

Childcare Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Education, are published separately as Bill 84 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Secretary Nicky Morgan has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Childcare Bill [HL] are compatible with the Convention rights.

Childcare Bill [HL]

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[NOTE: The words marked in bold type were inserted by the Lords to avoid questions of privilege.]

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B I L L

TO

Make provision about free childcare for young children of working parents and about the publication of information about childcare and related matters by local authorities in England.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Availability of free childcare

1 Funding review

- (1) Sections 2 to 6 shall not come into force until the Secretary of State has—
 - (a) established an independent review of the free childcare entitlement funding system, including a large-scale analysis of the cost of delivering funded places; and 5
 - (b) put in place a comprehensive and sustainable funding solution, which takes into account the complete findings of the review under paragraph (a), and which addresses the funding of existing childcare and the additional requirements on childcare providers arising from this Act. 10
- (2) The review to be established under subsection (1)(a) shall consult local authorities, childcare providers, employers, parents and others with an interest.
- (3) Where the Secretary of State’s funding solution under subsection (1)(b) does not follow the recommendations of the review under subsection (1)(a), the Secretary of State must publish a report outlining the reasoning. 15
- (4) Any report published under subsection (3) must be laid before each House of Parliament.

2 Duty to secure 30 hours free childcare available for working parents

- (1) The Secretary of State must 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.
- (2) “Qualifying child of working parents” means a young child – 5
- (a) who is under compulsory school age,
 - (b) who is in England,
 - (c) who is of a description specified in regulations made by the Secretary of State,
 - (d) in respect of whom any conditions relating to a parent of the child, or a partner of a parent of the child, which are specified in such regulations, are met, and 10
 - (e) in respect of whom a declaration has been made, in accordance with such regulations, to the effect that the requirements of paragraphs (a) to (d) are satisfied. 15
- (3) The conditions mentioned in subsection (2)(d) may, in particular, relate to the paid work undertaken by a parent or partner.
- (4) For the purposes of subsections (2) and (3), the Secretary of State may by regulations –
- (a) make provision about when a person is, or is not, to be regarded as another person’s partner; 20
 - (b) make provision as to what is, or is not, paid work;
 - (c) specify circumstances in which a person is, or is not, to be regarded as in such work;
 - (d) make provision about the form of any declaration, the manner in which it is to be given and the period for which it has effect. 25
- (5) In determining, for the purposes of subsection (1), the amount of childcare that is available –
- (a) account is to be taken of any childcare available under the duty imposed by section 7(1) of the Childcare Act 2006 (duty of English local authorities to secure early years provision free of charge in accordance with regulations), but 30
 - (b) no account is to be taken of childcare available otherwise than by virtue of that duty or the duty imposed by subsection (1).
- (6) The Secretary of State must set out in regulations when a year begins for the purposes of determining in relation to a child whether the duty in subsection (1) has been discharged. 35
- (7) The Secretary of State may by regulations make provision about the circumstances in which a child is, or is not, in England for the purposes of this section. 40
- (8) In this section –
- “childcare” has the meaning given by section 18 of the Childcare Act 2006;
 - “parent”, in relation to a child, includes any individual who –
 - (a) has parental responsibility for the child, or
 - (b) has care of the child; 45
 - “parental responsibility” has the same meaning as in the Children Act 1989;

“young child”: a child is a “young child” during the period –

- (a) beginning with the child’s birth, and
- (b) ending immediately before the 1 September next following the date on which the child attains the age of 5.

3 Discharging the section 2(1) duty

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(1) The Secretary of State may make regulations for the purpose of discharging the duty imposed by section 2(1) (“extended entitlement regulations”).

(2) Extended entitlement regulations may (amongst other things) –

- (a) require an English local authority to secure that childcare of such a description as may be specified is made available free of charge for children in their area who are qualifying children of working parents; 10
- (b) make provision about how much childcare is to be so made available for each child, and about the times at which, and periods over which, that childcare is to be made available;
- (c) make provision about the terms of any arrangements made between English local authorities and providers or arrangers of childcare for the purposes of meeting any requirement imposed under paragraph (a) or (b); 15
- (d) impose obligations or confer powers on the Commissioners for Her Majesty’s Revenue and Customs; 20
- (e) make provision requiring information or documents to be provided by a person to the Secretary of State, the Commissioners for Her Majesty’s Revenue and Customs or an English local authority;
- (f) make provision for the purpose of enabling any person to check whether a child is a qualifying child of working parents; 25
- (g) for that purpose, make provision about the disclosure of information held by a Minister of the Crown, the Commissioners for Her Majesty’s Revenue and Customs or an English local authority;
- (h) create criminal offences in connection with the onward disclosure of information obtained under paragraph (g) where that information relates to a particular person and is not disclosed in a way authorised by or specified in the regulations; 30
- (i) make provision for reviews of, or appeals to the First-tier Tribunal against, determinations relating to a child’s eligibility for childcare under section 2; 35
- (j) make provision for a person specified in the regulations to impose financial penalties on persons in connection with –
 - (i) false or misleading information provided, or statements made or provided, in connection with a determination of a child’s eligibility for childcare under section 2, or 40
 - (ii) dishonest conduct in connection with the process of making such a determination;
- (k) require English local authorities, when discharging their duties under the regulations, to have regard to any guidance given from time to time by the Secretary of State. 45

