

CHILDCARE BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Childcare Bill [HL] as introduced in the House of Lords on 01 June 2015 (HLBill 9).

- These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill. So where a provision of the Bill does not seem to require any explanation or comment, the Notes simply say in relation to it that the provision is self-explanatory.

Table of Contents

Subject	Page of these Notes
Overview of the Bill	2
Policy background	2
Legal background	2
Territorial extent and application	2
Commentary on provisions of Bill	3
Clause 1: Duty to secure 30 hours free childcare available for working parents	3
Clause 2: Supplementary provision about regulations under section 1	4
Clause 3: Duty to publish information about childcare	4
Clause 4: Extent	4
Clause 5: Commencement	4
Clause 6: Short title	4
Commencement	5
Financial implications of the Bill	5
Annex A - Territorial extent and application	6

Overview of the Bill

- 1 This Bill contains provisions which will secure an additional entitlement of childcare support to be made available to working parents. It also seeks to help ensure that parents are able to access information about the additional free childcare being introduced and about other childcare provision/other services which may help them to meet their childcare needs.

Policy background

- 2 The Government's intention is to make childcare more affordable for working parents. This Bill is intended to secure the delivery of the Conservative Party's 2015 election manifesto commitment to give families where all parents are working an entitlement to 30 hours a week of free childcare care over 38 weeks of the year for their three and four year olds. All three and four year olds and disadvantaged two year olds who meet the eligibility criteria are already entitled to 15 hours a week of free childcare for 38 weeks of the year. This Bill makes the legislative changes needed to meet that commitment by placing a duty on the Secretary of State to make available additional free childcare for eligible children. The Bill also places a duty on local authorities to publish information about available childcare and other services available for parents locally. With the introduction of the additional entitlement to free childcare for working parents the Government believes that it is important that this information is published consistently, so that parents can access it.

Legal background

- 3 The existing legislation relating to the provision of childcare, including the regulation and inspection of childcare, is set out in the Childcare Act 2006 (and secondary legislation made under that Act). Part 1 of that Act makes provision about the powers and duties of local authorities in connection with the provision of childcare. Section 7 of that Act places a duty on local authorities in England to secure childcare for young children in its area, free of charge and in accordance with regulations. The relevant regulations are the Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147).
- 4 That Act also includes in section 12, a duty on local authorities to provide information, advice and assistance to parents and other persons, the information being prescribed in regulations (see the Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007 (SI 2007/3490)).
- 5 The Bill places a duty on the Secretary of State to secure the availability of 30 hours free childcare for qualifying children of working parents, with details to be set out in regulations. It also amends section 12 of the Childcare Act 2006, to make provision in regulations for local authorities in England to publish information about childcare and related information.
- 6 The Childcare Act 2006 will continue to be the main Act governing the provision of childcare.

Territorial extent and application

- 7 The Bill forms part of the law of England and Wales (a single legal jurisdiction). But clauses 1 and 2 apply to children in England only and clause 3 applies to English local authorities only.

