

2015 No. 522

CHILDCARE

PAYMENT SCHEME

The Childcare Payments Regulations 2015

<i>Made</i> - - - -	4th March 2015
<i>Laid before Parliament</i>	5th March 2015
<i>Coming into force</i> - -	1st June 2015

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, in exercise of the powers conferred by sections 2(3)(a) and (4), 4(6), 5(3), 15(3), (4) and (5), 17(4), 19(6), 24(1), (3) and (4), 25, 26(1) and (3), 49(6), 62(1), (2), (3) and (5) and 69(3) and (4) of the Childcare Payments Act 2014(a).

Citation and commencement

1. These Regulations may be cited as the Childcare Payments Regulations 2015 and come into force on 1st June 2015.

Interpretation

2. In these Regulations—

“the Act” means the Childcare Payments Act 2014, and a reference without more to a numbered section is a reference to the section of the Act bearing that number;

“another EEA state” means any EEA state apart from the United Kingdom;

“armed forces independence payment” means an armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011(b);

“disability living allowance” means disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992(c) or sections 71 to 76 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d);

(a) 2014 c. 28.
(b) S.I. 2011/517, amended by S.I. 2013/436 and S.I. 2014/412; there are other amending instruments but none is relevant.
(c) 1992 c. 4. Sections 71 to 76 were amended by section 67 of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 145 of Schedule 1 to the National Health Service (Consequential Provisions) Act 2006 (c. 43), sections 52, 53 and 60 of, and paragraph 2 of Schedule 7 and paragraph 1 of Schedule 8 to, the Welfare Reform Act 2007 (c. 5), section 14 of the Welfare Reform Act 2009 (c. 24) and S.I. 2011/2426.
(d) 1992 c. 7. Sections 71 to 76 were amended by sections 48, 49 and 54 of, and paragraph 1 of Schedule 8 to, the Welfare Reform Act (Northern Ireland) 2007 (c. 2), paragraph 39 of Schedule 1 to the Pensions Act (Northern Ireland) 2008 (c. 1), section 13 of the Welfare Reform Act (Northern Ireland) 2010 (c. 13), S.I. 1999/3147 (N.I. 11) and S.R. (N.I.) 2011 No. 356.

“disabled child” is to be read in accordance with regulations made under section 14 (qualifying child)(a);

“personal independence payment” means a personal independence payment under Part 4 of the Welfare Reform Act 2012(b);

“relevant maximum” for an entitlement period is to be read in accordance with section 19 (payments into childcare accounts).

Qualifying childcare: registered or approved childcare

3.—(1) For the purposes of section 2 (qualifying childcare), childcare described in paragraphs (2) to (6) is to be regarded as registered or approved childcare.

(2) Care provided in England for a child—

- (a) by a person registered under Part 3 of the Childcare Act 2006(c);
- (b) by or under the direction of the proprietor of a school as part of the school activities—
 - (i) out of school hours, where a child has reached compulsory school age; or
 - (ii) at any time, where a child has not yet reached compulsory school age; or
- (c) by a domiciliary care provider registered with the Care Quality Commission in accordance with the requirements of the Health and Social Care Act 2008(d).

(3) Care provided in Wales for a child—

- (a) by a person registered under Part 2 of the Children and Families (Wales) Measure 2010(e);
- (b) by a person in circumstances where, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(f), the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010;
- (c) out of school hours, by a school as part of the school activities or by a local authority;
- (d) by a domiciliary care worker under the Domiciliary Care Agencies (Wales) Regulations 2004(g);
- (e) by a foster parent in relation to a child (other than one whom the foster parent is fostering) in circumstances where the care would be child minding or day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010 but for the fact that the child is over the age of the children to whom that Measure applies; or
- (f) by a childcare provider approved in accordance with a scheme made by the National Assembly for Wales or the Welsh Ministers(h) under section 12(5) of the Tax Credit Act 2002(i).

(4) Care provided in Scotland for a child—

- (a) by a person in circumstances where the care service provided by the person consists of child minding or of day care of children within the meaning of paragraph 12 or 13 of Schedule 12 to the Public Services Reform (Scotland) Act 2010(j) and is registered under Part 5 of that Act;

(a) Regulation 5 of the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448), made under section 14, explains when a disabled child is a qualifying child for the purposes of the Act.

(b) 2012 c. 5.

