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STATUTORY INSTRUMENTS

2021 No. 781

**CHILDCARE
PAYMENT SCHEME**

**The Childcare Payments (Miscellaneous
Amendment) Regulations 2021**

Made - - - - 30th June 2021

Laid before Parliament 1st July 2021

Coming into force - - 22nd July 2021

The Treasury, in exercise of the powers conferred on them by sections 3(4), 8(2), 9(2) and (3), 10(1) and (2), 11(5), 14 and 69(2) and (4) of the Childcare Payments Act 2014⁽¹⁾, make regulations 1 and 2 and the Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred on them by sections 2(3)(a), 4(6), 19(6), 49(6), 62(1), (2), (3), (4) and (5), and 69(3) and (4) of the Childcare Payments Act 2014, make regulations 1 and 3:

Citation and Commencement

1. These Regulations may be cited as the Childcare Payments (Miscellaneous Amendment) Regulations 2021 and will come into force on 22nd July 2021.

Amendment of the Childcare Payments (Eligibility) Regulations 2015

2.—(1) The Childcare Payments (Eligibility) Regulations 2015⁽²⁾ are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “another EEA State”,
- (b) after the definition of “personal independence payment” insert—
““prescribed state” means any EEA state or Switzerland;”.

(1) 2014 c. 28.

(2) S.I. 2015/448, amended by S.I. 2016/793, 2016/2021, 2017/1101, 2020/354 and 2020/1515, there are other amending instruments but none is relevant.

- (3) In regulation 5 (meaning of qualifying child) in paragraph (5)(a)(iv) substitute “a prescribed” for “another EEA”.
- (4) In regulation 6 (temporary absence from the United Kingdom) in paragraph (6) in the definition of “prescribed area”—
- (a) after “any member State” insert “of the EEA” and
 - (b) omit “(other than the United Kingdom)”.
- (5) In regulation 7 (persons treated as being, or not being, in the United Kingdom)—
- (a) in paragraph (1)(d)—
 - (i) substitute “a prescribed” for “another EEA”,
 - (ii) after “state” insert “who is not a person subject to immigration control and”,
 - (b) in paragraph (3)(b)(ii) substitute “a prescribed” for “another EEA”.
- (6) In regulation 9 (the requirement to be in qualifying paid work)—
- (a) omit both paragraphs (1)(c)(3),
 - (b) after paragraph 1(b) insert—
 - “(c) the person is in paid work as an employed person or as a self-employed person and the person’s expected income from the work in the period specified in paragraph (4) is greater than or equal to the relevant threshold; or
 - (d) the person is in paid work as an employed person or as a self-employed person, the person’s expected income does not meet the requirements of sub-paragraphs (a) or (b) due to coronavirus, and the person—
 - (i) is receiving payments under a coronavirus support scheme; or
 - (ii) has made a claim for and is reasonably expecting to receive payments under a coronavirus support scheme; or
 - (iii) is intending to make a claim under a coronavirus support scheme, with the reasonable expectation of the claim being agreed; or
 - (iv) is employed by an employer who is claiming a grant under a coronavirus support scheme to cover a proportion of the person’s normal earnings.” and
 - (c) in paragraph (1A) for “another EEA” substitute “a prescribed”.
- (7) In regulation 12 (qualifying paid work: time off in connection with sickness or parenting) ~~(4)~~—
- (a) in paragraph (1)(n), after “(n)” insert “in relation to England, Wales and Scotland only,”,
 - (b) in paragraph (1)(o), after “(o)” insert “in relation to England, Wales and Scotland only,”,
 - (c) in paragraph (7) substitute “a prescribed” for “another EEA”.
- (8) In regulation 13 (qualifying paid work: caring, incapacity for work or limited capability for work) at paragraph (5) substitute “a prescribed” for “another EEA”.
- (9) In regulation 15 (income not to exceed a certain level) at paragraph (2) substitute “a prescribed” for “another EEA”.
- (10) In regulation 16 (application of section 11 to EEA residents)—
- (a) in the heading substitute “residents of prescribed states” for “EEA residents”,
 - (b) in paragraph (1) substitute “a prescribed” for “another EEA”.

(3) This amendment is being made to rectify the existence of two paragraphs (1)(c) due to a drafting error.

(4) Sub-paragraphs (n) and (o) were added by regulation 36(2) of the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 (S.I. 2020/354) and have effect only in England, Wales and Scotland.

- (11) In regulation 17 (application of sections 12 and 13 to EEA residents)—
 - (a) in the heading substitute “residents of prescribed states” for “EEA residents”,
 - (b) in each of paragraphs (1), (2)(a)(i) and (2)(b) substitute “a prescribed” for “another EEA”.

Amendment of the Childcare Payments Regulations 2015

3.—(1) The Childcare Payments Regulations 2015⁽⁵⁾ are amended as follows.

(2) In regulation 2 (interpretation)—

- (a) omit the definition of “another EEA state”,
- (b) after the definition of “personal independence payment” insert—
““prescribed state” means any EEA state or Switzerland;”.

