

## EXPLANATORY MEMORANDUM TO

### THE CHILDCARE (FREE OF CHARGE FOR WORKING PARENTS) (ENGLAND) (AMENDMENT AND TRANSITIONAL PROVISION) REGULATIONS 2023

2023 No. 1330

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of His Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

#### 2. Purpose of the instrument

- 2.1 This instrument amends the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (the “2022 Regulations”). Since 2017, 30 hours free childcare has been available to children of qualifying working parents from the term after they attain the age of three. This instrument extends that entitlement, so that from September 2025, 30 hours of free childcare will become available to children of qualifying working parents from the term after they attain the age of 9 months. This expanded entitlement will be implemented over a transitional period in phases as follows:
  - A) From 1 April 2024, 15 hours for children from the term after they attain the age of 2;
  - B) From 1 September 2024, 15 hours for children from the term after they attain the age of 9 months.

From 1 September 2025 the entitlement will be increased to 30 hours. As now, children of qualifying working parents from the term after they attain the age of 3 up to compulsory school age will continue to be entitled to 30 hours of free childcare throughout the transitional period.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 Regulation 2(2) of this instrument corrects a drafting error in the definition of “responsible local authority” in regulation 4(1) of the 2022 Regulations, which consolidated the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257). Regulation 2(3) of this instrument also corrects an error in regulation 11 of the 2022 Regulations. These corrections ensure the previous policy position relating to foster parents and parents who are subject to immigration control is maintained.
- 3.2 The procedure for free issue will be applied and this instrument will be issued free of charge to all known recipients of the 2022 Regulations.

#### **4. Extent and Territorial Application**

- 4.1 The territorial extent of this instrument is (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

#### **5. European Convention on Human Rights**

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

#### **6. Legislative Context**

- 6.1 Section 1(1) of the Childcare Act 2016 (the “2016 Act”) places a duty on the Secretary of State to secure that childcare is available free of charge for qualifying children of working parents for, or for a period equivalent to, 30 hours in each of 38 weeks in any year. This duty is delegated by the Secretary of State to local authorities (see section 2(2)(a) of the 2016 Act and regulation 44 of the 2022 Regulations).
- 6.2 Section 1(6) of the 2016 Act provides that in determining the amount of childcare available, account is to be taken of any childcare available under the duty in section 7(1) of the Childcare Act 2006 (duty of English local authorities to secure early years provision free of charge in accordance with regulations). The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147), made under section 7, require local authorities to secure that 570 hours free childcare per year (equivalent to 15 hours per week over 38 weeks) is available for children meeting certain eligibility criteria broadly relating to disadvantage, from the term after they attain the age of two, and for all children from the term after they attain the age of three.

#### **7. Policy background**

##### *What is being done and why?*

- 7.1 Since September 2010, all three- and four-year-old children have been eligible for up to 570 hours of free early education per year, which is most often taken as 15 hours over 38 weeks per year. This is also known as the “universal entitlement”. As well as the universal entitlement, the most disadvantaged families are entitled to 15 hours of childcare provision for children aged two.
- 7.2 From September 2017, qualifying working parents<sup>1</sup> of three- and four-year-olds have been entitled to an additional 15 free hours on top of the universal entitlement, to make a total of 1140 hours of free childcare, also known as 30 hours free childcare. In January 2023, 363,000 qualifying 3- to 4-year-olds were registered for 30 hours free childcare.
- 7.3 On 15 March 2023, the Chancellor of the Exchequer announced that the free childcare available for qualifying working parents would be extended to younger children. This

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<sup>1</sup> ‘Qualifying working parents’ are parents who earn the equivalent of 16 hours per week at the minimum wage for their age and circumstances (regulation 18 of the 2022 Regulations), and under £100,000 adjusted net income per year (regulation 14 of the 2022 Regulations). Each parent, or the single parent, must expect to earn between these thresholds unless one is working and the other is receiving certain benefits (regulation 14(5) of the 2022 Regulations).

is being brought in to encourage parents back into the workplace, and support families with childcare costs. It was announced that this entitlement will be rolled out in stages, such that the full entitlement of 30 hours for children from the term after a child turns 9 months to compulsory school age will be available from September 2025. Once a child starts reception year at school, the working parent entitlement is delivered through the school setting.

