

Get in on the Act

Childcare Act 2016

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Background

The Childcare Bill was introduced in the House of Commons on 1 June 2015, completed its parliamentary stages on 2 February 2016 and received Royal Assent, becoming law, on 16 March 2016.

The Childcare Act 2016 (the Act) takes forward government commitments to secure an additional entitlement of childcare support for working parents. The Act extends the entitlement to 30 hours free childcare over 38 weeks of the year for three- and four-year-olds in families where all parents are working.

The Act is made up of three parts as follows:

1. Availability of free childcare
2. Public information
3. General

This publication aims to provide readers with an introduction to the Act and summarises the main issues on which the Local Government Association (LGA) campaigned.

The role of the LGA and local government in influencing the legislation

We worked with LGA vice-presidents, ministers, parliamentarians, and civil servants to influence the Act. Key highlights include:

- When the Bill was in its early stages, the LGA worked with peers to table an amendment that probed the Government for more details on the funding for the extended childcare entitlement. The amendment would have prevented the legislation coming into force until an independent review of the funding had been carried out. This led to the announcement in the Spending Review 2015 of over £1 billion more a year by 2019/20, £50 million of capital funding, and over £300 million to increase the hourly rate for childcare providers. Having committed to further funding the proposed review was no longer necessary.
- The LGA secured the removal of clauses that would have given the Secretary of State power to dictate the times and type of local childcare provision that must be available. Instead this will be achieved through regulations put before Parliament. The Minister committed to drafting the regulation in partnership with local government and the LGA through a working group.

The key provisions and their implications for local government

1. Availability of free childcare

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

Section 1 places a duty on the Secretary of State to ensure that free childcare equivalent to 30 hours for 38 weeks in a year is available for qualifying children of working parents. The criteria for the additional entitlement will be set out in subsequent regulations, but the intention is that children will qualify at the start of the school term following their third birthday. The regulations will also specify the in-work conditions for parents. Parents will be able to apply for the additional entitlement through the same application process as for Tax-Free Childcare.

The 30 hours will include the free early years provision currently available under the duty on local authorities in the Childcare Act 2006.

When the Bill was first in the House of Lords, the LGA worked with peers to table an amendment that probed the Government for more details on the funding for the extended entitlement. The amendment would have prevented the legislation coming into force until an independent review of the funding had been carried out. This led to the announcement in the Spending Review 2015 of over £1 billion more a year by 2019/20, £50 million of capital funding, and over £300 million to increase the hourly rate for providers. As such the amendment was removed.

Section 2: Discharging the section 1(1) duty

Section 2 allows the Secretary of State to make regulations that detail how she proposes to discharge the new duty to secure the extended entitlement. The regulations may require local authorities to secure free childcare in their area, having regard to any guidance issued by the Secretary of State. The regulations may specify the type and the periods over which childcare is to be made available, and make provisions about the terms of arrangements between local authorities and providers of childcare. Should a local authority fail to secure free childcare in accordance with any extended entitlement regulations, the Secretary of State may intervene.

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Under this section provision may be made to enable a local authority to check whether a child qualifies for the additional entitlement and regulations may make provision to allow the data sharing to this purpose. As is the case under the Childcare Act 2006, unlawful disclosure of this information will be a criminal offence with the maximum penalty of a two-year term of imprisonment.

Section 3: Sections 1 and 2: consequential amendments

Section 3 makes amendments to the Childcare Act 2006 to enable the Secretary of State to make regulations requiring childcare providers delivering the extended entitlement to supply basic information about the qualifying children to the Secretary of State, local authority, or relevant childminder agency.

The section also amends the School Standards and Framework Act 1998 to extend that framework to the provision of financial assistance to settings delivering the extended entitlement. Any duty imposed on a local authority in regulations made under extended entitlement regulations is to be treated as an education function for the purposes of determining the specified budgets of a local authority.

Where a local authority proposes to allocate money to a childcare provider, other than a maintained school, out of its individual schools budget, the amount of money to be allocated is to be determined in accordance with regulations. The amount of financial assistance allocated to childcare providers for the purpose of discharging any duty imposed on the local authority in extended entitlement regulations will also be governed by regulations. This mirrors the position in respect of money allocated to childcare providers by local authorities for the purposes of discharging their duty under the Childcare Act 2006.

Section 4: Supplementary provisions about regulations under section 1 and 2

Section 4 makes clear that any regulations made under section 1 or 2 of the Act may make different provision for different purposes, make amendments, and may repeal or revoke any provisions of another Act. The regulations may also confer a discretion on any person. Such regulations are subject to an affirmative procedure in Parliament the first time the powers are exercised and the negative procedure thereafter.

2. Public information

Section 5: Duty to publish information about childcare and related matters

Section 5 amends the Childcare Act 2006 to allow regulations to require local authorities to publish information of a prescribed description, interval, and manner. Regulations made under the Childcare Act 2006 prescribe information which local authorities must provide to parents in their area. The information to be prescribed under section 5 may be similar to that information. In making the regulations the Secretary of State must have regard to the needs of parents of disabled children for appropriate information.

Thank you

Throughout the passage of the Bill through Parliament we worked closely with our President and vice-presidents, as well as other MPs and peers, briefing them ahead of debates and suggesting amendments. On behalf of local government, we are grateful to all those parliamentarians who supported us and championed the concerns and arguments of the sector.

Useful links

For the full text of the Act, please refer to: www.legislation.gov.uk/ukpga/2016/5/introduction/enacted

For the LGA's briefings on the Bill, please go to: www.local.gov.uk/legislation



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