

**EXPLANATORY MEMORANDUM TO**  
**THE CHILDCARE (FREE OF CHARGE FOR WORKING PARENTS) (ENGLAND)**  
**(AMENDMENT) (NO. 2) REGULATIONS 2024**

**2024 No. 527**

**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.

**2. Declaration**

- 2.1 David Johnston, Parliamentary Under-Secretary of State (Minister for Children, Families and Wellbeing) at the Department for Education confirms that this Explanatory Memorandum meets the required standard.
- 2.2 Joanna Mackie, Deputy Director for Early Years Entitlements at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

**3. Contact**

- 3.1 Sean Ruston at the Department for Education email: Sean.Ruston@education.gov.uk can be contacted with any queries regarding the instrument.

**Part One: Explanation, and context, of the Instrument**

**4. Overview of the Instrument**

*What does the legislation do?*

- 4.1 This instrument amends the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (the “Principal Regulations”). It extends the periods of time within which parents who are starting work or returning to work from certain types of statutory employment leave (such as maternity, paternity, adoption or parental leave) can obtain a determination of their eligibility for free childcare.

*Where does the legislation extend to, and apply?*

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

**5. Policy Context**

*What is being done and why?*

- 5.1 Since 2017, eligible working parents of 3- and 4-year-old children have been entitled to 30 hours free childcare per week over 38 weeks of the year. The eligibility criteria for free childcare for working parents and Tax-Free childcare (TFC) are broadly aligned. Parents can apply for free childcare and TFC via the Childcare Service administered by His Majesty’s Customs and Revenue (HMRC). HMRC are responsible for determining whether a parent is eligible for free childcare and TFC.

Children can take up a place from the beginning of the term (1 September, 1 January or 1 April) following a valid determination of eligibility from HMRC.

- 5.2 In the Government's Spring Budget 2023, the Chancellor announced the expansion of 30 hours free childcare to children aged from 9 months up to school age. Since April 2024, eligible working parents of 2-year-olds have been able to access 15 hours of free childcare per week (over 38 weeks a year) from the term after their 2nd birthday. This will be extended to eligible working parents of children aged from 9 months from September 2024. From September 2025, this entitlement will be extended to 30 hours of free childcare per week (over 38 weeks a year) from the term after an eligible child turns 9 months to when the child starts school.
- 5.3 Prior to these amendments, regulation 7(1)(d) of the Principal Regulations provided that a parent can be treated as an "employee" for the purposes of the regulations during the period of 31 days before the parent expects to start work. Similarly, regulation 16(3)(b) provided that parents who are returning to work from certain types of employment leave (including maternity, paternity and adoption leave) taken because of the birth or adoption of a child for whom childcare is sought, were exempt from the minimum income requirement in regulation 18 for the period of 31 days before their return to work. The purpose of these 31-day periods was to allow a parent to obtain confirmation of eligibility within a reasonable period of time before starting or returning to work.
- 5.4 The expansion of the free childcare entitlements for working parents has led to demand for earlier confirmation of eligibility by parents and childcare providers seeking to arrange free childcare for the start of the following term. The 31-day periods are therefore extended, enabling parents to obtain confirmation and arrange a childcare place much earlier. However, because children are only eligible for free childcare from whichever of 1st January, 1<sup>st</sup> April or 1<sup>st</sup> September next follows the date on which they obtain confirmation of eligibility (see regulation 27 of the Principal Regulations), these changes will not affect the amount of childcare a child can access.
- 5.5 Regulation 2(2)(a)(i) amends regulation 7 of the Principal Regulations, ensuring that a parent on unpaid leave from employment is not excluded from the definition of employee and aligns the definition of employee with the definition applicable to TFC in the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448).
- 5.6 Regulation 2(2)(a)(ii) and (b) also amends regulation 7 to extend the period during which a parent who expects to start work can be treated as an employee for the purposes of the Regulations. These amendments will mean in most cases that a parent can be treated as an employee from whichever of 1 January, 1 September or 1 April immediately precedes the date on which the parent starts work. Where a parent starts work during the first month of any term (in January, April or September), the parent can be treated as an employee from the start of the preceding term.
- 5.7 Regulation 2(3) makes similar changes to regulation 16(3) of the Principal Regulations. Where a parent returns to work from certain types of statutory employment leave, or receipt of certain types of statutory pay, such as maternity, paternity, shared parental or adoption leave or pay, taken because of the birth or adoption of the child for whom childcare is sought, the parent will be exempt from the minimum income requirement from the start of the term which precedes their return to work. As with the amendment to regulation 7, where a parent returns to work in the first month of any term, they are exempt from the minimum income requirement from the start of the preceding term.

