

EXPLANATORY MEMORANDUM TO
THE CHILDCARE PAYMENTS (CORONAVIRUS AND MISCELLANEOUS
AMENDMENTS) REGULATIONS 2020

2020 No. 656

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and Her Majesty's Revenue and Customs and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The purpose of the instrument is to make amendments to two sets of regulations which govern Tax-Free Childcare (referred to in legislation as childcare payments). These are the Childcare Payments (Eligibility) Regulations 2015 (SI 2015/448) (the Eligibility Regulations) and the Childcare Payments Regulations 2015 (SI 2015/522) (the Payments Regulations). Both these sets of Regulations are made under the Childcare Payments Act 2014 (the Act).
- 2.2 The change to the Eligibility Regulations will ensure that critical workers who exceed the maximum income threshold set out in those regulations due to increased income for reasons related to the coronavirus (COVID-19) outbreak can continue to claim Tax-Free Childcare. The change will only be effective for the year 6 April 2020 to 5 April 2021.
- 2.3 The change to the Payments Regulations inserts a new regulation to facilitate improvements to the scheme announced at the 2020 Budget.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application.

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

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

6. Legislative Context

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- 6.1 The Eligibility Regulations set out detailed rules about eligibility for the scheme. These include the requirement for applicants and their partners (if any) not to expect to earn above a specified amount (the maximum income threshold).
- 6.2 These Regulations make a temporary change to the maximum income threshold criterion in the Eligibility Regulations.
- 6.3 The Department for Education own the 30 hours free childcare scheme for working parents of three- and four-year olds. That scheme has similar eligibility rules to Tax-Free Childcare and is administered by HMRC alongside Tax-Free Childcare. Similar changes are being made by the Secretary of State for Education to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (SI 2016/1257) to ensure consistency between Tax-Free Childcare and 30 hours free childcare.

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- 6.4 It was announced at Budget 2020 that Tax-Free Childcare would be improved to ensure access to the scheme for parents of primary school-aged children when they pay for childcare through agents. This instrument adds a new regulation to the Payments Regulations to facilitate this.
- 6.5 The new regulation uses powers in section 20(7) of the Act not previously used to determine when and how payments to agents or other intermediaries from childcare accounts need to be apportioned between permitted payment and prohibited payment elements.

7. Policy background

What is being done and why?

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- 7.1 Parents can apply for either Tax-Free Childcare or 30 hours free childcare or both, through a joint on-line application – the Childcare Service. HMRC determine whether parents meet the eligibility criteria for either or both schemes.
- 7.2 The maximum income eligibility criterion for Tax-Free Childcare is that each parent in a two-parent family, or a sole parent, must expect to earn less than £100,000 in the tax year in which they make their application for, or reconfirmation of eligibility for, Tax-Free Childcare. This is defined in terms of what they reasonably expect their “adjusted net income”, as defined in section 58 of the Income Tax Act 2007, to be. The maximum income “resets” at the beginning of the new tax year – 6 April.
- 7.3 When a parent applies or reconfirms, they declare that they do not expect their income in that tax year to exceed £100,000. If the parent’s income is below this upper limit and increases in this tax year as a response to the coronavirus (COVID-19) outbreak, without this amendment they would exceed the maximum income threshold of £100,000. This would mean that they would not be able to claim Tax-Free Childcare for the year 6 April 2020 to 5 April 2021.
- 7.4 Parents who already and normally earn over £100,000 remain ineligible as normal.

- 7.5 Critical workers who would have been previously ineligible as their income exceeded the maximum income threshold will be eligible if their income has reduced as a result of the coronavirus (COVID-19) outbreak, if they can declare that their income over the tax year will be less than the maximum threshold.
- 7.6 HMRC will put in place controls to mitigate the risk that the temporary amendment to the maximum income thresholds will allow persons other than critical workers to benefit during the coronavirus (COVID-19) outbreak. HMRC will use the published critical worker guidance to determine who is a critical worker and will check that any increase in income is temporary and relates to the period of the outbreak.
- 7.7 The regulations set a new maximum income threshold of £150,000. This aligns with the threshold chosen for 30 hours free childcare. It creates sufficient headroom to ensure that no affected parents miss out while being the next natural limit from tax law (the point at which the additional tax rate takes effect). As we have no data or evidence on how much a critical worker's income may increase as a result of the coronavirus (COVID-19) response, any other amount would be an arbitrary figure. Section 10 of the Act requires a limit to be specified.
- 7.8 The amendment will be in force for the tax year 6 April 2020 to 5 April 2021. HMRC has told affected parents to reconfirm as normal in anticipation of the regulations coming into force. Most parents who are critical workers will not know what their income this tax year will be yet as this is an uncertain period.

