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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 3

Information, reviews, appeals and penalties

CHAPTER 1

Information

**Supply of information**

**18.**—(1) Information to which paragraph (2) or (3) applies may be supplied to the Commissioners, or a person providing services to the Commissioners, for use for the purpose of determining whether the criteria in section 1(2)(b), (c) and (d) of the Act are met in relation to the child.

(2) This paragraph applies to information held for the purposes of functions relating to social security—

- (a) by the Secretary of State; or
- (b) by a person providing services to the Secretary of State, in connection with the provision of those services.

(3) This paragraph applies to information held for the purposes of functions relating to immigration control—

- (a) by the Secretary of State, or
- (b) by a person providing services to the Secretary of State, in connection with the provision of those services.

(4) Information to which paragraph (5) applies may be supplied for use for the purpose of verifying whether a child is a qualifying child of working parents—

- (a) to the Secretary of State, or a person providing services to the Secretary of State;
- (b) to an English local authority, or a person exercising functions relating to verifying whether a child is a qualifying child of working parents on behalf of an English local authority;

(5) This paragraph applies to information held regarding whether a particular young child is a qualifying child of working parents—

- (a) by the Commissioners; or
- (b) by a person providing services to the Commissioners, in connection with the provision of those services.

(6) Information received by virtue of paragraph (1) or (4) may be supplied to another person to whom it could have been supplied under that paragraph for use for the same purpose.

### **Unauthorised disclosure of information received under regulation 18**

**19.**—(1) A person commits an offence if the person discloses any information—

- (a) which the person received by virtue of paragraph (1) or (4) of regulation 18; and
- (b) which relates to a particular person;

unless the information is disclosed in accordance with paragraph (2) of this regulation.

(2) Information is disclosed in accordance with this paragraph if it is disclosed in any of the following ways—

- (a) in accordance with regulation 18(6);
- (b) in the course of a duty that the person disclosing it has in connection with the exercise of functions relating to establishing whether a child is a qualifying child of working parents;
- (c) in accordance with an enactment or an order of a court; or
- (d) with written consent given by or on behalf of the person to whom the information relates.

(3) It is a defence for a person charged with an offence under paragraph (1) to prove that the person reasonably believed that the disclosure was lawful.

(4) A person guilty of an offence under paragraph (1) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or a fine, or both;
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine, or both.

(5) In relation to an offence committed before the commencement of section 154(1) of the Criminal Justice Act 2003, the reference in paragraph (4)(b) to 12 months is to be read as a reference to 6 months.

## **CHAPTER 2**

### **Reviews and appeals of determinations**

#### **Rights to review and appeal a determination under regulation 17**

**20.** Where a person is notified of a determination under regulation 17, the notification must include details of the person's right to apply for a review of the determination (in accordance with regulation 21) and to appeal against the determination (in accordance with regulation 23).

#### **Reviewing a determination under regulation 17**

**21.**—(1) A person who makes a declaration may apply for a review of a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are not met in relation to the child.

(2) The application must be made—

- (a) to the Commissioners; and
- (b) either—
  - (i) within the period of 30 days beginning with the day on which the applicant was notified of the determination; or
  - (ii) if the period for making the application has been extended under regulation 22, within the extended period.

(3) The application must be made—

- (a) in writing by electronic communications, and paragraphs (2) to (5) of regulation 14 apply as if for “declaration” wherever it appears there were substituted “application”; and

- (b) in such form as may be specified by the Commissioners.
- (4) The application must—
  - (a) contain sufficient information to identify the applicant and the determination; and
  - (b) set out the reasons for seeking a review of the determination.
- (5) If an application for a review of a determination is made to the Commissioners in accordance with this regulation, the Commissioners must review the determination.
- (6) On a review under this regulation, the Commissioners may—
  - (a) uphold the determination;
  - (b) substitute for the determination a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are not met in relation to the child for a different reason; or
  - (c) substitute for the determination a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are met in relation to the child.
- (7) If the applicant makes any representations to the Commissioners at a stage which gives the Commissioners a reasonable opportunity to consider them, the Commissioners must take account of them when carrying out the review.
- (8) Where—
  - (a) the Commissioners notify the applicant of further information or evidence which they may need for carrying out the review, and
  - (b) the information or evidence is not provided to them within the period of 15 days beginning with the day on which the notification was given,the review may proceed without that information or evidence.
- (9) The Commissioners must notify the applicant of the matters set out in paragraph (10) within—
  - (a) the period of 30 days beginning with the day on which the Commissioners received the application for the review;
  - (b) if the applicant has been given a notice under paragraph (8), the period of 45 days beginning with that day; or
  - (c) such other period as the applicant and the Commissioners may agree.
- (10) The matters referred to in paragraph (9) are—
  - (a) the conclusion on the review and the reasons for the conclusion;
  - (b) if the conclusion is that the determination is upheld or is substituted for a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are not met in relation to the child for a different reason, details of the person’s right to appeal against that determination.
- (11) If the Commissioners do not comply with paragraph (9), the review is to be treated as having concluded that the determination is upheld and the Commissioners must notify the applicant of that conclusion.