(c) 2006 c. 21.

(d) 2008 c. 14.

(e) 2010 nawm 1.

(f) S.I. 2010/2839 (W 233).

(g) S.I. 2004/219 (W. 23).

(h) Section 45(2) of the Government of Wales Act 2006 (c. 32) defines the Welsh Ministers as the First Minister and the Welsh Ministers appointed under section 48 of that Act.

(i) 2002 c. 21. The Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007 (S.I.2007/226 (W. 20)) was made under section 12(5) of the Tax Credits Act.

(j) 2010 asp 8.

- (b) by a local authority in circumstances where the care service provided by the local authority consists of child minding or of day care of children within the meaning of paragraph 12 or 13 of Schedule 12 to the Public Services Reform (Scotland) Act 2010 and is registered under Part 5 of that Act; or
 - (c) by a childcare agency where the care service consists of or includes supplying, or introducing to persons who use the service, childcarers within the meaning of paragraph 5 of Schedule 12 to the Public Services Reform (Scotland) Act 2010.
- (5) Care provided in Northern Ireland for a child—
- (a) by a person registered under Part 11 of the Children (Northern Ireland) Order 1995(a);
 - (b) out of school hours by a school as part of the school activities; or
 - (c) by a childcare provider approved in accordance with a scheme under the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006(b).
- (6) Care provided for a child outside the United Kingdom by a childcare provider approved by an organisation accredited by the Secretary of State under the Tax Credits (New Category of Child Care Provider) Regulations 2002(c).
- (7) The following are not registered or approved childcare—
- (a) care provided for a child by the child’s parent, step-parent or the parent’s partner(d);
 - (b) care provided for a child by a relative of the child, wholly or mainly in the child’s home;
 - (c) care provided by a person with parental responsibility for the child; and
 - (d) care provided by a person who is a foster parent of the child.
- (8) Care is not within paragraph (2)(a) if it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.
- (9) Care is not within paragraph (5)(a) if it is provided in breach of a requirement to register under Part 11 of the Children (Northern Ireland) Order 1995.
- (10) In this regulation—
- “compulsory school age” is determined in accordance with section 8 of the Education Act 1996(e);
- “foster parent” includes, in Scotland, a foster carer or kinship carer as defined by regulation 2 of the Looked After Children (Scotland) Regulations 2009(f);
- “local authority” means—
- (a) in relation to Wales, a county council, a county borough council or a community council;
 - (b) in relation to Scotland, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(g);
- “proprietor”, in relation to a school, means—
- (a) the governing body incorporated under section 19 of the Education Act 2002(h); or
 - (b) if there is no such body, the person or body of persons responsible for the management of the school;
- “relative” means grandparent, aunt, uncle, brother or sister, whether of the full blood or half blood or by marriage or civil partnership;
- “school”—

(a) S.I. 1995/755 (N.I. 2).
 (b) S.R. 2006 No. 64.
 (c) S.I. 2002/1417.
 (d) Section 71 of the Act provides that partner is to be read in accordance with regulations made under section 3(5). Regulation 3 of S.I. 2015/448, made under section 3(5), explains when two people are regarded as partners for the purposes of the Act.
 (e) 1996 c. 56; section 8 was amended by section 52 of the Education Act 1997 (c. 44).
 (f) S.S.I. 2009/210.
 (g) 1994 c. 39.
 (h) 2002 c. 32. Section 19 was amended, in relation to schools in England, by section 38 of the Education Act 2011 (c. 21) and S.I. 2010/1158.

- (a) in England and Wales, has the same meaning as in the Education Act 1996(a);
- (b) in Northern Ireland, means a school as defined by article 2(2) of the Education and Libraries (Northern Ireland) Order 1986(b).

Entitlement periods

4.—(1) A person’s first entitlement period begins on the day on which HMRC confirm that the person is an eligible person for the entitlement period.

(2) Each subsequent entitlement period begins on the day after the previous entitlement period ends.

(3) Each entitlement period begins on the same day of a month except as follows—

- (a) if the first entitlement period begins or ends on the 31st day of a month, each subsequent entitlement period shall begin or end on the last day of the month; and
- (b) if the first entitlement period begins or ends on the 29th or 30th day of a month, each subsequent entitlement period shall begin or end on the 29th or 30th day of the month, except in February where it begins or ends on the 27th day or, in a leap year, the 28th day.

