

**EXPLANATORY MEMORANDUM TO**  
**THE CHILDCARE (EARLY YEARS PROVISION FREE OF CHARGE)**  
**(EXTENDED ENTITLEMENT) AMENDMENT REGULATIONS 2017**

**2017 No. 1160**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The Secretary of State has exercised her powers under section 1 of the Childcare Act 2016 (the “2016 Act”) to make regulations relating to the eligibility criteria for 30 hours free childcare for working parents of three and four year olds - the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (the “2016 Regulations”). These Regulations amend the 2016 Regulations to simplify and improve the parent journey when applying for 30 hours free childcare.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As the instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2016 Act places a duty on the Secretary of State to make 30 hours free childcare available for three and four year old children of working parents.
- 4.2 The 2016 Regulations, made under the 2016 Act, set out the eligibility criteria for 30 hours free childcare, the eligibility checking process by Her Majesty’s Revenue and Customs (HMRC), give HMRC the power to impose penalties for inaccurate declarations, and provide for a review and appeals process for parents found ineligible for a 30 hour free place. The 2016 Regulations also set out how local authorities should discharge the duty to secure 30 hours free childcare for eligible children.
- 4.3 These Regulations make minor amendments to the 2016 Regulations.

**5. Extent and Territorial Application**

- 5.1 This instrument extends to England and Wales.
- 5.2 This instrument applies in England.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Since September 2010, all three and four year olds have been entitled to 570 hours of free early education over no fewer than 38 weeks of the year (which equates to 15 hours a week for 38 weeks of the year).
- 7.2 In September 2017, the government fulfilled its 2015 Manifesto commitment to double the amount of free childcare from 15 hours a week for 38 weeks of the year to 30 hours a week for 38 weeks of the year (or 1140 hours a year) for three and four year olds of working parents. The additional free childcare is intended to help families by reducing the cost of childcare and will support parents to move into work or to work more hours, should they wish to do so.
- 7.3 The Secretary of State has made the 2016 Regulations to discharge her duty to secure the additional free hours through English local authorities.
- 7.4 The Childcare Payments Act 2014 ('The Act') enacted a new scheme known as "Tax-Free Childcare" designed to provide financial support to help working families with the costs of childcare. The eligibility criteria for 30 hours free childcare broadly align with those for the Tax-Free Childcare scheme.
- 7.5 Parents can apply for either 30 hours free childcare or Tax-Free Childcare or both through a joint on-line application – the Childcare Service. Her Majesty's Revenue and Customs (HMRC) determine whether parents meet the eligibility criteria for either or both schemes.
- 7.6 Following feedback from applicants for both 30 hours free childcare and Tax-Free Childcare, the Department for Education and HMRC consider that making minor technical changes to the application process will simplify and improve the parent journey.
- 7.7 In these Regulations, the Department for Education is mirroring amendments already made by HMRC to regulations under the Childcare Payments Act 2014.<sup>(1)</sup> The effect of the Regulations is to require a parent and their partner to obtain a national insurance number before making a declaration of eligibility. The Regulations also permit a parent to make a declaration of eligibility up to 30 days before starting or returning to work (as opposed to 14 days in the 2016 Regulations). Finally, the Regulations give HMRC the power to align validity periods in a newly formed household where one parent has made a declaration for 30 hours free childcare only and the other has applied for Tax-Free Childcare.

### Consolidation

- 7.8 There are no plans for consolidating regulations at present.

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<sup>(1)</sup> S.I. 2017/1096, S.I. 2017/1101 and S.I. 2016/1021.

## **8. Consultation outcome**

- 8.1 The eligibility criteria for 30 hours free childcare were extensively debated during the passage of the Childcare Act 2016 through Parliament, and the 2016 Regulations were subject to the affirmative procedure and received formal approval from both Houses of Parliament.
- 8.2 The Department for Education has not formally consulted on these Regulations as they are technical in nature, and will benefit working parents.
- 8.3 Enabling parents to apply for 30 hours free childcare further in advance of taking up or returning to work will allow parents more time to make their childcare arrangements.
- 8.4 Aligning the validity periods in a newly formed household will make the process simpler and less bureaucratic and time-consuming for parents.

## **9. Guidance**

- 9.1 There is already statutory guidance for local authorities on early education and childcare. This came into effect on 1 September 2017 and sets out how local authorities should discharge their duty to secure the universal 15 hour entitlement for all three and four year olds and 30 hours free childcare for working parents of three and four year olds. The Department does not intend to revise the statutory guidance for local authorities as the amendments relate to the application process, which is managed by HMRC. HMRC is working with the Government Digital Service (GDS) to update the online childcare service guidance for parents to reflect these changes to 30 hours free childcare.

## **10. Impact**

- 10.1 The instrument in itself does not have a direct impact on businesses, charities or voluntary bodies as these are technical changes to the application process for 30 hours free childcare.
- 10.2 The impact on the public sector is that, as parents will be able to apply earlier, local authorities (who have a duty to secure 30 hours free childcare for eligible parents) will have more time to assess demand for free places and ensure sufficiency of those places.
- 10.3 An Impact Assessment has not been prepared for these Regulations.

## **11. Regulating small business**

- 11.1 The Regulations do not place requirements directly on small business, as childcare providers are free to choose whether to offer the 30 hours free childcare entitlement. However, enabling parents to apply earlier will support those childcare providers who choose to offer the entitlement giving them more time to plan and manage delivery of free places.

## **12. Monitoring & review**

- 12.1 We regularly review the impact of 30 hours free childcare through a variety of mechanisms. These include: an independent evaluation of the first two terms of 30 hours national implementation, and an annual parent survey. We will continue to do so going forward.

### **13. Contact**

- 13.1 Julie Laughton or Christina Banks at the Department for Education. Telephone: 0207 783 8335 or 0207 783 8583 or email: Jobshare.BANKES-LAUGHTON@education.gov.uk can answer any queries regarding the instrument.