

*This Statutory Instrument has been made in part as a consequence of defects in S.I. 2016/1021 and S.I. 2021/781 and is being issued free of charge to all known recipients of those Statutory Instruments.*

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## STATUTORY INSTRUMENTS

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**2022 No. 1148**

# CHILDCARE PAYMENT SCHEME

## The Childcare Payments (Miscellaneous Amendments) Regulations 2022

*Made* - - - - *7th November 2022*

*Laid before Parliament* *8th November 2022*

*Coming into force* - - *1st December 2022*

The Treasury, in exercise of the powers conferred by sections 9(2) and (3), 10(1) and (2), 14 and 69(2) and (4) of the Childcare Payments Act 2014<sup>(1)</sup>, make regulations 1 and 2 and the Commissioners for His Majesty's Revenue and Customs, in exercise of the powers conferred by sections 4(6)(a)<sup>(2)</sup> 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 Amendments) Regulations 2022 and come into force on 1st December 2022.

### Amendments to the Childcare Payments (Eligibility) Regulations 2015

- 2.—(1) The Childcare Payments (Eligibility) Regulations 2015<sup>(3)</sup> are amended as follows.
- (2) In regulation 2 (interpretation)—
- (a) in the definition of “disability living allowance”<sup>(4)</sup>, for paragraph (b) substitute—
- “(b) disability assistance given in accordance with regulations made under section 31 of the Social Security (Scotland) Act 2018<sup>(5)</sup>”; and

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(1) 2014 c. 28.

(2) Section 4(7) defines “specified” as meaning specified in the Regulations.

(3) S.I. 2015/448, amended by S.I. 2016/793, 2016/1021, 2017/1101, 2020/297, 2020/656, 2020/1515, 2021/781; there are other amending instruments but none is relevant.

(4) The term “disability living allowance” was amended by S.I. 2020/297.

(5) 2018 asp 9.

- (b) in the definition of “employed”—
  - (i) for “means engaged” substitute—
    - “means—
    - (a) engaged”;
  - (ii) at the end insert—
    - “or
    - (b) an engagement in relation to which any of Chapters 7 to 10 of Part 2 of ITEPA 2003(6) applies (which relate to agency workers, workers under arrangements made by intermediaries and workers providing services through managed service companies);”.
- (3) In regulation 9 (the requirement to be in qualifying paid work) in paragraph (1)(c) for the “or” which appears after “as an employed person” substitute “and”.
- (4) In regulation 10 (calculation of expected income) at the end of paragraph (1)(b), for “.” substitute “;”, and insert—
  - “(c) an engagement in relation to which any of Chapters 7 to 10 of Part 2 of ITEPA 2003 applies (which relate to agency workers, workers under arrangements made by intermediaries and workers providing services through managed service companies).”.
- (5) In regulation 11 (self-employed persons: start-up periods) for paragraph (1)(7) substitute—
  - “(1) A self-employed person does not have to meet the condition in regulation 9(1)(b) or (c) in respect of—
    - (a) their first declaration of eligibility, if it is made within a start-up period(8); and
    - (b) declarations of eligibility in each of the three entitlement periods(9) immediately following that start-up period.”.
- (6) In regulation 13 (qualifying paid work: caring, incapacity for work or limited capability for work)—
  - (a) at the end of paragraph (1)(b)(v) omit “or”(10); and
  - (b) at the end of paragraph (1)(b)(vi) for “.” substitute “; or”, and then insert—
    - “(vii) carer’s assistance given in accordance with regulations made under section 28 of the Social Security (Scotland) Act 2018, except young carer grants given under the Carer’s Assistance (Young Carer Grants) (Scotland) Regulations 2019(11).”.
- (7) In regulation 15 (income not to exceed a certain level)—
  - (a) omit paragraphs (1A) and (1B)(12); and
  - (b) in paragraph (4) omit the definition of “critical worker”.

### **Amendment to the Childcare Payments Regulations 2015**

**3.—(1)** The Childcare Payments Regulations 2015(13) are amended as follows.

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- (6) 2003 c. 1. Section 71 of the Childcare Payments Act 2014 (“CPA”) defines ITEPA 2003 as meaning the Income Tax (Earnings and Pensions) Act 2003. Section 46A of ITEPA 2003 was inserted by section 16(5) of the Finance Act 2014 (c. 26). Chapter 9 was inserted by paragraph 4 of Part 1 of Schedule 3 to the Finance Act 2007 (c. 11). Chapter 10 was inserted by paragraph 9 of Part 2 of Schedule 1 to the Finance Act 2017 (c. 10).
  - (7) Paragraph (1) was amended by S.I. 2016/1021.
  - (8) The term “start-up period” is defined in regulation 11(2) of S.I. 2015/448.
  - (9) The term “entitlement period” is defined in section 71(1) of CPA.
  - (10) Paragraph (1)(b)(v) was substituted by S.I. 2017/1101.
  - (11) S.S.I. 2019/324.
  - (12) Paragraphs (1A) and (1B) and the definition of “critical worker” were inserted by S.I. 2020/656.
  - (13) S.I. 2015/522, amended by S.I. 2016/796 and 2021/781; there are other amending instruments but none is relevant.

