

Draft Regulations laid before Parliament under section 104(3A) of the Children Act 1989, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. []

CHILDREN AND YOUNG PERSONS, ENGLAND

The Breaks for Carers of Disabled Children Regulations 2010

Made - - - - 2010
Coming into force - - 1st April 2011

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by paragraph 6(2) of Schedule 2 to the Children Act 1989⁽¹⁾.

In accordance with section 104(3A) of that Act, a draft of these Regulations was laid before Parliament and approved by resolution of each House of Parliament.

Citation and commencement

1. These Regulations may be cited as the Breaks for Carers of Disabled Children Regulations 2010 and come into force on 1st April 2011.

Interpretation

2. In these Regulations—

“the 1989 Act” means the Children Act 1989;

“carer” means a person who provides care for a disabled child and who is—

(a) the child’s parent, or

(b) a person who is not the child’s parent but who has parental responsibility for that child;
and

“disabled” has the meaning given in section 17(11) of the 1989 Act⁽²⁾.

(1) 1989 c. 41. Paragraph 6(2) was inserted by section 25 of the Children and Young Persons Act 2008 (c. 23) (“the 2008 Act”). The power in paragraph 6(2) is expressed to be exercisable by the “appropriate national authority”. The “appropriate national authority” is defined in section 59(7) of the Children Act 1989 as meaning, in relation to England, the Secretary of State. Section 104(3A) was substituted by section 39 of, and Schedule 3 to, the 2008 Act and subsequently amended by S.I. 2009/1892.

(2) That is, that a child is disabled “if he is blind, deaf or dumb or suffers from mental disorder of any kind or is substantially and permanently handicapped by illness, injury or congenital deformity or such other disability as may be prescribed”.

Duty to make provision

3. In performing their duty under paragraph 6(1)(c) of Schedule 2 to the 1989 Act⁽³⁾, a local authority must—

- (a) have regard to the needs of those carers who would be unable to continue to provide care unless breaks from caring were given to them; and
- (b) have regard to the needs of those carers who would be able to provide care for their disabled child more effectively if breaks from caring were given to them to allow them to—
 - (i) undertake education, training or any regular leisure activity,
 - (ii) meet the needs of other children in the family more effectively, or
 - (iii) carry out day to day tasks which they must perform in order to run their household.

Types of services which must be provided

4.—(1) In performing their duty under paragraph 6(1)(c) of Schedule 2 to the 1989 Act, a local authority must provide, so far as is reasonably practicable, a range of services which is sufficient to assist carers to continue to provide care or to do so more effectively.

- (2) In particular, the local authority must provide, as appropriate, a range of—
 - (a) day-time care in the homes of disabled children or elsewhere,
 - (b) overnight care in the homes of disabled children or elsewhere,
 - (c) educational or leisure activities for disabled children outside their homes, and
 - (d) services available to assist carers in the evenings, at weekends and during the school holidays.

Short breaks services statement

5.—(1) A local authority must, by 1st October 2011, prepare a statement for carers in their area (a “short breaks services statement”) setting out details of—

- (a) the range of services provided in accordance with regulation 4,
- (b) any criteria by which eligibility for those services will be assessed, and
- (c) how the range of services is designed to meet the needs of carers in their area.

(2) The local authority must publish their short breaks services statement, including by placing a copy of the statement on their website.

(3) The local authority must keep their short breaks services statement under review and, where appropriate, revise the statement.

(4) In preparing and revising their statement, the local authority must have regard to the views of carers in their area.

Date

Name
Minister of State
Department for Education

(3) Paragraph 6(1)(c) (inserted by section 25 of the 2008 Act) requires local authorities to provide services designed to assist individuals who provide care for disabled children to continue to do so, or to do so more effectively, by giving them breaks from caring.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are the first regulations to be made under paragraph 6 of Schedule 2 to the Children Act 1989, which imposes a duty on local authorities, as part of the range of services they provide for families, to provide breaks from caring to assist parents and others who provide care for disabled children. Paragraph 6(1)(c) and (2) of Schedule 2 to the Children Act 1989 were inserted by the Children and Young Persons Act 2008.

The Regulations, which come into force on 1st April 2011, prescribe the manner in which local authorities must make provision for short breaks for carers of disabled children in their area. Local authorities must have regard to (a) the needs of those carers who would be able to provide care more effectively if they had breaks from caring, and (b) the needs of those carers who would be unable to continue to provide care unless a break were offered to them (regulation 3).

They require that local authorities provide a range of short breaks services (regulation 4), and that local authorities, in consultation with carers in their area, prepare, publish, and keep under review, a “short breaks services statement” setting out what services are available, the categories of carer who may be eligible to gain access to them, and how they are designed to meet the needs of carers in the area (regulation 5).

An impact assessment of the effect that these Regulations will have on the costs of business and the voluntary and public sectors is available at www.education.gov.uk and is available alongside the Regulations on the OPSI website.