

CHILDCARE ACT 2016

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Childcare Act 2016 (c. 5) which received Royal Assent on 16 March 2016.

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Act will mean in practice; provide background information on the development of policy; and provide additional information on how the Act will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Act. They are not, and are not intended to be, a comprehensive description of the Act.

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Overview of the Act

- 1 This Act contains provisions which are intended to secure an additional entitlement of childcare support for working parents. It also seeks to ensure that parents are able to access information about the additional free childcare being introduced and about other childcare provision/services which may help them to meet their childcare needs.

Policy background

- 2 The Government's intention is to make childcare more affordable for working parents. This Act is intended to secure the delivery of the Conservative Party's 2015 election manifesto commitment to give families where all parents are working an entitlement to 30 hours a week of free childcare over 38 weeks of the year for their three and four year olds. All three and four year olds and disadvantaged two year olds who meet the eligibility criteria are already entitled to 15 hours a week of free early years provision for 38 weeks of the year.
- 3 This Act makes the legislative changes needed to meet that commitment. It places a duty on the Secretary of State to make available free childcare for eligible children and provides that the Secretary of State may discharge this duty through English local authorities. It also contains provisions allowing for the sharing of data between Government Departments and Her Majesty's Revenue and Customs ('HMRC') so that a child's eligibility for the extended entitlement can be determined.
- 4 The Act also enables the Secretary of State to place a duty on local authorities to publish information about childcare and other services available for parents locally. With the introduction of the additional entitlement to free childcare for working parents the Government believes that it is important that this information is published consistently, so that parents can access it.

Legal background

- 5 The existing legislation relating to the provision of childcare in England, and its regulation and inspection, is set out in the Childcare Act 2006 (and secondary legislation made under that Act). Part 1 of that Act makes provision about the powers and duties of local authorities in connection with the provision of childcare. Section 7 of that Act places a duty on local authorities in England to secure early years provision for young children in their area, free of charge and in accordance with regulations. The relevant regulations are the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147).
- 6 That Act also includes, in section 12, a duty on local authorities to provide information, advice and assistance to parents and other persons, the information being prescribed in regulations (see the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007 (SI 2007/3490) as amended).
- 7 The Childcare Act 2016 places a duty on the Secretary of State to secure the availability of 30 hours of free childcare for qualifying children of working parents, with details to be set out in regulations. It also amends section 12 of the Childcare Act 2006 to enable regulations to be made requiring local authorities in England to publish information about childcare and related information.
- 8 The Childcare Act 2006 will continue to be the main Act governing the regulation of childcare provision.

Territorial extent and application

- 9 The provisions in the Act extend to England and Wales only (as one legal jurisdiction). The Act applies to children in England only. See also Annex A, which concerns territorial extent and application.

Commentary on provisions of Act

Section 1: Duty to secure 30 hours free childcare available for working parents

- 10 Section 1(1) imposes a duty on the Secretary of State to ensure that childcare is available free of charge for qualifying children of working parents for 30 hours in each of 38 weeks in any year, or for an equivalent period.
- 11 Subsection (2) is concerned with eligibility for the free childcare entitlement under subsection (1). It provides that a “qualifying child of working parents” is a young child:
 - a. who is under compulsory school age (as defined in section 8 of the Education Act 1996);
 - b. who is in England;
 - c. who is of a description specified in regulations;
 - d. in respect of whom any conditions relating to the parent of the child, or the parent’s partner, are met; and
 - e. in respect of whom a declaration has been made that all the other eligibility requirements are satisfied.
- 12 The intention is that regulations will specify that children will qualify for the free childcare entitlement under subsection (1) at the start of the school term following their third birthday. The conditions attaching to parents, and their partners, will include conditions relating to paid work. For these purposes, subsection (4) enables the Secretary of State to make regulations about when a person is to be regarded as another person’s partner and what constitutes paid work. Subsection (4) also enables the Secretary of State to specify the circumstances in which a person is, or is not, to be regarded as in paid work. Regulations will, for example, specify that people temporarily away from the workplace on paid parental leave will be regarded as in work. Subsection (4) also enables the Secretary of State to set conditions to be met by a person making a declaration as to a child’s eligibility for the extended entitlement. For example, that the person making the declaration would need to be the person who is responsible for the child.
- 13 Subsection (5) confers on HMRC the power to make declarations as to a child’s eligibility and carry out related functions.
- 14 HMRC already has functions under the Childcare Payments Act 2014 in relation to the administration and operation of Tax-Free Childcare. The intention is that parents will be able to apply for both the extended entitlement and Tax-Free Childcare through a simple, joint application process. Subsection (5) gives HMRC the requisite power to verify a child’s eligibility for additional free childcare.

