
STATUTORY INSTRUMENTS

2018 No. 794

**The Childcare (Disqualification) and Childcare
(Early Years Provision Free of Charge) (Extended
Entitlement) (Amendment) Regulations 2018**

**Part 3 Amendment of the Childcare (Early Years Provision
Free of Charge) (Extended Entitlement) Regulations 2016**

**Amendment of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement)
Regulations 2016**

13. The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016⁽¹⁾ are amended as follows.

14. In regulation 2(1), insert in the appropriate places—

“‘foster parent’ means—

- (a) a local authority foster parent within the meaning of section 105(1) of the Children Act 1989⁽²⁾;
- (b) a local authority foster parent within the meaning of section 197 of the Social Services and Well-Being (Wales) Act 2014⁽³⁾;
- (c) a person approved as a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009⁽⁴⁾; or
- (d) a foster parent within the meaning of Article 27(3) of the Children (Northern Ireland) Order 1995⁽⁵⁾,” and

“‘responsible local authority’ means—

- (a) the local authority looking after the child in accordance with section 22(1) of the Children Act 1989; or
- (b) where the child is looked after by a local authority within the meaning of regulation 3(2)(b), (c) or (d), the local authority discharging its duty under regulation 33 to secure the early years provision;”.

15. After regulation 3(3)(b) insert—

- “(ba) during any period when the child is placed with a foster parent under section 22C(6)(a) or (b) of the Children Act 1989;
- (bb) during any period when the child is placed with a foster parent under section 81(6)(a) or (b) of the Social Services and Well-Being (Wales) Act 2014;

(1) [S.I. 2016/1257](#), amended by [S.I. 2017/1160](#).

(2) [1989 c.41](#). The definition of ‘local authority foster parent’ was substituted by regulations 55 and 106(a) of [S.I. 2016/413](#).

(3) [2014 anaw 4](#). The definition of ‘local authority foster parent’ was substituted by regulations 294 and 319(a) of [S.I. 2016/413](#).

(4) [SSI 2009/210](#) to which there are amendments not relevant to these Regulations.

(5) [S.I. 1995/755 \(N.I.2\)](#). To which there are amendments not relevant to these Regulations.

- (bc) during any period when the child is placed with a foster parent under section 80 of the Adoption and Children (Scotland) Act 2007(6);
- (bd) during any period when the child is placed with a foster parent under Article 27(2)(a) of the Children (Northern Ireland) Order 1995;”.

16. In regulation 4, at the beginning insert—

“(A1) This regulation does not apply in relation to a child falling within regulations 3(3) (ba) to (bd).”.

17. After regulation 4 insert—

“Specified conditions relating to the parent, and any partner of the parent, of the child – foster parents

4A.—(1) This regulation applies in relation to a child falling within regulations 3(3) (ba) to (bd).

(2) For the purposes of section 1(2) of the Act, a parent of the child must meet the following five conditions.

(3) The first condition is that the parent is a foster parent and has the child placed with them.

(4) The second condition is that the main reason, or one of the main reasons, the parent of the child seeks the free childcare referred to in section 1(1) of the Act is to enable the parent, or any partner of the parent, to work.

(5) The condition in paragraph (4) is treated as being met in relation to any person to whom any of the cases in regulation 8(1)(a) to (m) or 9(1)(b) applies.

(6) The third condition is that the parent of the child is in work.

(7) In paragraphs (4) and (6) “work” means—

- (a) in relation to the parent and their partner, where the partner is also the child’s foster parent, paid work outside their role as a foster parent; and
- (b) in relation to the partner of the parent, where the partner is not the child’s foster parent, qualifying paid work.

(8) For the purposes of this regulation the parent is also treated as being in work if—

- (a) the person—
 - (i) has accepted an offer to work on or before the date of the declaration made in accordance with regulation 13; and
 - (ii) expects the work to start within 31 days of that date; or
- (b) the person—
 - (i) is absent from work on unpaid leave on the date of the declaration made in accordance with regulation 13; and
 - (ii) expects to return to work within 31 days of that date.

(9) The fourth condition is that—

- (a) the parent; and
- (b) any partner of the parent, where the partner is also the child’s foster parent,

has had confirmation from the responsible local authority that the responsible local authority is satisfied that taking up paid work outside their role as a foster parent is consistent with the child's care plan.

(10) The fifth condition is that the parent does not expect their adjusted net income to exceed £100,000 in the relevant tax year.

(11) The condition in paragraph (10) is treated as not being met by any parent if—

- (a) the parent has made, or expects to make, a claim under section 809B of the Income Tax Act 2007⁽⁷⁾(claim for remittance basis to apply) for the relevant tax year, or
- (b) the parent expects section 809E of that Act (application of remittance basis in certain cases without claim) to apply to the parent for the relevant tax year.

(11) Where a parent of the child has a partner, that partner must also meet the condition in paragraphs (6) and (10).

