

Draft Regulations laid before Parliament under section 70(3) of the Childcare Payments Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

**CHILDCARE
PAYMENT SCHEME**

The Childcare Payments (Eligibility) Regulations 2015

Made - - - - *******

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⁽¹⁾.

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.

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;

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

“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011⁽²⁾;

(1) 2014 c. 28.

(2) S.I. 2011/517, amended by S.I. 2013/436.

“disability living allowance” means disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992(3) or sections 71 to 76 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(4);

“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;

“minimum weekly income” means the amount a person would be paid for 8 hours of work a week at the hourly rate set out in regulation 11 or 13 of the National Minimum Wage Regulations 1999(5);

“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(6);

“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(7), the Prisons (Scotland) Act 1989(8) or the Prison Act (Northern Ireland) 1953(9),

other than a person who is detained in hospital under the provisions of the Mental Health Act 1983(10), in Scotland under the provisions of the Mental Health (Care and Treatment) (Scotland) Act 2003(11) or the Criminal Procedure (Scotland) Act 1995(12) or, in Northern Ireland, under articles 12 to 17 of the Mental Health (Northern Ireland) Order 1986(13);

“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.

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

(3) 1992 c. 4. Sections 71 to 76 were amended by section 67 of the Welfare Reform and Pensions Act 1999 (c. 5), sections 52 and 53 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.

(4) 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) and S.R. 2011 No. 356.

(5) S.I. 1999/584. Regulation 13 was substituted by S.I. 2010/1901 and amended by S.I. 2012/2397 and 2014/2832. The hourly rates in regulations 11 and 13 were last substituted by S.I. 2014/2485.

(6) 2012 c. 5.

(7) 1952 c. 52.

(8) 1989 c. 45.

(9) 1953 c. 18.

(10) 1983 c. 20.

(11) 2003 asp 13.

(12) 1995 c. 46.

(13) S.I. 1986/595 (N.I. 4).

- (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(14);
 - (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(15); or
 - (c) in Northern Ireland, has parental responsibility as defined by article 6 of the Children (Northern Ireland) Order 1995(16).
- (5) In this regulation—

(14) 1989 c. 41.

(15) 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).

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

“adoption agency” has the meaning given (for England and Wales) in section 2 of the Adoption and Children Act 2002⁽¹⁷⁾, (for Scotland) in section 119 of the Adoption and Children (Scotland) Act 2007⁽¹⁸⁾, and (for Northern Ireland) in article 3 of the Adoption (Northern Ireland) Order 1987⁽¹⁹⁾;

“looked after by a local authority” has the meaning given in section 22 of the Children Act 1989⁽²⁰⁾, section 17(6) of the Children (Scotland) Act 1995⁽²¹⁾ or article 25 of the Children (Northern Ireland) Order 1995⁽²²⁾ (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⁽²³⁾;
- (b) the Adoption Agencies (Wales) Regulations 2005⁽²⁴⁾;
- (c) the Adoption Agencies (Scotland) Regulations 2009⁽²⁵⁾; or
- (d) the Adoption Agencies Regulations (Northern Ireland) 1989⁽²⁶⁾.

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;

⁽¹⁷⁾ 2002 c. 38.

⁽¹⁸⁾ 2007 asp 4.

⁽¹⁹⁾ 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.

⁽²⁰⁾ 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).

⁽²¹⁾ 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.

⁽²²⁾ Article 25 was amended by section 2(1) of the Children (Leaving Care) Act (Northern Ireland) 2002 (c. 11).

⁽²³⁾ S.I. 2005/389, to which there are amendments not relevant to this regulation.

⁽²⁴⁾ S.I. 2005/1313 (W. 95), to which there are amendments not relevant to this regulation.

⁽²⁵⁾ S.S.I. 2009/154, to which there are amendments not relevant to this regulation.

⁽²⁶⁾ S.R. 1989 No. 253.

- (iv) an allowance or payment made under the law of another EEA 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.

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.

(2) This paragraph applies where the absence does not exceed 6 months and is solely in connection with—

- (a) the person undergoing treatment for an illness or physical or mental impairment by, or under the supervision of, a qualified practitioner; or
- (b) the person accompanying the person's partner or a child for whom the person is responsible for treatment as mentioned in sub-paragraph (a).

