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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 2**

Conditions relating to a parent, and any partner of the parent, of the child

**Qualifying paid work: time off in connection with sickness or parenting**

- 8.—(1)** This regulation applies for any period during which a person—
- (a) is paid statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992<sup>(1)</sup> or Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(2)</sup>;
  - (b) is paid maternity allowance under section 35 of the Social Security Contributions and Benefits Act 1992<sup>(3)</sup> or section 35 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(4)</sup>;
  - (c) is paid statutory maternity pay under Part 12 of the Social Security Contributions and Benefits Act 1992 or Part 12 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - (d) is absent from work during an ordinary maternity leave period under section 71 of the Employment Rights Act 1996<sup>(5)</sup> or article 103 of the Employment Rights (Northern Ireland) Order 1996<sup>(6)</sup>;
  - (e) is absent from work during an additional maternity leave period under section 73 of the Employment Rights Act 1996<sup>(7)</sup> or article 105 of the Employment Rights (Northern Ireland) Order 1996<sup>(8)</sup>;

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<sup>(1)</sup> 1992 c. 4.

<sup>(2)</sup> 1992 c. 7.

<sup>(3)</sup> Section 35 was amended by section 2 of the Still Births (Definition) Act 1992 (c. 29), section 67 of the Social Security Act 1998 (c. 14), section 53 of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 4 of Schedule 7 to the Employment Act 2002 (c. 22), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c. 18), section 120 of the Children and Families Act 2014 (c. 6), S.I. 1994/1230 and S.I. 2014/606.

<sup>(4)</sup> Section 35 was amended by S.I. 1992/1310 (N.I. 10), S.R. 1994 No. 176, S.I. 1998/1506 (N.I. 10), S.I. 1999/3147 (N.I. 11), paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10), S.R. 2002 No. 358, S.I. 2006/1947 (N.I. 16), S.R. 2014 No. 102 and section 6 of the Work and Families Act (Northern Ireland) 2015 (c. 1).

<sup>(5)</sup> 1996 c. 18. Section 71 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26), and amended by section 17 of the Employment Act 2002 (c. 22), paragraph 31 of Schedule 1 to the Work and Families Act 2006 (c. 18), and section 118 of the Children and Families Act 2014 (c. 6).

<sup>(6)</sup> S.I. 1996/1919 (N.I. 16). Article 103 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2), S.I. 2006/1947 (N.I. 16), and section 3 of the Work and Families Act (Northern Ireland) 2015 (c. 1).

<sup>(7)</sup> Section 73 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26), and amended by section 17 of the Employment Act 2002 (c. 22), paragraph 32 of Schedule 1 to the Work and Families Act 2006 (c. 18) and section 118 of the Children and Families Act 2014 (c. 6).

- (f) is paid statutory paternity pay under Part 12ZA of the Social Security Contributions and Benefits Act 1992(9) or Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(10);
  - (g) is absent from work during a paternity leave period under section 80A or 80B of the Employment Rights Act 1996(11) or article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996(12);
  - (h) is paid statutory adoption pay under Part 12ZB of the Social Security Contributions and Benefits Act 1992(13) or Part 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(14);
  - (i) is paid statutory shared parental pay under Part 12ZC of the Social Security Contributions and Benefits Act 1992 or Part 12ZC of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - (j) is absent from work during an ordinary adoption leave period under section 75A of the Employment Rights Act 1996(15) or article 107A of the Employment Rights (Northern Ireland) Order 1996(16);
  - (k) is absent from work during an additional adoption leave period under section 75B of the Employment Rights Act 1996(17) or Article 107B of the Employment Rights (Northern Ireland) Order 1996(18);
  - (l) is absent from work during a period of shared parental leave under section 75E or 75G of the Employment Rights Act 1996 or articles 107E and 107G of the Employment Rights (Northern Ireland) Order 1996(19); or
  - (m) is absent from work during a statutory parental leave period under section 76 of the Employment Rights Act 1996(20) or article 108 of the Employment Rights (Northern Ireland) Order 1996.
- (2) Subject to paragraphs (3) and (4), such a person is regarded for the purposes of these Regulations—
- (a) as in paid work during the period in paragraph (1); and
  - (b) as having, for each week of that period, expected income from that work equal to the minimum weekly income.
- (3) Paragraph (2) does not apply unless, immediately before the start of the period in any subparagraph of paragraph (1), either—

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- (8) Article 105 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2), S.I. 2006/1947(N.I. 16), and section 3 of the Work and Families Act (Northern Ireland) 2015 (c. 1).
  - (9) Part 12ZA was inserted by section 2 of the Employment Act 2002.
  - (10) Part 12ZA was inserted by S.I. 2002/2836 (N.I. 2).
  - (11) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002. Section 80A was amended by section 118 of and paragraph 32 of Schedule 7 to the Children and Families Act 2014 (c. 6). Section 80B was amended by sections 118, 121 and 128 of, and paragraph 33 of Schedule 7 to, the 2014 Act.
  - (12) Articles 112A and 112B were inserted by S.I. 2002/2836 (N.I. 2). Article 112A was amended by section 3 and paragraph 4 of Schedule 1 to the Work and Families Act (Northern Ireland) 2015 (c. 1), and Article 112B by sections 3, 8 and 17 of, and paragraph 4 of Schedule 1 to, the 2015 Act.
  - (13) Part 12ZB was inserted by section 4 of the Employment Act 2002.
  - (14) Part 12ZB was inserted by S.I. 2002/2836 (N.I. 2).
  - (15) Section 75A was inserted by section 3 of the Employment Act 2002 and amended by paragraph 33 of Schedule 1 to the Work and Families Act 2006 (c.18), sections 118, 121 and 122 of the Children and Families Act 2014 (c. 6), and S.I. 2016/413.
  - (16) Article 107A was inserted by S.I. 2002/2836 (N.I. 2) and amended by sections 3 and 8 of, and paragraph 32 of Schedule 1 to, the Work and Families Act (Northern Ireland) 2015, and S.I. 2006/1947 (N.I. 16).
  - (17) Section 75B was inserted by section 3 of the Employment Act 2002 and amended by paragraph 34 of Schedule 1 to the Work and Families Act 2006 and sections 118 and 122 of the Children and Families Act 2014.
  - (18) Article 107B was inserted by S.I. 2002/2836 (N.I. 2) and amended by section 3 of, and paragraph 33 of Schedule 1 to, the Work and Families Act (Northern Ireland) 2015, and S.I. 2006/1947 (N.I. 16).
  - (19) S.I. 1996/1919 (N.I. 16). Article 107E and 107G were added by section 2(2) of Part 2 of the Work and Families Act (Northern Ireland) 2015 (c. 1).
  - (20) Section 76 was substituted by section 7 of, and Part 1 of Schedule 4 to, the Employment Relations Act 1999.

- (a) the person was in qualifying paid work; or
  - (b) this regulation applied to the person by virtue of a different sub-paragraph of paragraph (1).
- (4) Where a child whose placement for adoption caused the period in paragraph (1)(h), (j), (k) or (l) to run is the child in respect of whom a declaration is made, paragraph (2) applies only for the final 14 days before the person returns to work.
- (5) This regulation applies to a self-employed person during any period for which paragraph (1) would have applied in that person's case but for the fact that the work performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.
- (6) This regulation applies to a resident of another EEA state who under the law of that state—
- (a) receives payments which are substantially similar in character to the payments in paragraph (1)(a) to (c), (f), (h) or (i); or
  - (b) is absent from work in circumstances which are substantially similar in character to a period of absence described in paragraph (1)(d), (e), (g) or (j) to (m).