

EXPLANATORY MEMORANDUM TO
THE CHILDCARE (EARLY YEARS PROVISION FREE OF CHARGE)
(EXTENDED ENTITLEMENT) (CORONAVIRUS) (AMENDMENT)
REGULATIONS 2020

2020 No. 712

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 This instrument makes a temporary change to the maximum income threshold eligibility criterion for free childcare for working parents of three and four year olds set out in the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations (“the 2016 Regulations”) commonly known as “30 hours free childcare”. The change aims to ensure that critical workers who exceed the maximum income threshold set out in the 2016 Regulations due to increased income mainly attributable to earnings from work undertaken directly or indirectly as a result of the coronavirus (COVID-19) outbreak can continue to take up 30 hours free childcare. The change will only be effective for the tax year starting with 6th April 2020 and ending with 5th April 2021.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is England and Wales.
4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 The Childcare Act 2016 Act (the “2016 Act”) places a duty on the Secretary of State to ensure that 30 hours free childcare is available for three and four year old children

of working parents. The 2016 Act also allows the Secretary of State to delegate this duty to local authorities (see section 2(2)(a)).

- 6.2 The 2016 Regulations, made under the 2016 Act, set out details about who is a 'qualifying child' of working parents, conditions of eligibility, declarations that are needed from working parents to confirm eligibility, mechanisms for reviews and appeals and the requirements on local authorities to secure the free early years provision. The 2016 Regulations also set out a number of functions which are given to Her Majesty's Revenue and Customs (HMRC). These functions are: the collection of applications and declarations of eligibility, the requirement to determine whether declarations made are valid, the power to impose penalties for inaccurate declarations, the requirement to review, on request, its decisions on eligibility and penalties and to defend any appeals, after review. The 2016 Regulations also set out how local authorities should discharge the duty to secure 30 hours free childcare for eligible children.
- 6.3 These Regulations make a temporary change to the maximum income threshold criterion in the 2016 Regulations.
- 6.4 HMRC have made a similar change to the Childcare Payments (Eligibility) Regulations 2015 to ensure consistency with the Tax Free Childcare scheme.

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 The Childcare Payments Act 2014 enacted a new scheme, commonly known as Tax Free Childcare, designed to provide financial support to help working parents with the costs of childcare.
- 7.3 The government committed in their 2015 Manifesto 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 15 hours of free childcare was intended to help families by reducing the costs of childcare and to support parents to move into work or to work more hours, should they wish to do so.
- 7.4 The eligibility criteria for 30 hours free childcare set out in the 2016 Regulations broadly aligns with Tax Free Childcare.
- 7.5 Since September 2017, all three- and four-year-olds whose parents meet the eligibility criteria set out in the 2016 Regulations have been entitled to 30 hours free childcare. This was extended to foster parents in September 2018.
- 7.6 Parents can apply for either 30 hours free childcare or Tax-Free Childcare or both, through a joint on-line application – the Childcare Service. HMRC determine whether parents meet the eligibility criteria for either or both schemes.
- 7.7 Parents successfully applying for 30 hours free childcare will receive an eligibility code which can be used to obtain a free place for their child. Parents must receive an eligibility code by the deadlines set out in the 2016 Regulations (31st August, 31st

December and 31st March) to secure a free place for the following term. Parents are required to reconfirm their eligibility every three months to maintain a valid code.