(11) In this regulation—

“adjusted net income” has the meaning given by section 58 of the Income Tax Act 2007;

“care plan” means—

- (a) the ‘care plan’ as defined by regulation 2 of the Care Planning, Placement and Case Review (England) Regulations 2010⁽⁸⁾;
- (b) the ‘care and support plan’ as defined by regulation 2 of the Care Planning, Placement and Case Review (Wales) Regulations 2015⁽⁹⁾;
- (c) the ‘child’s plan’ prepared in accordance with regulation 5 of the Looked After Children (Scotland) Regulations 2009; or
- (d) the written record of the arrangements for the child’s care made under regulation 3 of the Arrangements for the Placement of Children (General) Regulations (Northern Ireland) 1996⁽¹⁰⁾;

“the relevant tax year” means the tax year in which the declaration by the parent or the parent’s partner is made.”.

18. In regulation 8—

- (a) in the title after “paid work” insert “and work outside role as a foster parent”;
- (b) for paragraph (2) substitute—

“(2) Subject to paragraphs (3) and (4) where the person falls within regulation 4, or is not a foster parent but falls within regulation 4A, the person is regarded for the purposes of these Regulations—

- (i) as in paid work during the period in paragraph (1), and
- (ii) as having, for each week of that period, expected income from that work equal to the minimum weekly income.

(2A) Subject to paragraphs (3) and (4) where the person is a foster parent within regulation 4A, the person is regarded as being in paid work outside their role as a foster parent.”; and

- (c) in paragraph (3)—

- (i) at the end of sub-paragraph (a) omit “or”; and

⁽⁷⁾ 2007 c.3.

⁽⁸⁾ S.I. 2010/959, to which there are amendments not relevant to these Regulations.

⁽⁹⁾ S.I. 2015/1818, to which there are amendments not relevant to these Regulations.

⁽¹⁰⁾ S.I. 1996/453.

(ii) after sub-paragraph (a) insert—

“(aa) the person was in paid work outside their role as a foster parent; or”.

19. In regulation 9—

(a) in the title after “paid work” insert “and paid work outside role as a foster parent”;

(b) for sub-paragraph (1)(a) substitute—

“(a) a person (“P”) has—

(i) a partner who is in qualifying paid work, or

(ii) a partner who is in paid work outside their role as a foster parent; and”;

(c) for paragraph (2) substitute—

“(2) For the purposes of the Act—

(a) where P falls within regulation 4 or is not a foster parent and falls within regulation 4A, P is regarded as—

(i) being in paid work during that period, and

(ii) as having, for each week of that period, expected income from that work equal to the minimum weekly income;

(b) where P falls within regulation 4A, P is regarded as in paid work outside their role as a foster parent.”; and

(d) in paragraph (3) after “qualifying paid work” insert “or paid work outside their role as a foster parent”.

20. For regulation 11(a) substitute—

“(a) be—

(i) the parent with whom the young child in respect of whom the declaration is being made normally lives, or that parent’s partner, or

(ii) the foster parent with whom the young child in respect of whom the declaration is being made is placed.”.

21. For regulation 13 substitute—

“(1) Where a declaration is being made in accordance with regulation 11(a)(i), the declaration must—

(a) be in the form specified by the Commissioners;

(b) be made to the Commissioners in accordance with regulation 14; and

(c) include information specified by the Commissioners—

(i) to identify the person making the declaration, and any partner of that person;

(ii) to identify the young child in respect of whom the declaration is being made; and

(iii) to determine whether the young child is a qualifying child of working parents.

(2) Where a declaration is being made in accordance with regulation 11(a)(ii), the declaration must be in the form specified by the responsible authority.”.

22. For regulation 14(1) substitute—

“(1) A declaration made in accordance with regulation 13(1) must be made by electronic communications.”.

23. In regulation 15—

- (a) in paragraph (2)(a) omit “or”;
 - (b) after paragraph (2)(a) insert—
 - “(ba) the responsible local authority under regulation 17A, or”; and
 - (c) in paragraphs (6), (7), (8) and (9) after “Commissioners” insert “or responsible local authority”.
- 24.** In regulation 16—
- (a) at the end of regulation (3)(a) omit “or”;
 - (b) after regulation (3)(a) insert—
 - “(ba) the responsible local authority under regulation 17A, or”.
 - (c) at the end of regulation (4)(a) omit “or”; and
 - (d) after regulation (4)(a) insert—
 - “(ba) the responsible local authority under regulation 17A, or”.
- 25.** For the heading of Chapter 4 of Part 2 substitute—
“Chapter 4

Determinations”.

- 26.** After regulation 17 insert—

“Determination by the responsible local authority

17A. Where a person makes a declaration in accordance with regulation 13 or a reconfirming declaration in accordance with regulation 16, the responsible local authority must make a determination as to whether the criteria in section 1(2)(b) and (d) of the Act are met in relation to the child in respect of whom the declaration is made.”.

- 27.** Before regulation 18 insert—

“Application to determinations made under regulation 17

18ZA. Regulations 18 to 32 apply in relation to determinations made by the Commissioners under regulation 17 only.”.