

2014 No. 2147

CHILDREN AND YOUNG PERSONS, ENGLAND

The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014

<i>Made</i>	- - - -	<i>11th August 2014</i>
<i>Laid before Parliament</i>		<i>14th August 2014</i>
<i>Coming into force</i>	- -	<i>8th September 2014</i>

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 7, 7A, 9A and 104(2) of the Childcare Act 2006(a).

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 2014 and come into force on 8th September 2014.

(2) In these Regulations—

“the 2006 Act” means the Childcare Act 2006;

“early years childminder” has the meaning given by section 96(4) of the 2006 Act;

“early years childminder agency” has the meaning given by section 98(1) of the 2006 Act(b);

“early years childminder agency inspection report” means a report under section 51E of the 2006 Act(c);

“early years provider” has the meaning given by section 96(3) of the 2006 Act;

“early years provision inspection report” means a report under section 162A of the Education Act 2002(d) (whether by Her Majesty’s Chief Inspector of Education, Children’s Services and Skills or by a body approved by the Secretary of State for the purposes of section 162A of that Act), section 5 of the Education Act 2005(e), section 50 of the 2006 Act(f) or section 109 of the Education and Skills Act 2008(g).

“eligible child” means a young child—

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- (a) 2006 c.21. Section 7 was substituted by section 1(2) of the Education Act 2011 (c.21). Sections 7A and 9A were inserted by section 87 of the Children and Families Act 2014 (c.6). See section 106 for the definitions of “prescribed” and “regulations”.
- (b) The definition of “early years childminder agency” was inserted into section 98(1) by paragraph 82 of Schedule 4 to the Children and Families Act 2014.
- (c) Section 51E was inserted by paragraph 13 of Schedule 4 to the Children and Families Act 2014.
- (d) 2002 c.32. Section 162A was inserted by paragraph 2 of Schedule 8 to the Education Act 2005 (c.18), and was amended by paragraph 73 of Schedule 14 to the Education and Inspections Act 2006 (c.40).
- (e) 2005 c.18. Section 5 was amended by paragraph 23 of Schedule 7 to the Education and Inspections Act 2006, paragraph 26 of Schedule 1 to the Education and Skills Act 2008 (c.25), paragraph 17 of Schedule 2 to the Academies Act 2010 (c.32), and sections 40(2) and 41(1) of, and paragraph 15(2) of Schedule 13 to, the Education Act 2011 (c.21).
- (f) Section 50(4) was repealed by paragraph 111 of Schedule 18 to the Education and Inspections Act 2006.
- (g) 2008 c.25.

- (a) who is within section 512ZB(4) of the Education Act 1996(a);
- (b) whose parent (within the meaning given by section 6(6) of the 2006 Act) is entitled to working tax credit under Part 1 of the Tax Credits Act 2002(b) by virtue of an award which is based on an annual income not exceeding £16,190;
- (c) who has a statement of special educational needs made under section 324 of the Education Act 1996(c);
- (d) for whom an EHC plan is prepared under section 37 of the Children and Families Act 2014 (education, health and care plans)(d)
- (e) who is entitled to disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(e);
- (f) who is looked after by a local authority under section 22(1) of the Children Act 1989(f); or
- (g) who has previously been looked after by the local authority under section 22(1) of the Children Act 1989 and is no longer so looked after as a result of the making of one of the following orders—
 - (i) an adoption order within the meaning given by section 46(1) of the Adoption and Children Act 2002(g);
 - (ii) a special guardianship order within the meaning given by section 14A(1) of the Children Act 1989(h);
 - (iii) a child arrangements order within the meaning given by section 8(1) of the Children Act 1989(i) which consists of, or includes, arrangements relating to either or both of the following—
 - (aa) with whom the child is to live,
 - (bb) when the child is to live with any person;

“term” means a term the dates of which have been set under section 32 of the Education Act 2002(j).

Prescribed early years provision

2.—(1) The prescribed early years provision for the purposes of section 7(1) of the 2006 Act (duty to secure early years provision free of charge) is early years provision that is provided by an early years provider, other than an excluded provider, to whom section 40 of the 2006 Act (duty to implement Early Years Foundation Stage) applies.

(2) In paragraph (1), an “excluded provider” is —

- (a) an independent school (other than an Academy within the meaning of section 1A of the Academies Act 2010(k)) which does not meet the standards prescribed under section 157(1) of the Education Act 2002 in relation to the spiritual, moral, social and cultural development of pupils at the school; or