(3) In regulation 3 (qualifying childcare: registered or approved childcare) at paragraph (6)(b) substitute “a prescribed” for “an EEA”.

(4) In regulation 6 (declarations of eligibility) at paragraph (6)—

- (a) substitute “a prescribed” for “another EEA”,
- (b) substitute “prescribed” for “other EEA”.

(5) In regulation 7 (late declarations of eligibility) at paragraph (4) substitute “a prescribed” for “another EEA”.

(6) In regulation 14 (variation of relevant maximum: delay in payment of allowances) at paragraph (4) substitute “a prescribed” for “another EEA”.

(7) Regulation 17 (compensatory payments) is amended as follows.

- (a) after paragraph (2)(b) omit “or”,
- (b) at the end of paragraph (2)(c) omit “.” and insert—
“; or

- (d) a person has applied for leave to enter or remain under the EU Settlement Scheme⁽⁶⁾, and the application has not been determined or there is an outstanding appeal.”,

(c) in paragraph (8) substitute “a prescribed” for “another EEA”, and

(d) after paragraph (8) insert—

“(9) In this regulation—

“EU Settlement Scheme” means—

- (i) the residence scheme immigration rules in Appendix EU to the immigration rules except those rules or changes to that appendix which are identified in the immigration rules as not having effect in the residence scheme that operates in connection with the withdrawal of the United Kingdom from the EU; and
- (ii) any other rules which are identified in the immigration rules as having effect in connection with the withdrawal of the United Kingdom from the EU.”

(8) In regulation 21 (disqualification orders: meaning of “relevant benefit”) at sub-paragraph (b) substitute “a prescribed” for “another EEA”.

⁽⁵⁾ S.I. 2015/522. Regulation 3(6) was amended by S.I. 2019/364; Regulations 6(6) and (7) were added/amended by S.I. 2016/796.
⁽⁶⁾ Appendix EU to the immigration rules, laid before Parliament on 20th July 2018 (CM 9675).

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30th June 2021

James Morris
Maggie Throup
Two of the Lord's Commissioners of Her
Majesty's Treasury

30th June 2021

Myrtle Lloyd
Sophie Dean
Two of the Commissioners for Her Majesty's
Revenue and Customs

EXPLANATORY NOTE

(This note is not part of the Regulations)

Regulation 1 provides for citation and commencement.

Regulation 2 of these Regulations amends the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) (“the Eligibility Regulations”), which contain the detailed requirements a person must satisfy in order to be able to receive top-up payments under the Childcare Payments Act 2014 (c. 28) (“the Act”). Regulation 3 of these Regulations amends the Childcare Payments Regulations 2015 (S.I. 2015/522) (“the Payments Regulations”), which provide for the administration of childcare accounts and top-up payments made under the Act.

Regulations 2(2) and 3(2) both remove the definition of “another EEA state” and add the definition of “prescribed state” as any EEA state or Switzerland which was necessary as a result of the United Kingdom’s (“UK”) exit from the European Union.

Regulations 2(3), 2(4), 2(5)(a)(i), 2(5)(b), 2(6)(c), 2(7)(c), 2(8), 2(9) and 2(10) and 3(3), 3(4), 3(5), 3(6), 3(7)(c) and 3(8) all amend provisions to remove references to “another EEA state” and to accommodate the new definition of “prescribed state”.

Regulation 2(5)(a)(ii) amends regulation 7 of the Eligibility Regulations, which specifies the circumstances in which a person is to be treated as being, or not being, in the UK in accordance with section 8 of the Act. This amendment changes who is regarded as meeting the condition due to the UK’s exit from the EU and provides that only those nationals from the EEA or Switzerland, who are not subject to immigration control, will be treated as being in the UK.

Regulation 2(6)(a) and (b) correct minor errors made in S.I. 2020/1515 which amended regulation 9 of the Eligibility Regulations and as a result this SI will be issued free of charge to any known recipient of a hard copy of the instrument.

Regulation 2(7) amends regulation 12 of the Eligibility Regulations to ensure that there is only one version of regulation 12 in those Regulations. Some confusion was inadvertently created by the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 because it did not extend to Northern Ireland and so its amendments were only applicable in England, Wales and Scotland. This amendment clarifies that those sub-paragraphs do not apply to Northern Ireland.

Regulation 3(7)(b) amends regulation 17, relating to compensatory payments, of the Payments Regulations. This provides that compensation is payable to certain categories of person who have applied for leave to enter or remain in the UK under the EU Settlement Scheme but who are waiting for a decision on their application or appeal. This category of persons will be able to claim compensation in an amount equal to the childcare payment they would have received, if the decision states that they are granted leave to enter or remain. EU Settlement Scheme is defined in regulation 3(7)(d).

A full impact assessment of the effect that the introduction of the childcare payments scheme will have on the costs of business and the voluntary sector was published on 10th June 2014 alongside the draft Childcare Payments Bill and was updated on 20th November 2014. It 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. An updated impact assessment in relation to the secondary legislation was made on 30th March 2017 and is available on the gov.uk website.

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