the declaration; and
- (c) where the young child in respect of whom the declaration is being made is a child in respect of whom an active childcare account under section 17(3) of the Childcare Payments Act 2014<sup>(1)</sup> is held, be the account-holder (within the meaning of section 15(10) of that Act) for that account.

**Being in the United Kingdom**

**12.—(1)** Subject to paragraph (2), the following persons are treated for the purposes of regulation 11 as being in the United Kingdom—

- (a) a person who is ordinarily resident in the United Kingdom;
- (b) a resident of another EEA state who is in paid work in the United Kingdom;
- (c) a person in the United Kingdom as a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
- (d) a person in the United Kingdom who has been granted, or who is deemed to have been granted, leave outside the rules (the “Immigration Rules”) made under section 3(2) of the Immigration Act 1971<sup>(2)</sup> where that leave is—
  - (i) discretionary leave to enter or remain in the United Kingdom;
  - (ii) leave to remain under the Destitution Domestic Violence concession<sup>(3)</sup>; or

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<sup>(1)</sup> 2014 c. 28.

<sup>(2)</sup> 1971 c. 77.

<sup>(3)</sup> The Destitution Domestic Violence concession is published by the Home Office at: <http://www.ukba.homeoffice.gov.uk>.

- (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005<sup>(4)</sup>;
  - (e) a person in the United Kingdom who has humanitarian protection granted under the Immigration Rules;
  - (f) a person in the United Kingdom who has been deported, expelled or otherwise removed by compulsion of law from another country to the United Kingdom, but is not a person subject to immigration control.
- (2) But the following persons are treated for the purposes of regulation 11 as not being in the United Kingdom—
- (a) a person in the United Kingdom who—
    - (i) is resident in the United Kingdom but is taxed, by virtue of double taxation arrangements, as if they were not so resident; and
    - (ii) is not a resident of another EEA state who is in paid work in the United Kingdom;
  - (b) a person who is subject to immigration control.
- (3) In this regulation—
- “double taxation arrangements” means arrangements that have effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010<sup>(5)</sup> (giving effect to arrangements made in relation to other territories);
- “person subject to immigration control” has the meaning in section 115(9) of the Immigration and Asylum Act 1999<sup>(6)</sup>.

### **Declaration: form and content**

- 13.** 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.

### **Electronic communications**

- 14.—**(1) The declaration must be made by electronic communications.
- (2) A declaration by electronic communications shall be treated for the purposes of the Act as having been made, and received by the Commissioners, on the date on which it is recorded on an official computer system.
- (3) Paragraph (1) does not apply if the Commissioners are satisfied that the person making the declaration—
- (a) is prevented, by a court order, from sending information by electronic communications;
  - (b) holds beliefs which are incompatible with the use of electronic communications;
  - (c) is unable to send information by electronic communications by reason of—

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<sup>(4)</sup> S.I. 2005/1379.

<sup>(5)</sup> 2010 c. 8.

<sup>(6)</sup> 1999 c. 33.

- (i) age;
  - (ii) disability;
  - (iii) inability to operate a computer effectively in a manner that cannot be remedied by the use of assisted digital support; or
  - (iv) living in a remote location so that it is not reasonably practicable to use electronic communications; or
- (d) is prevented, for a continuous period of at least 7 days, by a technical failure affecting the Commissioners, from making a declaration.
- (4) Where paragraph (3) applies, the declaration must be made to the Commissioners in the manner specified by the Commissioners.
- (5) In this regulation—
- (a) “assisted digital support” includes both advice and assistance on how to make a declaration by means of electronic communications and entering a person’s information into an electronic communications service on that person’s behalf;
  - (b) “electronic communications” includes any communications by means of an electronic communications service;
  - (c) “electronic communications service” has the meaning given by section 32 of the Communications Act 2003(7);
  - (d) “official computer system” means a computer system maintained by or on behalf of the Commissioners to send, store or process information.