(3) This paragraph applies where the absence does not exceed 6 months and is solely in connection with the death of—

- (a) the person's partner or a child for whom the person was responsible;
- (b) a close relative of the person, or of the person's partner; or
- (c) a close relative of a child for whom the person or the person's partner is responsible.

(4) This paragraph applies where the absence is not expected to exceed, and does not exceed, 6 months and the person is—

- (a) a mariner; or
- (b) a continental shelf worker who is in a designated area or a prescribed area.

(5) Regulation 4 applies for the purposes of this regulation.

(6) In this regulation—

“close relative” means—

- (a) a parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother or sister; and
- (b) if any of the above has a partner, that partner;

“continental shelf worker” means a person who is employed in a designated area or a prescribed area in connection with any activity mentioned in section 11(2) of the Petroleum Act 1998⁽²⁷⁾;

“designated area” means any area which may from time to time be designated by Order in Council under the Continental Shelf Act 1964⁽²⁸⁾ as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

(27) 1998 c. 17.

(28) 1964 c. 29.

“mariner” means a person who is employed either as a master or member of the crew of any ship or vessel, or in any other capacity on board any ship or vessel where—

- (a) the employment is entered into in the United Kingdom with a view to its performance (in whole or in part) while the ship or vessel is on its voyage; and
- (b) the employment in that other capacity is for the purposes of that ship or vessel or its crew or any passengers or cargo or mails carried by the ship or vessel;

“prescribed area” means any area over which Norway or any member State (other than the United Kingdom) exercises sovereign rights for the purpose of exploring the seabed and subsoil and exploiting their natural resources, being an area outside the territorial seas of Norway or such member State, or any other area which is from time to time specified under section 10(8) of the Petroleum Act 1998;

“qualified practitioner” means a person qualified to provide medical treatment, physiotherapy or a form of treatment which is similar to, or related to, either of those forms of treatment.

Persons treated as being, or not being, in the United Kingdom

7.—(1) The following persons are treated for the purposes of the Act as being in the United Kingdom—

- (a) a person who is ordinarily resident in the United Kingdom;
- (b) a Crown servant or member of Her Majesty’s forces posted overseas;
- (c) the partner of the person mentioned in sub-paragraph (b) when the partner is accompanying the person on that posting;
- (d) a resident of another EEA state who is in paid work in the United Kingdom.

(2) A person mentioned in paragraph (1)(b) is posted overseas if the person is performing overseas the duties of a Crown servant or member of Her Majesty’s forces and was, immediately before their posting or the first of consecutive postings, ordinarily resident in the United Kingdom.

(3) The following persons are treated for the purposes of the Act as not being in the United Kingdom—

- (a) a person in the United Kingdom who—
 - (i) is not ordinarily resident in the United Kingdom; and
 - (ii) is not in the United Kingdom in one or more of the circumstances specified in regulation 8;
- (b) a person in the United Kingdom who—
 - (i) is resident in the United Kingdom but is taxed, by virtue of double taxation arrangements, as if they were not so resident; and
 - (ii) is not a resident of another EEA state who is in paid work in the United Kingdom;
- (c) a person who is subject to immigration control.

(4) In this regulation—

“Crown servant” means a person—

- (i) holding an office or employment under the Crown;
- (ii) whose duties of employment are of a public nature; and
- (iii) whose salary is paid out of public funds of the United Kingdom;

“double taxation arrangements” means arrangements that have effect under section 2(1) of the Taxation (International and Other Provisions) Act 2010⁽²⁹⁾ (giving effect to arrangements made in relation to other territories);

“Her Majesty’s forces” has the meaning in the Armed Forces Act 2006⁽³⁰⁾;

“person subject to immigration control” has the meaning in section 115(9) of the Immigration and Asylum Act 1999⁽³¹⁾.