Variation of entitlement periods

5.—(1) HMRC may vary the length of an entitlement period—

- (a) on the opening of a childcare account in relation to a person’s first entitlement period;
- (b) on the opening of a childcare account for a person’s second or subsequent child; or
- (c) in order to align the entitlement periods of two account-holders.

(2) The relevant maximum for the entitlement period varied under paragraph (1) is determined by the formula—

$$X \times A \div 91$$

where—

- X is, in the case of a disabled child, £4,000, or in the case of any other child, £2,000; and
- A is the number of days in the varied entitlement period.

Declarations of eligibility

6.—(1) A declaration of eligibility must—

- (a) be in the form specified by HMRC;
- (b) be made to HMRC in accordance with regulation 22; and
- (c) contain information specified by HMRC—
 - (i) to identify the person making the declaration, the person’s partner (if any) and the child in respect of whom the childcare account is, or is to be, held; and
 - (ii) to determine whether the person is an eligible person.

(2) A declaration of eligibility made for the purposes of opening a childcare account must be made on the day the person applies to open the account.

(3) Subject to paragraph (4) and regulation 7, any other declaration of eligibility (a “reconfirming declaration”) must be made during the period beginning 28 days before the

(a) Section 4, which gives the general meaning of school, was amended by section 51 of, and paragraph 10 of Schedule 7 and paragraph 1 of Schedule 8 to, the Education Act 1997, Part 3 of Schedule 22 to the Education Act 2002, section 95 of the Childcare Act 2006 (c. 21), paragraph 9 of Schedule 13 to the Education Act 2011 (c. 21) and S.I. 2010/1080.

(b) S.I. 1986/594 (N.I. 3), to which there are amendments not relevant to this regulation.

beginning of the entitlement period for which the reconfirming declaration is made and ending when that entitlement period ends.

(4) If a person makes a reconfirming declaration during the period of 7 days immediately preceding the beginning of the entitlement period for which that declaration is made, HMRC may not determine whether the declaration is valid for the purposes of the Act until—

- (a) 7 days after the reconfirming declaration was made; or
- (b) such earlier time as HMRC allow.

Late declarations of eligibility

7.—(1) If a person makes a declaration of eligibility during the entitlement period for which it is made (a “late declaration of eligibility”), HMRC may not determine whether the declaration is valid for the purposes of the Act until—

- (a) 7 days after the declaration was made; or
- (b) such earlier time as HMRC allow.

(2) If a person (“P”) makes a late declaration of eligibility—

- (a) P may make qualifying payments into the childcare account only for the remainder of the entitlement period after the day on which HMRC determine the declaration is valid; and
- (b) the relevant maximum for the entitlement period is reduced to an amount determined by the formula—

$$X \times A \div B$$

where—

X is, in the case of a disabled child, £4,000, or in the case of any other child, £2,000;

A is the number of days remaining in the entitlement period after the day on which HMRC determine that the declaration is valid; and

B is the total number of days in the entitlement period.

(3) The relevant maximum for an entitlement period is not reduced under paragraph (2)(b) if P satisfies HMRC that—

- (a) P has met the conditions of eligibility in sections 6 to 13 (conditions of eligibility) continuously since the beginning of the entitlement period; and
- (b) in a case where P has a partner, P’s partner has met the conditions of eligibility in sections 9 to 13 continuously since the beginning of the entitlement period.

(4) In paragraph (3), in relation to a resident of another EEA state, “conditions of eligibility” includes those conditions applied as modified by regulations made under section 8(2)(c) (the person must be in the UK)(a).

(5) Paragraph (3) does not apply if the late declaration of eligibility was made by P in circumstances where section 30(2) (termination of tax credit awards) applies.

Circumstances where eligible person unable to act— receivers etc.

8.—(1) In the circumstances specified in paragraph (2) a person mentioned in sub-paragraph (b) of that paragraph may act for the person mentioned in sub-paragraph (a) of that paragraph for the purposes of—

- (a) making a declaration of eligibility;
- (b) opening a childcare account;
- (c) managing a childcare account.

(a) Regulations 16 and 17 of S.I. 2015/448 modify the application of sections 11, 12 and 13 in relation to a resident of another EEA state.

