
STATUTORY INSTRUMENTS

2016 No. 1257

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

PART 2

A qualifying child of working parents

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.—(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.

(6) The condition in paragraph (5) is treated as not being met by a parent if—

(a) the parent has made, or expects to make, a claim under section 809B of the Income Tax Act 2007 (claim for remittance basis to apply)⁽¹⁾ for the relevant tax year; or

(b) the parent expects section 809E of that Act (application of remittance basis in certain cases without claim) to apply to the parent for the relevant tax year.

(7) Where a parent of the child has a partner (see regulation 10), that partner must also meet the conditions in paragraphs (4) and (5).

(8) In this regulation—

“adjusted net income” has the meaning given by section 58 of the Income Tax Act 2007;

“the relevant tax year” means the tax year in which the declaration by the parent or the parent’s partner is made.

(1) 2007 c. 3. Sections 809B and 809E were added by paragraph 1 of Schedule 7 to the Finance Act 2008 (c. 9). 809B was amended by paragraph 152 of Schedule 45 and paragraph 3 of Schedule 46 to the Finance Act 2013 (c. 29). Section 809E was amended by paragraph 152 of Schedule 45 and paragraph 5 of Schedule 46 to the Finance Act 2013 and paragraph 4 of Schedule 27 to the Finance Act 2009 (c. 10).

The requirement to be in qualifying paid work

- 5.—(1) A person is in qualifying paid work if—
- (a) the person is in paid work as an employed person whose expected income from the work in the period specified in paragraph (4) is greater than or equal to the relevant threshold; or
 - (b) the person is in paid work as a self-employed person and either—
 - (i) the person’s expected income from the work in the period specified in paragraph (4) is greater than or equal to the relevant threshold; or
 - (ii) the person’s expected income from the work in the period specified in paragraph (5) is greater than or equal to four times the relevant threshold.
- (2) For the purposes of this regulation a person is to be treated as in paid work as an employed person if—
- (a) the person—
 - (i) has accepted an offer of work on or before the date of the declaration that person or that person’s partner makes; and
 - (ii) expects the work to start within 14 days of that date; or
 - (b) the person—
 - (i) is absent from work on unpaid leave on the date of the declaration that person or that person’s partner makes; and
 - (ii) expects to return to work within 14 days of that date.
- (3) A person’s “expected income” is the income which the person has a reasonable expectation of receiving, calculated in accordance with regulation 6.
- (4) The period specified in this paragraph is—
- (a) the period of 3 months beginning with the date of the declaration the person or the person’s partner makes; or
 - (b) if paragraph (2)(a) or (b) applies, the period of 3 months beginning with the day on which the work is expected to start or the person is expected to return to work.
- (5) The period specified in this paragraph is, in relation to a declaration made by the person or the person’s partner, the tax year in which the date of the declaration falls.
- (6) In this regulation, “the relevant threshold” is the product of the calculation—

$$M \times W$$

where—

M is the minimum weekly income; and

W is the number of weeks in the period specified in paragraph (4).

Calculation of expected income

- 6.—(1) An employed person’s expected income comprises the amount of earnings the person expects to receive from—
- (a) any employment under a contract of service; and
 - (b) any office, including an elected office.
- (2) In paragraph (1), “earnings” has the meaning given by section 62 of the Income Tax (Earnings and Pensions) Act 2003(2).

- (3) A self-employed person's expected income comprises—
- (a) the amount of receipts the person expects to derive from a trade, profession or vocation less the amount of expenses the person expects to incur wholly and exclusively for the purposes of the trade, profession or vocation; or
 - (b) if the person carries on a trade, profession or vocation in a business partnership, the share expected to be allocated to the person of the partnership's receipts less the share expected to be allocated to that person of the partnership's expenses incurred wholly and exclusively for the purposes of the trade, profession or vocation.
- (4) In calculating a self-employed person's income, receipts and expenses of a capital nature are to be disregarded.
- (5) A person's expected income may include income from a person's employment and self-employment taken together.
- (6) For the purposes of paragraph (5) a person may not rely on the condition in regulation 5(1)(b)(ii).