8. The circumstances specified in this regulation are that a person is in the United Kingdom as—
- (a) a refugee within the definition in Article 1 of the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, as extended by Article 1(2) of the Protocol relating to the Status of Refugees done at New York on 31st January 1967;
 - (b) a person who has been granted, or who is deemed to have been granted, leave outside the rules (the “Immigration Rules”) made under section 3(2) of the Immigration Act 1971⁽³²⁾ where that leave is—
 - (i) discretionary leave to enter or remain in the United Kingdom;
 - (ii) leave to remain under the Destitution Domestic Violence concession⁽³³⁾; or
 - (iii) leave deemed to have been granted by virtue of regulation 3 of the Displaced Persons (Temporary Protection) Regulations 2005⁽³⁴⁾;
 - (c) a person who has humanitarian protection granted under the Immigration Rules; or
 - (d) a person who has been deported, expelled or otherwise removed by compulsion of law from another country to the United Kingdom, but is not a person subject to immigration control as defined by section 115(9) of the Immigration and Asylum Act 1999.

The requirement to be in qualifying paid work

- 9.—(1) For the purposes of the Act, a person is in qualifying paid work if—
- (a) the person is in paid work as an employed person whose expected income from the work in the period specified in paragraph (4) is greater than or equal to the relevant threshold; or
 - (b) the person is in paid work as a self-employed person and either—
 - (i) the person’s expected income from the work in the period specified in paragraph (4) is greater than or equal to the relevant threshold; or
 - (ii) the person’s expected income from the work in the period specified in paragraph (5) is greater than or equal to four times the relevant threshold.
- (2) For the purposes of this regulation—
- (a) a person is to be treated as in paid work as an employed person if the person—
 - (i) has accepted an offer of work on or before the date of the declaration of eligibility; and
 - (ii) expects the work to start within 14 days of that day; and
 - (b) a person is to be treated as in paid work as an employed person if the person—
 - (i) is absent from work on unpaid leave on the date of the declaration of eligibility; and
 - (ii) expects to return to work within 14 days of that day.

⁽²⁹⁾ 2010 c. 8.

⁽³⁰⁾ 2006 c. 52.

⁽³¹⁾ 1999 c. 33. There are amendments to section 115 but none is relevant to these Regulations.

⁽³²⁾ 1971 c. 77.

⁽³³⁾ The Destitution Domestic Violence concession is published by the Home Office at: <http://www.ukba.homeoffice.gov.uk>.

⁽³⁴⁾ S.I. 2005/1379 as amended by S.I. 2013/630; there are other amending instruments but none is relevant.

(3) A person’s “expected income” is the income which the person has a reasonable expectation of receiving, calculated in accordance with regulation 10.

(4) The period specified in this paragraph is—

- (a) the period of 3 months beginning with the date of the declaration of eligibility; or
- (b) if paragraph (2)(a) or (2)(b) applies, the period of 3 months beginning with the day on which the work is expected to start or the person is expected to return to work.

(5) The period specified in this paragraph is, in relation to a declaration of eligibility, the tax year in which the date of the declaration falls.

(6) In this regulation, “the relevant threshold” is the product of the calculation—

$$M \times W$$

where—

M is the minimum weekly income; and

W is the number of weeks in the period specified in paragraph (4).

Calculation of expected income

10.—(1) An employed person’s expected income comprises the amount of earnings the person expects to receive from—

- (a) any employment under a contract of service;
- (b) any office, including an elected office.

(2) In paragraph (1), “earnings” has the meaning given by section 62 of ITEPA 2003⁽³⁵⁾ (general definition of earnings).

(3) A self-employed person’s expected income comprises—

- (a) the amount of receipts the person expects to derive from a trade, profession or vocation less the amount of expenses the person expects to incur wholly and exclusively for the purposes of the trade, profession or vocation; or
- (b) if the person carries on a trade, profession or vocation in a business partnership, the share expected to be allocated to the person of the partnership’s receipts less the share expected to be allocated to that person of the partnership’s expenses incurred wholly and exclusively for the purposes of the trade, profession or vocation.

(4) In calculating a self-employed person’s income, receipts and expenses of a capital nature are to be disregarded.

(5) A person’s expected income may include income from a person’s employment and self-employment taken together.

Self-employed persons: start-up periods

11.—(1) A self-employed person does not have to meet the condition in regulation 9(1)(b)—

- (a) in the first entitlement period which falls wholly or partly within a start-up period; and
- (b) in the subsequent 3 entitlement periods.

(2) A “start-up period” is the period of 12 months following the commencement by the self-employed person of any trade, profession or vocation.

⁽³⁵⁾ 2003 c. 1. Section 71 of the Childcare Payments Act 2014 defines ITEPA 2003 as meaning the Income Tax (Earnings and Pensions) Act 2003.