- (2) The circumstances specified in this paragraph are where—
- (a) a person is, or is alleged to be, an eligible person but is unable for the time being to open and manage a childcare account; and
 - (b) there are any of the following—
 - (i) a receiver appointed by the Court of Protection with power to open and manage a childcare account on behalf of the person;
 - (ii) in Scotland, a tutor, curator or other guardian acting or appointed in terms of law who is administering the estate of the person; or
 - (iii) in Northern Ireland, a controller appointed by the High Court, with power to open and manage a childcare account on behalf of the person.

Circumstances where eligible person unable to act—other appointed persons

9.—(1) In the circumstances specified in paragraph (2) a person mentioned in sub-paragraph (b) of that paragraph may act for the person mentioned in sub-paragraph (a) of that paragraph for the purposes of—

- (a) making a declaration of eligibility;
 - (b) opening a childcare account;
 - (c) managing a childcare account.
- (2) The circumstances specified in this paragraph are where—
- (a) a person is, or is alleged to be, an eligible person but is unable for the time being to open and manage a childcare account; and
 - (b) in relation to that person, there is a person appointed under—
 - (i) regulation 33(1) of the Social Security (Claims and Payments) Regulations 1987(a);
 - (ii) regulation 33(1) of the Social Security (Claims and Payments) Regulations (Northern Ireland) 1987(b); or
 - (iii) paragraph (3).
- (3) Where no person mentioned in regulation 8(2)(b) has been appointed in relation to the person who is unable to act, HMRC may appoint under this paragraph a person who—
- (a) if a natural person, is aged 18 years or more; and
 - (b) has applied in writing to HMRC to be appointed to act on behalf of the person who is unable to act.
- (4) A person's appointment under paragraph (3) ends—
- (a) when HMRC terminate it;
 - (b) when the person appointed has resigned from the appointment having given one month's notice in writing to HMRC of that person's resignation; or
 - (c) when HMRC are notified that a receiver or other person mentioned in regulation 8(2)(b) has been appointed in relation to the person who is unable to open or manage a childcare account.

Appointment by account-holder of person to manage childcare account

10.—(1) An account-holder may appoint a person to manage a childcare account on behalf of the account-holder.

(2) The person appointed under paragraph (1) must be an individual whose name is notified to HMRC before any function is performed on behalf of the account-holder.

(a) S.I. 1987/1968. Regulation 33(1) was amended by S.I. 1999/2572.

(b) S.R. (N.I.) 1987/465. Regulation 33(1) was amended by S.I. 1999/2574.

(3) Except where HMRC otherwise allow, an account-holder cannot appoint under paragraph (1)—

- (a) an individual who is an account provider or is an owner of an account provider;
- (b) an individual who provides services to an account provider in connection with the provision or management of a childcare account—
 - (i) as an employee of the account provider;
 - (ii) as an employee of a person providing such services to the account provider; or
 - (iii) as a self-employed person; or
- (c) an individual who provides qualifying childcare for a child of the account-holder.

(4) A person may be appointed under paragraph (1) to manage not more than 5 childcare accounts at any time (whether or not on behalf of the same account-holder).

(5) A person appointed under paragraph (1) may not make a declaration of eligibility on behalf of the account-holder.

(6) Paragraphs (3), (4) and (5) do not apply to an account-holder's partner appointed under paragraph (1) to manage all the childcare accounts of that account-holder.

Opening a childcare account

11.—(1) An application to open a childcare account must—

- (a) be in the form specified by HMRC;
- (b) be made to HMRC in accordance with regulation 22;
- (c) contain information specified by HMRC to identify the applicant, the applicant's partner (if any) and the child in respect of whom the account is to be held; and
- (d) contain the child benefit number, if the child has been the subject of an award of that benefit—
 - (i) to the applicant; or
 - (ii) to a person other than the applicant, but the applicant knows or can reasonably ascertain the child benefit number.

(2) If the applicant or the applicant's partner is self-employed (the "self-employed person"), in the application to open a childcare account the applicant must—

- (a) provide any unique taxpayer's reference of the self-employed person; or
- (b) confirm that the self-employed person has, for the tax year in which the application is made, given notice to HMRC under section 7 of the Taxes Management Act 1970(a) in respect of the self-employment but has not yet received a unique tax reference.

(3) An applicant whose partner is self-employed in another EEA state must, in the course of applying to open a childcare account, provide information specified by HMRC to confirm that the partner is carrying out self-employed work in that other EEA state.

Variation of relevant maximum: child ceasing to be qualifying child etc.