Self-employed persons: start-up periods

- 7.—(1) Where a self-employed person makes a declaration within a start-up period, that person does not have to meet the requirement in regulation 5(1)(b) for the purposes of—
- (a) that declaration; and
 - (b) that person's subsequent three declarations.
- (2) A "start-up period" is the period of 12 months following the commencement by the self-employed person of any trade, profession or vocation.
- (3) A self-employed person cannot rely on a second or subsequent start-up period (in relation to the commencement by that person of a new trade profession or vocation) unless at least 48 months have passed since the end of the previous start-up period.
- (4) In paragraph (3) "the previous start-up period" is the period during which the person did not have to meet the condition in regulation 5(1)(b) or the condition in regulation 9(1)(b) of the Childcare Payments (Eligibility) Regulations 2015(3).

Qualifying paid work: time off in connection with sickness or parenting

- 8.—(1) This regulation applies for any period during which a person—
- (a) is paid statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992(4) or Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(5);
 - (b) is paid maternity allowance under section 35 of the Social Security Contributions and Benefits Act 1992(6) or section 35 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(7);

(3) S.I. 2015/448.

(4) 1992 c. 4.

(5) 1992 c. 7.

(6) Section 35 was amended by section 2 of the Still Births (Definition) Act 1992 (c. 29), section 67 of the Social Security Act 1998 (c. 14), section 53 of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 4 of Schedule 7 to the Employment Act 2002 (c. 22), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c. 18), section 120 of the Children and Families Act 2014 (c. 6), S.I. 1994/1230 and S.I. 2014/606.

(7) Section 35 was amended by S.I. 1992/1310 (N.I. 10), S.R. 1994 No. 176, S.I. 1998/1506 (N.I. 10), S.I. 1999/3147 (N.I. 11), paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10), S.R. 2002 No. 358, S.I. 2006/1947 (N.I. 16), S.R. 2014 No. 102 and section 6 of the Work and Families Act (Northern Ireland) 2015 (c.1).

- (c) is paid statutory maternity pay under Part 12 of the Social Security Contributions and Benefits Act 1992 or Part 12 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (d) is absent from work during an ordinary maternity leave period under section 71 of the Employment Rights Act 1996(8) or article 103 of the Employment Rights (Northern Ireland) Order 1996(9);
- (e) is absent from work during an additional maternity leave period under section 73 of the Employment Rights Act 1996(10) or article 105 of the Employment Rights (Northern Ireland) Order 1996(11);
- (f) is paid statutory paternity pay under Part 12ZA of the Social Security Contributions and Benefits Act 1992(12) or Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(13);
- (g) is absent from work during a paternity leave period under section 80A or 80B of the Employment Rights Act 1996(14) or article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996(15);
- (h) is paid statutory adoption pay under Part 12ZB of the Social Security Contributions and Benefits Act 1992(16) or Part 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(17);
- (i) is paid statutory shared parental pay under Part 12ZC of the Social Security Contributions and Benefits Act 1992 or Part 12ZC of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (j) is absent from work during an ordinary adoption leave period under section 75A of the Employment Rights Act 1996(18) or article 107A of the Employment Rights (Northern Ireland) Order 1996(19);
- (k) is absent from work during an additional adoption leave period under section 75B of the Employment Rights Act 1996(20) or Article 107B of the Employment Rights (Northern Ireland) Order 1996(21);