(3) A self-employed person cannot rely on a second or subsequent start-up period (in relation to the commencement by that person of a new trade, profession or vocation) unless 4 calendar years have passed since the end of the previous start-up period.

(4) In paragraph (3) “the previous start-up period” is the period during which the person did not have to meet the condition in regulation 9(1)(b).

Qualifying paid work: time off in connection with sickness or parenting

12.—(1) This regulation applies for any period during which a person—

- (a) is paid statutory sick pay under Part 11 of the Social Security Contributions and Benefits Act 1992(36) or Part 11 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(37);
- (b) is paid maternity allowance under section 35 of the Social Security Contributions and Benefits Act 1992(38) or section 35 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(39);
- (c) is paid statutory maternity pay under Part 12 of the Social Security Contributions and Benefits Act 1992 or Part 12 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (d) is absent from work during an ordinary maternity leave period under section 71 of the Employment Rights Act 1996(40) or article 103 of the Employment Rights (Northern Ireland) Order 1996(41);
- (e) is absent from work during an additional maternity leave period under section 73 of the Employment Rights Act 1996(42) or article 105 of the Employment Rights (Northern Ireland) Order 1996(43);
- (f) is paid ordinary or additional statutory paternity pay under Part 12ZA of the Social Security Contributions and Benefits Act 1992(44) or Part 12ZA of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(45);
- (g) is absent from work during an ordinary paternity leave period under section 80A or 80B of the Employment Rights Act 1996(46) or article 112A or 112B of the Employment Rights (Northern Ireland) Order 1996(47);
- (h) is absent from work during an additional paternity leave period under section 80AA or 80BB of the Employment Rights Act 1996(48) or article 112AA or 112BB of the Employment Rights (Northern Ireland) Order 1996(49);

(36) 1992 c. 4.

(37) 1992 c. 7.

(38) Section 35 was amended by section 2 of the Still Births (Definition) Act 1992 (c. 29), section 67 of the Social Security Act 1998 (c. 14), section 53 of the Welfare Reform and Pensions Act 1999 (c. 30), paragraph 4 of Schedule 7 to the Employment Act 2002 (c. 22), paragraph 6 of Schedule 1 to the Work and Families Act 2006 (c. 18), section 120 of the Children and Families Act 2014 (c. 6), S.I. 1994/1230 and S.I. 2014/606.

(39) Section 35 was amended by S.I. 1992/1310 (N.I. 10), S.R. 1994 No. 176, S.I. 1998/1506 (N.I. 10), S.R. 1999 No. 494, S.I. 1999/3147 (N.I. 11), paragraph 2 of Schedule 1 to the Social Security Act (Northern Ireland) 2002 (c. 10), S.R. 2002 No. 358, S.I. 2006/1947 (N.I. 16) and S.R. 2014 No. 102.

(40) 1996 c. 18. Section 71 was substituted by Part 1 of Schedule 4 to the Employment Relations Act 1999 (c. 26).

(41) S.I. 1996/1919 (N.I. 16). Article 103 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2) and S.I. 2006/1947 (N.I. 16).

(42) Section 73 was amended by paragraph 32 of Schedule 1 to the Work and Families Act 2006 (c. 18).

(43) Article 105 was substituted by S.I. 1999/2790 (N.I. 9) and amended by S.I. 2002/2836 (N.I. 2) and S.I. 2006/1947 (N.I. 16).

(44) Part 12ZA was inserted by section 2 of the Employment Act 2002.

(45) Part 12ZA was inserted by S.I. 2002/2836 (N.I. 2).

(46) Sections 80A and 80B were inserted by section 1 of the Employment Act 2002.

(47) Articles 112A and 112B were inserted by S.I. 2002/2836 (N.I. 2).

(48) Sections 80AA and 80BB were inserted by sections 3 and 4, respectively, of the Work and Families Act 2006.

(49) Articles 112AA and 112BB were inserted by S.I. 2006/1947 (N.I. 16).

