
STATUTORY INSTRUMENTS

1998 No. 655

EDUCATION, ENGLAND AND WALES

The Nursery Education (England) Regulations 1998

<i>Made</i>	- - - -	<i>9th March 1998</i>
<i>Laid before Parliament</i>		<i>11th March 1998</i>
<i>Coming into force</i>	- -	<i>1st April 1998</i>

In exercise of the powers conferred on the Secretary of State by sections 1 and 8(4) of, and paragraph 13 of Schedule 1 to, the Nursery Education and Grant Maintained Schools Act 1996⁽¹⁾, the Secretary of State for Education and Employment hereby makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Nursery Education (England) Regulations 1998 and shall come into force on 1st April 1998.

(2) These Regulations apply in relation to nursery education in England.

(3) In these Regulations—

“the Act” means the Nursery Education and Grant Maintained Schools Act 1996;

“area” means the area of a local education authority;

“the Education Act” means the Education Act 1996⁽²⁾;

“grant” means a grant made under arrangements under section 1 of the Act.

Cessation of application of the Nursery Education Regulations 1996 to nursery education in England

2. The Nursery Education Regulations 1996⁽³⁾ shall cease to apply to nursery education in England.

(1) 1996 c. 50.

(2) 1996 c. 56.

(3) S.I. 1996/2086: in respect of England and Wales the relevant amending instrument is S.I. 1996/3117. S.I. 1996/2086 has also been amended in respect of England only by S.I. 1997/2006 and in respect of Wales by S.I. 1997/1954.

Nursery education

3.—(1) For the purposes of section 1(2)(a) of the Act (prescribing, in the case of a child who does not attend school, a time broadly corresponding to a child's first term starting after the child has attained the age of 5 years) there is prescribed—

- (a) the date on which the first term starts after he has attained the age of 5 years, where the term in question is the term kept at county schools maintained by the local education authority in the area in which he resides, or,
- (b) where that term begins on different dates among those schools, the earliest of those dates.

(2) For the purposes of section 1(2)(b) of the Act (prescribing a time, earlier than the time in section 1(2)(a), after which education provided for children is nursery education) there is prescribed in relation to a child the day immediately preceding the later of—

- (a) the start of the first term starting after the child has attained the age of 4 years; or
- (b) if the child's fourth birthday falls within one of the periods specified in paragraph (3), the start of the term following the term referred to in that paragraph.

(3) The periods referred to in paragraph (2)(b) are, in any year,

- (a) the period commencing 1st April and ending with the start of the Summer term of that year;
- (b) the period commencing 1st September and ending with the start of the Autumn term of that year;
- (c) the period commencing 1st January and ending with the start of the Spring term of that year.

(4) For the purposes of paragraphs (2) and (3) of this regulation, "term" means the term kept in relation to the education provided, or to be provided, or under consideration, for the child, as the case may be, and, in any year, Spring term, Summer term and Autumn term mean, respectively, the term which starts in January, in April and in September.

Recipients of grant

4.—(1) Grants may be made (in addition to grants made to local education authorities under section 1(3)(a) of the Act) to—

- (a) local authorities which provide day care under section 18 of the Children Act 1989(4);
- (b) persons registered by a local authority under section 71(1)(b) of that Act (persons providing day care for children under 8 on non-domestic premises) or who would be required to be so registered if that Act applied to the Crown;
- (c) proprietors of independent schools to whom the Secretary of State has given notice of final registration of the school under section 465(3) of the Education Act;
- (d) proprietors of independent schools the registration of which under that section is provisional, being schools providing nursery education for children with statements of special education needs with the consent of the Secretary of State under section 347 of the Education Act or with the approval of the authority by which the statements are maintained;
- (e) proprietors of special schools not being maintained schools or grant-maintained special schools; and
- (f) local authorities which provide nursery education at home for children with special educational needs.

(4) 1989 c. 41.

Amount of grant

5.—(1) Paragraphs (2) to (5) apply for the purposes of regulations 6 and 7.

(2) The following expressions have the following meanings:

“allowable unit cost” means the average cost per child to the provider of the nursery education of providing that education for the children for whom it is provided during the grant period;

“approved Early Years Development Plan” means an Early Years Development Plan which has been approved by the Secretary of State and in respect of which that approval is extant;

“Early Years Development Partnership” means a body or group (however constituted) convened by a local education authority with purposes including the drawing up and agreeing of an Early Years Development Plan and consisting of providers of nursery education and others representative of the interests of children who have not yet attained compulsory school age in the area;

“Early Years Development Plan” means a statement prepared by a local education authority in conjunction with the Early Years Development Partnership for the area of their proposals for the provision of good quality nursery education and care for children in the area who have not attained compulsory school age;

“grant period” means a period referred to in paragraph (3) or paragraph (4), as the case may be;

“head count” means a count conducted by a provider of nursery education of the children attending for the purpose of nursery education during the week notified for the taking of the count by, in the case of provision taking place within an area in respect of which an approved Early Years Development Plan is in place, the local education authority and in any other case the Secretary of State;

“reckonable children” has the meaning given to it by regulation 6(7);

“Revenue Support Grant” has the meaning given to it by section 79 of the Local Government Finance Act 1988(5);

“session” means any period during which nursery education is provided on any one day, disregarding any break of less than one hour;

“unit amount” means any amount specified by the Secretary of State for the purposes of determining grants.

