STATUTORY INSTRUMENTS

2016 No. 796

CHILDCARE PAYMENT SCHEME

The Childcare Payments (Amendment) Regulations 2016

Made - - - -	*21st July 2016*
Laid before Parliament	*22nd July 2016*
Coming into force - -	*5th September 2016*

The Commissioners for Her Majesty's Revenue and Customs make the following Regulations, in exercise of the powers conferred by sections 4(6), 17(4), 24(4), and 62(1) and (5) of the Childcare Payments Act 2014(**1**).

Citation and commencement

1. These Regulations may be cited as the Childcare Payments (Amendment) Regulations 2016 and come into force on 5th September 2016.

Amendments to the Childcare Payments Regulations 2015

2. The Childcare Payments Regulations 2015(**2**) are amended as follows.

3. In regulation 2 (interpretation) in the definition of "personal independence payment" at the end insert "or Part 5 of the Welfare Reform (Northern Ireland) Order 2015(**3**)".

4. In regulation 6 (declarations of eligibility) after paragraph (4) insert—

"(5) Where a declarant or their partner is self-employed and they make(**4**)—

(a) the first declaration of the self-employment, the declarant must—

(i) provide any unique taxpayer's reference of the self-employment; or

(ii) confirm that the self-employed person has, for the tax year in which the reconfirmation is made, given notice to HMRC under section 7 of the Taxes

(**1**) 2014 c. 28.
(**2**) S.I. 2015/522.
(**3**) S.I. 2015/2006 (N.I. 1).
(**4**) Regulation 9 of the Childcare Payments (Eligibility) Regulations 2015 S.I. 2015/448 contains rules relating to self-employment and "self-employed" is defined in Regulation 2 of those regulations.

Management Act 1970(**5**) in respect of the self-employment but has not yet received a unique taxpayer's reference;

(b) the second declaration of the self-employment, the declarant must provide any unique taxpayer's reference of the self-employed person.

(6) Any person whose partner is self-employed in another EEA state must in the course of reconfirming eligibility, provide information specified by HMRC to confirm that the partner is carrying out self-employed work in that other EEA state.

(7) In this regulation a declarant means a person who makes a declaration of eligibility for the purposes of either opening a childcare account or reconfirming eligibility.".

5. For regulation 7 (late declarations of eligibility) substitute—

"**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 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.

(3) Where a late declaration of eligibility is made by P in circumstances where either—

(a) section 30(2) (termination of tax credit awards) applies; or

(b) P is subject to an assessment period under regulation 21 of the Universal Credit Regulations 2013(**6**) (assessment periods) and P's assessment period overlaps with the entitlement period;

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, £4000, or in the case of any other child, £2000;

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.

(4) Paragraph (3) applies with the modification in subparagraph (5) to a resident of another EEA state who is in paid work in the United Kingdom if, at the date of the declaration, that person or that person's partner either—

(i) is, under the law of that state, being paid in respect of a relevant assessment period a credit (an "equivalent credit") which is substantially similar in character to universal credit; or

(**5**) 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).

(**6**) S.I. 2013/376. Regulation 21(1A) was inserted by the Universal Credit (Waiting Days) Amendment Regulations 2015 S.I. 2015/1362 regulation 2(1)(b) and regulation 21(3)-(3E) was substituted for regulations 21(3) and (4) by the Universal Credit (Digital Service) Amendment Regulations 2014 S.I. 2014/2887 regulation 3(1)(b).

(ii) is, under the law of that state, in receipt of a credit ("an equivalent credit") which is substantially similar in character to an award of tax credit; or

(iii) has made a claim that would result in an equivalent credit becoming payable to that person or that person's partner.

(5) The modification in this paragraph is a reference to universal credit and tax credit includes a reference to an equivalent credit.".

6. In regulation 11 (opening a childcare account) omit paragraphs (1)(d), (2) and (3).

7. In regulation 17 (compensatory payments)—

(a) in paragraph (1) for "paragraphs (2) and (3)" substitute "paragraphs (2), (3) and (3A)";

(b) after paragraph (3) insert—

"(3A) The circumstances specified in this paragraph are that a person is unable to open a childcare account for a continuous period of at least 14 days, due to a serious technical failure affecting HMRC or the account provider.";

(c) in paragraph (4)(a) for "paragraph (2) or (3)" substitute "paragraphs (2), (3) or (3A)".

8. In regulation 18 (account restriction orders)—

(a) in paragraph (1)(a) before (2) insert "(1A), (1B),";

(b) after paragraph (1) insert—

"(1A) The condition specified in this paragraph is that an amount has been assessed and notified to a person under section 41 (assessment and enforcement of recoverable amounts) in relation to any of sections 35 to 38 (recovery of top up payments).

(1B) The conditions specified in this paragraph are that—

(i) an amount has been assessed and notified to a person under section 41 in relation to sections 39 or 40 (recovery of top up payments); and

(ii) some or all of the amount assessed has not been paid to HMRC by the time specified in section 41(5).".

(c) in paragraph (2)(a)—

(i) omit "41 or";

(ii) omit "recoverable amounts or";

(d) at paragraph 2(b) omit "41(5) or";

(e) at the end of paragraph (7)(b) for "." substitute ";";

(f) after paragraph (7)(b) insert—

"(c) may be imposed where the account holder agrees to this action;

(d) must be revoked where the account holder, having previously agreed to the imposition under subparagraph (7)(c) above, requests a review of the decision to make the account restriction order.".

9. In regulation 22 (use of electronic communications)—

(a) at the end of paragraph (3)(b) omit "or";

(b) at the end of paragraph (3)(c)(iv) for "." substitute "; or";

(c) after paragraph (3)(c)(iv) insert—

"(d) is prevented, for a continuous period of at least 7 days, by a technical failure affecting HMRC, from making a declaration or application.".