- (i) is paid statutory adoption pay under Part 12ZB of the Social Security Contributions and Benefits Act 1992(50) or Part 12ZB of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(51);
 - (j) is absent from work during an ordinary adoption leave period under section 75A of the Employment Rights Act 1996(52) or article 107A of the Employment Rights (Northern Ireland) Order 1996(53);
 - (k) is absent from work during an additional adoption leave period under section 75B of the Employment Rights Act 1996(54) or article 107B of the Employment Rights (Northern Ireland) Order 1996(55);
 - (l) is absent from work during a period of shared parental leave under section 75E or 75G of the Employment Rights Act 1996(56); or
 - (m) is absent from work during a statutory parental leave period under section 76 of the Employment Rights Act 1996(57) or Article 108 of the Employment Rights (Northern Ireland) Order 1996(58).
- (2) Subject to paragraphs (3), (4) and (5), that person is regarded for the purposes of the Act—
- (a) as in paid work during the period in paragraph (1); and
 - (b) as having, for each week of that period, expected income from that work equal to the minimum weekly income.
- (3) Paragraph (2) does not apply unless, immediately before the start of the period in any sub-paragraph of paragraph (1), either—
- (a) the person was in qualifying paid work; or
 - (b) this regulation applied to the person by virtue of a different sub-paragraph of paragraph (1).
- (4) For the purposes of the entitlement of a person, or of a person’s partner, to receive top-up payments in respect of a child whose birth or adoption caused the period in paragraph (1)(b) to (m) to run, paragraph (2) applies only for the final 14 days before the person returns to work.
- (5) Paragraph (2) applies to a person by virtue of paragraph (1)(h) only for such period as that person would have been paid additional statutory paternity pay had the conditions of entitlement in Part 2 or 3 of the Additional Statutory Paternity Pay (General) Regulations 2010(59) or Part 2 or 3 of the Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010(60) been satisfied.
- (6) This regulation applies to a self-employed person during any period for which paragraph (1) would have applied in that person’s case but for the fact that the work performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.
- (7) This regulation applies to a resident of another EEA state who is in paid work in the United Kingdom, or such a person’s partner, who under the law of that state—
- (a) receives payments which are substantially similar in character to the payments in paragraph (1)(a) to (c), (f) or (i); or

(50) Part 12ZB was inserted by section 4 of the Employment Act 2002.

(51) Part 12ZB was inserted by [S.I. 2002/2836 \(N.I. 2\)](#).

(52) Section 75A was inserted by section 3 of the Employment Act 2002.

(53) Article 107A was inserted by [S.I. 2002/2836 \(N.I. 2\)](#) and amended by [S.I. 2006/1947 \(N.I. 16\)](#).

(54) Section 75B was inserted by section 3 of the Employment Act 2002 and amended by section 11 of, and paragraph 34 of Schedule 1 to, the Work and Families Act 2006.

(55) Article 107B was inserted by [S.I. 2002/2836 \(N.I. 2\)](#) and amended by [S.I. 2006/1947 \(N.I. 16\)](#).

(56) Sections 75E and 75G were inserted by section 117 of the Children and Families Act 2014 (c. 6).

(57) Section 76 was substituted by section 7 of, and Part 1 of Schedule 4 to, the Employment Relations Act 1999.

(58) Article 108 was substituted by [S.I. 1999/2790 \(N.I. 9\)](#).

(59) [S.I. 2010/1056](#).

(60) [S.R. 2010 No. 300](#).

- (b) is absent from work in circumstances which are substantially similar in character to a period of absence described in paragraph (1)(d), (e), (g), (h) or (j) to (m).

Qualifying paid work: caring, incapacity for work or limited capability for work

13.—(1) This regulation applies for any period during which—

- (a) a person (“P”) has a partner who is in qualifying paid work; and
- (b) P is paid or entitled to any of the following—
- (i) incapacity benefit under section 30A, 40 or 41 of the Social Security Contributions and Benefits Act 1992(61) or section 30A, 40 or 41 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(62);
 - (ii) severe disablement allowance under section 68 of the Social Security Contributions and Benefits Act 1992 or section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (as they have effect by virtue of article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000(63) and article 4 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000(64));
 - (iii) long-term incapacity benefit under regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations 1995(65) or by regulation 11(4) or 17(1) of the Social Security (Incapacity Benefit) (Transitional) Regulations (Northern Ireland) 1995(66);
 - (iv) carer’s allowance under section 70 of the Social Security Contributions and Benefits Act 1992(67) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(68);
 - (v) contributory employment and support allowance under Part 1 of the Welfare Reform Act 2007(69) as amended by Schedule 3 and Part 1 of Schedule 14 to the Welfare Reform Act 2012(70) or under section 1 of the Welfare Reform Act (Northern Ireland) 2007(71); or
 - (vi) national insurance credits on the grounds of incapacity for work or limited capability for work under regulation 8B of the Social Security (Credits) Regulations 1975(72) or regulation 8B of the Social Security (Credits) Regulations (Northern Ireland) 1975(73).