Subsection (6) provides that in the discharge of her duty, the Secretary of State will take into account the free of charge early years provision available under the duty on local authorities under section 7 of the Childcare Act 2006. Section 7 of the Childcare Act 2006 enables the Secretary of State to make regulations to describe the type and amount of free early years provision that local authorities must secure and the description of children to benefit from free early years provision. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147) currently provide that 570 hours of childcare per year

must be made available by a local authority for defined groups of two year olds and for all children from the beginning of the school term which starts on or after 1 September, 1 January or 1 April following their third birthday until they reach compulsory school age.

- 15 Subsection (8) enables the Secretary of State to set out, in regulations, the circumstances in which a child will be considered to be in England for the purposes of the entitlement.

Section 2: Discharging the section 1(1) duty

- 16 Subsection (1) enables the Secretary of State to make regulations (“extended entitlement regulations”) detailing how she proposes to discharge the new duty to secure the equivalent of 30 hours per week of free childcare for working parents.
- 17 Subsection (2) sets out a non-exhaustive list of what extended entitlement regulations may provide for.
- 18 In particular, extended entitlement regulations may require English local authorities to secure free childcare for qualifying children of working parents in their area and, in doing so, to have regard to any guidance given by the Secretary of State (subsection (2)(a) and (k)). It is the Secretary of State’s intention to discharge her new duty through local authorities and to make regulations to this effect, building on the delivery mechanism for the existing entitlement to 15 hours of free childcare for all three- and four-year-olds under section 7 of the Childcare Act 2006.
- 19 Extended entitlement regulations may:
 - a. specify descriptions of the type of childcare that is to be made available (subsection (2)(a));
 - b. set out how much childcare is to be made available and the times at which, and periods over which, that childcare to be made available (subsection (2)(b)); and
 - c. make provision about the terms of any arrangements between local authorities and providers of childcare (subsection (2)(c)). The Secretary of State may, for example, impose a requirement that any contractual arrangements between a local authority and a childcare provider must include a clause which would enable the local authority to terminate the arrangements in particular circumstances.
- 20 In circumstances where a local authority fails to secure free childcare for working parents in accordance with any requirements imposed on it by extended entitlement regulations, then it will be open to the Secretary of State to intervene to secure proper performance of that function (see subsection (8)) mirroring powers under the Childcare Act 2006.
- 21 Subsection (2)(e) specifies that extended entitlement regulations may make provision requiring information or documents to be provided to the Secretary of State, HMRC or an English local authority. Regulations may, for example, require parents to provide information relating to their employment status or documents such as their child’s birth certificate, for the purpose of confirming the child’s eligibility for free childcare.
- 22 Subsection (2)(f) envisages that provision would be made for the purpose of enabling any person, for example an English local authority, to check whether a child is a qualifying child of working parents.

- 23 Subsection (2)(g) specifies that regulations may make provision about the sharing of data by a Minister of the Crown, HMRC or an English local authority for the purpose of eligibility checking and, by virtue of subsection (2)(h), extended entitlement regulations may also provide for criminal offences in connection with the unauthorised, onward disclosure of information obtained for that purpose. The intention is to replicate the criminal offence contained in section 13B of the Childcare Act 2006, which makes unlawful disclosure of information supplied for use in determining eligibility of children for free early years provision under section 7 of that Act a criminal offence. In accordance with subsection (4), the maximum penalty which may attach to any new criminal offence is a two year term of imprisonment (whether or not accompanied by a fine).
- 24 There may be instances where parents are not satisfied with a decision as to their child's eligibility for the extended entitlement. Subsection (2)(i) enables extended entitlement regulations to make provision for reviews of, or appeals to the First-tier Tribunal against, determinations relating to a child's eligibility. The Government intends to exercise this power so as to provide a right of appeal against a decision that a declaration of eligibility made by a parent is invalid.
- 25 Subsection (2)(j) makes clear that extended entitlement regulations may provide for the imposition of financial penalties on parents in connection with false or misleading statements made, or information provided, in connection with a determination of a child's eligibility for the extended entitlement and dishonest conduct in connection with the process of making this determination. If regulations are made which envisage the imposition of a financial penalty, then subsection (5) sets out that the maximum amount of any penalty that can be levied is £3000. Subsection (5) also specifies that a person who receives a financial penalty must be able to require a review of the imposition of the penalty and/or its amount with an onward right of appeal to the First-tier Tribunal.