12.—(1) If a child ceases to be a qualifying child during an entitlement period, the relevant maximum for that entitlement period is determined in accordance with paragraph (3).

(2) If an award of tax credit terminates in accordance with section 30(3) (termination of tax credit awards) in a case within section 30(1)(b), the relevant maximum for an entitlement period is

(a) 1970 c. 9. Section 7 was substituted by paragraph 1 of Schedule 19 to the Finance Act 1994 (c. 9) and was amended by section 115 of the Finance Act 1995 (c. 4), paragraph 1 of Schedule 4 to the Finance (No. 2) Act 1997 (c. 58), paragraph 358 of Schedule 1 to the Income Tax (Trading and Other Income) Act 2005 (c. 5), paragraph 38 of Schedule 1 to the Finance Act 2008 (c. 9), paragraph 2 of Schedule 1 to the Finance Act 2012 (c. 14) and paragraph 2 of Schedule 51 to the Finance Act 2013 (c. 29).

determined in accordance with paragraph (3) for the entitlement period in which the relevant day falls.

(3) The relevant maximum is determined by the formula—

$$X \times A \div B$$

where—

- (a) X is, in the case of a disabled child, £4,000, or in the case of any other child, £2,000;
 - (b) in a case within paragraph (1), A is the number of days beginning on the first day of the entitlement period and ending on the day after the day on which the child ceases to be a qualifying child; or
 - (c) in a case within paragraph (2), A is the number of days beginning on the relevant day and ending on the last day of the entitlement period; and
 - (d) B is the total number of days in the entitlement period.
- (4) In this regulation, “relevant day” has the meaning given in section 30.

Variation of relevant maximum: appealable decisions

13.—(1) This regulation applies where an appealable decision under section 56(3)(a), (b), (c), (e) or (h) (appealable decisions) is either—

- (a) varied or cancelled on a review under section 57 (review of decisions); or
- (b) quashed (wholly or partly) under section 60 (powers of tribunal).

(2) Where this regulation applies, the relevant maximum for an entitlement period beginning after the variation, cancellation or quashing of the appealable decision is increased by an amount equal to the relevant maximum that would (but for the decision) have been available to an active childcare account.

(3) Where a person has received compensation under section 62 (compensatory payments)—

- (a) no award of an increased relevant maximum may be made in respect of a variation or quashing of a decision for which the compensation was paid; and
- (b) any award of an increased relevant maximum that has been made in respect of such a variation or quashing is cancelled.

Variation of relevant maximum: delay in payment of allowances

14.—(1) This regulation applies where—

- (a) a person has applied to open a childcare account but HMRC are unable to confirm eligibility solely because of a delay in the payment to the person, or to the person’s partner, of—
 - (i) carer’s allowance under section 70 of the Social Security Contributions and Benefits Act 1992^(a) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992^(b); or
 - (ii) contributory employment and support allowance under section 1 of the Welfare Reform Act 2007^(c) or section 1 of the Welfare Reform Act (Northern Ireland) 2007^(d); or
- (b) in relation to a disabled child, a person has applied to open a childcare account but, solely because of a delay in the payment to the child of—
 - (i) disability living allowance;

(a) 1992 c. 4. Section 70 was amended, and the name of the allowance changed from invalid care allowance to carer’s allowance, by S.I. 2002/1457.

(b) 1992 c. 7.

(c) 2007 c. 5.

(d) 2007 c. 2.

- (ii) personal independence payment; or
- (iii) armed forces independence payment,

HMRC is unable to grant the application, or is able to grant it but subject to a relevant maximum less than the relevant maximum which applies in respect of a disabled child.

(2) Where this regulation applies, the relevant maximum for an entitlement period beginning after the delay is increased by an amount equal to the relevant maximum that would, but for the delay, have been available to an active childcare account held—

- (a) in a case within paragraph (1)(a), by that person; or
- (b) in a case within paragraph (1)(b), in respect of that child.

(3) Where a person has received compensation under section 62—

- (a) no award of an increased relevant maximum may be made in respect of a delay in payment for which the compensation was paid; and
- (b) any award of increased relevant maximum that has been made in respect of such a delay in payment is cancelled.

(4) In this regulation references to carer’s allowance, contributory employment and support allowance, disability living allowance, personal independence payment and armed forces independence payment include references to allowances and payments made under the law of another EEA state which are substantially similar in character to those allowances and payments.

