
STATUTORY INSTRUMENTS

2008 No. 1724

CHILDREN AND YOUNG PERSONS, ENGLAND

**The Local Authority (Duty to Secure Early Years
Provision Free of Charge) Regulations 2008**

<i>Made</i>	- - - -	<i>30th June 2008</i>
<i>Laid before Parliament</i>		<i>8th July 2008</i>
<i>Coming into force</i>	- -	<i>1st September 2008</i>

The Secretary of State for Children, Schools and Families makes the following Regulations in exercise of the powers conferred by sections 7 and 104(2) of the Childcare Act 2006⁽¹⁾:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2008 and come into force on 1st September 2008.

(2) In these Regulations, “the Act” means the Childcare Act 2006.

Prescribed early years provision

2.—(1) The prescribed early years provision⁽²⁾ for the purposes of section 7(1) of the Act (duty to secure prescribed early years provision free of charge) is early years provision that is provided by an early years provider to whom section 40 of the Act (duty to implement Early Years Foundation Stage) applies.

(2) But prescribed early years provision for the purposes of section 7(1) does not include early years provision in respect of which—

- (a) the Secretary of State has made a direction under section 46(1) of the Act (power to enable exemptions to be conferred); or
- (b) an early years provider has made a determination under section 46(2) of the Act.

Prescribed periods

3.—(1) For the purposes of section 7(1) of the Act, the prescribed periods are—

- (a) no fewer than 38 weeks in any year; and

(1) 2006 c. 21. See section 21 of the Childcare Act 2006 (“the Act”) for the definition of “regulations”.
(2) See section 96 of the Act for the definition of “early years provision”.

(b) twelve and a half hours, in respect of each of those 38 weeks.

(2) In this regulation, a year commences on the day on which a young child⁽³⁾ attains the age prescribed in regulation 4.

Prescribed ages

4.—(1) For the purposes of section 7(1)(a) of the Act, the prescribed age is the age that the young child attains at the start of the term beginning on or following the date set out in paragraph (2)—

(2) The date is—

- (a) in the case of a child who was born in the period 1st January to 31st March, 1st April following the child's third birthday;
- (b) in the case of a child who was born in the period 1st April to 31st August, 1st September following the child's third birthday;
- (c) in the case of a child who was born in the period 1st September to 31st December, 1st January following the child's third birthday.

(3) For the purposes of this regulation, “term” means a term the dates of which have been set under section 32 of the Education Act 2002⁽⁴⁾.

30th June 2008

Beverley Hughes
Minister of State
Department for Children, Schools and Families

(3) See section 19 of the Act for the meaning of “young child”.

(4) [2002 c. 32](#). Section 32 sets out who is responsible for determining the dates of school terms and holidays as well as the times of school sessions. In the case of a community, voluntary controlled or community special school, the local authority has responsibility for setting school term dates. In the case of a foundation, voluntary aided, or foundation special school, the governing body has responsibility for setting school term dates.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe certain matters for the purposes of section 7 of the Childcare Act 2006 (“the Act”). They apply in relation to England only.

Section 7 of the Act requires an English local authority (defined in section 106 of the Act) to secure that early years provision of a prescribed description is available free of charge for prescribed periods, for children who have attained a prescribed age.

Regulation 2(1) prescribes the early years provision that an English local authority must ensure is available free of charge. This is early years provision provided by a person to whom section 40 of the Act applies. Section 40 applies to early years providers who are required to be registered in the early years register (provided for under Chapter 2 of Part 3 of the Act) and also applies to early years providers who are not required to be registered in the early years register by virtue of section 34(2) of the Act, which sets out circumstances in which maintained schools, non-maintained special schools, and independent schools are not required to be registered. The effect is that an English local authority must ensure that free early years provision is made available by providers who are under a duty to provide the Early Years Foundation Stage. The Early Years Foundation Stage is established by the Secretary of State under section 39 of the Act. It is divided into two parts: learning and development requirements and welfare requirements. It removes the legal distinction between education and care for young children.

Regulation 2(2)(a) provides that early years provision in respect of which the Secretary of State has made a direction under section 46(1) of the Act is not prescribed. Regulation 2(2)(b) provides that early years provision in respect of which an early years provider has made a determination under section 46(2) of the Act is not prescribed. Section 46 of the Act gives power to the Secretary of State to make regulations enabling the Secretary of State and early years providers to grant exemptions from the learning and development requirements. Exemptions may be granted in respect of early years providers or in respect of a particular child. Local authorities are not required to secure that such early years provision is available free of charge.

Regulation 3 prescribes the periods during which an English local authority must ensure that prescribed early years provision is available free of charge. The periods are no fewer than 38 weeks in a year, and for twelve and a half hours during each of those 38 weeks. Although these are the periods that an English local authority must ensure are available free of charge, this regulation does not affect an authority’s discretion to secure that early years provision is available for other periods of time.

Regulation 4 prescribes the ages of children for whom an English local authority must ensure that the prescribed early years provision is available free of charge. The age of children is prescribed by reference to school term dates.

Section 7(2) of the Act requires an English local authority to have regard to guidance given by the Secretary of State. That guidance is the “Code of Practice on the Provision of Free Nursery Education Places for Three and Four Year Olds”, published by the Department for Education and Skills in February 2006. Copies of this document can be obtained from DCSF Publications, PO Box 5050, Sherwood Park, Annesley, Nottinghamshire NG15 0DJ. Copies can also be downloaded from the following website: www.surestart.gov.uk.

An impact assessment has not been produced for this instrument as no additional burden for business, charities, voluntary bodies, or the public sector is foreseen.

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