

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Childcare Accounts

Section 15: Childcare accounts

80. **Section 15** deals with the rules which apply to childcare accounts.
81. A childcare account is defined in subsection (1) as an account which a person holds for the purpose of receiving Government top-up payments in respect of a qualifying child, which meets the rules set out in the Act, and which is provided by an account provider as defined in section 16.
82. Subsection (2) provides that a childcare account can only be held for a single qualifying child. This means that, where a person has responsibility for two or more qualifying children, they must hold a separate childcare account for each child in order to receive Government top-up payments.
83. Subsection (4) permits regulations to be made which allow a person to operate a childcare account on behalf of an account-holder. This will allow, for example, an account-holder to nominate their partner to manage their childcare account.
84. Subsection (7) provides that, where a contract is entered into by or on behalf of a person aged 16 or 17, it will have the same effect as if that person were aged 18 or over. This is to ensure that contracts relating to childcare accounts entered into by persons aged 16 or 17 years old are legally binding.
85. Subsection (8) allows an account provider to charge fees in connection with childcare accounts, provided that HMRC gives its consent. This would allow an account provider, for example, to charge a person a fee for using a credit card to pay money into a childcare account. However, this is subject to subsection (9) which prevents an account provider from charging fees for providing and operating the account.

Section 16: Account providers

86. **Section 16** provides the rules about who may be an account provider for the purposes of the scheme. These permit three different categories of provider:
- the Commissioners for HMRC, which would allow HMRC itself to be an account provider, in addition to being responsible for administering the scheme more generally. As HMRC and the account provider would, in this case, be one and the same, subsection (4) modifies the Act to deal with places where HMRC and the account provider would otherwise be two separate bodies, for example, where an account provider is required to give or notify something to HMRC;
 - any person or body with whom HMRC have entered into arrangements for the provision of childcare accounts, which would allow one or more public or private sector entities to be an account provider, by agreement with HMRC; and

- the Director of Savings, which would allow the Treasury to determine that National Savings and Investments (NS&I), an executive agency of the Treasury, should be an account provider. If NS&I do provide accounts, they must do so in accordance with any arrangements made with the Commissioners for HMRC.
87. Subsection (3) provides that arrangements made between HMRC and an account provider may include provision for the making of payments by HMRC to the account provider for the provision of childcare accounts. Such payments are not subject to the restrictions on fees imposed by subsections (8) and (9) of section 15.

Section 17: Opening a childcare account

88. **Section 17** contains provision about opening a childcare account.
89. Subsection (1) requires a person to apply to HMRC to open a childcare account if they wish to receive top-up payments. Such a person is referred to as the applicant.
90. Subsection (2) permits HMRC to grant an application to open a childcare account, provided that the applicant has made a valid declaration of eligibility, the child is a qualifying child at the date of the application, and no-one else holds an active childcare account for the same child on the date that the application is granted. An active childcare account (as defined in subsection (3)) is one where the account-holder has made a valid declaration of eligibility for the current entitlement period, so that qualifying payments can be made into the account.
91. Subsection (4) permits regulations to be made providing further rules for opening childcare accounts. The Government intends that these regulations will include, for example, a requirement for applications to be made electronically where possible and rules permitting someone to operate a childcare account on someone else's behalf.

Section 18: Cases where there is more than one eligible person

92. **Section 18** deals with situations where two or more persons are eligible to hold a childcare account for a child, but they cannot decide between themselves who should have the active account and, therefore, receive top-up payments. This could happen if one person already has an active childcare account and another person wishes to either open one, or to reactivate an existing inactive one, in respect of the same child.
93. In such cases, HMRC will be able to decide which of them, if any, should be allowed to hold an account. If HMRC decide that a person who holds an active childcare account for a child should no longer have the active childcare account, they will be able to impose an account restriction order on that person's childcare account under section 24, so that the other person can have an active childcare account.
94. Subsection (3) is a signpost to the provision (section 24) enabling HMRC to make an account restriction order to give effect to their decision.

Section 19: Payments into childcare accounts

95. **Section 19** deals with payments that can be made into a childcare account.
96. An account-holder or any other person may make qualifying payments into a childcare account at any time during an entitlement period, provided the account-holder has made a valid declaration of eligibility for that entitlement period and the child is a qualifying child when the payment is made. Multiple qualifying payments may be made into a childcare account in an entitlement period. An account provider must notify HMRC of any qualifying payments made into a childcare account to enable HMRC to make the associated top-up payment.
97. The maximum value of qualifying payments which can be made into a childcare account in an entitlement period is £2,000, although this can be adjusted in regulations.

Regulations can also adjust the maximum qualifying payment in particular cases. For example, regulations may provide for the maximum to be adjusted proportionately for entitlement periods that are not the standard 3 months.

98. There are two types of payments into childcare accounts that are not qualifying payments. The first is a top-up payment, which means that it will not itself attract a top-up payment when it is paid into a childcare account. The second type of payment is a repayment made into the childcare account. This deals with cases where an account-holder overpays their childcare provider from their childcare account, and the childcare provider returns the amount overpaid to the childcare account. Because the repayment will already include a top-up element, it should not attract a further top-up payment. However, where an amount that has previously been withdrawn by the account-holder is re-deposited into the account, the corresponding top-up element of the withdrawal will have been returned to HMRC under section 22, so that payment will not include a top-up element and should, therefore, qualify for a top-up payment.

Section 20: Payments that may be made from childcare accounts

99. **Section 20** contains provision about the payments that may be made from a childcare account.
100. Subsection (1) restricts the types of payment that can be made from a childcare account to:
- payments for qualifying childcare for the child for whom the account is held; and
 - withdrawals made by the account-holder.

Such payments are defined by subsection (3) as a ‘permitted payment’.

