



# Childcare Payments Act 2014

## 2014 CHAPTER 28

### *Penalties*

#### **42 Penalties for inaccurate declarations of eligibility**

- (1) A person is liable to a penalty under this section if the person meets condition A or B.
- (2) Condition A is that—
  - (a) the person makes a declaration of eligibility that contains an inaccuracy, and
  - (b) the inaccuracy is careless or deliberate.

An inaccuracy is careless if it is due to a failure by the person to take reasonable care.

- (3) Condition B is that—
  - (a) a declaration of eligibility containing an inaccuracy is made by or on behalf of a person,
  - (b) the person discovers the inaccuracy after the declaration of eligibility has been made, and
  - (c) the person fails to take reasonable steps to inform HMRC.
- (4) In a case where the inaccuracy is deliberate, the amount of the penalty is 50% of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made.
- (5) In any other case, the amount of the penalty is 25% of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made.
- (6) “The maximum available top-up payment” for an entitlement period is the amount that would be payable by HMRC if qualifying payments equal to the relevant maximum for the entitlement period were made into the childcare account in respect of which the declaration was made.

(For the relevant maximum for an entitlement period, see section 19(5) and (6).)

- (7) If—

- (a) in the absence of this subsection, the relevant maximum for the entitlement period for which the declaration of eligibility was made would be the amount specified in section 19(5), but
- (b) the person made representations to HMRC that the relevant maximum for the entitlement period should be a greater amount determined by or under regulations under section 19(6),

then for the purposes of subsection (6) above the relevant maximum for the entitlement period is to be taken to be that greater amount.

#### **43 Penalties for failure to comply with information notice**

- (1) If—
  - (a) a person fails to comply with a notice under section 26 (an “information notice”) before the end of the period within which the person was required to comply with it, and
  - (b) the information notice has become final (see subsection (6)),
 HMRC may give the person a warning notice.
- (2) A “warning notice” is a notice requiring the person to comply with the information notice before the end of the period of 30 days beginning with the day on which the warning notice is given.
- (3) If a person fails to comply with a warning notice given under this section, the person is liable to a penalty under this section.
- (4) The amount of the penalty may not exceed £300.
- (5) Regulations may amend subsection (4) so as to substitute a different amount for the amount for the time being specified there.
- (6) An information notice becomes final—
  - (a) in a case where the person does not apply for a review of the decision to give the information notice within the period specified in section 57(2)(a), at the end of that period,
  - (b) in a case where—
    - (i) the person applies for a review of the decision but does not give notice of an appeal against the decision, and
    - (ii) the decision has not been cancelled,
 at the end of the period in which notice of an appeal against the decision could have been given, or
  - (c) in a case where—
    - (i) notice of such an appeal has been given, and
    - (ii) the decision has not been quashed on appeal,
 on the day on which the appeal is determined or withdrawn.
- (7) Accordingly—
  - (a) if a person is granted an extension of the period for making an application for a review of a decision to give an information notice, any warning notice given to the person in respect of the information notice before the application for the review is made is of no effect, and

- (b) if a person is permitted to give notice of an appeal against an information notice after the end of the period mentioned in subsection (6)(b), any warning notice given to the person in respect of the information notice before the notice of appeal is given is of no effect.

#### **44 Penalties for providing inaccurate information or documents**

- (1) A person is liable to a penalty under this section if—
  - (a) in complying with a notice under section 26, the person provides inaccurate information or provides a document that contains an inaccuracy, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.

An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (3) Condition B is that the person knows of the inaccuracy at the time the information or document is provided but does not inform HMRC at that time.
- (4) Condition C is that the person—
  - (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) The amount of a penalty under this section may not exceed £3,000.
- (6) Regulations may amend subsection (5) so as to substitute a different amount for the amount for the time being specified there.

#### **45 Penalties for making prohibited payments**

- (1) A person is liable to a penalty under this section if—
  - (a) HMRC has given the person a warning notice under this section,
  - (b) at any time when the warning notice has effect, the person causes or permits a prohibited payment to be made from a childcare account held by the person, and
  - (c) the person is notified of an assessment under section 41 in respect of the prohibited payment.
- (2) HMRC may give a person a warning notice under this section if—
  - (a) the person causes or permits a prohibited payment to be made from a childcare account held by the person,
  - (b) the person is notified of an assessment under section 41 in respect of the prohibited payment, and
  - (c) the assessment has become final (see subsection (7)).
- (3) A warning notice is a notice which—
  - (a) subject to subsection (4), has effect for a period of 4 years beginning with the day on which the notice is given (“the relevant 4-year period”), and
  - (b) states that the person will be liable to a penalty under this section if at any time during the relevant 4-year period the person causes or permits a prohibited payment to be made from a childcare account held by the person.

