

# CHILDCARE PAYMENTS ACT 2014

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Penalties*

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

181. [Section 42](#) provides for a penalty to be imposed on a person for making an inaccurate declaration of eligibility.
182. A person who makes an inaccurate declaration of eligibility is liable to a penalty if the inaccuracy is careless or deliberate. A person who makes an inaccurate declaration of eligibility, or for whom an inaccurate declaration of eligibility is made by someone acting on their behalf, is liable to a penalty if the person becomes aware of the inaccuracy after the declaration has been made but does not take reasonable steps to inform HMRC. An inaccuracy is careless if the person making the declaration of eligibility failed to take reasonable care.
183. Subsection (4) provides that the penalty for an inaccuracy which is deliberate will be 50% of the amount of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made. Subsection (5) provides that the penalty for any other inaccuracy will be 25% of the maximum available top-up payment for the entitlement period.
184. For a standard entitlement period, the maximum available top-up payment will be £500, as this is 25% of the maximum qualifying payment that can be paid into a childcare account under section 19. This means that the penalty for an inaccuracy that is deliberate will be £250 and the penalty for any other inaccuracy will be £125.
185. However, if the maximum qualifying payment had been amended under subsection (6) of section 19, the maximum available top-up payment would reflect this amount. Subsection (7) also provides that if a person has asked HMRC to increase the maximum qualifying payment, the penalty is to be calculated on the basis of that higher amount.

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

186. [Section 43](#) provides for the enforcement of notices under section 26 which require the provision of information or documents (referred to in this section as an ‘information notice’).
187. Subsection (1) allows HMRC to issue a warning notice to a person who has failed to comply with an information notice which has become final. Subsection (6) explains when an information notice becomes final. This is:
- at the end of the period during which the person could have requested a review of the decision to issue the information notice (usually 30 days after the information notice is given – see section 57);

- if the person has asked for a review of the decision to issue an information notice but has not appealed against it, at the end of the period in which they could have made such an appeal (see section 59); or
  - if the person has appealed against the notice, on the date on which the appeal is decided or withdrawn.
188. A warning notice is defined in subsection (2) as a notice which requires a person to comply with an information notice within 30 days of the date on which the warning notice is issued.
189. If the person who has received a warning notice does not comply with the information notice, subsection (3) provides that they are liable to a penalty. The maximum amount of this penalty is £300, which can be amended by regulations.
190. Subsection (7) provides that if a person has been granted an extension of the time limit for requesting a review of, or appealing against, an information notice, any warning notice has no effect. This means that a further warning notice would need to be issued before they could be subject to a penalty.

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

191. **Section 44** allows penalties to be imposed in cases where a person provides inaccurate information or documents to HMRC in response to an information notice.
192. Subsections (1) to (4) provide that a person who provides inaccurate information or documents in response to an information notice is liable to a penalty if:
- the inaccuracy was careless or deliberate (an inaccuracy is careless if the person failed to take reasonable care);
  - they knew of the inaccuracy when they provided the information or documents, but did not tell HMRC about it; or
  - they became aware of the inaccuracy after they provided the information or documents, but they did not take reasonable steps to inform HMRC.
193. Subsection (5) provides that the maximum penalty for providing inaccurate information or documents is £3,000, which can be amended by regulations made under subsection (6).

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

194. **Section 45** enables penalties to be imposed on a person who makes repeated prohibited payments from a childcare account or permits such payments to be made. A prohibited payment is defined in section 20.
195. A person will be liable to a penalty if:
- they have caused or permitted a prohibited payment to be made from their childcare account;
  - as a result of that prohibited payment, they became liable to repay the top-up amount and have been assessed under section 41;
  - HMRC has given them a warning notice under subsection (2); and
  - they then cause or permit a further prohibited payment to be made from their childcare account within 4 years of being given the warning notice and are assessed under section 41 as liable to repay the top-up amount.
196. Subsection (2) sets out the conditions that must be met before HMRC can give a warning notice. As set out above, these are that they must have caused or permitted a

prohibited payment to be made from their childcare account and have been notified of an assessment under section 41 in respect of that prohibited payment. That assessment must also have become final. An assessment becomes final, under subsection (7), when it can no longer be reviewed or appealed against.

197. Subsections (4) and (5) provide that a warning notice given to a person in respect of prohibited payments ceases to have effect if the person is notified of a penalty under this section, but that HMRC may issue a new warning notice in respect of the prohibited payment to which the penalty applies, thus triggering the start of another 4-year period, and enabling HMRC to issue a further penalty if subsequent prohibited payments are made within this period.
198. Subsection (6) provides that the penalty for prohibited payments will be 25% of the repayable top-up element that has been assessed under section 41. For example, if the prohibited payment was £500 (of which £100 was the top-up element), the penalty would be £25.
199. Subsection (8) provides that if a person has been granted an extension of the time limit for requesting a review of, or appealing against, an assessment under section 41, any warning notice has no effect. This means that a further warning notice would need to be issued before they could be subject to a penalty.

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

200. **Section 46** sets out the penalties HMRC can impose on people whose conduct involves dishonesty. It allows HMRC to impose a civil penalty in cases where a criminal prosecution is not pursued.
201. A person is liable to a penalty if, in order to obtain a top-up payment or a payment from a childcare account for themselves or another person, they act or fail to act, and their conduct involves dishonesty.
202. Subsection (3) provides that the maximum penalty is £3,000, or the sum of the ‘relevant amounts’ that have been obtained, whichever is greater. A ‘relevant amount’ is defined in subsection (4) as either the amount of the top-up payments, or an amount equal to the top-up element (as calculated under section 21) of any payments that are dishonestly made from a childcare account.
203. If a company is liable to a penalty under this section as a result of the dishonesty of one of its directors or officers, subsection (6) provides that a penalty can also be issued to that person. Similar provisions are made in subsections (8) and (9) in relation to the partners in a Scottish firm and the managing members of a corporate body.
204. Regulations under subsection (5) may amend the amount of the £3,000 penalty to a different amount.

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

205. **Section 47** sets out how HMRC may assess and enforce any penalty which a person has become liable to under the Act. HMRC must notify a person if it assesses that they are liable to a penalty.
206. Subsections (2) and (3) impose time limits on HMRC for assessing penalties. An assessment must be made by the earlier of:
  - four years from the day the person first became liable to the penalty (or, in cases of dishonesty, 20 years from that time); and
  - 12 months after the day HMRC first believed, or first had reasonable grounds to believe, that the person was liable to the penalty.
207. A person must pay a penalty as a result of an assessment under this section:

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

- within 30 days, if they do not apply for a review;
  - within 30 days of the end of the review, if they do not appeal against its conclusion; and
  - if the person has appealed against the penalty, on the day on which the appeal is determined or withdrawn.
208. Subsection (5) provides that any penalty imposed under the Act can be enforced as if it were an assessment of income tax which is due.

***Section 48: Double jeopardy***

209. **Section 48** ensures that a person will not be liable to any penalty under the Act where they have been convicted of a criminal offence for the same conduct or action. This means that no-one will be liable to both a criminal conviction and a civil penalty for the same offence.