101. Subsection (4) provides that any payment from a childcare account that is not a permitted payment or made by the account provider to HMRC will be a prohibited payment.
102. Subsection (5) allows permitted payments to be made from a childcare account during an entitlement period, whether or not the account-holder has made a valid declaration of eligibility for that period. This allows an account-holder to continue to spend accumulated balances in their childcare account for qualifying purposes even when they are no longer entitled to further top-up payments because they have not reconfirmed their eligibility.
103. Subsection (6) deals with payments made from a childcare account where only part of the payment is for the purpose of qualifying childcare. In such cases, only that part of the payment which is attributable to qualifying childcare provided for the relevant child will be treated as a permitted payment, and the rest will be treated as a prohibited payment.
104. For example, a person with responsibility for two children but with a childcare account for only one of them might place both children with a childcare provider and make a single payment for the childcare from the account. In such a case, half of that payment would be a permitted payment and half would be a prohibited payment.
105. Subsection (7) allows regulations to set rules for determining how much of a payment is to be attributed between permitted and prohibited payments for the purposes of subsection (6).

Section 21: Calculating the top-up element of payments made from childcare accounts

106. **Section 21** determines how much of a payment or other amount consists of top-up payments.

107. Subsection (1) defines the top-up element of any payment made from a childcare account as the amount equal to the relevant percentage of that payment. Subsection (2) provides a method for calculating the relevant percentage, which would accommodate any change in the rate at which top-up payments are made under section 1(4). The current relevant percentage is 20%.

Section 22: Withdrawals

108. **Section 22** provides the rules which apply where an account-holder withdraws amounts from a childcare account.
109. If an account-holder makes a withdrawal from a childcare account, subsection (1) requires the account provider to pay the corresponding top-up amount, calculated under subsection (2), to HMRC. Therefore, if an account-holder withdraws £400 from the childcare account, the corresponding top-up amount will be £100 which the account provider must pay to HMRC.
110. Subsection (3) provides that, as the corresponding top-up amount of any withdrawal must be paid to HMRC, the maximum amount which can be withdrawn from a childcare account is the 'relevant percentage' of the total amount in the account at any time. Where top-up payments are provided at the rate of 25% of a qualifying payment, the relevant percentage will be 80%.
111. Subsection (5) prevents a withdrawal from being made from a childcare account when a top-up payment is payable into the account. This is to ensure that the required 80:20 ratio between account-holder funds and top-up payments is maintained.

Section 23: Refunds of payments from childcare accounts

112. **Section 23** sets out the rules which apply when payments from a childcare account are refunded. These rules are needed to deal with payments from childcare accounts that are too high and lead to the childcare provider giving a refund.
113. If a payment is made from a childcare account and the whole or part of that payment becomes repayable to the account-holder, subsection (1) requires it to be repaid into the childcare account. This is because any refund will contain a top-up element which needs to be spent on qualifying childcare or returned to HMRC.
114. An example of this could be where an account-holder makes an advance payment of £1,000 to a nursery from their childcare account, but the nursery cannot provide all of the childcare and they give the account provider a refund of £500. Because of the calculation in section 21, this will consist of a qualifying payment of £400 and a top-up element of £100. The refund must be returned to the childcare account, but because of section 19(1)(b) it will not attract a further top-up payment. Once this amount has been returned to the account, the account-holder will be able either to spend the £500 on qualifying childcare or to withdraw their original £400 qualifying payment, in which case the £100 of top-up will be returned to HMRC.
115. Subsection (2) deals with cases where a repayment is made partly of money from a childcare account and partly of money which is not from the childcare account. In such cases, any part of the repayment which is more than the amount that is not from the childcare account must be put into the childcare account.
116. To illustrate this, assume that an account-holder needs to pay £1,000 for qualifying childcare, but because they only have £700 in their childcare account they pay the remaining £300 from their bank account. However, the childcare provider subsequently refunds £500 which is treated as consisting of £300 from the bank account and £200 from the childcare account. The £200 must be repaid into the childcare account and will not attract a top-up payment.

117. Subsections (3) and (4) deal with cases where the childcare account has been closed before the repayment can be made into it. In such cases the childcare provider must pay the repayment to the account provider. The account provider must then return the top-up element to HMRC and pay the remainder to the person that held the account.

Section 24: Imposing restrictions on childcare accounts

118. **Section 24** provides rules which permit HMRC to restrict the use of childcare accounts in certain circumstances.
119. Subsection (1) enables HMRC to make an order imposing restrictions on a childcare account where conditions set out in regulations are met. It is intended that regulations will set out these conditions which will include cases where an account-holder has an outstanding debt relating to their childcare account or where HMRC believes that the childcare account will be used for fraudulent purposes.
120. Subsection (2) provides that such an order made by HMRC will require the account provider to impose restrictions on a childcare account which can:
- prevent qualifying payments being paid into the account (which will mean that the account-holder will not receive further top-up payments); and/or
 - prevent payments being made from the account for qualifying childcare (with the effect that the account-holder will be unable to spend top-up payments on childcare).
121. Subsection (3) allows regulations to be made to permit HMRC to make an account restriction order where a person wants to open a childcare account or make a declaration of eligibility but is prevented from doing so because someone else already holds a childcare account in respect of the same child. This addresses the situations dealt with in section 18 and permits HMRC to determine which person will be allowed to have the active childcare account.

Section 25: Closure of childcare accounts

122. **Section 25** contains provision about closing a childcare account.
123. Subsections (1) and (2) permit regulations to be made about closing childcare accounts. Regulations will include provision for non-active childcare accounts to be closed after two years, or one year in cases where the child is no longer a qualifying child, and provision for what is to happen to any funds remaining in the childcare account in such cases.