Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2016 No. 1257

CHILDREN AND YOUNG PERSONS, ENGLAND

The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016

Made - - - - 19th December 2016

Coming into force in accordance with regulation 1

The Secretary of State for Education makes the following Regulations in exercise of the powers conferred by sections 1(2), (3), (4) and (7), 2(1), (2), (4) and (5) and 4(2) of the Childcare Act 2016 [F1].

In accordance with section 4(4) of that Act, a draft of this instrument was laid before and approved by a resolution of each House of Parliament.

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

F1 2016 c. 5.

PART 1

Preliminary

Citation and commencement

1.—(1) These Regulations may be cited as the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016.

(2) Parts 1, 2, 3 and 5 of these Regulations come into force 21 days after the day on which these Regulations are made.

(3) Part 4 of these Regulations comes into force on 1st September 2017.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Childcare Act 2016;

"the Commissioners" means the Commissioners for Her Majesty's Revenue and Customs;

[[F2]"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);

[[F3]"coronavirus support scheme" means

(a) any scheme in relation to which the Commissioners have functions by virtue of a direction made under section 76 of the Coronavirus Act 2020 (HMRC functions);

(b) the scheme known as the Small Business Grant Fund established in response to coronavirus;

(c) any scheme established in the tax year 2020-21 in response to coronavirus to support the fishing industry;

(d) the scheme known as the Retail, Hospitality and Leisure Grant Fund established in response to coronavirus;

(e) the scheme known as the Newly Self-Employed Hardship Fund established by the Scottish Ministers in the tax year 2020-2021 in response to coronavirus; and

(f) any other support scheme established in the tax year 2020-21 or 2021-2022 in response to coronavirus; and**]**

"critical worker" means a worker in a critical sector listed in the document entitled "Critical workers who can access schools or educational settings" in the version published by the Cabinet Office and the Department for Education on 16 June 2020;**]**

"declaration" means a declaration under section 1(2)(e) of the Act;

"early years childminder" has the meaning given by section 96(4) [F4] of the Childcare Act 2006 [F5];

"early years childminder agency" has the meaning given by section 98(1) [F6] of the Childcare Act 2006;

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

"early years provision" has the meaning given by section 96(2) of the Childcare Act 2006;

"early years provision inspection report" means a report under one of the following—

(a) section 162A of the Education Act 2002 [F7] as it had effect prior to the coming into force of section 169 of, and Schedule 2 to, the Education and Skills Act 2008 [F8] (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 the Education Act 2002);

(b) section 5 of the Education Act 2005 [F9];

(c) section 50 of the Childcare Act 2006 [F10]; or

(d) section 109 of the Education and Skills Act 2008;

[[F11]"foster parent" means—

(a) a local authority foster parent within the meaning of section 105(1) of the Children Act 1989;

(b) a local authority foster parent within the meaning of section 197 of the Social Services and Well-Being (Wales) Act 2014;

(c) a person approved as a foster carer within the meaning of regulation 2 of the Looked After Children (Scotland) Regulations 2009; or

(d) a foster parent within the meaning of Article 27(3) of the Children (Northern Ireland) Order 1995;**]**

"minimum weekly income" means—

(a) for a person—

(i) not yet aged 25 years; or

(ii) to whom the apprenticeship rate applies, as determined in accordance with regulation 5 of the National Minimum Wage Regulations 2015 [F12],

the amount a person would be paid for 16 hours of work a week at the hourly rate for a person in that person's circumstances as set out in regulation 4A of the National Minimum Wage Regulations 2015;

(b) for a person aged 25 years or older, the amount a person would be paid for 16 hours of work a week at the hourly rate set out in regulation 4 of the National Minimum Wage Regulations 2015;

"paid work" means work done for payment or in expectation of payment and does not include being engaged by a charitable or voluntary organisation, or as a volunteer, in circumstances in which the payment received by or due to be paid to the person is in respect of expenses;

[[F13]"prescribed state" means an EEA state or Switzerland;**]**

[[F11]"responsible local authority" means—

(a) the local authority looking after the child in accordance with section 22(1) of the Children Act 1989; or

(b) where the child is looked after by a local authority within the meaning of regulation 3(2)(b), (c) or (d), the local authority discharging its duty under regulation 33 to secure the early years provision;**]**

[[F3]"Scottish Ministers" has the meaning given by section 44(2) of the Scotland Act 1998);**]**

"the Tribunal" means the First-tier Tribunal.

(2) A person's age for the purposes of establishing that person's "minimum weekly income"—

(a) except in the circumstances in sub-paragraph (b), is that person's age when that person, or that person's partner, makes the declaration;

(b) under regulation 5 where that person is in paid work as a self-employed person and relies on regulation 5(1)(b)(ii) to meet the requirement of being in qualifying paid work, is that person's age at the start of the tax year in which the declaration made by that person or that person's partner falls.

F2 Words in reg. 2(1) inserted (31.7.2020) by The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Coronavirus) (Amendment) Regulations 2020 (S.I. 2020/712), regs. 1, **3**

F3 Words in reg. 2(1) inserted (14.1.2021) by The Tax Credits, Childcare Payments and Childcare (Extended Entitlement) (Coronavirus and Miscellaneous Amendments) Regulations 2020 (S.I. 2020/1515), regs. 1(2), **5(2)**

F4 Section 96 was amended by section 76 of the Small Business, Enterprise and Employment Act 2015 (c. 26).

F5 2006 c. 21.

F6 The definition in section 98(1) was amended by paragraph 62 of Schedule 4 to the Children and Families Act 2014 (c. 6).

F7 2002 c. 32. Section 162A was inserted by paragraph 2 of Schedule 8 to the Education Act 2005 (c. 18) and amended by paragraph 73 of Schedule 14 to the Education and Inspections Act 2006 (c. 40).

