

This Statutory Instrument has been made as a consequence of errors in S.I. 2022/1134 and is being issued free of charge to all known recipients of that Statutory Instrument.

STATUTORY INSTRUMENTS

2023 No. 1330

**CHILDCARE, ENGLAND
LOCAL AUTHORITIES**

**The Childcare (Free of Charge for Working Parents) (England)
(Amendment and Transitional Provision) Regulations 2023**

Made - - - - 6th December 2023

Laid before Parliament 8th December 2023

Coming into force in accordance with regulation 1(2)

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 1(2), (3) and (4), 2(1) and (2) and 4(2) of the Childcare Act 2016⁽¹⁾.

In accordance with section 2(3) of the Childcare Act 2016, these Regulations are made with the consent of the Treasury.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Childcare (Free of Charge for Working Parents) (England) (Amendment and Transitional Provision) Regulations 2023.

(2) These Regulations come into force on 1st January 2024, except for regulation 2(8)(a), which comes into force—

(a) on 1st January 2025 for purposes connected only with regulations made under section 47ZA of the School Standards and Framework Act 1998⁽²⁾ (free of charge early years provision outside a maintained school: budgetary framework: England), and

(b) on 1st September 2025 for all other purposes.

(3) These Regulations extend to England and Wales.

⁽¹⁾ 2016 c. 5.

⁽²⁾ 1998 c. 31. Section 47ZA was inserted by section 202(1) and (3) of the Apprenticeships, Skills, Children and Learning Act 2009 (c. 22), and amended by S.I. 2010/1158, and section 3(2)(b) of the Childcare Act 2016.

Amendment of the Childcare (Free of Charge for Working Parents) (England) Regulations 2022

2.—(1) The Childcare (Free of Charge for Working Parents) (England) Regulations 2022⁽³⁾ are amended as follows.

(2) In regulation 4(1) (definitions), for the definition of “responsible local authority”, substitute—
““responsible local authority” means—

- (a) in relation to a child who meets the description in regulation 9(1)(a), the local authority who looks after the child, or
- (b) in relation to a child who meets the description in regulation 9(1)(b), (c) or (d), the English local authority for the area in which the child may be a qualifying child of working parents;”.

(3) In regulation 11(1)(a) (meaning of “person in the United Kingdom”)—

- (a) in paragraph (i), omit “and”;
- (b) in paragraph (ii), for the “;” at the end, substitute “, and”;
- (c) after paragraph (ii), insert—

“(iii) not a person subject to immigration control;”.

(4) In regulation 12 (when periods begin and end), in the first column of the table, after “beginning” insert “or ending”.

(5) In regulation 13(2)(a) (description of young child), for “three”, substitute—

- (a) “two” during the period beginning with 1st April 2024 and ending with 31st August 2024, and
- (b) “nine months” from 1st September 2024.

(6) In regulation 16(4) (qualifying paid work requirement: employee)—

(a) in paragraph (3)—

(i) in sub-paragraph (a)—

(aa) at the end of paragraph (i), omit “or”;

(bb) for paragraph (ii), substitute—

“(ii) absent from work during a period of parental bereavement leave under an employment rights enactment,

(iii) in receipt of statutory parental bereavement pay under the Social Security Contributions and Benefits Act, or

(iv) in receipt of statutory sick pay under the Social Security Contributions and Benefits Act;”;

(ii) for sub-paragraph (b), substitute—

“(b) in the case of a person on specified leave relating to a young child in respect of whom a declaration is being made, other than where sub-paragraph (a)(ii), (iii) or (iv) applies, the period of 31 days ending before the day on which the person returns to work;”;

(b) in paragraph (4), omit the definition of “adoption leave”.

(7) In regulation 20 (when a declaration may be made), for sub-paragraph (a), substitute—

(3) [S.I. 2022/1134](#), amended by [S.I. 2023/276](#).

(4) Regulation 16 was amended by [S.I. 2023/276](#).

- “(a) in the period of 16 weeks ending before the day on which the child will meet the description in regulation 13 (if known), except during the time—
- (i) beginning on 1st January 2024 and ending before the day on which the child will meet the description in regulation 13 (if known), where that day occurs on or before 31st March 2024, and
 - (ii) beginning on 1st June 2024 and ending before the day on which the child will meet the description in regulation 13 (if known), where that day occurs on or before 31st August 2024,
- where the period referred to in this sub-paragraph is 13 weeks; or”.
- (8) In regulation 44 (duty to secure childcare available free of charge)—
- (a) in paragraph (2)(b), for “570” substitute “1140”;
 - (b) after paragraph (2), insert—
- “(3) In determining, for the purposes of paragraph (1), the amount of childcare that is available to a child, account is to be taken of any childcare available under the duty imposed by section 7(1) of the Childcare Act 2006⁽⁵⁾ (duty of English local authorities to secure early years provision free of charge in accordance with regulations)—
- (a) during the period beginning with 1st April 2024 and ending with 31st August 2025, in respect of a young child who meets the condition in regulation 3(2), but who does not also meet the condition in regulation 3(3), of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014⁽⁶⁾ (prescribed description of a young child), and
 - (b) from 1st September 2025, in respect of a young child who meets the condition in regulation 3(2) or (3) of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014.”.