- 7.8 The Department for Education is also taking steps to minimise the impact of the coronavirus outbreak on lower earning families that are eligible for 30 hours. The minimum income eligibility criterion for 30 hours free childcare is that each parent in a two parent family, or a sole parent, must expect to earn the equivalent of a weekly minimum of 16 hours at national minimum wage or national living wage. We have made a temporary change to this to maintain eligibility for the entitlement for parents who would ordinarily be eligible but who have lost income due to the coronavirus outbreak. We do not need to make legislative changes to the minimum income criterion. HMRC is able to implement this temporary change under the 2016 Regulations whereas the maximum income criterion of £100,000 is specified in regulations 4 and 4A of the 2016 Regulations and so must be amended. This temporary change to the minimum income criterion was announced on 5 May. A similar temporary change has been made to the minimum income threshold for Tax Free Childcare.
- 7.9 The maximum income eligibility criterion for 30 hours free childcare is that each parent in a two parent family, or a sole parent, must expect to earn less than £100,000 in the tax year in which they first make their application for 30 hours free childcare.
- 7.10 This is defined in terms of what they reasonably expect their “adjusted net income” (“income”) as defined in section 58 of the Income Tax Act 2007, to be. The maximum income “resets” to £0 at the beginning of the new tax year – 6th April.
- 7.11 When a parent applies or reconfirms by the deadlines set out in the 2016 Regulations they declare that they do not expect their income in that tax year to exceed £100,000. If the parent’s income is below this upper limit and increases in this tax year as a response to the coronavirus outbreak, without this amendment they would exceed the maximum income threshold of £100,000. The parent would then be unable to reconfirm their eligibility until 5th April 2021. This would mean that they would not be able to take up 30 hours free childcare until September 2021 as the deadline for having a valid eligibility code for the 2021 summer term is 31st March 2021 which is before the end of the tax year,
- 7.12 Parents who already and normally earn over £100,000 including parents who applied or reconfirmed by 31st March 2020 will be found ineligible at the application or reconfirmation stage, as normal.
- 7.13 Critical workers who have been previously ineligible as their income exceeded the £100,000 maximum income threshold will be eligible if their income earned over £100,000 is mainly as a result of the incidence or transmission of the coronavirus outbreak, if they can declare that their income over the tax year will be less than the new maximum threshold of £150,000.
- 7.14 As a result of the coronavirus outbreak, since 23rd March 2020, in line with scientific advice, the Government asked nurseries and early years providers to remain open only to vulnerable children or children who have a parent who is a critical worker¹. From the week commencing 1st June the Government asked primary schools to welcome back all children in nursery, reception and year 1 and year 6 alongside priority groups

¹ As defined in [guidance](#) published by the Cabinet Office and Department for Education on 16th June 2020.

(vulnerable children and children of critical workers). The Government also asked nurseries and other early years providers, including, childminders, to begin welcoming back children of all ages from 1st June. The Government is aware that parents who are critical workers and who would otherwise usually be eligible for 30 hours free childcare may find that their income will exceed the maximum income threshold as part of the coronavirus response. This amendment to the 2016 Regulations aims to ensure that parents who are critical workers are not penalised during the outbreak.

- 7.15 HMRC will put in place controls to mitigate the risk that the amendment to the maximum income thresholds will allow persons other than critical workers to benefit during the coronavirus outbreak. HMRC will use the published critical worker guidance to determine who is a critical worker and will check that any increase in income is temporary and is mainly attributable to earnings from work undertaken directly or indirectly as a result of the incidence or transmission of coronavirus outbreak.
- 7.16 The regulations make changes to the eligibility condition in relation to the 2020-21 tax year so that it can be met by a parent (or the partner of a parent) who expects their adjusted net income to exceed £100,000 but not to exceed £150,000, provided the parent (or partner of the parent) is a critical worker and all the income exceeding £100,000 is mainly attributable to earnings from work undertaken directly or indirectly as a result of coronavirus. The regulations make provisions for foster parents which are similar to the provisions made for parents (and any partner of the parent). The regulations therefore, set a new maximum income threshold of £150,000 for parents who are critical workers and who satisfy the provisions in the regulations. This aligns with the threshold HMRC have chosen for Tax Free Childcare as it creates sufficient headroom to ensure that no affected persons miss out and is considered the next ‘natural limit’ from a tax law perspective (the point at which the additional tax rate kicks in). To set no maximum income threshold in the regulations would be inconsistent with Tax Free Childcare and could cause confusion as parents may apply for both 30 hours free childcare and Tax-Free Childcare.
- 7.17 The amendment will be in force for the tax year 6th April 2020 to 5th April 2021. HMRC have told affected parents to reconfirm as normal in anticipation of the regulations coming into force. Most parents who are critical workers will not know what their income this tax year will be yet as this is an uncertain period.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

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

10. Consultation outcome

- 10.1 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.