(2) For the purposes of the Act, P is regarded—

- (a) as in paid work during that period; and

(61) Section 30A was added by section 1 of the Social Security (Incapacity for Work) Act 1994 (c. 18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c. 30). Sections 40 and 41 were substituted by paragraph 8 and 9 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994.

(62) Section 30A was inserted by S.I. 1994/1898 (N.I. 12).

(63) S.I. 2000/2958 (C.89).

(64) S.R. 2000 No. 332.

(65) S.I. 1995/310. Regulation 11(4) was amended by S.I. 1996/3207.

(66) S.R. 1995 No. 35. Regulation 11(4) was amended by S.R. 1996 No. 601.

(67) Section 70 was amended, and the name of the allowance changed from invalid care allowance to carer’s allowance, by S.I. 1994/2556, 2002/1457, 2011/2426, 2013/388 and 2013/796.

(68) Section 70 was amended, and the name of the allowance changed to carer’s allowance, by S.R. 1994 No. 370, 2002 No. 321, 2011 No. 356 and S.I. 2013/3233.

(69) 2007 c. 5.

(70) 2012 c. 5. Schedule 3 and Part 1 of Schedule 14 remove references to an income-related allowance.

(71) 2007 c. 2 (N.I.).

(72) S.I. 1975/556. Regulation 8B was amended by S.I. 1996/2367, 2000/3120, 2003/521, 2008/1554, 2010/385, 2012/913 and 2013/630.

(73) S.R. 1975 No. 113.

(b) as having, for each week of that period, expected income from that work equal to the minimum weekly income.

(3) P's partner is not in qualifying paid work for the purposes of paragraph (1)(a) during any period when that partner is paid a benefit or an allowance, or is entitled to a credit, described in paragraph (1)(b).

(4) This regulation applies to a self-employed person, or that person's partner, during any period for which paragraph (1) would have applied in that person's (or partner's) case but for the fact that the work performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.

(5) This regulation applies to a resident of another EEA state who is in paid work in the United Kingdom, or such a person's partner, who under the law of that state is entitled to a benefit, allowance or credit which is substantially similar in character to a benefit, allowance or credit described in paragraph (1)(b).

Qualifying childcare: work requirement

14.—(1) For the purposes of this regulation and section 2 (qualifying childcare) “work” means paid work.

(2) The condition in section 2(2)(b) is treated as being met in relation to a person to whom any of the cases in regulation 12(1)(a) to (m) or 13(1)(b) applies.

(3) The condition in section 2(2)(b) is treated as being met by a person who is on sick leave or paid annual leave.

(4) In this regulation—

“annual leave” means, in relation to a self-employed person, reasonable amounts of time off from work for the same purposes as the purposes for which annual leave is taken;

what are “reasonable amounts” is to be assessed having regard to the annual leave or sick leave to which an employee might reasonably expect to be entitled if doing similar work;

“sick leave” means, in relation to a self-employed person, reasonable amounts of time off from work due to sickness.

Income not to exceed a certain level

15.—(1) A person is treated as meeting the condition of eligibility in section 10 (the income of the person and his or her partner must not exceed limit) if the person does not expect to pay income tax at the additional rate or the dividend additional rate for the relevant tax year.

(2) A resident of another EEA state who is in paid work in the United Kingdom is treated as meeting the condition of eligibility in section 10 if that person would not expect to pay income tax at the additional rate or the dividend additional rate on the hypothetical net income of that person for the relevant tax year.

(3) A person is treated as not meeting the condition of eligibility in section 10 if—

(a) the person has made, or expects to make, a claim under section 809B of the Income Tax Act 2007⁽⁷⁴⁾ (claim for remittance basis to apply) for the relevant tax year; or

(b) the person expects section 809E of that Act (application of remittance basis in certain cases without claim) to apply to the person for the relevant tax year.