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- (8) 1996 c. 18. Section 71 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26), and amended by section 17 of the Employment Act 2002 (c. 22), paragraph 31 of Schedule 1 to the Work and Families Act 2006 (c.18), and section 118 of the Children and Families Act 2014 (c.6).
 - (9) S.I. 1996/1919 (N.I. 16). Article 103 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2), S.I. 2006/1947 (N.I. 16), and section 3 of the Work and Families Act (Northern Ireland) 2015 (c. 1).
 - (10) Section 73 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26), and amended by section 17 of the Employment Act 2002 (c. 22), paragraph 32 of Schedule 1 to the Work and Families Act 2006 (c. 18) and section 118 of the Children and Families Act 2014 (c. 6).
 - (11) Article 105 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2), S.I. 2006/1947(N.I. 16), and section 3 of the Work and Families Act (Northern Ireland) 2015 (c. 1).
 - (12) Part 12ZA was inserted by section 2 of the Employment Act 2002.
 - (13) Part 12ZA was inserted by S.I. 2002/2836 (N.I. 2).
 - (14) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002. Section 80A was amended by section 118 of and paragraph 32 of Schedule 7 to the Children and Families Act 2014 (c. 6). Section 80B was amended by sections 118, 121 and 128 of, and paragraph 33 of Schedule 7 to, the 2014 Act.
 - (15) Articles 112A and 112B were inserted by S.I. 2002/2836 (N.I. 2). Article 112A was amended by section 3 and paragraph 4 of Schedule 1 to the Work and Families Act (Northern Ireland) 2015 (c. 1), and Article 112B by sections 3, 8 and 17 of, and paragraph 4 of Schedule 1 to, the 2015 Act.
 - (16) Part 12ZB was inserted by section 4 of the Employment Act 2002.
 - (17) Part 12ZB was inserted by S.I. 2002/2836 (N.I. 2).
 - (18) Section 75A was inserted by section 3 of the Employment Act 2002 and amended by paragraph 33 of Schedule 1 to the Work and Families Act 2006 (c. 18), sections 118, 121 and 122 of the Children and Families Act 2014 (c. 6), and S.I. 2016/413.
 - (19) Article 107A was inserted by S.I. 2002/2836 (N.I. 2) and amended by sections 3 and 8 of, and paragraph 32 of Schedule 1 to, the Work and Families Act (Northern Ireland) 2015, and S.I. 2006/1947 (N.I. 16).
 - (20) Section 75B was inserted by section 3 of the Employment Act 2002 and amended by paragraph 34 of Schedule 1 to the Work and Families Act 2006 and sections 118 and 122 of the Children and Families Act 2014.
 - (21) Article 107B was inserted by S.I. 2002/2836 (N.I. 2) and amended by section 3 of, and paragraph 33 of Schedule 1 to, the Work and Families Act (Northern Ireland) 2015, and S.I. 2006/1947 (N.I. 16).

- (l) is absent from work during a period of shared parental leave under section 75E or 75G of the Employment Rights Act 1996 or articles 107E and 107G of the Employment Rights (Northern Ireland) Order 1996(22); or
 - (m) is absent from work during a statutory parental leave period under section 76 of the Employment Rights Act 1996(23) or article 108 of the Employment Rights (Northern Ireland) Order 1996.
- (2) Subject to paragraphs (3) and (4), such a person is regarded for the purposes of these Regulations—
- (a) as in paid work during the period in paragraph (1); and
 - (b) as having, for each week of that period, expected income from that work equal to the minimum weekly income.
- (3) Paragraph (2) does not apply unless, immediately before the start of the period in any sub-paragraph of paragraph (1), either—
- (a) the person was in qualifying paid work; or
 - (b) this regulation applied to the person by virtue of a different sub-paragraph of paragraph (1).
- (4) Where a child whose placement for adoption caused the period in paragraph (1)(h), (j), (k) or (l) to run is the child in respect of whom a declaration is made, paragraph (2) applies only for the final 14 days before the person returns to work.
- (5) This regulation applies to a self-employed person during any period for which paragraph (1) would have applied in that person’s case but for the fact that the work performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.
- (6) This regulation applies to a resident of another EEA state who under the law of that state—
- (a) receives payments which are substantially similar in character to the payments in paragraph (1)(a) to (c), (f), (h) or (i); or
 - (b) is absent from work in circumstances which are substantially similar in character to a period of absence described in paragraph (1)(d), (e), (g) or (j) to (m).

Qualifying paid work: caring, incapacity for work or limited capability for work

- 9.—(1) This regulation applies for any period during which—
- (a) a person (“P”) has a partner who is in qualifying paid work; and
 - (b) P is—
 - (i) paid or entitled to incapacity benefit under section 30A, 40 or 41 of the Social Security Contributions and Benefits Act 1992(24) or section 30A, 40 or 41 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(25);
 - (ii) paid or entitled to severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 or section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9,

(22) [S.I. 1996/1919 \(N.I. 16\)](#). Article 107E and 107G were added by section 2(2) of Part 2 of the Work and Families Act (Northern Ireland) 2015 (c. 1).

(23) Section 76 was substituted by section 7 of, and Part 1 of Schedule 4 to, the Employment Relations Act 1999.

(24) Section 30A was added by section 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30) and paragraph 14 of Schedule 24 to the Civil Partnership Act 2004 (c. 33). Sections 40 and 41 were substituted by paragraph 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994, and section 41 was amended by paragraph 21 of Schedule 4(3) to the Pensions Act 1995 (c. 26).