Section 3: Sections 1 and 2: consequential amendments

- 26 Section 3 makes amendments to the Childcare Act 2006 and to the School Standards and Framework Act 1998 which are consequential on the duty of the Secretary of State to secure that 30 hours of free childcare is made available free of charge for working parents ("the extended entitlement").
- 27 Subsection (1) amends section 99(1) of the Childcare Act 2006 ("the 2006 Act") to enable the Secretary of State to make regulations requiring childcare providers who deliver the extended entitlement to supply basic information about children receiving free childcare to the Secretary of State, to a local authority or to the childminder agency with which they are registered.
- 28 The information that all registered early years providers and school-based early years providers who are exempt from registration by section 34(2) of the 2006 Act can currently be required to provide, on request, is set out in the Schedule to the Childcare (Provision of Information About Young Children) (England) Regulations 2009 (SI 2009/1554). It is intended that early years providers delivering the extended entitlement will be required to provide the same types of information to the Secretary of State, a local authority or the childminder agency with which they are registered (as the case may be). This will ensure that information about take-up of the extended entitlement can be monitored and that funding for the entitlement is properly allocated to local authorities and in turn providers. To protect the children concerned, section 99(7) of the 2006 Act prohibits the publication of the information collected in any form which includes the name of the child to whom it relates.

- 29 Part II of the School Standards and Framework Act ("the 1998 Act") sets the legal framework for the provision of financial assistance, by local authorities, to maintained schools and private, voluntary and independent childcare providers. The consequential amendments in section 3(2) extend that framework to the provision of financial assistance to settings delivering the new entitlement to 30 hours' childcare for working parents. Subsection (2)(a) inserts a new subsection (4C) into section 45A of the 1998 Act so as to provide that any duty imposed on a local authority in regulations made under section 2 of this Act ("extended entitlement regulations"), is to be treated as an education function for the purposes of determining specified budgets of a local authority.
- 30 Subsection (2)(b) amends subsection (3)(a) of section 47ZA of the 1998 Act (free of charge early years provision outside a maintained school: budgetary framework). Section 47ZA applies where a local authority proposes to allocate money to a childcare provider (other than a maintained school) out of its individual schools budget. It provides that the amount of money to be allocated is to be determined in accordance with regulations. The amendment to subsection (3)(a) makes clear that the amount of financial assistance allocated to childcare providers for the purpose of discharging any duty imposed on the local authority in extended entitlement regulations will also be governed by regulations made under section 47ZA of the 1998 Act. This mirrors the position in respect of money allocated to childcare providers by local authorities for the purposes of discharging their duty under section 7 of the Childcare Act 2006 (the existing early entitlement).

Section 4: Supplementary provision about regulations under sections 1 and 2

- 31 This section makes clear that any regulations made under section 1 or 2 of the Act may make different provision for different purposes, make consequential, incidental, supplemental, transitional or saving provision or amend, repeal or revoke any provisions of another Act. The regulations may also confer a discretion on any person. Regulations made under sections 1 and 2(1) are subject to the draft affirmative procedure the first time the powers are exercised and the negative procedure thereafter. Any regulations seeking to update the maximum level of any financial penalty set out in section 2(5)(a) of the Bill will be subject to the affirmative procedure and therefore subject to the express approval of Parliament each time the powers are exercised.

Section 5: Duty to publish information about childcare and related matters

- 32 Section 5 amends section 12 of the Childcare Act 2006 by inserting new subsections (6A) to (6C) allowing regulations to require local authorities to publish information of a prescribed description at prescribed intervals and in a prescribed manner.
- 33 Regulations made under section 12(2) of the Childcare Act 2006 prescribe information which must be provided by English local authorities to parents or prospective parents in their area (see 'The Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007' (SI 2007/3490)). The information to be prescribed for publication under this section may be similar to that information.
- 34 New subsection (6C) provides that the requirement on the Secretary of State when making regulations under section 12(2) to have regard to the needs of parents of disabled children for appropriate information will also apply to the information she prescribes under new subsection (6A).

Section 6: Extent

- 35 Section 6 provides that the Act extends to England and Wales. It applies in relation to children in England only.