Commentary on provisions of Bill

Clause 1: Duty to secure 30 hours free childcare available for working parents

- 8 Subsection (1) of this clause imposes a duty on the Secretary of State to ensure that childcare is available free of charge for qualifying children of working parents for 30 hours in each of 38 weeks in any year, or for an equivalent period. Regulations under subsection (8) will set out when, in relation to any particular child, a year begins for this purpose.
- 9 Subsection (2) provides that a “qualifying child of working parents” is a young child who is under compulsory school age, is in England and is of a description specified in regulations. Young child is defined in subsection (12). Compulsory school age is defined in section 8 of the Education Act 1996. Subsection (11) makes it clear that the description can be framed by reference to a child’s parent or the parent’s partner. These regulations can therefore make provision about working parents.
- 10 Subsection (3) provides that, in the discharge of her duty, the Secretary of State will take into account any childcare available under the duty on local authorities under section 7 of the Childcare Act 2006. Section 7 of the Childcare Act 2006 enables the Secretary of State to make regulations to describe the type and amount of free childcare that local authorities must secure and the description of children to benefit from that free childcare. The Local Authority (Duty to Secure Early Years Provision Free of Charge) Regulations 2014 (SI 2014/2147) provide that 15 hours of childcare per week must be available for all 3 and 4 year olds, and for defined groups of 2 year olds.
- 11 Subsection (4) enables the Secretary of State to make regulations for the purpose of discharging her duty under subsection (1). Subsection (5) lists a number of examples of what those regulations may do, including -
 - a. requiring arrangements for childcare to be made available, and the times and periods over which it may be available,
 - b. specifying the descriptions of such childcare,
 - c. enabling payments to be made to parents or other persons, and
 - d. reproducing provisions of the Childcare Payments Act 2014, with or without modification.
- 12 The regulations may also impose functions on public bodies, or establish a body corporate and impose functions on it.
- 13 Subsection (5) also specifies that regulations could make provision requiring information or documents to be provided by a person to the Secretary of State or another person. The regulations may also make provision about the disclosure of information by any Minister of the Crown, Her Majesty’s Commissioners for Revenue and Customs, or any other person, for the purposes of checking eligibility for free childcare. New criminal offences may be created to support regulations made under these provisions.
- 14 Subsection (7) provides that any criminal offence may not provide for a penalty of imprisonment for a term greater than two years, with or without a fine.
- 15 Subsection (10) makes clear that the duty may be partly or wholly discharged by making regulations under Part 1 of the Childcare Act 2006, in respect of the local authority duties.

Clause 2: Supplementary provision about regulations under section 1

- 16 This clause allows regulations to be made which make different provision for different purposes, make consequential, incidental, supplemental, transitional or saving provision or amend, repeal or revoke any measures made in another Act. The regulations may also confer a discretion on any person. If regulations make changes to measures made in another Act they will be subject to affirmative resolution by each House of Parliament. Any other regulations under section 1 will be subject to negative resolution procedure.

Clause 3: Duty to publish information about childcare

- 17 This clause amends section 12 of the Childcare Act 2006 by inserting new subsections (6A) to (6C) allowing regulations to require English local authorities to publish information of a prescribed description at prescribed intervals and in a prescribed manner.
- 18 Regulations made under section 12(2) of the Childcare Act 2006 prescribe information which must be provided by English local authorities to parents or prospective parents in their area about available childcare and other services (see 'The Childcare Act 2006 (Provision of Information to Parents) (England) Regulations 2007' (SI 2007/3490)). The information to be prescribed for publication under new section 12(6A) may be similar to that information.
- 19 New subsection (6C) provides that the requirement on the Secretary of State when making regulations under section 12(2) to have regard to the needs of parents of disabled children for appropriate information will also apply when she makes regulations under new subsection (6A).

Clause 4: Extent

- 20 The Bill forms part of the law of England and Wales (a single legal jurisdiction). But clauses 1 and 2 apply to children in England only and clause 3 applies to English local authorities only.

Clause 5: Commencement

- 21 This clause provides for the commencement of the Bill. Clauses 1 to 3 will come into force on such day or days – which may be different days for different purposes - as may be appointed by regulations made by the Secretary of State. Regulations under subsection (2) may enable the introduction of the additional 15 hours free childcare in some areas in advance of others. Clauses 4 to 6 of the Bill come into force on the day on which the Bill receives Royal Assent. The clause also confers power to make transitional or saving provision in connection with the coming into force of any of the provisions. These regulations are not subject to parliamentary procedure.

Clause 6: Short title

- 22 This clause is self-explanatory.

Commencement

- 23 Clauses 1 to 3 will come into force on the day or days appointed by the Secretary of State in regulations. These regulations are not subject to parliamentary procedure. Clauses 4 to 6 will come into force on the day on which the Bill receives Royal Assent.

Financial implications of the Bill

- 24 The additional 15 hours free childcare entitlement for working parents of three and four year olds will be paid for by the Department for Education from money provided by Parliament. The cost of the additional entitlement will be considered as part of the normal Budget and Spending Review process.

Annex A - Territorial extent and application

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion required?	Extends to Scotland?	Legislative Consent Motion required?	Extends to Northern Ireland?	Legislative Consent Motion required?
Clause 1							
Clause 2	In Full	No	No	No	No	No	No
Clause 3							