10.2 There is no statutory requirement to consult on changes to the 2016 Regulations. The Department for Education has not formally consulted on this temporary change to the eligibility criteria as this is designed to ensure that critical worker parents are not prevented from accessing 30 hours free childcare simply due to increased income during the coronavirus outbreak and so will benefit these parents. However, we have tested the proposal with a small group of local authorities. Their feedback was positive in response to our proposal of allowing critical workers who currently earn under £100,000 and whose income would be pushed above that by having an increased income as a result of coronavirus to continue claiming 30 hours free childcare. They were reassured that parents who normally earn over £100,000 would not gain eligibility as a result of this temporary amendment. This change mirrors changes due to be made to the Tax-Free Childcare scheme shortly, subject to the relevant legislation being amended.

11. Guidance

- 11.1 There is already statutory guidance for local authorities on early education and childcare which came into effect on 1st September 2018 and sets out how local authorities should discharge their duty to secure 30 hours free childcare for working parents of three and four year olds. The Department does not intend to revise the guidance as the amendments relate to the eligibility criteria for 30 hours free childcare which is determined through the application process managed by HMRC. However, the Department for Education has notified local authorities of this temporary change to the eligibility criteria through email and guidance published on GOV.uk on 5th May 2020 to allow them to advise parents and direct them to the on-line childcare service guidance.
- 11.2 HMRC have worked with the Government Digital Service to update the online childcare service guidance for parents to reflect this temporary change to the eligibility criteria. This has been supplemented with a splash screen in the application process to point parents to the relevant online guidance for further details of the change. Processes have been agreed and implemented. HMRC have trained their call centre staff so they can advise parents and have trained their operational staff in the implementation of this amendment to the eligibility criteria

12. Impact

- 12.1 There may be a positive impact on business, charities or voluntary bodies who employ critical workers. Their staff will not be deterred from increasing their income or by working additional hours and will be able to continue to access 30 hours free childcare despite their income increasing during the coronavirus outbreak.
- 12.2 There is a similar impact on the public sector. Critical public sector workers will not be deterred from increasing their income or working additional hours and will be able to continue to access 30 hours free childcare despite their income increasing during the coronavirus outbreak and for the rest of the tax year.
- 12.3 An Impact Assessment has not been prepared for this instrument because the amendment to the maximum income threshold for 30 hours free childcare is a temporary measure for the tax year 6th April 2020 to 5th April- 2021 only. We estimate that less than 0.5% of three- and four-year-olds are from families who are critical workers and earning over £100,000. As such, we expect the number of three

and four year olds who would benefit from this temporary change to the maximum income threshold to be small.

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses including childcare providers as the instrument makes a temporary change to the eligibility criteria of the 30 hours free childcare entitlement for working parents of three- and four-year-olds.

14. Monitoring & review

- 14.1 The amendment to the maximum income threshold for 30 hours free childcare does not include a statutory review clause. It will be time limited for the tax year 6th April 2020 to 5th April 2021. The Department will work closely with HMRC to monitor the situation. The Department does not envisage that the amendment will be made permanent. However, should the public health emergency extend and its impact extend beyond April 2021 the Department will consider extending the period it is force by laying a further SI.

15. Contact

- 15.1 Victoria O’Keeffe at the Department for Education Telephone 020 7654 6062 or email: Victoria.Okeeffe@education.gov.uk can be contacted with queries regarding 30 hours change in the instrument.
- 15.2 Joanna Mackie, Deputy Director for Early Years Strategy and Entitlements at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Minister Vicky Ford, Parliamentary Under Secretary of State for Children and Families at the Department for Education, can confirm that this Explanatory Memorandum meets the required standard.