STATUTORY INSTRUMENTS

2024 No. 1228

CHILDCARE, ENGLAND

LOCAL AUTHORITIES, ENGLAND

The Local Authority (Duty to Secure Early Years Provision Free of Charge) and Childcare (Free of Charge for Working Parents) (England) (Amendment) Regulations 2024

Made - - - -	*27th November 2024*
Laid before Parliament	*29th November 2024*
Coming into force - -	*20th December 2024*

The Secretary of State makes these Regulations in exercise of the powers conferred by sections 7(1), 7A, 9A and 104(2)(a) of the Childcare Act 2006(**a**) and sections 2(1), 2(2)(a) and (c) and 4(2)(b) of the Childcare Act 2016(**b**).

Citation and commencement

1. These Regulations—

(a) may be cited as the Local Authority (Duty to Secure Early Years Provision Free of Charge) and Childcare (Free of Charge for Working Parents) (England) (Amendment) Regulations 2024,

(b) come into force on 20th December 2024, and

(c) extend to England and Wales.

Amendment of the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014

2.—(1) The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014(**c**) are amended in accordance with paragraphs (2) to (5).

(2) In regulation 1 (citation, commencement and interpretation), in paragraph (2)—

(a) before the definition of "early years childminder", insert—

> ""Chief Inspector" means His Majesty's Chief Inspector of Education, Children's Services and Skills;";

(**a**) 2006 c. 21. Section 7 was substituted by section 1(2) of the Education Act 2011 (c. 21). Sections 7A and 9A were added by section 87(2) and (3) respectively of the Children and Families Act 2014 (c. 6). See the definitions of "prescribed" and "regulations" in section 106 of the Childcare Act 2006.
(**b**) 2016 c. 5.
(**c**) S.I. 2014/2147, relevant amendments are made by S.I. 2016/887.

(b) in the definition of "early years provision inspection report", for "Her Majesty's Chief Inspector of Education, Children's Services and Skills" substitute "the Chief Inspector".

(3) In regulation 6 (scope of the requirement in regulation 5(1)), for paragraph (1), substitute—

"(1) In the case of early years provision other than provision by an early years childminder registered with an early years childminder agency, the requirement in regulation 5(1) applies only if—

(a) where the early years provision is for a child who meets the condition in regulation 3(2)—

(i) where the most recent inspection of the provision was not an inspection on or after 2nd September 2024 under section 5 of the Education Act 2005(**a**), the overall effectiveness of the provision was awarded a grade of "good", or better, in the most recent early years provision inspection report published in respect of the provision; or

(ii) where the most recent inspection of the provision was an inspection on or after 2nd September 2024 under section 5 of the Education Act 2005—

(a) the Chief Inspector has not determined that significant improvement or special measures are required (within the meaning of section 13(1) of the Education Act 2005) in the most recent early years provision inspection report published in respect of the provision; and

(b) except in the case of provision by the governing body of a maintained nursery school, the effectiveness of the early years provision was awarded a grade of "good", or better, in the most recent early years provision inspection report published in respect of the provision;

(b) where the early years provision is for a child who meets the condition in regulation 3(3)—

(i) where the most recent inspection of the provision was not an inspection on or after 2nd September 2024 under section 5 of the Education Act 2005, the overall effectiveness of the provision was awarded a grade of "satisfactory", or "requires improvement", or better, in the most recent early years provision inspection report published in respect of the provision; or

(ii) where the most recent inspection of the provision was an inspection on or after 2nd September 2024 under section 5 of the Education Act 2005, the Chief Inspector has not determined that significant improvement or special measures are required (within the meaning of section 13(1) of the Education Act 2005) in the most recent early years inspection report published in respect of the provision; or

(c) an early years provision inspection report has not yet been published in respect of the provision.".

(4) In regulation 7 (termination of the arrangements)—

(a) at the beginning, insert "Except in the case of arrangements with the governing body of a maintained school,";

(b) in sub-paragraphs (a) and (b) omit the words "overall effectiveness of the".

(**a**) 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(2) and 41(1) of, and paragraph 15(2) of Schedule 13 to, the Education Act 2011 (c. 21).

(5) In regulation 8 (requirements governing arrangements made for the purpose of discharging the duty of the local authority under section 7)—

(a) for paragraph (1)(c)(viii), substitute—

"(viii) in circumstances where the early years provision does not meet the description in regulation 6(1)(a)(i) or (ii) (whether the provision is for a child who meets the condition in regulation 3(2) or (3)), that the early years provider takes the measures identified in that report to improve the effectiveness of the early years provision, including, where applicable, participation in a training or other quality improvement programme; or";

(b) in paragraph (2)(a)(ii), omit the words from "where the report" to the end.

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

3.—(1) The Childcare (Free of Charge for Working Parents) (England) Regulations 2022(**a**) are amended in accordance with paragraphs (2) to (6).