(3) Regulations as described in subsection (2)(b) must ensure that the times at which childcare is to be made available provide sufficient flexibility –

- (a) for parents who work outside the hours of 9am to 5pm, Monday to Friday; and

- (b) to ensure that childcare is available during school holidays within the local authority area of the relevant childcare provider.
- (4) Extended entitlement regulations which impose a duty, or confer a power, on the Commissioners for Her Majesty’s Revenue and Customs, or authorise disclosure of information held by the Commissioners, may only be made with the consent of the Treasury. 5
- (5) In relation to a criminal offence created by virtue of subsection (2)(h), extended entitlement regulations may not provide for a penalty of imprisonment on conviction on indictment greater than imprisonment for a term not exceeding two years (whether or not accompanied by a fine). 10
- (6) If provision is made by virtue of subsection (2)(j) –
- (a) the maximum amount of any penalty that may be specified in, or determined in accordance with, the regulations is £3,000;
- (b) the regulations must include provision enabling a person on whom a financial penalty is imposed – 15
- (i) to require a review of the imposition of the penalty or its amount by the person who imposed the penalty;
- (ii) to appeal against the imposition of the penalty or its amount to the First-tier Tribunal.
- (7) The Secretary of State may by regulations substitute a different amount for the amount for the time being specified in subsection (6)(a). 20
- (8) In section 15 of the Childcare Act 2006 (powers of Secretary of State to secure proper performance of English local authorities’ powers and duties under Part 1 of that Act) references to Part 1 of that Act are to be read as including a reference to section 1 and this section. 25
- (9) In this section –
- “childcare” has the meaning given by section 18 of the Childcare Act 2006;
- “English local authority” means –
- (a) a county council in England;
- (b) a metropolitan district council; 30
- (c) a non-metropolitan district council for an area for which there is no county council;
- (d) a London borough council;
- (e) the Common Council of the City of London (in their capacity as a local authority); 35
- (f) the Council of the Isles of Scilly;
- “parent” has the same meaning as in section 2;
- “qualifying child of working parents” has the meaning given by section 2(2).
- 4 Sections 2 and 3: consequential amendments 40**
- (1) In section 99 of the Childcare Act 2006 (provision of information about young children: England), in subsection (1), omit the “and” at the end of paragraph (aa) and after paragraph (b) insert “, and
- (c) any other person who provides early years provision for the purposes of section 2(1) of the Childcare Act 2015 (Secretary of 45

- State’s duty to secure 30 hours free childcare available for working parents),”.
- (2) In Chapter 4 of Part 2 of the School Standards and Framework Act 1998 (financing of maintained schools) –
- (a) in section 45A (determination of specified budgets of local authority), after subsection (4B) insert – 5
- “(4C) For the purposes of this Part, a duty imposed on a local authority in England under section 3 of the Childcare Act 2015 (duties in connection with Secretary of State’s duty to secure 30 hours free childcare for working parents) is also to be treated as an education function of the authority.”; 10
- (b) in section 47ZA (free of charge early years provision outside a maintained school: budgetary framework: England), in subsection (3), for paragraph (a) (but not the “and” after it) substitute – 15
- “(a) for the purpose of the discharge of –
- (i) the authority’s duty under section 7 of the Childcare Act 2006, or
- (ii) a duty imposed on the authority under section 3 of the Childcare Act 2015,”.
- 5 Supplementary provision about regulations under sections 2 and 3 20**
- (1) In this section “regulations” means regulations under section 2 or 3.
- (2) Regulations may –
- (a) confer a discretion on any person;
- (b) make different provision for different purposes;
- (c) make consequential, incidental, supplemental, transitional or saving provision; 25
- (d) amend, repeal or revoke any provision made by or under an Act (whenever passed or made).
- (3) Regulations are to be made by statutory instrument.
- (4) A statutory instrument containing regulations under section 2 or 3 may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament. 30

Publication of information

- 6 Duty to publish information about childcare and related matters**
- In section 12 of the Childcare Act 2006 (duty to provide information, advice and assistance), after subsection (6) insert – 35
- “(6A) Regulations may require each English local authority to publish information which is of a prescribed description and relates to any of the matters mentioned in paragraphs (a) to (c) of subsection (2).
- (6B) Regulations under subsection (6A) may require information to be published – 40
- (a) at prescribed intervals;
- (b) in a prescribed manner.

- (6C) Subsection (3) applies in relation to information prescribed under subsection (6A) as it applies in relation to information prescribed under subsection (2).”

General

- 7 Extent** 5
- This Act extends to England and Wales only.
- 8 Commencement**
- (1) Section 1, section 7, this section and section 9 come into force on the day on which this Act is passed.
- (2) Subject to section 1, sections 2 to 6 come into force on such day or days as may be appointed by regulations made by the Secretary of State. 10
- (3) Regulations under subsection (2) may appoint different days for different purposes or different areas.
- (4) The Secretary of State may by regulations make transitional or saving provision in connection with the coming into force of any provision of this Act. 15
- (5) Regulations under this section are to be made by statutory instrument.
- 9 Short title**
- (1) This Act may be cited as the Childcare Act 2015.
- (2) **Nothing in this Act shall impose any charge on the people or on public funds, or vary the amount or incidence of or otherwise alter any such charge in any manner, or affect the assessment, levying, administration or application of any money raised by any such charge.** 20

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