(3) Subject to paragraph (5), where the nursery education in respect of which grant is made is provided at a school, the amount of grant shall be determined in respect of a period (“the grant period”) comprising a term.

(4) Subject to paragraph (5), where the nursery education in respect of which grant is made is provided otherwise than at a school, the amount of grant shall be determined in respect of a period (“the grant period”) which is equivalent, or approximates to, a school term.

(5) Where the nursery education in respect of which a grant is made is provided in an area in respect of which an approved Early Years Development Plan is in place, and that plan provides for the payment of grant to be made in respect of the period of half a term then the grant period for the purposes of paragraph (3) or, as the case may be, paragraph (4) shall be half a term or half a school term, respectively.

6.—(1) The provision of this regulation shall apply for determining the manner of counting children for the purposes of regulation 7.

(2) For each grant period, only those children may be counted who either—

- (a) attend at least one session of nursery education provided by the provider during the week in which the head count takes place, or
- (b) only fail so to attend because of illness or for some other exceptional reason but are at that time genuinely expected to take up the place which the provider has allocated to them.

(3) Except in the case of a child in relation to whom paragraph (4) or (5) applies, for the purposes of determining the number of children for whom a provider is providing nursery education in any grant period every such child shall count towards that number as a whole child.

(4) Except in the case of a child in relation to whom paragraph (5) applies or for the purposes of regulation 7(5), where, throughout a grant period, a provider provides nursery education for a child for fewer than five sessions per week, for the purposes of determining the number of children for whom nursery education places are provided that child shall count towards that number to the extent obtained by supplying the following formula—

$$A \times \frac{S}{5}$$

where

A is the child and S is the number of sessions of nursery education provided each week for the child (or if, during the grant period, a different number of sessions is provided in different weeks, the average such number).

(5) For the purposes of regulation 7(6) only, this paragraph applies throughout a grant period, if, in that period, for any number of weeks the following conditions are both met, namely—

- (a) that for that week or each of those weeks two or more providers each provide nursery education for a child; and
- (b) that in respect of that week or each of those weeks, the total number of sessions for which grant is claimed by those providers in respect of the child exceeds 5.

(6) Where paragraph (5) applies, for the purpose of determining the number of children for whom a provider is providing nursery education, the child in question shall count towards that number to the extent obtained by applying the following formulas;

- (a) in a case in which the conditions in paragraph (5) are met during every week in which nursery education is provided for the child throughout the grant period, the formula is

$$A \times \frac{P}{T}$$

where

A is the child, P is the average number of sessions of nursery education provided by the provider for the child each week during the grant period and T is the average of the total number of all sessions of nursery education provided for the child each week during the grant period for which grant is claimed;

- (b) in a case in which the conditions in paragraph (5) apply for a number of weeks (“N weeks”) during the grant period that are fewer than the total number of weeks (“W weeks”) in which nursery education is provided for the child, if for each of the remaining weeks (“W-N weeks”) grant is claimed in respect of the child by only one provider and nursery education is provided by that provider for fewer than 5 sessions, the formula is

$$A \times \frac{N(P \div T) / (W - N)(Q \div 5)}{W}$$

where

A is the child P is the average number of sessions of nursery education provided by the provider during each of the weeks in which the conditions are met, T is the

average of the total number of all sessions of nursery education provided for the child each such week and Q is the average number of sessions provided for the child by the provider in each week in which the conditions are not, or one of the conditions is not, met.

- (c) in any other case in which the conditions in paragraph (5) apply for a number of weeks (“N weeks”) during the grant period that are fewer than the total number of weeks (“W weeks”) in which nursery education is provided for the child, if for the remaining weeks (“W-N weeks”) nursery education is provided for the child by one provider, the formula is

$$A \times \frac{N(P \div T) + (W-N)}{W}$$

where

A is the child, P is the average number of sessions of nursery education provided by the provider during each of the weeks in which the conditions are met, and T is the average of the total number of all sessions of nursery education provided for the child each such week.

(7) For the purposes of regulation 7(2), the number of reckonable children is given by subtracting from the number of children for whom places are provided at such schools as are mentioned there for the period in question the number of children provision of nursery education for whom during that period has been taken into account in calculating the Revenue Support Grant payable to the local education authority for the financial year in which that period falls.

7.—(1) The provisions of this regulation shall have effect for determining the amount of grant payable to a provider of nursery education.

(2) The amount of grant made to a local education authority for any grant period in respect of nursery education provided at schools maintained by them shall be the amount obtained by multiplying the unit amount by the number of reckonable children.