(4) In this regulation—

⁽⁷⁴⁾ 2007 c. 3. Sections 809B and 809E were inserted by paragraph 1 of Schedule 7 to the Finance Act 2008 (c. 9) and amended by Schedule 27 to the Finance Act 2009 (c. 10) and Schedules 45 and 46 to the Finance Act 2013 (c. 29).

“hypothetical net income” has the meaning given in section 55C(3) of the Income Tax Act 2007⁽⁷⁵⁾ (election to reduce personal allowance);

“the relevant tax year” has the meaning given in section 10(5).

Application of section 11 to EEA residents

16.—(1) Section 11 (neither the person nor his or her partner may be claiming universal credit) applies with the modifications in paragraph (2) 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—

- (a) 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
 - (b) has made a claim that would result in an equivalent credit becoming payable to that person or that person’s partner in respect of a relevant assessment period.
- (2) The modifications in this paragraph are—
- (a) a reference to universal credit includes a reference to an equivalent credit; and
 - (b) a reference to “the relevant legislation” includes a reference to the provisions governing the equivalent credit.

Application of sections 12 and 13 to EEA residents

17.—(1) Sections 12 and 13 (neither the person nor his or her partner may be in a relevant childcare scheme or receiving other childcare support) apply to a resident of another EEA state who is in paid work in the United Kingdom, and to such a person’s partner, with the modifications in paragraph (2).

- (2) The modifications in this paragraph are—
- (a) in section 12—
 - (i) a reference to a “relevant childcare scheme” includes a scheme which, under the law of another EEA state, provides support of a substantially similar character to a scheme under section 270A (limited exemption for qualifying childcare vouchers) or 318 (childcare: exemption for employer-provided care) of ITEPA 2003⁽⁷⁶⁾; and
 - (ii) “eligible employee” means a person who is eligible for such a scheme;
 - (b) in section 13, a reference to “national authority” includes an authority of another EEA state.

Disqualifying tax credit and universal credit claimants from obtaining top-up payments: change of circumstances

18.—(1) The following are to be regarded as changes of circumstances in relation to a person for the purposes of sections 32 and 33 (power to disqualify tax credit or universal credit claimants from obtaining top-up payments)—

- (a) a person no longer meets the conditions of eligibility in sections 7 to 9, or a person’s partner no longer meets the condition in section 9;
- (b) the composition of a person’s household changes, including where—

⁽⁷⁵⁾ Section 55C was inserted by section 11 of the Finance Act 2014 (c. 26).

⁽⁷⁶⁾ 2003 c. 1. Section 270A was inserted by paragraph 3 of Schedule 13 to the Finance Act 2004 (c. 12) and amended by sections 15 and 16 of the Finance Act 2005 (c. 7), section 36 of and paragraph 2 of Schedule 13 to the Finance Act 2011 (c. 11), S.I. 2006/882 and S.I. 2013/513. Section 318 was substituted by paragraph 1 of Schedule 13 to the Finance Act 2004 and was amended by section 16 of the Finance Act 2005, S.I. 2008/2170, 2009/1544 and 2011/775.

- (i) a person's partner joins the person's household or the person joins the partner's household;
 - (ii) a person or a person's partner takes responsibility for another child or qualifying young person;
 - (iii) a person's partner or a child leaves the household; or
 - (iv) a person's partner or child dies;
- (c) a person or the person's partner is absent from the household for at least one month;
- (d) a person's child or the person's partner's child is awarded, or ceases to be entitled to, disability living allowance, personal independence payment or armed forces independence payment;
- (e) the principal employment of a person or a person's partner changes;
- (f) the employment status of a person or a person's partner changes;
- (g) a person becomes liable to pay HMRC an amount under section 35(2), 36(2), 37(2) or 38(3) (recovery of top-up payment where award of tax credit or universal credit made on review, revision or appeal); or
- (h) any other change entitles a person or a person's partner to make a claim that results in either—
- (i) a first award of a tax credit; or
 - (ii) a first award of universal credit.
- (2) For the purposes of paragraph (1)(b)(ii)—
- (a) in a case within section 32—
 - (i) a person takes responsibility for a child or qualifying young person where the person takes such responsibility in accordance with the rules in regulation 3 of the Child Tax Credit Regulations 2002⁽⁷⁷⁾; and
 - (ii) "qualifying young person" has the meaning given in regulations 2 and 5(3) and (4) of those Regulations;
 - (b) in a case within section 33—
 - (i) a person takes responsibility for a child or qualifying young person where the person takes such responsibility as determined by regulations 4 and 4A of the Universal Credit Regulations 2013⁽⁷⁸⁾; and
 - (ii) "qualifying young person" has the meaning given in regulation 5 of those Regulations;
 - (c) "child" means a person under the age of 16.
- (3) In paragraph (1)(b)(iii) and (iv) and (1)(d) "child" means a qualifying child for the purposes of the Act.
- (4) In paragraph (1)(e), a person's "principal employment" is the employment in which the greater part of the person's working time is spent.