(25) Section 30A was inserted by [S.I. 1994/1898 \(N.I. 12\)](#), and amended by paragraph 68 of Schedule 24(5) to the Civil Partnership Act 2004 and [S.I. 1999/3147](#). Section 41 was amended by [S.I. 1995/3213](#).

- and Transitional and Savings Provisions) Order 2000(26) and article 4 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000(27));
- (iii) paid or entitled to long-term incapacity benefit under regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(28) or regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(29);
 - (iv) paid or entitled to carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992(30) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(31);
 - (v) paid or entitled to contributory employment and support allowance under Part 1 of the Welfare Reform Act 2007(32) as amended by Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012(33) or under section 1 of the Welfare Reform Act (Northern Ireland) 2007(34);
 - (vi) entitled to national insurance credits on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(35) or regulation 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975(36);
 - (vii) paid or entitled to the carer element of universal credit under regulation 29 of the Universal Credit Regulations 2013(37) or regulation 30 of the Universal Credit Regulations (Northern Ireland) 2016(38); or
 - (viii) determined as having limited capability for work and work-related activity in accordance with regulations 39 and 40 of the Universal Credit Regulations 2013 or regulations 40 and 41 of the Universal Credit Regulations (Northern Ireland) 2016.
- (2) For the purposes of the Act, P is regarded—
- (a) as in paid work during that period; and
 - (b) as having, for each week of that period, expected income from that work equal to the minimum weekly income.
- (3) P's partner is not in qualifying paid work for the purposes of paragraph (1)(a) during any period when that partner is paid or entitled to a benefit or an allowance, or is entitled to a credit, described in paragraph (1)(b).
- (4) This regulation applies to a self-employed person, or that person's partner, during any period for which paragraph (1) would have applied in that person's, or that person's partner's, case but for the fact that the work performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.

(26) S.I. 2000/2958.

(27) S.R. 2000 No. 332 (C.14).

(28) S.I. 1995/310. Regulation 11(4) was amended by S.I. 1996/3207.

(29) S.I. 1995/35 Regulation 11(4) was amended by S.R. 1996 No. 601.

(30) Section 70 was amended, and the name of the allowance changed from invalid care allowance to carer's allowance, by S.I. 1994/2556, 2002/1457, 2011/2426, 2013/388, 2013/796 and 2015/1754.

(31) Section 70 was amended, and the name of the allowance changed to carer's allowance, by S.I. 1994/370, S.O. (NI) 2002 No. 321, S.I. 2011/356 and S.I. 2016/228.

(32) 2007 c. 5.

(33) 2012 c. 5. Schedule 3 and Part 1 of Schedule 14 remove references to an income-related allowance.

(34) 2007 c. 2 (N.I.). Section 1 was amended by articles 56, 59 and 60 of the Welfare Reform (Northern Ireland) Order 2015/2006.

(35) S.I. 1975/556. Regulation 8B was inserted by S.I. 1996/2367 and amended by 2000/3120, 2003/521, 2008/1554, 2010/385, 2012/913 and 2013/630.

(36) S.R. 1975 No. 113.

(37) S.I. 2013/376. Regulation 29 was amended by S.I. 2015/175. Regulations 39 and 40 were amended by S.I. 2014/597.

(38) S.R. 2016 No. 216.

(5) This regulation applies to a resident of another EEA state who under the law of that state is entitled to a benefit, allowance or credit which is substantially similar in character to a benefit, allowance or credit described in paragraph (1)(b).

Partner of a parent of the child

10.—(1) For the purposes of section 1(2) and (3) of the Act, a person is to be regarded as another person’s partner if they are both at least 16 years old and either—

- (a) they are married to, or civil partners of, each other and are members of the same household; or
- (b) they are not married to, or civil partners of, each other but are living together as a married couple or as civil partners.

(2) Where two people are parties to a polygamous marriage, they are not regarded as partners for the purposes of section 1(2) and (3) of the Act if—

- (a) one of them is party to an earlier marriage that still subsists; and
- (b) the other party to that earlier marriage is living in the same household.

(3) A person’s partner who is temporarily absent from the person’s household at the date of the declaration is not to be regarded as the person’s partner for the purposes of section 1(2) and (3) of the Act if—

- (a) the absence exceeds, or is expected to exceed, 6 months; or
- (b) the absent person is a prisoner.

(4) In this regulation, “polygamous marriage” means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.