Section 7: Commencement

- 36 Section 7 provides for the extent and commencement provisions of this Act, and its short title, to come into force on the day on which the Act is passed. Section 1(5), which allows HMRC to make declarations as to a child's eligibility and carry out related functions, will also come into force on Royal Assent.
- 37 Under subsection (2), the remaining provisions of this Act will come into force on such day or days as may be appointed by regulations made by the Secretary of State.
- 38 Regulations under subsection (2) allow for the introduction of the extended entitlement in some areas in advance of others.

Section 8: Short Title

- 39 Section 8 provides that the short title of this Act is the Childcare Act 2016.

Commencement

- 40 The extent and commencement provisions of this Act, its short title and the provision which confers on HMRC the ability to make declarations as to a child's eligibility and carry out related functions will all come into force on Royal Assent. The remaining provisions of this Act will come into force on the days appointed by the Secretary of State in regulations.

Annex A - Territorial extent and application in the United Kingdom

| Provision | Extends to E & W and applies to England? | Extends to E & W and applies to Wales? | Extends and applies to Scotland? | Extends and applies to Northern Ireland? |
|-----------|--|--|----------------------------------|--|
| Clause 1 | Yes | No | No | No |
| Clause 2 | Yes | No | No | No |
| Clause 3 | Yes | No | No | No |
| Clause 4 | Yes | No | No | No |
| Clause 5 | Yes | No | No | No |
| Clause 6 | Yes | No | No | No |
| Clause 7 | Yes | No | No | No |
| Clause 8 | Yes | No | No | No |

Annex B - Hansard References

41 The following table sets out the dates and Hansard references for each stage of the Act's passage through Parliament.

| Stage | Date | Hansard Reference |
|---|------------------|--|
| <i>House of Lords</i> | | |
| Introduction | 01 June 2015 | 1 Jun 2015 : Column 161 |
| Second Reading | 16 June 2015 | 16 Jun 2015 : Column 1081 |
| Grand Committee (first sitting) | 01 July 2015 | 1 July 2015 : Column 2074 |
| Grand Committee (second sitting) | 06 July 2015 | 6 July 2015 : Column 16 |
| Report | 14 October 2015 | 14 Oct 2015 : Column 235 |
| Third Reading | 26 October 2015 | 26 Oct 2015 : Column 975 |
| <i>House of Commons</i> | | |
| Introduction | 26 October 2015 | No debate |
| Second Reading | 25 November 2015 | 25 Nov 2015 : Column 1413 |
| Public Bill committee (session 1) | 08 December 2015 | 08 December 2015: Column 3 |
| Public Bill committee (session 2) | 08 December 2015 | 08 December 2015: Column 39 |
| Public Bill committee (session 3) | 10 December 2015 | 10 December 2015: Column 89 |
| Public Bill committee (session 4) | 10 December 2015 | 10 December 2015: Column 117 |
| Report, Legislative Grand Committee and Third Reading | 25 January 2016 | 25 Jan 2016 : Column 50 |
| Lords Consideration of Commons Amendments | 02 February 2016 | 2 Feb 2016 : Column 1740 |
| Royal Assent | 16 March 2016 | Commons: Vol 607 Col 986 |
| | | Lords: Vol 769 Col 1843 |

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Annex C - Progress of Bill Table

42 This Annex shows how each section and Schedule of the Act was numbered during the passage of the Bill through Parliament.

| Section of the Act | Bill as Introduced in the Lords | Bill as amended in Committee in the Lords | Bill as amended on Report in the Lords | Bill as introduced in the Commons | Bill as amended in Committee in the Commons |
|--------------------|---------------------------------|---|--|-----------------------------------|---|
| Section 1 | | | Clause 1 | Clause 1 | |
| Section 2 | Clause 1 | Clause 1 | Clause 2 | Clause 2 | Clause 1 |
| Section 3 | Clause 2 | Clause 2 | Clause 3 | Clause 3 | Clause 2 |
| Section 4 | Clause 3 | Clause 3 | Clause 4 | Clause 4 | Clause 3 |
| Section 5 | Clause 4 | Clause 4 | Clause 5 | Clause 5 | Clause 4 |
| Section 6 | Clause 5 | Clause 5 | Clause 6 | Clause 6 | Clause 5 |
| Section 7 | Clause 6 | Clause 6 | Clause 7 | Clause 7 | Clause 6 |
| Section 8 | Clause 7 | Clause 7 | Clause 8 | Clause 8 | Clause 7 |
| Section 9 | Clause 8 | Clause 8 | Clause 9 | Clause 9 | Clause 8 |

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