Variation of relevant maximum: death of account-holder

15.—(1) This regulation applies where—

- (a) an account-holder dies leaving funds in the childcare account (“account A”);
- (b) a person (“P”) has an active childcare account (“account B”) at the time account A is closed; and
- (c) account A was, and account B is, held in respect of the same qualifying child.

(2) Where this regulation applies, the relevant maximum for P’s next entitlement period beginning after the closure of account A is increased by an amount equal to the amount paid to the deceased account-holder’s personal representatives under regulation 19(2)(b) and (3) (closure of a childcare account).

Variation of relevant maximum: infrastructure failure

16.—(1) This regulation applies where a payment is prevented from being made into a childcare account by a serious technical failure affecting—

- (a) HMRC;
- (b) the account provider; or
- (c) a bank or provider of banking services.

(2) Where this regulation applies, the relevant maximum for the next entitlement period beginning after the failure is increased by—

$$X - Q$$

where—

X is, in the case of a disabled child, £4,000, or in the case of any other child, £2,000; and
Q is the sum of qualifying payments made into the childcare account during the entitlement period in which the failure occurred.

Compensatory payments

17.—(1) Subject to paragraphs (5) and (6), the circumstances specified in paragraphs (2) and (3) are specified for the purposes of section 62.

- (2) The circumstances specified in this paragraph are—
- (a) an appealable decision under section 56(3)(a), (b), (c), (e) or (h) is—
 - (i) varied or cancelled on a review under section 57; or
 - (ii) quashed (wholly or partly) under section 60;
 - (b) a person has applied to open a childcare account but HMRC are unable to confirm eligibility solely because of a delay in the payment to the person, or to the person's partner, of—
 - (i) carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992 or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or
 - (ii) contributory employment and support allowance under section 1 of the Welfare Reform Act 2007 or section 1 of the Welfare Reform Act (Northern Ireland) 2007; or
 - (c) in relation to a disabled child, an application is made to open a childcare account but, solely because of a delay in the payment to the child of—
 - (i) disability living allowance;
 - (ii) personal independence payment; or
 - (iii) armed forces independence payment,HMRC is unable to grant the application, or is able to grant it but subject to a relevant maximum less than the relevant maximum which applies in respect of a disabled child.

- (3) The circumstances specified in this paragraph are—
- (a) the circumstances are as specified in paragraph (2)(b) but, at the time the payment is made, the person is no longer an eligible person for a reason unrelated to the delay in payment;
 - (b) the circumstances are as specified in paragraph (2)(b) but, at the time the payment is made, the child in relation to whom the application was made has died; or
 - (c) the circumstances are as specified in paragraph (2)(c) but the child dies during the period of delay in payment.

(4) The amount paid to a person under section 62 in respect of a child for a period (the "compensation period") may not exceed the amount of top-up payments that person could have received if—

- (a) the circumstances specified in paragraph (2) or (3) had not arisen; and
- (b) the person had held an active childcare account in respect of the child throughout the compensation period.

(5) Circumstances specified in paragraph (2)(b) or (c) or (3) are not specified for the purposes of section 62 for any period of delay in payment in respect of which an award of tax credits is or has been made to the person claiming a compensatory payment.

(6) Circumstances specified in paragraph (2) are not specified for the purposes of section 62 to the extent that a person has received, in respect of those circumstances, additional top-up payments by using an increased amount of relevant maximum awarded under regulation 13 or 14.

(7) A person claiming a compensatory payment must provide to HMRC evidence of payment of the costs incurred on qualifying childcare.

(8) In this regulation references to carer's allowance, contributory employment and support allowance, disability living allowance, personal independence payment and armed forces independence payment include references to allowances and payments made under the law of another EEA state which are substantially similar in character to those allowances and payments.

