

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Other Enforcement Powers

Section 49: Disqualification orders

210. [Section 49](#) allows HMRC to disqualify a person from receiving support under the scheme by making a disqualification order.
211. Subsections (1) to (5) provide that HMRC can make a disqualification order against a person if any of these conditions apply:
- the person has been notified of a penalty on more than one occasion in the 4 years before the disqualification order is made;
 - the person has been convicted of a criminal offence or notified of a civil penalty under section 46 of the Act for dishonestly acting or failing to act in order to obtain a top-up payment or a payment from a childcare account, either for themselves or for another person; or
 - the person has been convicted of a criminal offence for dishonestly acting or failing to act in order to obtain a relevant benefit (which will be defined in regulations under subsection (6)), either for themselves or another person. This permits HMRC to disqualify a person from receiving support under this scheme if they have been convicted of an offence in relation to benefits under other schemes.
212. Subsection (7) prevents a person who is subject to a disqualification order from opening a childcare account, making qualifying payments into an existing childcare account or making a valid declaration of eligibility for as long as the order is in force.
213. Subsection (8) provides that a disqualification order will remain in force for the period stated in the order. However, subsection (9) provides that this cannot be longer than 3 years.
214. Subsection (10) obliges HMRC to ensure that, when a disqualification order is made, a copy of the order is given to the person to whom it relates and any account provider. This will ensure that the account provider is aware that the person is disqualified, which means that they cannot open a childcare account.
215. Subsection (11) allows HMRC to revoke a disqualification order. HMRC will do so, for example, where the person who is subject to the order has successfully sought a review of the decision to make that order.

Section 50: Power to exclude childcare from being qualifying childcare

216. **Section 50** enables HMRC to exclude care provided by a particular childcare provider from being qualifying childcare under the Act. This will mean that the childcare provider in question will be unable to provide childcare for the purposes of the scheme.
217. Subsections (1) and (2) enable HMRC to direct that childcare provided by a person is not qualifying childcare if they have been convicted of a criminal offence or notified of a penalty under section 46 for dishonestly acting or failing to act in order to obtain a payment from a childcare account.
218. Subsection (3) provides that a direction under this section will have effect for 12 months starting with the day on which it was made. This period can be amended in regulations under subsection (4).
219. Subsection (5) provides that any direction made against a person also applies to any company of which that individual is a director or officer, any corporate body (such as a co-operative) of which the person is a managing member and any Scottish firm of which the individual is a partner. The direction will no longer apply to an organisation if the person ceases to hold such a position.
220. Subsection (6) obliges HMRC to notify both the childcare provider and any account provider in any case where a childcare provider has been excluded from the scheme. HMRC must also bring such cases to the attention of anyone else who might be affected by the exclusion, such as account-holders.
221. Subsection (7) provides that HMRC can revoke any disqualification order made under this section.

Section 51: Power to charge interest

222. **Section 51** enables HMRC to charge interest on unpaid penalties and recoverable top-up payments.
223. Subsection (1) enables HMRC to charge a person interest if they have not paid a recoverable top-up payment or penalty assessed under section 41 or 47 by the due date. If it does so, HMRC must notify the person in writing that interest has been charged on the outstanding amount.
224. Subsection (2) provides that if HMRC notifies a person that interest will be charged, the amount outstanding will attract interest from the 'start date' until either the date specified in the notice or, if earlier, the date on which the debt is paid. If the debt has not been paid by the date specified in the notice, HMRC may issue a further notice which specifies a different, later, end date. This enables HMRC to extend the period for which interest is charged when a debt remains unpaid.
225. Subsection (3) sets out the date from which interest will be charged on debts assessed under section 41 and 47. For amounts assessed under section 41, it will be the day on which the person becomes liable under sections 35 to 40 to pay those amounts. In the case of penalties assessed under section 47, it will be the day on which the debt becomes overdue.
226. Subsections (4) and (5) define the end date for the interest as any specified day within 6 months of the date on which a notice is issued under this section.
227. Subsections (6) and (7) provide that interest charged under this section is payable at the same rate which applies to late payments of tax. This rate is currently set at 3%.
228. Subsection (8) provides that if two or more people have been notified that they are liable to pay interest on a debt, that interest can be enforced against them either individually or together.

