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STATUTORY INSTRUMENTS

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**2023 No. 276**

**The Childcare and Inspection of Education, Children’s Services and Skills (Fees) (Amendments) Regulations 2023**

**PART 5**

**Amendments to the Childcare (Free of Charge for Working Parents) (England) Regulations 2022**

**Amendments to the Childcare (Free of Charge for Working Parents) (England) Regulations 2022**

**10.** The Childcare (Free of Charge for Working Parents) (England) Regulations 2022(1) are amended in accordance with the following provisions of this Part.

**Amendments to regulation 4**

**11.** In regulation 4(1) (definitions)—

(a) for the definition of “childminder” substitute—

““childminder” means an early years childminder within the meaning given in section 96(4) of the Childcare Act 2006 but as if the definition in that subsection was not subject to subsection (5) of that section;”;

(b) after the definition of “inspection report” insert—

““limited capability for work” means limited capability for work under—

(a) regulation 39 of the Universal Credit Regulations 2013(2), or

(b) regulation 40 of the Universal Credit Regulations (Northern Ireland) 2016(3);

“limited capability for work and work-related activity” means limited capability for work and work-related activity under—

(a) regulation 40 of the Universal Credit Regulations 2013(4), or

(b) regulation 41 of the Universal Credit Regulations (Northern Ireland) 2016(5);”;

(c) omit the definition of “Social Security Act”;

(d) before the definition of “tax year” insert—

““specified benefit” has the meaning given in regulation 11A;”.

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(1) [S.I. 2022/1134](#).

(2) [S.I. 2013/376](#), amended by [S.I. 2014/597](#).

(3) [S.R. 2016 No. 216](#).

(4) [S.I. 2013/376](#), amended by [S.I. 2014/597](#).

(5) [S.R. 2016 No. 216](#).

## Amendment to regulation 10

12. In regulation 10 (meaning of partner), after paragraph (2) insert—

“(3) A person is not a member of the same household as, or living together with, another person if—

- (a) the person is absent, and
- (b) the absence exceeds, or is expected to exceed, 6 months.”.

## Insertion of regulation 11A

13. After regulation 11 insert—

### “Meaning of “specified benefit”

11A.—(1) A “specified benefit” is any of the following—

- (a) carer’s allowance under—
  - (i) section 70 of the Social Security Contributions and Benefits Act 1992<sup>(6)</sup>, or
  - (ii) section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(7)</sup>;
- (b) carer’s assistance given in accordance with regulations made under section 28 of the Social Security (Scotland) Act 2018<sup>(8)</sup> except a young carer grant given under the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019<sup>(9)</sup>;
- (c) the carer element<sup>(10)</sup> under—
  - (i) regulation 29 of the Universal Credit Regulations 2013<sup>(11)</sup>, or
  - (ii) regulation 30 of the Universal Credit Regulations (Northern Ireland) 2016<sup>(12)</sup>;
- (d) credits for incapacity for work or limited capability for work under—
  - (i) regulation 8B of the Social Security (Credits) Regulations 1975<sup>(13)</sup>, or
  - (ii) regulation 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975<sup>(14)</sup>;
- (e) employment and support allowance under—
  - (i) section 1 of the Welfare Reform Act 2007<sup>(15)</sup>, or
  - (ii) section 1 of the Welfare Reform Act (Northern Ireland) 2007<sup>(16)</sup>;
- (f) long-term incapacity benefit under—
  - (i) regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995<sup>(17)</sup>, or

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<sup>(6)</sup> Section 70 was amended by S.I. 1994/2556, 2002/1457, 2011/2426, 2013/388, 796, 2015/1754, 2021/174, 1301 and 2022/332.

<sup>(7)</sup> Section 70 was amended by S.I. 2013/3233, 2021/1301, 2022/332 and S.R. 1994 No. 370, 2002 No. 321, 2011 No. 356 and 2016 No. 228 and 236.

<sup>(8)</sup> 2018 asp 9.

<sup>(9)</sup> S.S.I. 2019/324, amended by S.S.I. 2020/99, 475, 2021/170, 320, 469 and 2022/108, 129 and 336.

<sup>(10)</sup> The carer element is part of an award of universal credit, which is a benefit payable in accordance with Part 2 of the Welfare Reform Act 2012 (c. 5) or Part 2 of the Welfare Reform (Northern Ireland) Order 2015 (S.I. 2015/2006 (N.I. 1)).

<sup>(11)</sup> S.I. 2013/376, amended by S.I. 2015/1754 and 2017/204.

<sup>(12)</sup> S.R. 2016/216, amended by S.R. 2017/146.

<sup>(13)</sup> S.I. 1975/556, amended by S.I. 1996/2367, 2000/3120, 2003/521, 2008/1554, 2010/385, 2012/913 and 2013/630.

<sup>(14)</sup> S.R. 1975 No. 113.

<sup>(15)</sup> 2007 c. 5. Section 1 was amended by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5).

<sup>(16)</sup> 2007 c. 2 (N.I.). Section 1 was amended by S.I. 2015/2006 (N.I. 1).

<sup>(17)</sup> S.I. 1995/310, amended by S.I. 1996/3207 and 1999/2422.

- (ii) regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(18);
- (g) long-term or short-term incapacity benefit under—
  - (i) section 30A, 40 or 41 of the Social Security Contributions and Benefits Act 1992(19), or
  - (ii) section 30A, 40 or 41 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(20);
- (h) severe disablement allowance under—
  - (i) section 68 of the Social Security Contributions and Benefits Act 1992(21), or
  - (ii) section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(22).”.

