

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Reviews and Appeals

Section 56: Appealable decisions

246. [Section 56](#) lists the HMRC decisions which a person can appeal against under the Act.
247. Before an appeal can be made against a decision, subsection (2) requires the person to have first asked for a review to be conducted under section 57 and either for them to have been notified of its outcome, or for the deadline for HMRC to notify the person to have passed without them receiving notification.
248. Subsection (3) sets out the list of decisions that can be appealed against. These include decisions not to allow a person to open a childcare account, to restrict what money can be paid into or out of a person's account, to impose a penalty or recover top-up, to disqualify a person from the scheme or to recover debts from a person's childcare account.
249. Where a person is notified of an appealable decision, subsection (4) requires the notification to include details of the person's right to apply for a review of the decision and to appeal against the decision.
250. Subsections (5) and (6) provide rules setting out when the effect of the decision will or will not be suspended when a review has been requested or an appeal has been brought in relation to a decision. When decisions are suspended this continues until the person has been notified of the outcome of the review or appeal.

Section 57: Review of decisions

251. [Section 57](#) sets out the process for a person to follow where they wish to apply for a review of a decision made by HMRC. Similar mandatory review processes apply in other Government schemes.
252. A person can ask the Commissioners for HMRC to review any decision that is listed in subsection (3) of section 56. The person must make this request within 30 days of being notified of the decision, unless they have been granted an extension of time under section 58. An application must be made in writing, must contain enough information to identify the person seeking the review and the decision they are appealing against, and must set out the reasons why they would like the decision to be reviewed.
253. The Commissioners must review a decision if they receive a request to do so. They can either uphold, vary or cancel the decision. When they are carrying out their review, subsection (6) requires the Commissioners to take account of any representations which the person has made, provided they have been made in reasonable time.

254. If the Commissioners notify the person that they require further information or evidence, and that information or evidence is not supplied within 15 days, subsection (7) allows them to complete the review without it.
255. The Commissioners must notify the person of the review's conclusion, the reasons for that conclusion and, if the decision is varied, details of any variation. This notification must take place within 30 days of them receiving the request for review or, if they have requested further information, 45 days. The Commissioners and the person can also agree that a different time limit applies.
256. If the Commissioners do not notify the person of the review's conclusion within the applicable time limit, subsection (10) provides that the review will be treated as having concluded that the decision has been upheld. The Commissioners must tell the person if this has happened.

Section 58: Extension of time limit for applications for review

257. **Section 58** allows the Commissioners for HMRC to extend the time limit within which a person can request a review of a decision. If a person wants to be granted an extension of time they must apply to the Commissioners within 6 months of the end of the period in which they should have asked for a review, setting out the reasons for their application.
258. The Commissioners may extend the time limit if they are satisfied that there were special circumstances that meant it was not practicable for the person to request a review within 30 days of being notified of the decision, and that it is reasonable to allow that extension.
259. Subsection (4) provides that a person cannot make another application if the Commissioners refuse their application for an extension to the time limit.

Section 59: Exercise of right of appeal

260. **Section 59** sets out the procedure applying to appeals against decisions made by HMRC.
261. Subsection (1) assigns appeals under section 56 to the appropriate tribunal.
262. Subsections (2) and (3) define the appropriate tribunal. They provide that an appeal is to be heard by the First-tier Tribunal or by the appeal tribunal in Northern Ireland. An appeal tribunal is one which is constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998.
263. Subsection (4) enables regulations to provide that certain provisions which apply for the purposes of social security and tax appeals apply to appeals made under the Act, and to modify those provisions for that purpose.

Section 60: Powers of tribunal

264. **Section 60** sets out the powers of a tribunal that hears an appeal brought under the Act.
265. If the appeal is against a decision to assess a penalty (or the amount of that penalty), subsection (2) allows the tribunal to uphold the penalty, set it aside, or replace it with a penalty of a different amount.
266. In any other case, subsections (3) to (5) require the tribunal to either dismiss the appeal or overturn all or part of the decision. The tribunal can only overturn a decision if it is satisfied that it was either wrong in law or was based on a factual error.
267. If the tribunal overturns a decision it can either replace it with its own decision or refer the case back for HMRC to make a new decision in accordance with the tribunal's ruling. However, the tribunal cannot direct HMRC to take any action which HMRC would not otherwise have the power to take.

268. Subsection (7) provides that the tribunal's decision has the same effect, and can be enforced in the same manner, as an HMRC decision.

Section 61: Cases where there is more than one eligible person

269. **Section 61** deals with appeals in cases where more than one person has applied to open a childcare account in respect of a particular child, HMRC has made a decision as to which person should hold an account and this has led to an appeal. This may occur if a child's parents are estranged and each of them wants to open a childcare account for the child.
270. The ways in which such disputes can lead to an appeal are covered in subsections (2), (3) and (4). The first of these in subsection (2) is where two or more persons seek to open a childcare account for a single child at the same time and HMRC refuses one or more of the requests. The second in subsection (3) is where a person seeks to open a childcare account for a child while another person holds an active account for that child and HMRC refuses the request. The third in subsection (4) is where HMRC makes a decision whether or not to make an account restriction order in relation to another person where such an order is necessary in order for another person to open a childcare account.
271. In this situation, the appeal notice must be given to every other person who applied to open an account, and they will all be treated as a party to that appeal. If the tribunal overturns HMRC's decision it must replace it with a decision of its own.