Section 52: Deduction of recoverable amounts from tax credit awards

229. **Section 52** allows amounts that a person owes to HMRC under section 35 or 36 because they received a back-dated award of tax credits as a result of a review or appeal, to be deducted from the tax credit award made to them or their partner (if it is a joint claim).
230. This section could apply, for example, where a person is refused tax credits and appeals against that decision, but successfully applies for this scheme while the appeal proceeds. If their appeal is successful, a debt to HMRC arises because they have to repay the top-up payments that they received during the appeal process. This section allows the repayment to be taken from the back-dated tax credit award made as a result of their appeal.

Section 53: Recovery of debts from childcare accounts

231. **Section 53** enables HMRC to recover debts arising under the Act directly from childcare accounts. Different rules apply depending on whether the debt is in respect of recoverable top-up payments, other debts, or a combination of both.
232. Subsection (1) provides that, in order for HMRC to be able to recover a debt from a childcare account, the account-holder must owe money because of something they did, or did not do, in connection with a childcare account that is held for the same child. They must also not have paid the debt by the time that it is due (as set out in sections 41(5) and 47(4)).
233. Subsections (5) to (8) apply when a debt has arisen as a result of HMRC recovering top-up payments from the account-holder. In this situation, HMRC can only recover the debt from the childcare account if it is not active when they make the direction. When the account provider removes the money from the account, they must also pay the account-holder either the amount that would need to be paid in to receive a top-up payment equal to the debt or, if the debt is more than the amount of top-up payments in the account, all of the remaining money in the account.
234. As an example, assume that an account-holder owes HMRC £400 of recoverable top-up payments. The balance in their account is £1,000, consisting of £800 of their own money and £200 top-up payments. The £200 top-up element is used to pay the debt, but the account-holder still owes £200 which is taken from the £800 of the account-holder's money.
235. Subsections (10) to (13) apply when the debt is for anything other than recoverable top-up payments. In such situations, HMRC cannot recover more than a specified percentage of the funds in the account. If top-up payments are made at a rate of 25% of qualifying payments (as section 1(4) provides), this rate is 80%. When the account provider removes money to discharge a debt, they must also return the corresponding amount of top-up payments to HMRC. However, the corresponding top-up payment will not go towards discharging the debt because it is not the account-holder's money.
236. Subsection (14) applies to debts which are a combination of recoverable top-up payments and other amounts. In this situation the amount of the debt that does not relate to recoverable top-up payments can be taken from the money that would otherwise be returned to the account-holder. The amount that would normally be paid to HMRC in respect of the recoverable top-up payments can be taken from the amount of corresponding top-up payment that is returned in relation to the other debt.
237. Subsection (15) provides that if childcare accounts are provided by HMRC, a direction cannot be made in respect of any fees that might be charged in relation to the childcare account.
238. Subsection (16) provides that the section has no effect on any of HMRC's other powers to recover debts which are due and payable to HMRC.

Section 54: Set-off

239. **Section 54** deals with certain debts owed to HMRC by the holder of an inactive childcare account.
240. **Section 22** provides that when an account-holder makes a withdrawal from a childcare account, the amount of top-up payment which corresponds to that withdrawal must be returned to HMRC. Under section 54, if a withdrawal is made by the holder of an inactive account who owes a debt to HMRC in respect of recoverable top-up payments, the corresponding top-up element that is returned to HMRC will count as a payment against their debt.
241. Subsection (3) provides that if any of the top-up element of a withdrawal is used against a debt in this way, the amount of the withdrawal that led to this repayment cannot be added back to the relevant maximum qualifying payment for an entitlement period. This is different from the normal position, under section 19(8), where withdrawals are added back to this maximum.

Section 55: Order in which payments are taken to discharge debts

242. **Section 55** applies where a person owes HMRC any amount arising under the Act. A person may owe different kinds of amounts to HMRC and if they have paid off some but not all of the total debt, it is necessary to have rules to determine the order in which the different debts are to be treated as paid off. The order in which debts are discharged when HMRC receives a payment towards them is:
- penalties and other amounts;
 - recoverable top-up payments as defined in section 53;
 - interest charged under section 51.
243. A payment only counts towards a lower priority debt if all of the higher priority debts have been discharged.
244. Subsection (3) provides that, for the purpose of determining whether a relevant debt is an amount of recoverable top-up payments (so that, for example, the rules in subsections (5) to (8) of section 53 apply), amounts paid to HMRC to discharge a relevant debt are to be treated as paying off debts relating to penalties before they are treated as paying off amounts of recoverable top-up payments.
245. Subsection (4) provides that amounts paid to HMRC are treated as paying off interest only if all other amounts owing to HMRC have been paid off. Subsection (5) similarly provides a rule which ensures that amounts of recoverable top-up payments are treated as paid off before any interest can be paid off.