- (4) If a person is notified of a penalty under this section, the warning notice given to the person under this section ceases to have effect.
- (5) But subsection (4) does not prevent HMRC from giving the person a fresh warning notice as a result of the prohibited payment in respect of which the person was notified of the penalty.
- (6) Where a person is liable to a penalty under this section for causing or permitting a prohibited payment to be made, the amount of the penalty is 25% of the amount assessed under section 41 in respect of the prohibited payment.
- (7) For the purposes of this section an assessment under section 41 becomes final—
  - (a) in a case where the person does not apply for a review of the assessment within the period specified in section 57(2)(a), at the end of that period,
  - (b) in a case where—
    - (i) the person applies for a review of the assessment but does not give notice of an appeal against the assessment, and
    - (ii) the assessment has not been cancelled,
 at the end of the period in which notice of an appeal against the assessment could have been given, or
  - (c) in a case where—
    - (i) notice of such an appeal has been given, and
    - (ii) the assessment has not been quashed on appeal,
 on the day on which the appeal is determined or withdrawn.
- (8) Accordingly—
  - (a) if a person is granted an extension of the period for making an application for a review of an assessment, any warning notice given to the person in respect of the assessment before the application for the review is made is of no effect, and
  - (b) if a person is permitted to give notice of an appeal against an assessment after the end of the period mentioned in subsection (7)(b), any warning notice given to the person in respect of the assessment before the notice of appeal is given is of no effect.

#### **46 Penalties for dishonestly obtaining top-up payments, etc**

- (1) A person (“P”) is liable to a penalty under this section if—
  - (a) for the purpose of obtaining a relevant payment for P or another (see subsection (2)), P does, or omits to do, any act, and
  - (b) P’s conduct involves dishonesty.
- (2) The following payments are “relevant payments”—
  - (a) a top-up payment;
  - (b) a payment from a childcare account.
- (3) The amount of the penalty may not exceed—
  - (a) £3,000, or
  - (b) the sum of any relevant amounts obtained as mentioned in subsection (1), whichever is greater.

- (4) In subsection (3) “relevant amount” means—
- (a) in the case of a top-up payment, the amount of the payment, and
  - (b) in the case of a payment from a childcare account, an amount equal to the top-up element of the payment.
- (For provision about calculating the top-up element of a payment, see section 21.)
- (5) Regulations may amend subsection (3)(a) so as to substitute a different amount for the amount for the time being specified there.
- (6) Where—
- (a) a body corporate is liable to a penalty under this section, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a person falling within subsection (7),
- that person (as well as the body corporate) is liable to a penalty under this section.
- (7) The persons are—
- (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (8) Where the affairs of a body corporate are managed by its members, subsection (6) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (9) Where—
- (a) a Scottish firm is liable to a penalty under this section, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a partner of the firm or a person purporting to act as such a partner,
- that person (as well as the firm) is liable to a penalty under this section.

#### **47 Assessment and enforcement of penalties**

- (1) Where a person becomes liable to a penalty under this Act—
- (a) HMRC may assess the penalty, and
  - (b) if they do so, they must notify the person.
- (2) No assessment of a penalty may be made under this section after—
- (a) the end of the period specified in subsection (3), or
  - (b) if earlier, the end of the period of 12 months beginning with the day on which HMRC first believed, or had reasonable grounds for believing, that the person was liable to the penalty.
- (3) The period referred to in subsection (2)(a) is—
- (a) the period of 4 years beginning with the day on which the person became liable to the penalty, or
  - (b) in a case where the person became liable to the penalty as a result of the person’s dishonesty, the period of 20 years beginning with that day.
- (4) Where a person is notified of an assessment under this section, the penalty payable as a result of the assessment must be paid—
- (a) in a case where the person does not apply for a review of the penalty within the period specified in section 57(2)(a), before the end of that period,

- (b) in a case where the person applies for a review of the penalty but does not give notice of an appeal against the penalty, before the end of the period in which notice of such an appeal could have been given, or
  - (c) in a case where notice of such an appeal has been given, on the day on which the appeal is determined or withdrawn.
- (5) A penalty under this Act may be enforced as if it were income tax charged in an assessment and due and payable.

See also section 53 (recovery of debts from childcare accounts).

#### **48 Double jeopardy**

A person is not liable to a penalty under this Act in respect of anything in respect of which the person has been convicted of an offence.