EXPLANATORY MEMORANDUM TO

THE CHILDCARE ACT 2006 (PROVISION OF INFORMATION TO PARENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2017

2017 No. 249

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.

1.2 This memorandum contains matters of special interest to the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The Childcare Act 2006 (Provision of Information to Parents) (England) (Amendment) Regulations 2017 ("the Regulations") prescribe an additional category of information relating to free childcare that English local authorities must provide to parents or prospective parents pursuant to their existing duty under section 12 of the Childcare Act 2006 ("the 2006 Act"). They also introduce a duty on local authorities to publish the prescribed information on their website on a termly basis. In addition, these Regulations place a time-limited obligation on local authorities to provide information about childcare providers that intend to deliver the extended entitlement to free childcare for young children of working parents from 1 September 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 Due to an administrative error, these Regulations were made before the Department had completed its final drafting checks. Consequently, the drafting of regulation 1(2) and (3) and 2(2) of these Regulations is defective. The Department is aware of this and will be revoking these Regulations in March 2017. The Department will then be making a further set of Regulations which are the same in substance as these Regulations but will have corrected the defective drafting. The Department regrets and apologises for this error.

Other matters of interest to the House of Commons

3.2 As this 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 These Regulations amend the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007[1] ("the 2007 Regulations") and exercise for the first time the powers in section 12(6A) of the 2006 Act, which were introduced by the Childcare Act 2016 ("the 2016 Act").

[1] S.I. 2007/3490.

4.2 Section 12 of the 2006 Act requires local authorities to establish and maintain a service providing information, advice and assistance to parents and prospective parents in their area. Regulations 2 and 3 and Schedules 1 and 2 of the 2007 Regulations prescribe the descriptions of information which local authorities must provide. The information relates to (1) childcare in the local area and (2) any other services, facilities and publications which may be of benefit to parents, prospective parents, children or young people in their area.

4.3 All three and four year olds are entitled to 570 hours a year of free childcare over no fewer than 38 weeks of the year which equates to 15 hours a week for 38 weeks of the year (the "universal entitlement").[2] The 2016 Act places a duty on the Secretary of State to secure the availability of free childcare for qualifying children of working parents for 30 hours a week in each of 38 weeks in any year or the equivalent. This is in effect a duty to provide an additional 15 hours of free childcare to all qualifying children in addition to the current universal entitlement[3] (and is known as "the extended entitlement"). Regulation 33 of the Childcare (Early Years Provision Free of charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257) places a duty on local authorities to secure that the extended entitlement is available for each qualifying child in their area. This duty is due to come into force on 1 September 2017.

4.4 The 2016 Act also amended section 12 of the 2006 Act to enable regulations to be made requiring local authorities to publish information about childcare and related matters at prescribed intervals and in a prescribed manner (section 12(6A) of the 2006 Act).

4.5 Under Schedule 1 of the 2007 Regulations a local authority is required to provide prescribed information to parents and prospective parents regarding childcare providers that deliver free childcare pursuant to section 7 of the 2006 Act (for example the time and duration of the free childcare). These Regulations ensure that local authorities are also required to provide the prescribed information about providers who will deliver the extended entitlement from 1 September 2017. In addition, to enable parents to plan for take up of the additional childcare hours they may be entitled to, these Regulations place a time-limited obligation on local authorities to provide information about providers that intend to deliver the extended entitlement from 1 April to 31 August 2017.

4.6 These Regulations exercise the power under section 12(6A) of the 2006 Act to require local authorities to publish prescribed information about childcare on a termly basis (1 January, 1 April and 1 September each year), starting from 1 September 2017. The local authority must publish the prescribed information by placing it on its website and must publish its arrangements for enabling people without internet access or who have difficulties accessing the internet to obtain a copy of the information.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies to England.

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[2] Regulation 4 of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147) made under section 7(1) of the 2006 Act.

[3] Section 1(6) of the 2016 Act provides that in assessing whether the duty under section 1(1) has been met the Secretary of State is permitted to take into account any childcare made available to eligible children under section 7 (1) of the 2006 Act.

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 eligible two year olds and the majority of three and four years olds have been entitled to 570 hours a year of free childcare over no fewer than 38 weeks of the years (which equates to 15 hours a week for 38 weeks of the year). Pursuant to a new duty imposed on the Secretary of State under the 2016 Act, from 1 September 2017, qualifying children of working parents will be eligible for the extended entitlement, doubling the existing funded provision from 15 to 30 hours. The government will deliver this new commitment through local authorities, as it does for the existing 15 hours.

7.2 The government recognises the importance of providing parents with information about childcare and other services in their area so that they can make informed choices and find the right childcare solutions for their needs. The government believes that it is important that this information is published consistently, so that parents can access it easily.

7.3 Previous studies, including the *Review of childcare costs: the analytical report (2015)*[4] and *Childcare & Early Years Survey of Parents 2012-2013*[5], report that a significant proportion (over one-third) of parents feel there is too little information about childcare provision in their local area. The National Audit Office report, *Entitlement to free early education and childcare*[6] found that many parents experience initial confusion about the childcare market and how to access their free entitlement; better information would help many of them.