F8 2008 c. 25.

F9 2005 c. 18. Section 5 was amended by paragraph 23 of Schedule 7 to the Education and Inspections Act 2006 (c. 40)), paragraph 17 of Schedule 2 to the Academies Act 2010 (c. 32) and sections 40 and 41 of, and paragraph 15 of Schedule 13 to, the Education Act 2011 (c. 21).

F10 Section 50(4) was repealed by paragraph 1 of Schedule 18 to the Education and Inspections Act 2006 (c. 40).

F11 Words in reg. 2(1) inserted (31.8.2018) by The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (S.I. 2018/794), regs. 1, **14**

F12 S.I. 2015/621. Regulation 4 was amended by S.I. 2016/68. Regulation 4A was inserted by S.I. 2016/68. Regulation 5 was amended by S.I. 2015/971.

F13 Words in reg. 2 inserted (E.) (1.7.2021) by The Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2021 (S.I. 2021/674), regs. 1(1), **5**

PART 2

A qualifying child of working parents

CHAPTER 1

Conditions relating to a qualifying child of working parents

Description of a qualifying child of working parents

3.—(1) For the purposes of section 1(2)(c) of the Act, a young child is of a specified description if the young child—

(a) has attained the age of three years or will attain the age of three years within 16 weeks beginning with the day on which the declaration was made in relation to that child; and

(b) is not looked after by a local authority.

(2) In this regulation, except for the categories of children in paragraph (3), "looked after by a local authority" has the meaning given by—

(a) section 22(1) of the Children Act 1989 [F14];

(b) section 74(1) of the Social Services and Well-being (Wales) Act 2014 [F15];

(c) section 17(6) of the Children (Scotland) Act 1995 [F16]; or

(d) article 25 of the Children (Northern Ireland) Order 1995 [F17] (with the modification that for the reference to a local authority there is substituted a reference to an authority within the meaning of article 2 of that Order).

(3) A child is not looked after by a local authority for the purposes of this regulation—

(a) during any period which is in the nature of a short-term break or is one of a series of such breaks for the purposes of providing respite for the person with whom the child normally lives;

(b) during any period when the child is placed with or continues to live with a person under section 22C(2) of the Children Act 1989;

[[F18](ba) during any period when the child is placed with a foster parent under section 22C(6)(a) or (b) of the Children Act 1989;

(bb) during any period when the child is placed with a foster parent under section 81(6)(a) or (b) of the Social Services and Well-Being (Wales) Act 2014;

(bc) during any period when the child is placed with a foster parent under section 80 of the Adoption and Children (Scotland) Act 2007;

(bd) during any period when the child is placed with a foster parent under Article 27(2)(a) of the Children (Northern Ireland) Order 1995;**]**

(c) during any period when the child is placed with or continues to live with a person under section 81(2) of the Social Services and Well-being (Wales) Act 2014;

(d) during any period when the child is placed with or continues to live with a person defined in regulation 8(1) or 10(2) of the Looked after Children (Scotland) Regulations 2009 [F19]; and

(e) during any period when the child is placed with or continues to live with a person under article 27(2) of the Children (Northern Ireland) Order 1995 where that person falls within article 27(4)(a) of that Order.

F14 1989 c. 41. Section 22(1) was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c. 22), section 2 of the Children (Leaving Care) Act 2000 (c. 35), section 116 of the Adoption and Children Act 2002 (c. 38) and S.I. 2016/413. Section 22C was added by section 8 of the Children and Young Persons Act 2008 (c. 23).

F15 2014 anaw. 4.

F16 1995 c. 36. Section 17(6) was amended by paragraph 9 of Schedule 2 to the Adoption and Children (Scotland) Act 2007 (asp 4), paragraph 2 of Schedule 5 to the Children's Hearings (Scotland) Act 2011 (asp 1), and SSI 2013/211.

F17 S.I. 1995/755 Article 25 was amended by section 2 of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11). Article 27 was amended by SI 2003/431.

F18 Reg. 3(3)(ba)-(bd) inserted (31.8.2018) by The Childcare (Disqualification) and Childcare (Early Years Provision Free of Charge) (Extended Entitlement) (Amendment) Regulations 2018 (S.I. 2018/794), regs. 1, **15**

F19 S.I. 2009/210 (S.) Regulations 8 and 10 were amended by SSI 2013/147.

CHAPTER 2

Conditions relating to a parent, and any partner of the parent, of the child

Specified conditions relating to a parent, and any partner of the parent, of the child

4.—**[**[F20](A1) This regulation does not apply in relation to a child falling within regulations 3(3)(ba) to (bd).**]**

(1) For the purposes of section 1(2)(d) of the Act, a parent of the child must meet the following three conditions.

(2) The first condition is that the main reason, or one of the main reasons, the parent of the child seeks the free childcare referred to in section 1(1) of the Act is to enable the parent, or any partner of the parent, to work.

(3) The condition in paragraph (2) is treated as being met in relation to a person to whom any of the cases in regulation 8(1)(a) to (m) or 9(1)(b) applies.

(4) The second condition is that the parent of the child is in qualifying paid work in accordance with this Chapter.

(5) The third condition is that the parent does not expect their adjusted net income to exceed £100,000 in the relevant tax year.

[[F21](5A) The condition in paragraph (5) is treated as being met by a parent if—

(a) the parent is a critical worker;

(b) the relevant tax year is the tax year starting with 6th April 2020 and ending with 5th April 2021;

(c) the parent expects the parent's adjusted net income to exceed £100,000 but not to exceed £150,000 in that tax year; and

(d) the parent expects all the parent's income that exceeds £100,000 to be mainly attributable to earnings from work undertaken directly or indirectly as a result of the incidence or transmission of coronavirus.**]**