Changes to legislation: *There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Childcare Payments (Eligibility) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

STATUTORY INSTRUMENTS

2015 No. 448

CHILDCARE PAYMENT SCHEME

The Childcare Payments (Eligibility) Regulations 2015

Made - - - - 4th March 2015

Coming into force in accordance with regulation 1

The Treasury make the following Regulations, in exercise of the powers conferred by sections 2(3)(b) to (d), 3(4) and (5), 7(3), 8(2), 9(2) and (3), 10(2), (3) and (4), 14, 32(5), 33(5) and 69(2) and (4) of the Childcare Payments Act 2014 [F1].

In accordance with section 70(3) of that Act, a draft of this instrument was laid before Parliament and approved by resolution of each House of Parliament.

F1 2014 c. 28.

Citation and commencement

1. These Regulations may be cited as the Childcare Payments (Eligibility) Regulations 2015 and come into force on the day after the day on which they are made.

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;

[F2]...

"armed forces independence payment" means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011 [F3];

[[F4]"coronavirus" means severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);**]**

[[F4]"coronavirus support scheme" means—

(a) any scheme in relation to which HMRC have functions by virtue of a direction made under section 76 of the Coronavirus Act 2020 (HMRC functions);

(b) the scheme known as the Small Business Grant Fund established in response to coronavirus;

(c) any scheme established in the tax year 2020-21 in response to coronavirus to support the fishing industry;

(d) the scheme known as the Retail, Hospitality and Leisure Grant Fund established in response to coronavirus;

(e) the scheme known as the Newly Self-Employed Hardship Fund established by the Scottish Ministers in the tax year 2020-2021 in response to coronavirus; and

(f) any other support scheme established in the tax year 2020-21 or 2021-2022 in response to coronavirus; and**]**

[F5“disability living allowance” means either—

(a) disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 or sections 71 to 76 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or

(b) disability assistance under section 31 of the Social Security (Scotland) Act 2018.**]**

“employed”, except in the expression “self-employed”, means engaged under a contract of service or in an office (including an elected office) or so engaged as a United Kingdom resident working overseas;

[F6“minimum weekly income” means the amount a person would be paid for 16 hours of work a week at the hourly rate set out in regulations 4, 4A and 4B of the National Minimum Wage Regulations 2015;**]**

“paid work” means work done for payment or in expectation of payment and does not include being engaged by a charitable or voluntary organisation, or as a volunteer, in circumstances in which the payment received by or due to be paid to the person is in respect of expenses;

“partner” has the meaning given in regulation 3;

“personal independence payment” means a personal independence payment under Part 4 of the Welfare Reform Act 2012 F7**[**F8or Part 5 of the Welfare Reform (Northern Ireland) Order 2015**]**;

[F9“prescribed state” means any EEA state or Switzerland;**]**

“prisoner” means—

(a) a person who is detained in custody pending trial or sentence upon conviction or under a sentence imposed by a court; or

(b) a person who is on temporary release in accordance with the provisions of the Prison Act 1952 F10, the Prisons (Scotland) Act 1989 F11 or the Prison Act (Northern Ireland) 1953 F12,

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983 F13, in Scotland under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003 F14 or the Criminal Procedure (Scotland) Act 1995 F15 or, in Northern Ireland, under articles 12 to 17 of the Mental Health (Northern Ireland) Order 1986 F16;

[F4“Scottish Ministers” has the meaning given by section 44(2) of the Scotland Act 1998;**]**

“self-employed” means engaged in carrying on a trade, profession or vocation on a commercial basis and with a view to profit, either on one's own account or as a member of a business partnership;

“week” means a period of seven days starting with midnight between Saturday and Sunday.

F2 Words in reg. 2 omitted (22.7.2021) by virtue of The Childcare Payments (Miscellaneous Amendment) Regulations 2021 (S.I. 2021/781), regs. 1, **2(2)(a)**

F3 S.I. 2011/517, amended by S.I. 2013/436.