#### **Amendments to regulation 14**

- 14.** In regulation 14 (conditions relating to parent)—
- (a) in paragraph (4)(a), for “(see regulation 10)” substitute “mentioned in regulation 15(3),”;
  - (b) omit paragraph (5).

#### **Amendments to regulation 15**

- 15.—**(1) In regulation 15 (conditions relating to partner of parent)—
- (a) for paragraph (2) substitute—

“(2) If a parent of a young child has a partner, the partner must be a person mentioned in paragraph (3) or (4).”.
  - (b) After paragraph (2) insert—

“(3) A person who—

    - (a) meets the qualifying paid work requirement in regulation 16 or 17,
    - (b) does not for the relevant tax year—
      - (i) expect their adjusted net income to exceed £100,000,
      - (ii) make a claim under section 809B of the Income Tax Act 2007(23) (claim for remittance basis to apply), or
      - (iii) expect section 809E of Income Tax Act 2007(24) to apply (application of remittance basis without claim: other cases), and

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(18) S.R. 1995/35.

(19) Section 30A of the Social Security Contributions and Benefits Act 1992 (c. 4) was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c. 18) (“the 1994 Act”) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c. 33). Section 40 was substituted by paragraph 8 of Schedule 1 to the 1994 Act and repealed by section 67 of the Welfare Reform Act 2007 (c. 5) (“the 2007 Act”). Section 41 was substituted by paragraph 9 of Schedule 1 to the 1994 Act and repealed by section 67 of the 2007 Act.

(20) Section 30A of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c. 7) was inserted by S.I. 1994/1898 (N.I. 12) and amended by paragraph 68 of Schedule 24 to the Civil Partnership Act 2004 (c. 33) and S.I. 1999/3147 (N.I. 11). Section 40 was substituted by paragraph 8 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994/1898 (“the 1994 Order”). Section 41 was substituted by paragraph 9 of Schedule 1 to the 1994 Order and amended by paragraph 18 of Schedule 2 to the Pensions (Northern Ireland) Order 1995/3213.

(21) Section 68 was repealed by Part 4 of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30). Certain persons remain eligible by virtue of S.I. 2000/2958.

(22) Section 68 was repealed by S.I. 1999/3147 (N.I. 11). Certain persons remain eligible by virtue of S.R. 2000 No. 332.

(23) 2007 c. 3. Section 809B was inserted by section 25 and Schedule 7 to the Finance Act 2008 (c. 11).

(24) As above, section 809E was inserted by section 25 and Schedule 7 to the Finance Act 2008 (c. 11).

- (c) if a foster parent of the young child, has confirmation from the responsible local authority that it is satisfied that engaging in any paid work other than as a foster parent is consistent with the child’s care plan.
- (4) A person who is the partner of a parent mentioned in regulation 14(3) and who—
  - (a) has limited capability for work;
  - (b) has limited capability for work and work-related activity;
  - (c) is entitled to a specified benefit; or
  - (d) is a resident of an EEA State or Switzerland who is, under the law of the EEA State or Switzerland, entitled to a benefit of a kind that is substantially similar to a specified benefit.”.

#### **Amendments to regulation 16 (qualifying paid work requirement: employee)**

**16.** In regulation 16 (qualifying paid work requirement: employee)—

- (a) for paragraph 3(a) substitute—
  - “(a) any period the person is—
    - (i) a foster parent, or
    - (ii) on specified leave other than adoption leave of the kind mentioned in sub-paragraph (b);”.
- (b) In paragraph (4)—
  - (i) in the definition of “adoption leave”, in paragraph (b), for “the Social Security Act” substitute “the Social Security Contributions and Benefits Act”;
  - (ii) after the definition of “national insurance number” insert—
    - ““the Social Security Contributions and Benefits Act” means either of the following—
    - (a) the Social Security Contributions and Benefits Act 1992<sup>(25)</sup>;
    - (b) the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(26)</sup>
  - (iii) in the definition of “specified leave”, in paragraph (a) for (i) to (v) substitute—
    - “(i) ordinary or additional maternity leave;
    - (ii) ordinary or additional adoption leave;
    - (iii) shared parental leave;
    - (iv) parental leave;
    - (v) paternity leave;
    - (vi) parental bereavement leave;”;
  - (iv) in paragraph (b), for “the Social Security Act” substitute “the Social Security Contributions and Benefits Act”.

#### **Amendments to regulation 18**

**17.** In regulation 18 (minimum income requirement), in paragraph (3) in the definition of “relevant period”—

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<sup>(25)</sup> 1992 c. 4.

<sup>(26)</sup> 1992 c. 7.

- (a) in sub-paragraph (a), for the words from “beginning with” to the end, substitute—
  - “beginning with—
    - (i) the day on which the declaration relating to the employee is made, or
    - (ii) if regulation 7(1)(d) applies, the day on which the person expects to be a person mentioned in any of regulation 7(1)(a) to (c);”;
- (b) in paragraph (b), for “mentioned in paragraph (a)” substitute “of three months beginning with the day on which the declaration relating to the employee is made”.

**Amendment to regulation 45**

**18.** In regulation 45 (duty to make arrangements with childcare provider chosen by parent), in paragraph (3)(c), for “a childcare agency”, substitute “an early years childminder agency”.

**Amendment to regulation 47**

**19.** In regulation 47 (requirements permissible in arrangements), in paragraph (1)(f), for “a childcare agency” substitute “an early years childminder agency”.