Account restriction orders

18.—(1) HMRC may make an account restriction order—

- (a) imposing a restriction under section 24(2)(a), if the condition specified in paragraph (2), (3) or (4) is met; or
 - (b) imposing a restriction under section 24(2)(b), if the condition specified in paragraph (5) is met.
- (2) The condition specified in this paragraph is—
- (a) an amount has been assessed and notified to a person under section 41 or 47 (assessment and enforcement of recoverable amounts or penalties); and
 - (b) some or all of the amount assessed has not been paid to HMRC by the time specified in section 41(5) or 47(4).
- (3) The condition specified in this paragraph is—
- (a) a person (“P”) wishes—
 - (i) to open a childcare account in respect of a child; or
 - (ii) to make a declaration of eligibility in relation to a childcare account held in respect of a child; and
 - (b) P is prevented from so doing because another person holds an active childcare account in respect of the child.
- (4) The condition specified in this paragraph is that section 35(1), 36(1), 37(1) or 38(1) (recovery of top-up payments) applies in relation to an account-holder or the partner of an account-holder.
- (5) The condition specified in this paragraph is—
- (a) HMRC have reasonable grounds to suspect that fraudulent payments are to be made from a childcare account; and
 - (b) HMRC have reasonable grounds to believe that it will not be possible to recover top-up payments if the order is not made.
- (6) In a case within paragraph (3), the person who wishes to open a childcare account may apply to HMRC for an account restriction order to be made in relation to the active childcare account.
- (7) An account restriction order—
- (a) may impose a restriction on the account for the period specified in the order;
 - (b) may provide that the restriction does not apply in circumstances specified in the order.
- (8) HMRC may revoke an account restriction order if they consider it is no longer required, either on their own initiative or on an application by the account-holder.
- (9) An account-holder may make such an application if—
- (a) the period for applying for a review of, or for bringing an appeal against, the order has elapsed; and
 - (b) the circumstances of the account-holder have changed since that period elapsed.

Closure of a childcare account

- 19.**—(1) A childcare account must be closed if—
- (a) two years have elapsed since the end of the last entitlement period for which there was a valid declaration of eligibility; or
 - (b) one year has elapsed since the end of the entitlement period during which the child ceased to be a qualifying child.
- (2) At the time a childcare account is closed, whether under paragraph (1) or otherwise—
- (a) the top-up element of the funds remaining in the account at that time, calculated in accordance with section 21 (calculating the top-up element of payments etc), must be paid to HMRC; and
 - (b) the relevant percentage of the total funds in the account at that time, calculated in accordance with section 22 (withdrawals), must be returned to the account-holder.

(3) Where an account-holder has died, the relevant percentage to be returned under paragraph (2)(b) must be paid to the account-holder's personal representatives.

Power to obtain information or documents

20.—(1) A notice (an “information notice”) under section 26(1) (power to obtain information or documents) may be addressed to, and may require information or documents from, any of the following persons—

- (a) an account-holder or a person who has applied to open a childcare account (the “applicant”);
- (b) a person named in a declaration of eligibility or application as the partner of an account-holder or applicant;
- (c) an agent of a person specified in sub-paragraph (a) or (b);
- (d) a person who provides, or has provided, childcare to an account-holder or has received a payment from a childcare account;
- (e) an employer or former employer of an account-holder or applicant;
- (f) an employer who provides, or has provided, a relevant childcare scheme within the meaning of section 12(2) and any person who provides, or has provided, services to the employer in connection with the provision to employees of such a scheme;
- (g) a person or body of persons who HMRC reasonably expect can provide information or documents relevant to an allegation of, or an inquiry into, non-compliance with the Act.

(2) An information notice must—

- (a) specify the information or documents required and the form and manner in which they are to be provided;
- (b) set out the reason why HMRC are requesting the information or documents; and
- (c) specify the period within which the person must provide the information or documents.

(3) The period in paragraph (2)(c) must be at least 30 days beginning with the day on which the notice is issued.

Disqualification orders: meaning of “relevant benefit”

21. For the purposes of section 49 (disqualification orders), a “relevant benefit” is—

- (a) any “disqualifying benefit” within the meaning given in section 6A(1) of the Social Security Fraud Act 2001(a); or
- (b) any benefit, payment, allowance, pension or credit made under the law of another EEA state which is substantially similar in character to those specified in paragraph (a).

Use of electronic communications

22.—(1) Except as provided by paragraphs (3) and (4), an application to open a childcare account (an “application”) or a declaration of eligibility (a “declaration”) must be made to HMRC by electronic communications.

(2) Payments made from a childcare account by an account provider in respect of qualifying childcare must be made by electronic communications.

