EXPLANATORY MEMORANDUM TO

THE CHILDCARE (FREE OF CHARGE FOR WORKING PARENTS) (ENGLAND) (AMENDMENT) REGULATIONS 2024

2024 No. 369

1. Introduction

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

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 David Johnston, Parliamentary Under-Secretary of State (Minister for Children, Families and Wellbeing) at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Joanna Mackie, Deputy Director for Early Years Entitlements at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sean Ruston at the Department for Education [Sean.RUSTON@education.gov.uk] can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes four amendments to the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (the "Principal Regulations"). First, it extends from 13 to 16 weeks the period within which a declaration can be made by parents of children who will attain the age of 9 months on or before 31 August 2024. Second, it adds carer's leave to the types of statutory employment leave or pay ("specified leave") during which working parents do not have to meet the minimum income requirement. Third, it equalises the treatment of a person on specified leave with that of a person on substantially similar leave under the law of an EEA state or Switzerland. Fourth, it corrects a drafting error, relating to the treatment of parents on specified leave, made when the Principal Regulations were amended by the Childcare (Free of Charge for Working Parents) (England) (Amendment and Transitional Provision) Regulations 2023 (S.I. 2023/1330) (the "Amendment Regulations"). These Regulations are being issued free of charge to all known recipients of the Amendment Regulations. The policy background to the Amendment Regulations can be found in the explanatory memorandum to that instrument[1].

[1] https://www.legislation.gov.uk/uksi/2023/1330/pdfs/uksiem_20231330_en_001.pdf

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 The Amendment Regulations amended the Principal Regulations to extend the availability of free childcare to younger children over a transitional period from April 2024, so that from September 2025, 30 hours of free childcare will become available to children of qualifying working parents from the term after they attain the age of 9 months. These Regulations make minor changes which do not affect the overall policy.

5.2 Regulation 2(2) of this instrument corrects a drafting error made when regulation 16(3) of the Principal Regulations was amended by regulation 2(6) of the Amendment Regulations. The correction ensures that parents on specified leave do not have to meet the minimum income requirement and broadly aligns with similar provision in regulation 12 of the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) which govern eligibility for tax-free childcare. The policy position is set out more fully in paragraph 7.6 of the explanatory memorandum to the Amendment Regulations.

5.3 Regulation 2(3) of this instrument inserts a new regulation 16(3A) to the Principal Regulations to ensure that eligible working parents on leave under the law of an EEA state or Switzerland which is substantially similar to specified leave are treated in the same way as parents on specified leave. This replaces the provision currently found in regulation 16(3)(c) of the Principal Regulations, which is omitted.

5.4 Regulation 2(4) of this instrument adds carer's leave to the definition of "specified leave" in regulation 16(4) of the Principal Regulations, in consequence of the Carer's Leave Act 2023 (c. 18), which came fully into force on 4 December 2023. This amendment will mean that eligible working parents will not have to meet the minimum income requirement in regulation 18 of the Principal Regulations during any period the person is on carer's leave.

5.5 Regulation 2(5) of this instrument restores the usual period of 16 weeks during which a declaration seeking a determination of eligibility may be made by parents of children who will reach the age of 9 months on or before 31 August 2024. As noted in paragraph 7.7 of the Explanatory Memorandum to the Amendment Regulations, this period was reduced by that instrument to 13 weeks to enable HMRC to amend the digital process for making applications, but that reduced period is no longer required.

What was the previous policy, how is this different?

5.6 This instrument does not make significant policy changes as explained above.

6. Legislative and Legal Context

How has the law changed?

6.1 Section 1(1) of the Childcare Act 2016 (the "2016 Act") places a duty on the Secretary of State to secure that childcare is available free of charge for qualifying

children of working parents for, or for a period equivalent to, 30 hours in each of 38 weeks in any year. This duty is delegated by the Secretary of State to local authorities by the Principal Regulations (see section 2(2)(a) of the 2016 Act and regulation 44 of the Principal Regulations).

6.2 The Principal Regulations were amended by the Amendment Regulations which came into force on 1 January 2024. The amendments provide primarily for the expansion of the free childcare entitlement to younger children. This instrument makes minor adjustments to the provision made in that instrument.

6.3 The Carer's Leave Act 2023, which came fully into force on 4 December 2023, amended the Employment Rights Act 1996 to introduce a new entitlement to carer's leave. The objective of the carer's leave policy is to introduce a new leave entitlement from the first day of employment, available to take flexibly and accessible to all employees who are providing care for a dependant with a long-term care need.

Why was this approach taken to change the law?

6.4 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 No consultation was undertaken in relation to this instrument, which makes minor adjustments to the provision made in the Amendment Regulations and an amendment in consequence of the introduction of carer's leave.

8. Applicable Guidance

8.1 There is statutory guidance[2] on early education and childcare for local authorities to support them in discharging their statutory duties to secure sufficient free early education and childcare to eligible children in their area.

8.2 The Department updated the statutory guidance in early January 2024 to help local authorities deliver the expanded entitlements for each phase of delivery. The updated statutory guidance includes minor changes to provide more clarity on some aspects of the guidance following feedback received since 2018 from local authorities.

8.3 Parents will be made aware of the changes to the free childcare entitlements through government websites and the Childcare Service online application system. This includes clarity on each stage of the roll-out of the expanded entitlements and advice on the application process.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because there is no, or no significant, impact on business, charities or voluntary bodies.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies as explained in the explanatory memorandum to the Amendment Regulations.

[2] https://www.gov.uk/government/publications/early-education-and-childcare--2

9.3 The legislation does not impact small or micro businesses.

9.4 The impact on the public sector is explained in the explanatory memorandum to the Amendment Regulations.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 Take-up of the existing free early education and childcare entitlements for two-, three- and four-year-olds is monitored through the annual Early Years Census and the termly School Census and is published annually in official statistics[3]. The statistics also contain data on providers who deliver free early education and childcare places. The Department will monitor the number and types of providers who deliver the expanded entitlements, the numbers of children taking up their entitlement and the number of hours of free provision those children are taking up.

10.2 The instrument does not include a statutory review clause as it has no, or no significant, impact on business.

[3] https://explore-education-statistics.service.gov.uk/find-statistics/education-provision-children-under-5

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Regulation 2(2) of this instrument corrects a drafting error made in regulation 2(6) of the Amendment Regulations. The procedure for free issue will be applied and this instrument will be issued free of charge to all known recipients of the Amendment Regulations. The Amendment Regulations were considered, but not reported, in the Committee's Ninth Report of Session 2023-24.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023.