(2) In regulation 4 (definitions), in paragraph (1)—

(a) before the definition of "childcare provider", insert—

""Chief Inspector" means His Majesty's Chief Inspector of Education, Children's Services and Skills;";

(b) in sub-paragraph (b) of the definition of "inspection report", before paragraph (i), insert—

"(ai) section 162A of the Education Act 2002(**b**) (whether by the Chief Inspector or by a body approved by the Secretary of State for the purposes of section 162A of that Act);".

(3) In regulation 45 (duty to make arrangements with childcare provider chosen by parent), for paragraph (3)(c), substitute—

"(c) a childcare provider (other than a childminder registered with an early years childminder agency)—

(i) that was not inspected on or after 2nd September 2024 under section 5 of the Education Act 2005, and that fails in its most recent inspection report (if any) to achieve Grade 3 ("requires improvement") or better for the overall effectiveness of its childcare; or

(ii) that was inspected on or after 2nd September 2024 under section 5 of the Education Act 2005, and the Chief Inspector has determined that significant improvement or special measures are required (within the meaning of section 13(1) of the Education Act 2005) in the most recent inspection report published in respect of the provision.".

(4) In regulation 46 (arrangements to provide for termination), at the beginning, insert "Except in the case of arrangements with the governing body of a maintained school,".

(5) In regulation 47 (requirements permissible in arrangements), in paragraph (1)—

(a) after the words "regulation 45(2)", insert "(other than arrangements with the governing body of a maintained school)";

(b) after sub-paragraph (b)(iii), insert—

(**a**) S.I. 2022/1134, relevant amendments are made by S.I. 2023/276.

(**b**) 2002 c. 32. Section 162A was amended by paragraph 2 of Schedule 8 to the Education Act 2005 (c. 18), and by paragraph 73(3) of Schedule 14, and paragraph 1 of Schedule 18, to the Education and Inspections Act 2006 (c. 40), and was repealed by paragraph 1 of Schedule 2 to the Education and Skills Act 2008.

"(iv) the effective safeguarding and promotion of welfare of the children for whom the childcare is provided;";

(c) in sub-paragraph (f)—

(i) for the words "achieves in its most recent inspection report (if any) the minimum grade mentioned in regulation 45(3)(c) or worse", substitute "meets the description in regulation 45(3)(c)";

(ii) in paragraph (i), omit the word "overall".

(6) In regulation 48 (requirements prohibited in arrangements), after the words "regulation 45(2)", insert "(other than arrangements with the governing body of a maintained school)".

Stephen Morgan
Parliamentary Under-Secretary of State (Minister for Early Education)
Department for Education

27th November 2024

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (S.I. 2014/2147) (the "2014 Regulations") and the Childcare (Free of Charge for Working Parents) (England) Regulations 2022 (S.I. 2022/1134) (the "2022 Regulations"), which provide for early years provision to be available free of charge. The changes follow the removal of overall effectiveness judgements for Ofsted inspections of state-funded schools (maintained schools, academies and non-maintained special schools) under section 5 of the Education Act 2005 from 2 September 2024.

Regulation 2 amends the 2014 Regulations. In summary:

— Regulation 2(3) amends regulation 6(1) so that the duty for the local authority to make arrangements with a provider chosen by a parent of the child, if the provider meets minimum quality standards, also applies if the provider is the governing body of a maintained school. Regulation 2(3) also amends regulations 6(1)(a) and (b) to update references to Ofsted inspection gradings in relation to schools inspected under section 5 of the Education Act 2005 after the removal of overall effectiveness judgements on 2 September 2024;

— Regulation 2(4) amends regulation 7 in consequence of the changes to overall effectiveness judgements and so that mandatory termination provisions in relation to arrangements for the free of charge early years provision do not apply to maintained schools;

— Regulation 2(5) amends regulation 8 (which specifies the requirements local authorities may and may not impose as part of arrangements for free of charge early years provision) in light of the changes to inspection judgements.

Regulation 3 amends the 2022 Regulations. In summary:

— Regulation 3(2) amends regulation 4(1) so that the definition of "inspection report" includes a report under section 162A of the Education Act 2002 for consistency with the definition of "early years provision inspection report" in the 2014 Regulations;

— Regulation 3(3) amends regulation 45(3)(c) to update references to Ofsted inspection gradings in relation to schools inspected under section 5 of the Education Act 2005 after the removal of overall effectiveness judgements on 2 September 2024;

— Regulation 3(4) amends regulation 46 so that mandatory termination provisions in relation to arrangements for the free of charge early years provision do not apply to arrangements with the governing body of a maintained school;

— Regulation 3(5)(a) amends regulation 47(1) so that it does not limit the requirements a local authority may impose as part of arrangements with the governing body of a maintained school;

— Regulation 3(5)(b) amends regulation 47(1)(b) so that a local authority may include in their arrangements with providers requirements in relation to the effective safeguarding and promotion of welfare of children. This is consistent with the similar provision in regulation 8(1)(v) of the 2014 Regulations;

— Regulation 3(6) amends regulation 48 so that it does not limit the requirements a local authority may impose as part of arrangements with the governing body of a maintained school.

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

An Explanatory Memorandum is published alongside this instrument at www.legislation.gov.uk.

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