**Extension of time limit for applications for review**

**22.—**(1) A person who wishes to make an application for a review of a determination under regulation 21 may apply to the Commissioners for an extension of the period for making the application.

- (2) An application under this regulation—
  - (a) must be made before the end of the period of 6 months beginning with the day after the last day of the period mentioned in regulation 21(2)(b)(i) (“the standard period”);
  - (b) in such form as may be specified by the Commissioners;

- (c) must be made by electronic communications and paragraphs (2) to (5) of regulation 14 apply as if for “declaration” wherever it appears there were substituted “application”; and
  - (d) must set out the reasons for seeking the extension.
- (3) The Commissioners may grant an extension under this regulation if they are satisfied that—
- (a) due to special circumstances, it was not practicable for the person to make the application under regulation 21 within the standard period, and
  - (b) it is reasonable in all the circumstances to grant the extension.
- (4) If an application under this regulation is refused, it may not be renewed.

### **Appealing a determination under regulation 17**

**23.**—(1) A person who makes a declaration may appeal against a determination that the criteria in section 1(2)(b), (c) and (d) of the Act are not met in relation to the child in respect of whom the declaration is made.

- (2) But a person may not appeal under paragraph (1) unless—
  - (a) the person has applied under regulation 21 for a review of the determination; and
  - (b) the period applicable under regulation 21(9) has expired.
- (3) An appeal under this regulation is an appeal to the Tribunal.

### **Powers of tribunal: appeals against determinations**

**24.**—(1) This regulation applies where a person is appealing to the Tribunal under regulation 23 against a determination.

- (2) The Tribunal may—
  - (a) uphold the determination; or
  - (b) quash the determination.
- (3) The Tribunal may act as mentioned in paragraph (2)(b) only to the extent that it is satisfied that the determination was wrong on one or more of the following grounds—
  - (a) that the determination was based on an error of fact;
  - (b) that the determination was wrong in law.
- (4) If the Tribunal quashes the determination, it must substitute its own determination for that of the Commissioners.

## **CHAPTER 3**

### **Penalties**

#### **Penalties for inaccurate declarations**

- 25.**—(1) A person is liable to a penalty under this regulation if—
- (a) the person makes a declaration that contains a material inaccuracy; and
  - (b) the inaccuracy is due to a failure by the person to take reasonable care.
- (2) The amount of a penalty under this regulation may not exceed £300.

#### **Penalties for providing false or misleading information or statements**

**26.**—(1) A person making a declaration, or that person’s partner, is liable to a penalty under this regulation if the person provides false or misleading information, or makes or provides false

or misleading statements, as part of a declaration or at any of the other stages in the process of the making of a determination under regulation 17 (including a review under regulation 21) and—

- (a) the inaccuracy is due to a failure by the person providing the information or statements to take reasonable care;
  - (b) the person knows of the inaccuracy at the time the information or statement is provided but does not inform the Commissioners at that time; or
  - (c) the person later discovers the inaccuracy and fails to take reasonable steps to inform the Commissioners.
- (2) The amount of a penalty under this regulation may not exceed £500.

### **Penalties for dishonesty**

**27.**—(1) A person making a declaration, or that person’s partner, is liable for a penalty under this regulation if—

- (a) the person does, or omits to do, any act as part of a declaration or at any of the other stages in the process of the making of a determination; and
  - (b) the person’s act or omission involves dishonesty.
- (2) The amount of the penalty may not exceed £3,000.

### **Assessment and enforcement of penalties**

**28.**—(1) Where a person becomes liable to a penalty under these Regulations the Commissioners may assess the amount of the penalty.

- (2) Where the Commissioners assess a penalty under paragraph (1) they must—
  - (a) notify the person of the imposition of that penalty; and
  - (b) include in that notification details of the person’s right to apply for a review of the decision (in accordance with regulation 29) and to appeal against the decision (in accordance with regulation 31).
- (3) No penalty may be imposed under this regulation after—
  - (a) the end of the period specified in paragraph (4); or
  - (b) if earlier, the end of the period of 12 months beginning with the day on which the Commissioners first believed, or had reasonable grounds for believing, that the person was liable to the penalty.
- (4) The period referred to in paragraph (3)(a) is—
  - (a) the period of 4 years beginning with the day on which the person became liable to the penalty; or
  - (b) in a case where the person became liable to the penalty as a result of the person’s dishonesty, the period of 20 years beginning with that day.
- (5) Where a person is notified of the imposition of a penalty under this regulation, the penalty payable must be paid—
  - (a) in a case where the person does not apply for a review of the penalty within the period specified in regulation 29, before the end of that period;
  - (b) in a case where the person applies for a review of the penalty but does not give notice of an appeal against the penalty, before the end of the period in which notice of such an appeal could have been given;

(c) in a case where notice of such an appeal has been given, on the day on which the appeal is determined or withdrawn.

