

# CHILDCARE BILL [HL]

## EXPLANATORY NOTES ON COMMONS AMENDMENTS

### What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Childcare Bill [HL] as brought from the House of Commons on 26 January 2016.
- 2 These Explanatory Notes have been prepared by the Department for Education in order to assist the reader of the Bill and the Commons amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons amendments themselves, refer to Bill 84, the Bill as first printed for the Commons.
- 4 These Explanatory Notes need to be read in conjunction with the Commons amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons amendments.
- 5 All Commons amendments were tabled in the name of the Minister.

### Commentary on Commons amendments

#### Commons Amendments to Clause 1: Funding Review

##### Commons Amendment 1

- 6 [Page 1, line 2, leave out Clause 1]
  - a. This amendment would remove Clause 1 of the Bill which required the Secretary of State to carry out an independent review of the free childcare entitlement funding system and put in place a funding solution which took account of its findings before the coming into force of the rest of the Act.

#### Commons Amendments to Clause 2: Duty to secure 30 hours free childcare available for working parents

##### Commons Amendment 2

- 7 [Clause 2, page 2, line 25, leave out from “about” to the end of line 26 and insert “ —  
(i) the form of a declaration and the manner in which it is to be

made;

(ii) the conditions to be met by the person making a declaration;

(iii) the period for which a declaration has effect.”]

- a. This amendment would enable the Secretary of State to set conditions to be met by a person making a declaration as to a child’s eligibility for the extended entitlement. For example, that the person making the declaration would need to be the person who is responsible for the child.

### Commons Amendment 3

8 [Clause 2, page 2, line 26, at end insert—

“(4A) For the purposes of assisting the Secretary of State in the discharge of the duty imposed by subsection (1), the Commissioners for Her Majesty’s Revenue and Customs may carry out functions in connection with the making of determinations as to whether a child is a qualifying child of working parents.”]

- a. This amendment would confer on Her Majesty’s Revenue and Customs (HMRC) the power to make declarations as to a child’s eligibility and carry out related functions. HMRC already has functions under the Childcare Payments Act 2014 in relation to the administration and operation of Tax-Free Childcare. The intention is that parents will be able to apply for both the extended entitlement and Tax-Free Childcare through a simple, joint application process. This amendment seeks to make clear that HMRC has the requisite power to verify a child’s eligibility for additional free childcare.

## Commons Amendments to Clause 3: Discharging the section 2(1) duty

### Commons Amendment 4

9 [Clause 3, page 3, line 46, leave out subsection (3)]

- a. This amendment would remove the provision which requires the Secretary of State, when exercising her power to make regulations for the purpose of discharging her duty, and in particular when making regulations setting out the times at which childcare is to be made available, to make provision to ensure that childcare is made available for parents who have alternative working patterns and during the school holidays.

## Commons Amendments to Clause 5: Supplementary provision about regulations under sections 2 and 3

### Commons Amendment 5

These Explanatory Notes relate to the Commons Amendments to the Childcare Bill [HL] as brought from the House of Commons on 26 January 2016 [HL Bill 90]

10 [Clause 5, page 5, line 30, leave out subsection (4) and insert –

“(4) A statutory instrument containing (whether alone or with other provision) regulations mentioned in subsection (5) may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

(5) The regulations referred to in subsection (4) are –

- (a) the first regulations made under section 2;
- (b) the first regulations made under section 3(1);
- (c) any regulations under section 3(7);
- (d) any other regulations that amend or repeal provision made by an Act.
- (6) Any other statutory instrument containing regulations is subject to annulment in pursuance of a resolution of either House of Parliament.”]

- a. This amendment would remove the provision which requires all regulations made under clauses 2 (Duty to secure 30 hours’ free childcare available for working parents) and 3(1) (Discharging the section 2(1) duty) of the Bill to be subject to the affirmative procedure on every occasion they are made. Instead regulations under clauses 2 and 3(1) would be subject to the affirmative procedure the first time the powers are exercised, and the negative procedure thereafter. This amendment would not alter the position that any regulations which seek to amend or repeal primary legislation, and any regulations seeking to update the maximum level of any financial penalty set out in clause 3(6)(a) of the Bill would continue to be subject to the affirmative procedure and therefore subject to the express approval of Parliament each time the powers were exercised.

## Commons Amendments to Clause 8: Commencement

### Commons Amendment 6

11 [Clause 8, page 6, line 8, leave out from beginning to “come” in line 10 and insert –

“(1) The following provisions come into force on the day on which this Act is passed –

- (a) section 2(4A);
- (b) section 7;
- (c) this section;
- (d) section 9.

(2) The remaining provisions of this Act”]

- a. This amendment is consequential on amendment 3, described above. HMRC's power to make declarations as to a child's eligibility and carry out related functions would come into force on the day on which the Childcare Act is passed. This amendment seeks to give HMRC the requisite statutory authority to begin the preparatory work necessary to build the eligibility checking system (which the government intends will operate in conjunction with that for Tax Free Childcare).

## **Commons Amendments to Clause 9: Short title**

### **Commons Amendment 7**

12 [Clause 9, page 6, line 19, leave out subsection (2)]

- a. This amendment would remove the provision which was inserted when the Bill left the Lords to avoid infringing the financial privileges of the Commons. Now that the money resolution has been passed this provision can be removed.



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