- (2) In regulation 6 (declarations of eligibility)—
- (a) in paragraph (1)(b) omit “and”;
  - (b) at the end of paragraph (1)(c) for “.” substitute “;”, and then insert—
    - “(d) be accompanied by a confirmation, if required by HMRC(14).”; and
  - (c) for paragraph (7)(15) substitute—
    - “(7) In this regulation—
      - “a confirmation” means a confirmation made to HMRC, orally or in writing, by a declarant or their partner that they have complied with the requirement in section 8(1)(a) of the Taxes Management Act 1970(16) within the period specified in section 8(1D), except where either section 8(1F) or 8(1G) applies where the time limit specified in that section applies;
      - “declarant” means a person who makes a declaration of eligibility for the purposes of either opening a childcare account or reconfirming eligibility.”.

7th November 2022

*Nigel Huddleston*  
*Amanda Solloway*  
Two of the Lords Commissioners of His  
Majesty’s Treasury  
*Jim Harra*

7th November 2022

*Penny Ciniewicz*  
Two of the Commissioners for His Majesty’s  
Revenue and Customs

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(14) The term “HMRC” is defined in section 71(1) of CPA.

(15) Paragraph (7) was inserted by regulation 4 of S.I. 2016/796.

(16) 1970 c. 9.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make a number of amendments to the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) (“the Eligibility Regulations”) and the Childcare Payments Regulations 2015 (S.I. 2015/522) (“the Payments Regulations”).

Regulation 2 of these Regulations amends 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 Payments Regulations, which provide for the administration of childcare accounts and top-up payments made under the Act and for other procedural matters in relation to the childcare payments scheme.

Regulation 2(2)(a) amends paragraph (b) of the definition of “disability living allowance” in the Eligibility Regulations to refer to disability assistance as being given in accordance with regulations made under section 31 of the Social Security (Scotland) Act 2018 (asp 9). Regulation 2(2)(b) updates the definition of “employed” to include workers who are engaged under arrangements in relation to which any of Chapters 7 to 10 of the Income Tax (Earnings and Pensions) Act 2003 (c. 1) (“ITEPA 2003”) applies. Chapters 7 to 10 relate to agency workers, workers’ services provided through intermediaries and managed service companies.

Regulation 2(3) amends regulation 9(1)(c) of the Eligibility Regulations to correct an error in S.I. 2021/781. The amended regulation 9(1)(c) provides that a person who is in paid work as an employed and as a self-employed person whose income is greater than or equal to the relevant threshold (which term is defined in the Eligibility Regulations) is in paid qualifying work.

Regulation 2(4) amends regulation 10 of the Eligibility Regulations to insert regulation 10(1)(c). This provides that where a person receives certain income through an engagement in relation to which any of Chapters 7 to 10 of ITEPA 2003 applies, those amounts will comprise part of that person’s expected income. Chapters 7 to 10 relate to agency workers, workers’ services provided through intermediaries and managed service companies.

Regulation 2(5) amends regulation 11 of the Eligibility Regulations to specify that a self-employed person must make a declaration of eligibility in not only the start-up period, but also in each of the subsequent three entitlement periods, in order to not be required to meet the condition in regulation 9(1)(b) or (c) of the Eligibility Regulations.

Regulation 2(6) amends regulation 13 of the Eligibility Regulations. It inserts paragraph (vii) into sub-paragraph (1)(b) to reflect the introduction of carer’s assistance in Scotland. Paragraph (1) provides that where a person is in receipt of a benefit specified in regulation 13(1)(b) and that person has a partner in qualifying paid work, that person is regarded as being in paid work and as having an expected income equal to the minimum weekly income.

Regulation 2(7) amends regulation 15 of the Eligibility Regulations to omit paragraphs (1A) and (1B), as well as the definition of “critical worker” in paragraph (4) of regulation 15 of the Eligibility Regulations.

Regulation 3(2) amends regulation 6 of the Payments Regulations to insert sub-paragraph (d) in paragraph (1) and to amend paragraph (7). Sub-paragraph (d) sets out that HMRC may require a declaration of eligibility to be accompanied by a confirmation. A confirmation is defined in paragraph (7).

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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 and again on 30 March 2017. This is available from the gov.uk website at <https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment-march-2017>. It remains an accurate summary of the impacts that apply to this instrument.