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- (a) 1996 c.56. This section was substituted, together with sections 512 and 512ZA, for section 512 as originally enacted by section 201(1) of the Education Act 2002 (c.32) and amended by paragraph 16 of Schedule 3 to the Welfare Reform Act 2007 (c.5), by section 26 of the Child Poverty Act 2010 (c.9) and by paragraph 39 of Schedule 2 to the Welfare Reform Act 2012 (c.5).
 - (b) 2002 c.21.
 - (c) Section 324 was amended by paragraph 77 of Schedule 30 to the School Standards and Framework Act 1998 (c.31), by section 9 of the Special Educational Needs and Disability Act 2001 (c.10) and by paragraph 43 of Schedule 21 to the Education Act 2002 (c.32).
 - (d) 2014 c.6.
 - (e) 1992 c.4. Section 71 was amended by section 67 of the Welfare Reform and Pensions Act 1999 (c.30).
 - (f) 1989 c.41. Section 22(1) was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c.22), by section 2(2) of the Children (Leaving Care) Act 2000 (c. 35) and by section 116(2) of the Adoption and Children Act 2002 (c.38).
 - (g) 2002 c.38.
 - (h) Section 14A was inserted by section 115(1) of the Adoption and Children Act 2002 (c.38).
 - (i) 1989 c.41. Section 8(1) was amended by section 12 of the Children and Families Act 2014 (c.6).
 - (j) 2002 c.32. Section 32 was amended by S.I. 2010/1158.
 - (k) 2010 c.32. Section 1A was inserted by section 53(7) of the Education Act 2011 (c.21).

- (b) an early years provider in relation to whom the local authority has reasonable grounds to believe—
 - (i) does not actively promote the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs; or
 - (ii) promotes as evidence-based views or theories which are contrary to established scientific or historical evidence and explanations.

Prescribed description of a young child

3.—(1) For the purposes of section 7(1)(b) of the 2006 Act, a young child is of a prescribed description if the young child meets the conditions in paragraphs (2) or (3).

(2) The condition is that the young child—

- (a) has attained the age of two years at the start of the term beginning on or following the date in paragraph (4); and
- (b) is an eligible child on or after the date in paragraph (4) applicable to the child in question.

(3) The condition is that the young child has attained the age of three years at the start of the term beginning on or following the date in paragraph (4).

(4) 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 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 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 birthday.

Availability of early years provision

4.—(1) For the purposes of section 7(1) of the 2006 Act, an English local authority must secure that the prescribed early years provision is available for each young child for a period of 570 hours in any year and during no fewer than 38 weeks in any year.

(2) For the purposes of paragraph (1) and subject to paragraph (3), the first year commences on the date in regulation 3(4) applicable to the child in question, and subsequent years commence on the anniversary of that date.

(3) Where a young child becomes an eligible child on a date after the date in regulation 3(4) applicable to the child in question, the first year commences on the date in regulation 3(4) next following the date on which the young child becomes an eligible child, and subsequent years commence on the anniversary of that date.

Requirement on local authority when discharging its duty under section 7 to secure early years provision free of charge

5.—(1) An English local authority must discharge its duty to a young child under section 7 of the 2006 Act by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled in cases where—

- (a) the early years provider is willing to provide it, and
- (b) the early years provider is also willing to accept—
 - (i) any terms as to the payments which would be made to him or her in respect of the provision, and
 - (ii) any requirements which would be imposed in respect of it.

(2) The requirement in regulation 5(1) applies subject to regulation 6.

Scope of the requirement in regulation 5(1)

6.—(1) In the case of early years provision other than provision by an early years childminder registered with an early years childminder agency, the requirement in regulation 5(1) applies only if the early years provision is provision by an early years provider other than the governing body of a maintained school, and—

- (a) where the early years provision is for a child who meets the condition in regulation 3(2), the overall effectiveness of the provision was awarded a grade of “good,” or better, in the most recent early years provision inspection report published in respect of the provision;
- (b) where the early years provision is for a child who meets the condition in regulation 3(3), the overall effectiveness of the provision was awarded a grade of “satisfactory”, or “requires improvement”, or better, in the most recent early years provision inspection report published in respect of the provision; or
- (c) an early years provision inspection report has not yet been published in respect of the provision.

(2) In the case of early years provision by an early years childminder registered with an early years childminder agency, the requirement in regulation 5(1) applies only if—

- (a) where the early years provision is for a child who meets the condition in regulation 3(2), the childminder is registered with an agency which was awarded a grade of “good”, or better, in the most recent early years childminder agency inspection report published in respect of the agency;
- (b) where the early years provision is for a child who meets the condition in regulation 3(3), the childminder is registered with an agency which was awarded a grade of “requires improvement”, or better, in the most recent early years childminder agency inspection report published in respect of the agency; or
- (c) an early years childminder agency inspection report has not yet been published in respect of the agency.

(3) The requirement in regulation 5(1) does not apply where—

- (a) the local authority has reasonable grounds to believe that the person with whom the arrangements are intended to be made is not able to satisfy a requirement imposed in respect of the early years provision; or
- (b) in the case of early years provision by an early years childminder registered with an early years childminder agency, the early years childminder agency has notified the local authority that, in the reasonable opinion of the agency, the provision by the early years childminder registered with the agency is not of satisfactory quality.