- 7.4 To allow for planning and effective operational delivery, eligibility for this new entitlement will be implemented over a transitional period as follows:
- A) From 1 April 2024, 15 hours for children from the term after they attain the age of 2
  - B) From 1 September 2024, 15 hours for children from the term after they attain the age of 9 months
  - C) From 1 September 2025, 30 hours for children from the term after they attain the age of 9 months
- 7.5 In accordance with section 1(6) of the Childcare Act 2016, the entitlement to 30 hours childcare for qualifying children of working parents takes account of any entitlement to 15 hours free childcare under section 7 of the Childcare Act 2006 (universal entitlement or entitlement for the most disadvantaged 2-year-olds)<sup>2</sup>. During the transition period from April 2024 to September 2025, the entitlement to 15 hours free childcare for children of working parents aged from 9 months up to 3 years old will also take account of any entitlement under section 7 for the most disadvantaged 2-year-olds.
- 7.6 The eligibility criteria for the working parent entitlements broadly align with the eligibility criteria for the Childcare Payments Scheme, generally referred to as Tax Free Childcare (TFC). Regulation 2(6) of this instrument amends regulation 16(3) of the 2022 Regulations, which exempts people from the minimum income requirement when they are on certain types of family leave from work or receiving certain types of statutory pay. The 2022 Regulations currently provide that where a person is on adoption leave or shared parental leave relating to the child for whom free childcare is sought, the person is only exempt from the minimum income requirement for the period of 31 days before they return to work. In consequence of the fact that much younger children will now be eligible for free childcare than was previously the case, this '31 day rule' is extended to other types of parental leave (including maternity and paternity leave), but only where the person is taking such leave in relation to the child for whom free childcare is sought. The person would still not be required to meet the minimum income requirement in relation to any other qualifying children whilst on these forms of leave. This change ensures that people on maternity, paternity and parental leave are treated in the same way as those on adoption or shared parental leave, and also aligns with regulation 12 of the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448), which treats people on these forms of leave as in paid work and as having the required minimum weekly income during the 31 day period.
- 7.7 Applications for 30 hours free childcare are processed by HMRC jointly with TFC applications. Regulation 2(7) amends regulation 20 of the 2022 Regulations to shorten

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<sup>2</sup> See the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147)

the period before the child that is the subject of an application will be confirmed as eligible from 16 weeks before they turn the requisite age to 13 weeks. This is to enable HMRC to amend the digital process for making applications. The additional 3 weeks that are normally allowed ensure that certain rare cases are catered for, but HMRC will ensure no parents miss out across the transitional period through temporary manual processes.

- 7.8 This instrument corrects a drafting error in the definition of “responsible local authority” in the 2022 Regulations. The amendment confirms the pre-2022 position that the local authority responsible for making determinations in relation to foster parents is the English local authority which looks after the child (the corporate parent). In cases where the local authority which looks after the child is in Wales, Scotland or Northern Ireland, the responsible local authority is the local authority in which the child may be a qualifying child of working parents.
- 7.9 This instrument also corrects a drafting error in regulation 11 of the 2022 Regulations, which omitted to exclude persons subject to immigration control from part of the definition of ‘person in the United Kingdom’ in regulation 11(1)(a).

## **8. European Union Withdrawal and Future Relationship**

- 8.1 This instrument does not relate to withdrawal from the European Union.

## **9. Consolidation**

- 9.1 The Regulations were consolidated in 2022 and there are no plans to further consolidate at this time.

## **10. Consultation outcome**

- 10.1 This instrument implements measures announced in the Spring Budget 2023 by the Chancellor of the Exchequer, which were not consulted on.

## **11. Guidance**

- 11.1 There is statutory guidance<sup>3</sup> on early education and childcare for local authorities to support them in discharging their statutory duties to secure sufficient free early education and childcare to eligible children in their area.
- 11.2 The Department will update the statutory guidance to help local authorities deliver the expanded entitlements for each phase of delivery. The updated statutory guidance will also include minor changes to provide more clarity on some aspects of the guidance following feedback received since 2018 from local authorities. The statutory guidance will be published in early January 2024.
- 11.3 Parents will be made aware of the changes to the free childcare entitlements through government websites and the Childcare Service online application system. This will include clarity on each stage of the roll-out of the expanded entitlements and advice on the application process.

## **12. Impact**

- 12.1 There is no, or no significant impact on business, charities, or voluntary bodies. However, we anticipate that given the expansion of the age range, there will be greater

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<sup>3</sup> [Early education and childcare - Statutory guidance for local authorities \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

demand for free early education and childcare from parents/carers of young children at childcare providers who choose to deliver free places.

- 12.2 The impact on the public sector is that local authorities will be under a duty to secure that free childcare is available for children who are eligible for the expanded free entitlements. Local authorities will be required to ensure appropriate childcare is available for eligible children and are expected to enter into arrangements with childcare providers to this end. Local authorities will receive funding from central government for the free entitlements and will be responsible for allocating funding to providers to deliver the expanded offer.
- 12.3 A full Impact Assessment has not been completed.

### **13. Regulating small business**

- 13.1 The legislation does not place requirements on small businesses. Childcare providers are free to choose whether they deliver the free early education and childcare entitlements.
- 13.2 The Department has developed communications for local authorities to share with childcare providers to ensure they understand the expansion of free places to younger children and how this will affect them if they choose to deliver the free places.

### **14. Monitoring & review**

- 14.1 Take-up of the existing free early education and childcare entitlements for two-, three- and four-year-olds is monitored through the annual Early Years Census and the termly School Census and is published annually in official statistics<sup>4</sup>. The statistics also contain data on providers who deliver free early education and childcare places. The Department will monitor the number and types of providers who deliver the expanded entitlements, the numbers of children taking up their entitlement and the number of hours of free provision those children are taking up.

### **15. Contact**

- 15.1 Simran Singh at the Department for Education [Simran.SINGH@education.gov.uk] can be contacted with any queries regarding the instrument.
- 15.2 Joanna Mackie, Deputy Director for Early Years Entitlements at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 David Johnston at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

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<sup>4</sup> [Education provision: children under 5 years of age. Reporting year 2023 – Explore education statistics – GOV.UK \(explore-education-statistics.service.gov.uk\)](https://www.gov.uk/explore-education-statistics)