- 5.8 Regulation 2(4) amends regulation 27 to provide that a child will be eligible for childcare from whichever of 1<sup>st</sup> January, 1<sup>st</sup> April or 1<sup>st</sup> September is the first date after (instead of ‘on or after’) the day on which a declaration has effect. This is to ensure that the amendments made to regulations 7 and 16 do not have the effect of bringing forward the date on which a child can access free childcare.

*What was the previous policy, how is this different?*

- 5.9 As outlined above, this instrument enables parents who are starting work or returning to work after certain types of employment leave to obtain confirmation of their eligibility for free childcare earlier than was previously the case. These amendments do not, however, bring forward the date on which a child will be able to take up free childcare, which remains from the start of the term following the date on which the parent obtains confirmation of eligibility from HMRC.

## **6. Legislative and Legal Context**

*How has the law changed?*

- 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 by the Principal Regulations (see section 2(2)(a) of the 2016 Act and regulation 44 of the Principal Regulations).
- 6.2 The Principal Regulations, set out details about who is a ‘qualifying child’ of working parents, conditions of eligibility, declarations that are needed from working parents to confirm eligibility, mechanisms for reviews and appeals and the requirements on local authorities to secure the free early years provision.
- 6.3 The Principal Regulations were amended by the Childcare (Free of Charge for Working Parents) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/1330) to reflect the expansion of the free childcare offer. Further minor amendments to the provision made in that instrument were made by the Childcare (Free of Charge for Working Parents) (England) (Amendment) Regulations 2024 (S.I. 2024/369).

*Why was this approach taken to change the law?*

- 6.4 This is the only possible approach to make the necessary changes.

## **7. Consultation**

*Summary of consultation outcome and methodology*

- 7.1 The Department for Education has not consulted on this change as the amendments to the regulations are technical in nature and are designed to provide an improved customer journey for parents who are starting work or returning to work from specified leave. This change will benefit affected parents and allow them additional time to secure a free childcare place for their child.

## **8. Applicable Guidance**

- 8.1 There is statutory guidance<sup>1</sup> for local authorities on early education and childcare to support them in discharging their duty to secure free early education and childcare to eligible children in their area. The Department updated the statutory guidance in January 2024 to come into effect from 1 April 2024 to reflect the expansion of the free childcare entitlement. The Department does not intend to revise the statutory guidance for local authorities at this time as the amendments relate to the eligibility criteria, which are applied by HMRC. Parents will be made aware of the change through government websites and the online Childcare Service application system.

## **Part Two: Impact and the Better Regulation Framework**

### **9. Impact Assessment**

- 9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies. This is a technical change to the eligibility criteria administered by HMRC.

#### *Impact on businesses, charities and voluntary bodies*

- 9.2 There is no, or no significant, impact on business, charities or voluntary bodies. Childcare providers are free to choose whether to deliver the free childcare entitlements.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no impact on the public sector as this is a technical change to the eligibility criteria administered by HMRC. Local authorities will still be required to secure free places for eligible children in their area.

### **10. Monitoring and review**

#### *What is the approach to monitoring and reviewing this legislation?*

- 10.1 Take-up of the existing free early education and childcare entitlements for all eligible children is monitored through the annual Early Years Census<sup>2</sup> and the termly School Census and is published annually in official statistics. 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.
- 10.2 The instrument does not include a statutory review clause as it has no, or no significant, impact on business.

## **Part Three: Statements and Matters of Particular Interest to Parliament**

### **11. Matters of special interest to Parliament**

- 11.1 None.

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<sup>1</sup> <https://www.gov.uk/government/publications/early-education-and-childcare--2>

<sup>2</sup> <https://www.gov.uk/government/statistics/provision-for-children-under-5-in-england-january-2023>

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

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

## **13. The Relevant European Union Acts**

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).