(3) Paragraph (1) does not apply if HMRC are satisfied that the person making the application or declaration—

- (a) is prevented, by a court order, from sending information by electronic communications;
- (b) holds beliefs which are incompatible with the use of electronic communications; or

(a) 2001 c. 11. Section 6A(1) was inserted by section 24 of the Welfare Reform Act 2009 (c. 24) and amended by section 117(2) of, and paragraph 57 of Schedule 2 and paragraph 46 of Schedule 9 to, the Welfare Reform Act 2012 (c. 5).

- (c) is unable to send information by electronic communications by reason of—
 - (i) age;
 - (ii) disability;
 - (iii) inability to operate a computer effectively in a manner that cannot be remedied by the use of assisted digital support; or
 - (iv) living in a remote location so that it is not reasonably practicable to use electronic communications.

(4) An application or declaration made by a person to whom paragraph (3) applies must be made to HMRC in the manner specified by HMRC.

(5) If an application or declaration is made by electronic communications, it shall be treated for the purposes of the Act and these Regulations as having been made, and received by HMRC, on the date on which it is recorded on an official computer system.

(6) In this regulation—

- (a) “assisted digital support” includes advice and assistance on how to make an application or declaration by means of electronic communications and entering a person’s information into the service on that person’s behalf;
- (b) “electronic communications” includes any communications by means of an electronic communications service;
- (c) “electronic communications service” has the meaning given by section 32 of the Communications Act 2003(a);
- (d) “official computer system” means a computer system maintained by or on behalf of HMRC—
 - (i) to send or store information; or
 - (ii) to process or store information.

Edward Troup
Nick Lodge

4th March 2015

Two of the Commissioners for Her Majesty’s Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the administration of childcare accounts and top-up payments made under the Childcare Payments Act 2014 (c. 28) (“the Act”) and for other procedural matters in relation to the childcare payments scheme.

Regulations 1 and 2 provide for citation, commencement and interpretation.

Regulation 3 prescribes registered or approved childcare for the purposes of the scheme. It includes specific provisions for such childcare in England, Scotland, Wales and Northern Ireland and for overseas childcare provided by accredited organisations. It also prescribes that care provided by parents themselves, close relatives or foster parents is not registered or approved childcare.

Regulations 4 and 5 provide for entitlement periods, including the normal length of an entitlement period and when a period begins and ends. The regulation also specifies when the length of the period can be varied and provides that the relevant maximum for qualifying payments under the scheme can be varied, where the length of the period has been varied.

(a) 2003 c. 21. Section 32 was amended by S.I. 2011/1210.

Regulations 6 and 7 provide for declarations of eligibility. They specify the time for making a declaration and when it will be determined as valid by HMRC. In cases of declarations made late, the relevant maximum may be varied.

Regulations 8 to 10 provide for circumstances where the eligible person under the scheme is unable to act and another person may be appointed to act on their behalf in relation to the opening and running of a childcare account. An account-holder may appoint another person to act on their behalf.

Regulation 11 provides for the form and procedure for opening a childcare account, including the information required to be provided to HMRC.

Regulations 12 to 16 provide for various circumstances in which the relevant maximum for an entitlement period may be varied. These include where a child ceases to be a qualifying child and cases where there has been delay in payment of an allowance affecting eligibility, or a serious technical failure affecting childcare account payments.

Regulation 17 prescribes the circumstances where a compensatory payment under section 62 of the Act may be made, many of which are similar to those in which a relevant maximum may be varied, giving some measure of choice to the account-holder who has been disadvantaged.

Regulation 18 provides for circumstances where HMRC may make an account restriction order, whose effect is to restrict payments into or from a childcare account.

Regulation 19 provides the circumstances in which a childcare account must be closed. It also provides how funds remaining in an account should be repaid on closure.

Regulation 20 provides for information notices. It specifies to whom such notices may be sent, what information may be required by the notice and the minimum time the addressee has to reply.

Regulation 21 defines “relevant benefit” for the purposes of a disqualification order made under section 49 of the Act.

Regulation 22 provides that applications to open an account and declarations of eligibility must be sent to HMRC electronically, except in specified circumstances, and that an account provider must make payments in respect of qualifying childcare electronically.

A full Impact Assessment of the effect that the childcare payments scheme will have on the costs of business and the voluntary sector is available from the gov.uk website at <https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment>. It remains an accurate summary of the impacts that apply to this instrument.

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£6.00

UK2015030514 03/2015 19585

<http://www.legislation.gov.uk/id/uksi/2015/522>

ISBN 978-0-11-113208-1



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