⁽⁷⁷⁾ S.I. 2002/2007. Regulation 3 was amended by S.I. 2004/762, 2005/2919, 2006/1163, 2007/2151, 2008/1879, 2008/2169, 2009/697, 2011/1740, 2012/848 and 2013/1465.

⁽⁷⁸⁾ S.I. 2013/376. Regulation 4 was amended, and regulation 4A was added, by S.I. 2013/1508.

Date

Name
Name
Two of the Lords Commissioners of Her
Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations contain the detailed requirements a person must satisfy in order to be able to receive top-up payments under the Childcare Payments Act 2014 (c. 28) (“the Act”) in respect of childcare costs.

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

Regulation 3 describes the circumstances where a person is regarded as another person’s partner for the purposes of the Act.

Regulation 4 describes the circumstances where a person is regarded as responsible for a child for the purposes of the Act. This is usually the person (or one of the persons) with whom the child lives. The regulation also describes where a person is not to be so regarded, such as where the child is absent from the person’s household for at least 6 months or is detained in custody, in local authority care or placed for adoption.

Regulation 5 gives the meaning of qualifying child, broadly a child under 12 years old or, if disabled, 17 years old. It also describes what is meant by “disabled child”.

Regulations 6 to 8 specify the circumstances in which a person is to be treated as being, or not being, in the United Kingdom so as to meet the condition in section 8 of the Act. Regulation 6 specifies when temporary absence from the UK is disregarded in determining whether the condition is met. Regulations 7 and 8 describe the persons regarded as meeting the condition, including armed forces members posted overseas, and those who don’t meet the condition, including persons not ordinarily resident in the UK and those subject to immigration control or taxed in another jurisdiction.

Regulations 9 to 13 concern the condition in section 9 that a person (and partner) must be in qualifying paid work. Regulation 9 defines qualifying paid work in terms of a minimum weekly income, calculated in accordance with regulation 10. Regulation 11 contains an exception to the condition in relation to start-up periods for self-employed persons. Regulation 12 treats certain persons as satisfying the condition during periods when they receive statutory sick pay, maternity or paternity pay or when a person is on statutory leave for reasons connected with the birth or adoption of a child. Regulation 13 contains similar provision for periods when a person’s partner is working but the person is incapable of working and in receipt of statutory benefits such as incapacity benefit, disablement allowance or carer’s allowance.

Regulation 14 defines “work” for the purposes of the requirement that childcare must be qualifying childcare and specifies cases when persons are to be treated as in work for those purposes.

Regulation 15 specifies the maximum level of income for eligibility under the Act, including special provision for persons who are not domiciled in the UK and who are subject to the remittance basis for income tax.

Regulation 16 provides for the condition in section 11 (neither the person nor the person’s partner may be claiming universal credit) to apply in relation to a person working in the United Kingdom who is receiving, from another EEA state, a credit which is similar to universal credit.

Regulation 17 provides for the condition in sections 12 and 13 (the person must not be in a relevant childcare scheme nor be receiving other childcare support) to apply to an EEA resident who is working in the United Kingdom or that person’s partner.

Regulation 18 supplements the power of Her Majesty’s Revenue and Customs to disqualify a person from obtaining top-up payments at the same time as either tax credits or universal credit. It sets out

the changes in a person's circumstances for which a claim to both top-up payments and one of the other credits may be justified, so that the requirements for disqualification are not met.

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.