(3) The amount of grant made to an authority for any grant period in respect of nursery education provided by them (other than provision in respect of which grant is made under paragraph (2) or would be made under that paragraph but for the effect of regulation 6(7)) shall be the amount obtained by multiplying the unit amount by the number of children for whom nursery education places are so provided for that period.

(4) The amount of a grant made to person (other than an authority or a local education authority) for any grant period in respect of nursery education provided by that person shall be the lesser of the amounts calculated in accordance with paragraphs (5) and (6).

(5) In this paragraph, the amount is the amount obtained by multiplying the allowable unit cost by the number of children for whom nursery education is so provided by that person during that period.

(6) In this paragraph, the amount is the amount obtained by multiplying the unit amount by the number of children for whom nursery education is so provided by that person during that period.

Social Security information

8.—(1) The information specified in paragraph (2) shall constitute information of a prescribed description for the purposes of paragraph 1(2) of Schedule 2 to the Act.

(2) The information for the purposes of paragraph (1) shall be any information supplied to the Secretary of State in connection with a claim for, or in connection with the adjudication of a claim for, child benefit pursuant to Part IX of the Social Security Contributions and Benefits Act 1992(6) and in particular—

- (a) the name, address and date of birth of the child or of each child in respect of whom child benefit is claimed; and
- (b) the name and address of the person by whom the claim for child benefit is made.

Inspection reports

9.—(1) For the purposes of paragraph 13(1) of Schedule 1 to the Act, there is prescribed, as the period within which a report of an inspection under paragraph 6 of that Schedule is to be made, 25 days beginning on the day following that on which the inspection is completed.

(2) For the purposes of calculating the period prescribed by paragraph (1), no account shall be taken of Saturday, Sunday, Good Friday and Christmas Day or any day which is a bank holiday in England under the Banking and Financial Dealings Act 1971(7).

(3) In paragraph (4), “the local education authority” means the local education authority for the area in which the nursery education is provided and references to “any other local education authority” are references to any local education authority other than the local education authority.

(4) For the purposes of paragraph 13 (2) of Schedule 1 to the Act there are prescribed, as the authorities and persons to whom a copy of a report of an inspection shall be sent, the local education authority and—

- (a) in the case of nursery education provided at a school maintained by a local education authority, the head teacher of the school and (except in the case of a nursery school) the school’s governing body;
- (b) in the case of nursery education provided at a school having foundation governors, the person who appoints them;
- (c) in the case of nursery education provided at a school whose instrument of government names a person as sponsor, that person;
- (d) in the case of nursery education provided at an independent school, the head teacher of the school, the proprietors of the school, the Registrar of Independent Schools for England(8) and, where the school is approved by the Secretary of State under section 347 of the Education Act (approval of independent schools for children with statements), the funding authority, or any other local education authority if that authority are paying fees in respect of the attendance of a registered pupil at the school;
- (e) in the case of nursery education provided at a special school which is not a maintained or grant-maintained special school, the head teacher of the school, the proprietors of the school and the funding authority, or any other local education authority if that authority are paying fees in respect of the attendance of a registered pupil at the school;
- (f) in the case of nursery education provided by a local authority under section 18 of the Children Act 1989, the local authority and the person in charge of the place at which the education is provided;
- (g) in the case of nursery provision provided by a person registered by a local authority under section 71(1)(b) of the Children Act 1989, that person and the registering authority;
- (h) in the case of nursery education provided by a person who would be required to be so registered in that Act applied to the Crown, that person and the Secretary of State; and
- (i) in the case of nursery education provided by a local authority at home to children with special educational needs, that authority.

(7) 1971 c. 80.

(8) For the appointment of separate Registrars for England and for Wales see S.I. [1970/1536](#) and [1995/2896](#).

Inspection intervals

10. For the purpose of paragraph 6(1)(a) of Schedule 1 to the Act it is hereby prescribed that funded nursery education shall be inspected by a registered nursery education inspector at intervals of four years.

Signed by authority of the Secretary of State.

9th March 1998

Estelle Morris
Parliamentary Under Secretary of State
Department for Education and Employment

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations replace the Nursery Education regulations 1996 (S.I.1996/2086) in relation to the provision of nursery education in England with effect from 1st April 1998. They prescribe matters relating to the making of grants in respect of nursery education and the inspection of funded nursery education for the purposes of the Nursery Education and Grant Maintained Schools Act 1996.

The following are prescribed:

- (a) the time before which, and the time after which, education provided for a child is nursery education (*regulation 3*);
- (b) the authorities and persons to whom grants in respect of nursery education may be made (*regulation 4*);
- (c) the method of calculating the amount of grant to be paid in respect of the provision of nursery education (*regulations 5 to 7*);
- (d) the information relating to a claim for (or the adjudication of a claim for) child benefit which constitutes “social security information” for the purposes of Schedule 2 to the Act (*regulation 8*);
- (e) the period within which a report of an inspection of funded nursery education is to be made and the authorities and persons to whom copies of such a report must be sent (*regulation 9*);
- (f) the intervals at which funded nursery education is to be inspected for the purposes of paragraph 6(1)(a) of Schedule 1 to the Act (*regulation 10*).