

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Introductory

Section 2: Qualifying childcare

26. **Section 2** defines the terms ‘childcare’ and ‘qualifying childcare’ for the purposes of the Act. Money in a childcare account can only be spent on childcare which is qualifying childcare.
27. Childcare is defined in subsection (1) as any type of supervised activity or care for a child, except for care which they receive in the course of their compulsory education. Childcare includes care provided by nurseries, play schemes, childminders and nannies.
28. The definition of ‘qualifying childcare’ in subsection (2) is in two parts, the first of which is that the childcare is registered or approved. The types of childcare which are registered or approved for these purposes will be set out in regulations, but it is intended that this will follow the approach taken for other schemes such as universal credit. This will include childcare that is regulated by Ofsted, its counterparts in Wales, Scotland and Northern Ireland or similar regulatory bodies.
29. The second part of the definition of ‘qualifying childcare’ in subsection (2) is that the main reason, or one of the main reasons, for incurring the costs of the childcare is to enable the person to work. In cases where that person has a partner, the main reason, or one of the main reasons, for incurring the childcare costs must be to enable both the person and their partner to work.
30. This means that a person cannot use the money in their childcare account, which the Government will have topped up, to pay for childcare that enables them to pursue leisure activities. For example, if a person works for one day a week and pursues a hobby for two days a week, they will be able to use the funds in their childcare account to pay for childcare only for their one working day a week. They will not be able to use their childcare account to pay for childcare for the two days a week when they pursue their hobby.
31. However, a person will be able to use the funds in their childcare account to pay for childcare that puts them in a position to work, as well as for childcare while they are actually at work. This means, for example, that they can use their childcare account to pay for childcare that enables them to travel to and from work.
32. What is meant by ‘work’ in this context will be set out in regulations made under subsection (3). These regulations can also set out further rules about when the ‘main reason’ condition will be treated as being met and describe circumstances where it does not need to be met. The Government intends to make regulations providing that the ‘main reason’ condition will not need to be met when a person is not working because they are on annual, sick or parenting leave (for example maternity, paternity or adoption leave) from paid work.

*These notes refer to the Childcare Payments Act 2014
(c.28) which received Royal Assent on 17 December 2014*

33. Subsection (4) allows regulations to be made under subsection (3)(a) to treat childcare as qualifying childcare if it is provided outside the UK by a person who has been approved by a legally accredited organisation. This enables certain people who work abroad and are accompanied by their families (such as members of the UK armed forces and UK diplomats) to qualify for top-up payments in the same way as those who are based in the UK. Because Ofsted and its devolved counterparts can only regulate childcare which is provided within the UK, an alternative approval mechanism will be needed in such cases.
34. Subsection (5) provides that the definition of qualifying childcare is subject to section 50, which allows HMRC to exclude childcare provided by a specified person from being treated as qualifying childcare if they have acted dishonestly in order to obtain top-up payments.