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- 7.9 Many schools use software companies (payment agents) to provide online payment services to parents, for example, for school trips and lunches.
- 7.10 Up to 500,000 children in the UK currently use wraparound childcare (such as breakfast and after-school clubs) in school-based settings which use payment agents.
- 7.11 Currently Tax-Free Childcare does not provide for payments to school payment agents for onward payment to childcare providers. This has left many parents of school-aged children unable to use Tax-Free Childcare to pay their chosen provider and benefit from help towards their childcare costs through the scheme. The Budget 2020 announcement covers ongoing work to rectify this. The Childcare Payments Act 2014 does not provide certainty to school payment agents and parents that payments from Tax-Free Childcare to these agents are permitted payments and that HMRC will not seek to claw back any top-up.
- 7.12 The new regulations confirm that payments that initially go to intermediaries, but with ultimate payees that are registered childcare providers, will be permitted payments for Tax-Free Childcare. They will also identify that if these payments include a reasonable fee or commission the whole payment will be permitted and no apportionment is needed. But they will make clear that unreasonable fees will not be permitted.
- 7.13 This will create certainty for parents, agents and childcare providers while protecting both parents and the scheme from abuse.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidating regulations at present.

10. Consultation outcome

10.1 HMRC has not formally consulted before introducing the amendment regulations however, the Social Security Advisory Committee, which is an independent statutory body that provides impartial advice on social security and related matters, has considered these regulatory changes under its Memorandum of Understanding with HM Treasury and HMRC.

11. Guidance

11.1 HMRC has worked with the Government Digital Service to update the online childcare service guidance for parents to reflect the temporary change to the eligibility criteria at <https://www.gov.uk/guidance/check-if-you-can-get-tax-free-childcare-and-30-hours-free-childcare-during-coronavirus-covid-19>.

11.2 This has been supplemented with an additional screen in the application process to point parents to the relevant online guidance for further details of the change. HMRC has updated its operational processes to handle the changes. HMRC has trained its call centre staff so they can advise parents and have trained their operational staff in the implementation of this amendment to the eligibility criteria

12. Impact

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12.1 The impact on business, charities or voluntary bodies should be positive as their critical workers will not be deterred from increasing their income by working additional hours and will be able to continue to claim Tax-Free Childcare despite their income increasing during the coronavirus (COVID-19) outbreak.

12.2 The impact on the public sector should be positive as its critical workers will not be deterred from increasing their income or working additional hours and will be able to continue to claim Tax-Free Childcare despite their income increasing during the coronavirus (COVID-19) outbreak and for the rest of the tax year.

12.3 An Impact Assessment has not been prepared for this instrument because the amendment to the maximum income threshold for Tax-Free Childcare is a temporary measure for the tax year 6 April 2020 to 5 April 2021. HMRC has estimated that 1.5-2% of children receiving TFC now are from families where parents are critical workers earning more than £80k and less than 1% of those earning more than £90k, who may therefore be affected by the maximum income threshold if they take on additional work in response to the pandemic.

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12.4 The impact on business, charities or voluntary bodies is expected to be negligible on a small number of payment intermediaries. One-off costs will include familiarisation with the change and updating software as a result of the change.

12.5 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 November 2014 alongside The Childcare Payments Act 2014 and is available from the gov.uk website

at
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/377091/Tax-free_childcare_Impact_Assessment.pdf. An updated Impact Assessment was made on 30 March 2017 and is available at
<http://www.legislation.gov.uk/ukpga/2014/28/resources>.

13. Regulating small business

Covid-19 Response: maximum income threshold for critical workers

- 13.1 The legislation does not apply to activities that are undertaken by small businesses. This includes childcare providers as the instrument makes a temporary change to the eligibility criteria for Tax-Free Childcare entitlement for working parents of children under 12 years old, or 16 years old if disabled children, so only affects parents.

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- 13.2 The amendment to the 2015 Payments Regulations applies to activities that are undertaken by some small businesses. The regulatory change will impose a small regulatory burden on some small businesses.
- 13.3 No specific action is proposed to minimise the regulatory burdens on small businesses.
- 13.4 The basis for the final decision on what action to take to assist small businesses is that very few small businesses are affected by the change. Those businesses are very keen to participate in the improvement to Tax-Free Childcare

14. Monitoring & review

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- 14.1 The amendment to the maximum income threshold for Tax-Free Childcare does not include a statutory review clause. It will be time limited for the tax year 6 April 2020 to 5 April 2021. HMRC will monitor the situation and does not envision that the amendment will be made permanent. However, should the public health emergency extend and its impact extend beyond April 2021 the Treasury will consider extending the period it is in force by laying a further Statutory Instrument.

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- 14.2 The improvements to Tax-Free Childcare will be delivered in spring 2021 following the making of these regulations. HMRC will monitor the effect of the improvements and the new regulation when implemented.

15. Contact

- 15.1 Phil Mattacks at HM Revenue and Customs, telephone: 07584445189 or email: phil.mattacks@hmrc.gov.uk, can answer any queries regarding the instrument.
- 15.2 Rachel Nixon, Deputy Director for Tax Free Childcare, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Steve Barclay, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.