(6) A penalty payable under these regulations is to be treated for the purposes of Part 6 of the Taxes Management Act 1970(1) (collection and recovery) as if it were tax charged in an assessment and due and payable.

### **Reviewing a penalty**

**29.**—(1) Where a person has received notification under regulation 28(2) of the imposition of a penalty, that person may apply for a review of the imposition of the penalty or the assessment of the amount of the penalty or both.

(2) The application must be made—

(a) to the Commissioners; and

(b) either—

(i) within the period of 30 days beginning with the day on which the applicant was notified of the decision; or

(ii) if the period for making the application has been extended under regulation 30, within the extended period.

(3) The application must be made—

(a) in writing by electronic communications and paragraphs (2) to (5) of regulation 14 apply as if for “declaration” wherever it appears there were substituted “application”; and

(b) in such form as may be specified by the Commissioners.

(4) The application must—

(a) contain sufficient information to identify the applicant and the decision; and

(b) set out the reasons for seeking a review of the decision.

(5) If an application for a review of a decision is made to the Commissioners in accordance with this regulation, the Commissioners must review the decision.

(6) On a review under this regulation, the Commissioners may—

(a) uphold the decision;

(b) vary the decision; or

(c) quash the decision.

(7) If the applicant makes any representations to the Commissioners at a stage which gives the Commissioners a reasonable opportunity to consider them, the Commissioners must take account of them when carrying out the review.

(8) Where—

(a) the Commissioners notify the applicant of further information or evidence which they may need for carrying out the review, and

(b) the information or evidence is not provided to them within the period of 15 days beginning with the day on which the notice was given,

the review may proceed without that information or evidence.

(9) The Commissioners must notify the applicant of the matters set out in paragraph (10) within—

(a) the period of 30 days beginning with the day on which the Commissioners received the application for the review;

- (b) if the applicant has been given a notice under paragraph (8), the period of 45 days beginning with that day; or
  - (c) such other period as the applicant and the Commissioners may agree.
- (10) The matters referred to in paragraph (9) are—
- (a) the conclusion on the review;
  - (b) the reasons for the conclusion;
  - (c) if the conclusion is that the decision is upheld or varied, details of the person’s right to appeal against that decision.
- (11) If the Commissioners do not comply with paragraph (9), the review is to be treated as having concluded that the decision is upheld and the Commissioners must notify the applicant of that conclusion.

### **Extension of time limit for applications for review**

**30.**—(1) A person who wishes to make an application for a review under regulation 29 may apply to the Commissioners for an extension of the period for making the application.

- (2) An application under this regulation must—
- (a) be made before the end of the period of 6 months beginning with the day after the last day of the period mentioned in regulation 29(2)(b)(i) (“the standard period”);
  - (b) be in such form as may be specified by the Commissioners;
  - (c) be made by electronic communications, and paragraphs (2) to (5) of regulation 14 apply as if for “declaration” wherever it appears there were substituted “application”; and
  - (d) set out the reasons for seeking the extension.
- (3) The Commissioners may grant an extension under this regulation if they are satisfied that—
- (a) due to special circumstances, it was not practicable for the person to make the application under regulation 29 within the standard period, and
  - (b) it is reasonable in all the circumstances to grant the extension.
- (4) If an application under this regulation is refused, it may not be renewed.

### **Appealing against a penalty**

**31.**—(1) Where a person has received notification under regulation 28(2) of the imposition of a penalty, that person may appeal against the imposition of the penalty or the assessment of the amount of the penalty or both.

- (2) But a person may not appeal under paragraph (1) unless—
- (a) the person has applied under regulation 29 for a review of the decision; and
  - (b) the period applicable under regulation 29(9) has expired.
- (3) An appeal under this regulation is an appeal to the Tribunal.

### **Powers of tribunal: appeals against penalties**

**32.**—(1) This regulation applies where a person is appealing to the Tribunal under regulation 31 against a decision.

- (2) The Tribunal may—
- (a) uphold the penalty;
  - (b) set aside the penalty; or

- (c) substitute for the penalty a penalty of an amount decided by the Tribunal.
- (3) If the Tribunal varies or quashes the decision, it must substitute its own decision for that of the Commissioners.
- (4) A decision of the Tribunal made by virtue of this regulation has the same effect as, and may be enforced in the same manner as, a decision of the Commissioners.