F4 Words in reg. 2 inserted (14.1.2021) by The Tax Credits, Childcare Payments and Childcare (Extended Entitlement) (Coronavirus and Miscellaneous Amendments) Regulations 2020 (S.I. 2020/1515), regs. 1(2), **4(2)**
F5 Words in reg. 2 substituted (6.4.2020) by The Tax Credits, Child Benefit, Guardians Allowance and Childcare Payments (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/297), regs. 1, **9(2)**
F6 Words in reg. 2 substituted (5.9.2016) by The Childcare Payments (Eligibility) (Amendment) Regulations 2016 (S.I. 2016/793), regs. 1, **3(a)**
F7 2012 c. 5.
F8 Words in reg. 2 inserted (5.9.2016) by The Childcare Payments (Eligibility) (Amendment) Regulations 2016 (S.I. 2016/793), regs. 1, **3(b)**
F9 Words in reg. 2 inserted (22.7.2021) by The Childcare Payments (Miscellaneous Amendment) Regulations 2021 (S.I. 2021/781), regs. 1, **2(2)(b)**
F10 1952 c. 52.
F11 1989 c. 45.
F12 1953 c. 18.
F13 1983 c. 20.
F14 2003 asp 13.
F15 1995 c. 46.
F16 S.I. 1986/595 (N.I. 4).

Eligible persons: partners

3.—(1) For the purposes of the Act two people are regarded as partners at any time if they are both at least 16 years old at that time and either—

(a) they are married to, or civil partners of, each other and are members of the same household; or

(b) they are not married to, or civil partners of, each other but are living together as a married couple or as civil partners.

(2) Where two people are parties to a polygamous marriage, they are not regarded as partners for the purposes of the Act if—

(a) one of them is party to an earlier marriage that still subsists; and

(b) the other party to that earlier marriage is living in the same household.

(3) A person's partner who is temporarily absent from the person's household at the date of the declaration of eligibility is not to be regarded as the person's partner for the purposes of the Act if—

(a) the absence exceeds, or is expected to exceed, 6 months; or

(b) the absent person is a prisoner.

(4) In this regulation, "polygamous marriage" means a marriage during which a party to it is married to more than one person and which took place under the laws of a country which permits polygamy.

When a person is regarded as responsible for a child

4.—(1) For the purposes of the Act, a person is regarded as responsible for a child who normally lives with the person.

(2) A person is not regarded as responsible for a child during any period when the child is—

(a) continuously absent from the person's household for a period which exceeds, or is expected to exceed, 6 months;

(b) a prisoner;

(c) looked after by a local authority; or

(d) placed for adoption by an adoption agency in the home of a person proposing to adopt the child.

(3) A child is not looked after by a local authority for the purpose of paragraph (2)(c)—

(a) during any period which is in the nature of a planned short term break, or is one of a series of such breaks, for the purpose of providing respite for the person with whom the child normally lives; or

(b) during any period when the child is placed with, or continues to live with, the child's parent or a person who has parental responsibility for the child.

(4) For the purposes of paragraph (3), a person has parental responsibility if that person is not a foster parent and—

(a) in England and Wales, has parental responsibility as defined by section 3 of the Children Act 1989 [F17];

(b) in Scotland, has any or all of the legal responsibilities or rights described in section 1 or 2 of the Children (Scotland) Act 1995 [F18]; or

(c) in Northern Ireland, has parental responsibility as defined by article 6 of the Children (Northern Ireland) Order 1995 [F19].

(5) In this regulation—

"adoption agency" has the meaning given (for England and Wales) in section 2 of the Adoption and Children Act 2002 [F20], (for Scotland) in section 119 of the Adoption and Children (Scotland) Act 2007 [F21], and (for Northern Ireland) in article 3 of the Adoption (Northern Ireland) Order 1987 [F22];

"looked after by a local authority" has the meaning given in section 22 of the Children Act 1989 [F23], section 17(6) of the Children (Scotland) Act 1995 [F24] or article 25 of the Children (Northern Ireland) Order 1995 [F25] (with the modification that for the reference to a local authority there is substituted a reference to an authority within the meaning of article 2 of that Order);

"placed for adoption" means placed for adoption in accordance with—

(a) the Adoption Agencies Regulations 2005 [F26];

(b) the Adoption Agencies (Wales) Regulations 2005 [F27];

(c) the Adoption Agencies (Scotland) Regulations 2009 [F28]; or

(d) the Adoption Agencies Regulations (Northern Ireland) 1989 [F29].