7.4 Local authorities receive frequent updates from Ofsted on provider information, such as the Ofsted registration status and inspection outcomes of childcare providers in their areas. However, the timeliness and presentation of the information local authorities make available to parents varies greatly between local areas. The government's intention is to strengthen the current position by requiring local authorities to publish this information on a termly basis.

7.5 The government also decided, in consideration of responses to the consultation on the most easily accessible format for publication for parents, to impose a requirement on local authorities to publish the childcare information on its website (see paragraph 8.3 below).[7] In response to concerns over accessibility to the internet for different groups, including people with a disability, these Regulations introduce a requirement on local authorities to publish its arrangements for enabling those persons to obtain a copy of the information.

7.6 Some parents will need to access information on the extended entitlement, including details of the childcare providers that intend to provide it, before it officially launches

[4] https://www.gov.uk/government/publications/review-of-childcare-costs
[5] https://www.gov.uk/government/statistics/childcare-and-early-years-survey-of-parents-2012-to-2013
[6] https://www.nao.org.uk/wp-content/uploads/2016/03/Entitlement-to-free-early-education-and-childcare.pdf
[7] The government response to the consultation was published on 5 November 2016 and is available at: https://www.gov.uk/government/consultations/30-hour-free-childcare-entitlement

on 1 September 2017. This information will assist parents and prospective parents in planning take up of the additional childcare hours they may be entitled to as swiftly as possible from the start of the new school year. For this reason, the government has decided to impose a requirement on local authorities to provide information about providers who intend to provide the extended entitlement for a limited period from 1 April 2017 until the duty to provide and publish this information comes into force from 1 September 2017.

7.7 The government response to the consultation was published on 5 November 2016 and is available at the following link: https://www.gov.uk/government/consultations/30-hour-free-childcare-entitlement.

Consolidation

7.8 There are no plans for consolidating regulations at present.

8. Consultation outcome

8.1 The government launched a consultation on 3 April 2016 which was closed on 6 June 2016. The consultation asked respondents for views on a set of draft regulations (including a draft of these Regulations) and on draft guidance as part of a consultation on the implementation of the extended entitlement. 1,314 responses to the consultation were received, including from all local authorities in England and from 66 national organisations representing large groups of childcare providers.

8.2 Responses to the *30 hour free childcare entitlement: delivery model* consultation asked "how often should information about childcare be updated and published for parents?" Over half of respondents thought that information about childcare should be updated and published at least on a termly basis (autumn, spring and summer).

8.3 The government sought views on the most easily accessible format for publication for parents. The majority of respondents (69%) agreed that electronic means e.g. via a website, was the most easily accessible format. Concerns were raised by some parents about accessibility for those without access to the internet or a computer, or who are not ICT literate.

8.4 A significant proportion of respondents felt that the specified range of childcare information to be published for parents was sufficient and also that the draft guidance explained the new duty for local authorities effectively (48.5% and 58% respectively).

8.5 Having considered the responses, the government is:

- strengthening the regulations and statutory guidance[8] to make clear that local authorities will be required to update and publish their childcare information on a termly basis.
- requiring local authorities to publish the information by electronic means via their websites, and also to continue to provide the information in other formats where it is needed (such as where parents have no internet access) and to signpost parents to other information or services that will benefit them.
- making clearer in the statutory guidance where local authorities could publish other helpful information for parents beyond the list set out in Schedule 1 to

[8] Early education and childcare: statutory guidance for local authorities (updated version due to be published on www.gov.uk in March 2017).

the 2007 Regulations, such as where childcare providers work in partnerships to offer more wraparound services for parents.

8.6 The government response to the consultation was published on 5 November 2016 and is available at the following link: https://www.gov.uk/government/consultations/30-hour-free-childcare-entitlement.

9. Guidance

9.1 Section 12(7) of the 2006 Act requires local authorities, in exercising their functions under section 12, to have regard to any guidance given from time to time by the Secretary of State. The Department will issue statutory guidance before these Regulations come into force on 1 September 2017 which will include further details about the types of information prescribed by these Regulations. The guidance will also signpost local authorities to the technical standards and principles for publishing open data that complies with data protection requirements.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is on the 152 "top-tier" local authorities in England which will have to expand their information service by including information regarding the extended entitlement and publishing the required information on their websites alongside arrangements for providing copies in alternative formats.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring and review

12.1 The Department will monitor local authority compliance with the new publication duty and provision of information to parents on the expanded descriptions of information through a biennial survey[9]. The Childcare and Early Years Survey of Parents series seeks to provide salient, up-to-date information on parents' use of childcare and early years provision, and their views and experiences. The Department also collects data on local authorities' delivery of children's services. The information which local authorities are required to publish will be available publicly on their website.

13. Contact

13.1 Alan Conlon at the Department for Education Telephone: 020 7340 7408 or email: Alan.Conlon@education.gov.uk can answer any queries regarding the instrument.

[9] https://www.gov.uk/government/statistics/childcare-and-early-years-survey-of-parents-2014-to-2015.