Termination of the arrangements

7. Arrangements made by the local authority for the purpose of complying with the requirement in regulation 5(1) must include provision allowing the local authority to terminate the arrangements if—

- (a) in the case of early years provision of the description in regulation 6(1)(a), the overall effectiveness of the provision ceases to meet that description;
- (b) in the case of early years provision of the description in regulation 6(1)(b), the overall effectiveness of the provision ceases to meet that description;
- (c) in the case of early years provision of the description in regulation 6(2)(a), the childminder is registered with an agency which fails to be awarded a grade of “good”, or better, in the most recent early years childminder agency inspection report published in respect of the agency;
- (d) in the case of early years provision of the description in regulation 6(2)(b), the childminder is registered with an agency which fails to be awarded a grade of “requires improvement”, or better, in the most recent early years childminder agency inspection report published in respect of the agency;

- (e) in the case of early years provision by an early years childminder registered with an early years childminder agency, the early years childminder agency has notified the local authority that, in the reasonable opinion of the agency, the provision by an early years childminder registered with the agency has ceased to be of satisfactory quality.

Requirements governing arrangements made for the purpose of discharging the duty of the local authority under section 7

8.—(1) In making arrangements for the purpose of discharging its duty under section 7 of the 2006 Act with an early years provider (other than the governing body of a maintained school), or with an early years childminder agency, a local authority may impose on the person with whom the arrangements are made only requirements which—

- (a) enable the local authority to comply with the requirement in regulation 5(1);
- (b) enable the local authority to terminate the arrangements made pursuant to the requirement in regulation 5(1), in the circumstances prescribed in regulation 7;
- (c) have as their purpose the satisfaction of one of the following objectives—
 - (i) that the early years provision is provided free of charge;
 - (ii) that the early years provision is provided in a pattern to suit the needs of the parents of the children for whom the early years provision is provided;
 - (iii) that any financial assistance provided by a local authority under the arrangements is used properly and in accordance with the arrangements;
 - (iv) the meeting of the needs of disabled children (within the meaning given by section 6 of the Equality Act 2010^(a)) and children with special educational needs (within the meaning given by section 20(1) of the Children and Families Act 2014)^(b) for whom the early years provision is provided;
 - (v) the effective safeguarding and promotion of welfare of the children for whom the early years provision is provided;
 - (vi) the active promotion of the fundamental British values of democracy, the rule of law, individual liberty and mutual respect and tolerance of those with different faiths and beliefs;
 - (vii) that views or theories which are contrary to established scientific or historical evidence and explanations are not promoted as evidence-based in the early years provision;
 - (viii) in circumstances where an early years provision inspection report awards a grade of less than “good” to the overall effectiveness of the early years provision, that the early years provider takes the measures identified in that report to improve the overall effectiveness of the early years provision, including, where applicable, participation in a training or other quality improvement programme; or
- (d) are otherwise necessary for the effective administration of the arrangements.

(2) But a local authority may not impose requirements which—

- (a) where the arrangements are made with an early years provider—
 - (i) subject the quality of the early years provision to a quality assessment process by the local authority; or
 - (ii) require the provider to attend any training or other quality improvement programme, other than any training or quality improvement programme identified in an early years provision inspection report as a measure necessary for the improvement of the early years provision, where the report has awarded a grade of less than “good” to the overall effectiveness of the provision;

(a) 2010 c.15.

(b) 2014 c.6.

- (b) where the arrangements are made with an early years childminder agency, subject the quality of the services provided by the childminder agency to a quality assessment process by the local authority.

Revocations

9. The following are revoked—

- (a) the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013(a); and
- (b) the Local Authority (Duty to Secure Early Years Provision Free of Charge) (Amendment) Regulations 2014(b).

John Nash
Parliamentary Under Secretary of State
Department for Education

11th August 2014

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 7 of the Childcare Act 2006 (“the 2006 Act”) places a duty on an English local authority to secure early years provision to a young child in its area, free of charge, and in accordance with regulations.

Regulation 2 of these Regulations prescribes the early years provision which an English local authority must secure free of charge. Regulation 3 prescribes the description of children for whom an English local authority must ensure prescribed early years provision is available free of charge. Regulation 4 sets out the amount of free prescribed early years provision which an English local authority must make available.

Section 7A of the 2006 Act makes provision for regulations to require an English local authority to discharge its duty to a young child under section 7 by making arrangements which secure that an early years provider chosen by a parent of the child provides the early years provision to which the child is entitled in cases where the early years provider is willing to provide the provision, and to accept the terms of the local authority imposed in respect of the provision.

Regulation 5 of these Regulations imposes that requirement. The requirement in regulation 5 is subject to regulation 6, which describes the kind of early years provider and the kind of early years provision which fall within the scope of the requirement. Regulation 7 sets out the circumstances in which the arrangements may be terminated.

Section 9A of the 2006 Act makes provision for regulations to prescribe requirements which may, or may not, be imposed in arrangements made by an English local authority for the purpose of discharging its duty under section 7. Regulation 8(1) prescribes the requirements which may be imposed, and regulation 8(2) prescribes the requirements which may not be imposed.

Regulation 9 revokes the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2013 and amending regulations.

An Impact Assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

(a) S.I. 2013/3193.
(b) S.I. 2014/1705.

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£6.00

UK201408129 08/2014 19585

<http://www.legislation.gov.uk/id/uksi/2014/2147>

ISBN 978-0-11-111988-4



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