

**EXPLANATORY MEMORANDUM TO**  
**THE CHILDCARE PAYMENTS (ELIGIBILITY) (AMENDMENT No. 2)**  
**REGULATIONS 2016**

**2016 No. 1021**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared on behalf of the Treasury by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The instrument contains the detailed rules covering amendments to The Childcare Payments (Eligibility) Regulations 2015.

**3. Matters of special interest to Parliament**

*Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The Childcare Payments Act 2014 ('The Act') enacted a new scheme designed to provide financial support to help working families with the costs of childcare.
- 4.2 The Act provides for the overall structure of the scheme and the way in which it will operate. It also contains a number of delegated powers exercised by regulations, The Childcare Payments (Eligibility) Regulations 2015 and The Childcare Payments Regulations 2015. These were since amended by The Childcare Payments (Eligibility) (Amendment) Regulations 2016 and The Childcare Payments (Amendment) Regulations 2016.
- 4.3 This instrument covers a series of further amendments to The Childcare Payments (Eligibility) Regulations 2015. These are technical amendments intended to improve the running of the scheme for customers.
- 4.4 Separate further amendments to The Childcare Payments Regulations 2015 are subject to a separate explanatory memorandum.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 At Budget 2013, the Government announced the introduction of a new scheme, Tax-Free Childcare, designed to provide financial support to help working families with the costs of childcare. In particular the new scheme aims to support parents to take up paid work, or increase their existing working hours, should they wish to do so.
- 7.2 The scheme will be based on a system of childcare accounts. Eligible parents will open an online account into which they will pay money and the Government will automatically top up amounts in the account at a rate of 20p for every 80p paid in by the parent. The amounts held in the childcare accounts will have to be used to pay for qualifying childcare.
- 7.3 Government support will be up to £2000 per child per year. Parents will be able to have one account per qualifying child. A child will qualify for the scheme until the first week in September following their eleventh birthday or, for disabled children, until the first week in September following their sixteenth birthday.
- 7.4 A person will be eligible to receive top-up payments under the scheme if they have a qualifying child, meet the eligibility conditions, provide information to demonstrate that they are eligible, open a childcare account and pay money into that account.
- 7.5 The Childcare Payments (Eligibility) Regulations 2015 provided detailed rules on what it means to be a person's partner; responsible for a child; a qualifying child; in the UK; and in qualifying paid work. The income rules and some rules concerning the movement of individuals between this scheme and tax credits and universal credits were also provided in this instrument.
- 7.6 The main amendments contained in the Childcare Payments (Eligibility) (Amendment) Regulations 2016 were in relation to policy changes announced at Autumn Statement 2015. Namely, the reduction of the upper limit from £150,000 to £100,000 per parent to be applied to Tax-Free Childcare customers. And secondly, the new requirement to earn the equivalent of 16 hours a week at the national minimum or living wage, rather than 8, to be eligible for Tax-Free Childcare. The Regulations also contained an amendment to the definition of 'personal independence payment' to include a reference to Northern Ireland legislation, as well as amendments as a result of the Work and Families (NI) Act 2015, adding to and amending previously existing law that we point to. The instrument also amended the definition from 'hypothetical net income' to 'adjusted net income' as per the meaning in the Income Tax Act 2007, and created a term 'hypothetical adjusted net income' which refers to the amount of income of those persons who are not domiciled in the UK.
- 7.7 This instrument contains further amendments to The Childcare Payments (Eligibility) Regulations 2015. These amendments are technical and largely intended to improve the design of the scheme and underpin improvements to the customer experience. They simplify the way minimum income for eligibility is calculated, clarify rules for self-employed parents to ensure start-up periods work as intended, and require applicants and their partners to have – rather than 'provide' – a National Insurance

number to apply for Tax-Free Childcare. It also clarifies the rules around using a combination of employed and self-employed income to meet the minimum income threshold.

### ***Consolidation***

- 7.8 This instrument amends the Childcare Payments (Eligibility) Regulations 2015. They will not be consolidated.

## **8. Consultation outcome**

- 8.1 The Government published a formal consultation on 5<sup>th</sup> August 2013. The response to this was published on 18<sup>th</sup> March 2014. A further consultation ran on how childcare accounts will be provided under the new scheme and the response to this was published on 29<sup>th</sup> July 2014.
- 8.2 Formal consultation on the draft version of the Childcare Payments Regulations 2015 took place between 4<sup>th</sup> July and 3<sup>rd</sup> October 2014 in line with Government guidance on public consultation.

## **9. Guidance**

- 9.1 HM Revenue and Customs will be publishing further guidance on the operation of the scheme. Draft guidance was published on 16<sup>th</sup> October 2014.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 A full Impact Assessment of the effect that the childcare payments scheme will have on the costs of business and the voluntary sector was published on 18<sup>th</sup> November 2014 alongside The Childcare Payments Act 2014 and 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.

## **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

## **12. Monitoring & review**

- 12.1 The policy will be reviewed two years after full implementation of the scheme to assess whether Tax-Free Childcare is delivered effectively and supports working families as intended.

## **13. Contact**

- 13.1 Phil Mattacks at the HM Revenue and Customs. Telephone: 03000 585 501 or email: [phil.mattacks@hmrc.gsi.gov.uk](mailto:phil.mattacks@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.