F17 1989 c. 41.

F18 1995 c. 36. Sections 1 and 2 were amended by paragraphs 48 and 49 of Schedule 6(2) to the Human Fertilisation and Embryology Act 2008 (c. 22).

F19 S.I. 1995/755 (N.I. 2).

F20 2002 c. 38.

F21 2007 asp 4.

F22 S.I. 1987/2203 (N.I. 22). Article 3 was amended by S.I. 1994/429 (N.I. 2), **sections 32** and 34 of, and paragraph 1 of Schedule 6 to, the Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), **S.I.** 2003/431 (N.I. 9) and S.R. 2010 No. 288.

F23 Section 22 was amended by paragraph 19 of Schedule 5 to the Local Government Act 2000 (c. 22), **section 2(2)** of the Children (Leaving Care) Act 2000 (c. 35), **section 116(2)** of the Adoption and Children Act 2002 (c. 38), **section 52** of the Children Act 2004 (c. 31), **paragraphs 1** and 6 of Schedule 3 to the Children and Young Persons Act 2008 (c. 23) and section 99 of the Children and Families Act 2014 (c. 6).

F24 Section 17(6) was amended by paragraph 9 of Schedule 2 to the Adoption and Children (Scotland) Act 2007 (asp 4), **paragraph 2** of Schedule 5 to the Children's Hearings (Scotland) Act 2011 (asp 1) and S.S.I. 2013/211.
F25 Article 25 was amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11).
F26 S.I. 2005/389, to which there are amendments not relevant to this regulation.
F27 S.I. 2005/1313 (W. 95), to which there are amendments not relevant to this regulation.
F28 S.S.I. 2009/154, to which there are amendments not relevant to this regulation.
F29 S.R. 1989 No. 253.

Meaning of qualifying child

5.—(1) A child is a qualifying child for the purposes of the Act until the last day of the week in which falls the 1st September following the child's eleventh birthday.

(2) A disabled child is a qualifying child for the purposes of the Act until the last day of the week in which falls the 1st September following the child's sixteenth birthday.

(3) If at any time any provisions of the Act are in force only in relation to children who have not reached a day earlier than the day referred to in paragraph (1) ("the relevant day"), paragraph (1) has effect for the purposes of the Act as if the reference in that paragraph to the relevant day were a reference to that earlier day.

(4) If at any time any provisions of the Act are in force only in relation to disabled children who have not reached a day earlier than the day referred to in paragraph (2) ("the relevant day"), paragraph (2) has effect for the purposes of the Act as if the reference in that paragraph to the relevant day were a reference to that earlier day.

(5) For the purposes of paragraphs (2) and (4), "disabled child" means—

(a) a child in respect of whom any of the following is being paid—

(i) disability living allowance;

(ii) personal independence payment;

(iii) armed forces independence payment;

(iv) an allowance or payment made under the law of **[**F30a prescribed**]** state which is substantially similar in character to an allowance or payment within paragraph (i), (ii) or (iii); or

(b) a child who is certified as severely sight impaired or blind by a consultant ophthalmologist.

F30 Words in reg. 5(5)(a)(iv) substituted (22.7.2021) by The Childcare Payments (Miscellaneous Amendment) Regulations 2021 (S.I. 2021/781), regs. 1, **2(3)**

Temporary absence from the United Kingdom

6.—(1) A person's temporary absence from the United Kingdom is disregarded in determining whether the person meets the condition of eligibility in section 8 (the person must be in the UK) if—

(a) the person is an eligible person, within the meaning of section 3, immediately before the beginning of the period of temporary absence; and

(b) either—

(i) the absence is not expected to exceed, and does not exceed, 8 weeks; or

(ii) paragraph (2), (3) or (4) applies.