Signed by authority of the Secretary of State for Education

6th December 2023

David Johnston
Parliamentary Under Secretary of State
Department for Education

We consent.

4th December 2023

Stuart Anderson
Scott Mann
Two of the Lords Commissioners of His
Majesty’s Treasury

⁽⁵⁾ 2006 c. 21. Section 7 was substituted by section 1 of the Education Act 2011 (c. 21).

⁽⁶⁾ S.I. 2014/2147.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (“the 2022 Regulations”).

Regulation 2(2) of these Regulations amends the definition of “responsible local authority” in regulation 4(1) of the 2022 Regulations.

The amendment of regulation 11(1)(a) of the 2022 Regulations in regulation 2(3) of these Regulations clarifies that a person to whom regulation 11(1)(a) applies must also not be subject to immigration control. This provision, and part of the definition of “responsible local authority” were omitted in error from the 2022 Regulations, and as a consequence, these Regulations are being issued free of charge to all known recipients of that instrument.

Regulation 2(4) of these Regulations amends the table in regulation 12 of the 2022 Regulations to make it clear that a period of time described as “ending with” a specified day includes that specified day.

The amendments increase the availability of free of charge childcare for qualifying children of working parents in the following respects.

The amendment of regulation 13(2) of the 2022 Regulations in regulation 2(5)(a) of these Regulations requires childcare to be available free of charge in respect of qualifying children who have attained the age of two years on or after 1st April 2024.

The amendment of regulation 13(2) of the 2022 Regulations in regulation 2(5)(b) of these Regulations requires childcare to be available free of charge in respect of qualifying children who have attained the age of nine months on or after 1st September 2024.

In all cases, regulation 27 of the 2022 Regulations provides that a child is eligible for childcare under section 1 of the Childcare Act 2016 (c. 5) for the period beginning with whichever of 1st January, 1st April or 1st September is the first date on or after the day on which a declaration in respect of the child has effect, and ending before the day on which the child ceases to be a qualifying child of working parents.

The amendment of regulation 16(3) of the 2022 Regulations in regulation 2(6) of these Regulations provides that working parents who are on certain forms of specified leave (within the definition of that term in regulation 16(4) of the 2022 Regulations) relating to a young child in respect of whom a declaration is being made, do not have to meet the minimum income requirement in regulation 18 of the 2022 Regulations during the period of 31 days before the person returns to work.

Regulation 2(6) of these Regulations also omits the definition of “adoption leave” from regulation 16(4) of the 2022 Regulations in consequence of the amendment of regulation 16(3).

The amendment of regulation 20 of the 2022 Regulations in regulation 2(7) of these Regulations enables a declaration to be made in respect of a child who reaches the age of two years in the period of 13 weeks beginning with 1st January 2024 and ending with 31st March 2024 so that childcare may be available to such a child free of charge from 1st April 2024. In addition, this amendment enables a declaration to be made in respect of a child who reaches the age of nine months in the period of 13 weeks beginning with 1st June 2024 and ending with 31st August 2024 so that childcare may be available to such a child free of charge from 1st September 2024.

The amendment of regulation 44(2)(b) of the 2022 Regulations in regulation 2(8)(a) of these Regulations requires 30 hours of childcare to be available in respect of qualifying children of working parents from 1st September 2025.

The amendment of regulation 44 of the 2022 Regulations in regulation 2(8)(b) of these Regulations requires a local authority, when calculating the amount of childcare to be made available free of charge, to take account of childcare which is available free of charge to a young child under section 7 of the Childcare Act 2006 (c. 21) as follows:

- during the period beginning with 1st April 2024 and ending with 31st August 2025, the local authority is to take account of any childcare available to a child who meets the condition in regulation 3(2), but does not meet the condition in regulation 3(3), of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) (“the 2014 Regulations”), and
- from 1st September 2025, the local authority is to take account of any childcare available to a child who meets the condition in regulation 3(2) or (3) of the 2014 Regulations.

An Explanatory Memorandum is available alongside this instrument on <https://www.legislation.gov.uk>.

A full impact assessment has not been prepared for this instrument as no, or no significant impact on the private, voluntary or public sectors is foreseen.