#### **Period of time for which the first declaration has effect**

- 15.—**(1) In this regulation—
- (a) “declaration period” means the first declaration period or a subsequent declaration period;
  - (b) “first declaration period” means the period described in paragraph (2);
  - (c) “subsequent declaration period” means a period described in paragraph (3).
- (2) The first declaration in respect of a young child has effect for a period of three months, subject to paragraphs (5), (6), (7) and (9), beginning with the day on which a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are met in relation to the child is made by—
- (a) the Commissioners under regulation 17 or 21(6)(c); or
  - (b) the Tribunal under regulation 24(4).
- (3) At the end of the first declaration period, a series of consecutive new periods begins, each of which:
- (a) begins with the day after that on which the preceding period ends, subject to paragraph (4); and
  - (b) lasts for three months, subject to paragraph (7).
- (4) Each declaration period begins on the same day of a month except as follows—
- (a) if the first declaration period begins on the 31st day of a month, each subsequent declaration period begins on the last day of the month;
  - (b) if the first declaration period begins on the 30th day of a month, each subsequent declaration period begins on the 30th day of the month, except in February where it shall begin on the 28th day or, in a leap year, the 29th day;

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(7) 2003 c. 21. Section 32 was amended by S.I. 2011/1210.

(c) if the first declaration period begins on the 29th day of a month, each subsequent declaration period begins on the 29th day of the month, except in February when it is not a leap year, where it shall begin on the 28th day.

(5) Where the young child in respect of whom the declaration is being made is a child in respect of whom a childcare account under section 17(3) of the Childcare Payments Act 2014 is held, the Commissioners may vary the length of the first declaration period under this regulation for the purpose of aligning the start of the next declaration period with the start of the next entitlement period under regulation 4 of the Childcare Payments Regulations 2015(8).

(6) Where a person who has already made a declaration in respect of a child makes a declaration in respect of a subsequent child, the Commissioners may vary the length of the first declaration period under this regulation in respect of the subsequent child for the purpose of aligning the start of the next declaration period with the start of the next declaration period in respect of the other child.

(7) Where a person who has already made a declaration in respect of a child becomes the partner of another person who has already made a declaration in respect of a child, the Commissioners may vary the length of any declaration period in respect of any child of the person, or partner, in respect of whom a declaration has been made for the purpose of aligning the start of the next declaration period for any of those children with that of another of those children.

(8) The maximum length of time by which the Commissioners may vary a declaration period under paragraphs (5) to (7) is two months.

(9) In circumstances other than those described in paragraphs (5) to (7), the Commissioners may vary the length of the first declaration period by a maximum of one month.

### **Reconfirming declaration**

**16.—**(1) Where a person who has made a declaration in respect of a young child which has effect in relation to a declaration period (“the active declaration period”) makes a further declaration in respect of the same child it is a “reconfirming declaration”.

(2) Where a reconfirming declaration is made during the last 28 days of the active declaration period, the reconfirming declaration has effect for the duration of the subsequent declaration period.

(3) Where a reconfirming declaration is made after the end of the most recent active declaration period but before the last 28 days of any subsequent declaration period, the reconfirming declaration has effect from the day on which a subsequent determination that the criteria in section 1(2)(b), (c) and (d) of the Act are met in relation to the child is made by—

- (a) the Commissioners under regulation 17 or 21(6)(c); or
- (b) the Tribunal under regulation 24(4),

until the end of the declaration period in which that determination is made.

(4) Where a reconfirming declaration is made during the last 28 days of any declaration period following the most recent active declaration period, the reconfirming declaration has effect from the day on which a subsequent determination that the criteria in section 1(2)(b), (c) and (d) of the Act are met in relation to the child is made by—

- (a) the Commissioners under regulation 17 or 21(6)(c); or
- (b) the Tribunal under regulation 24(4),

until the end of the declaration period after the declaration period in which that determination is made.

(5) In this regulation, “declaration period” and “subsequent declaration period” have the meanings given in regulation 15(1).

