

EXPLANATORY MEMORANDUM TO
THE CHILDCARE PAYMENTS (ELIGIBILITY) (AMENDMENT AND
TRANSITIONAL PROVISIONS) REGULATIONS 2025

2025 No. 857

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty’s Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Darren Jones MP, Chief Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 James Knipe, Deputy Director for Welfare Policy in HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Helen Early at HMRC Telephone: 03000 516116 or email: taxfreechildcareteam@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument amends the Childcare Payments (Eligibility) Regulations 2015 (‘the Eligibility Regulations’). It extends the period of time an individual is treated as being in qualifying paid work, for the purposes of applying for childcare top up payments, when either returning to work from leave or starting a new job. These payments are commonly referred to as Tax-Free Childcare (TFC) payments but are described in the legislation as childcare top-up payments.

4.2 This instrument also amends the Eligibility Regulations by removing references to a section that was revoked by the Childcare Payments (Eligibility) (Amendment) Regulations 2017. However, an oversight meant that these references were not removed at the same time the section was revoked. These references have no practical effect.

Where does the legislation extend to, and apply?

4.3 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.4 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. Policy Context

What is being done and why?

- 5.1 Since 2017, TFC has provided financial support to eligible working persons responsible for the child (for this Explanatory Memorandum referred to as parents), with the aim of encouraging parents into work, or allowing them to work longer hours. For every £8 paid into a childcare account, the Government adds £2, up to a maximum of £2,000 per year for children aged 11 or under (or up to £4,000 per year for disabled children aged 16 or under). This can be used by parents to pay towards qualifying childcare costs if their childcare provider is registered with a relevant regulatory body, such as Ofsted in England.
- 5.2 Eligibility for both the UK wide TFC scheme and the Department for Education's, England only, Free Childcare for Working Parents (FCWP) scheme is assessed through the same digital service, at the same time. The application period for FCWP was amended in April 2024 through the Childcare (Free of Charge for Working Parents) (England) (Amendment) (No.2) Regulations 2024. The new applicable period introduced enables eligible parents to apply for their FCWP entitlement from the beginning of the previous academic term if their return-to-work date/start date is before the end of the first month of the following term. This caused an eligibility misalignment between the TFC and FCWP childcare schemes.
- 5.3 This instrument emulates the effect of the changes made in April 2024 to FCWP and introduces the new applicable period for qualifying paid work into the Eligibility Regulations. This will allow eligible parents to apply for TFC top-up payments earlier, with the new applicable period being determined by applying the date on which the parent expects to start or return to work to the corresponding academic term date, which in the table in the Regulations is represented by a period of time amounting to each of the 3 academic terms. For the purposes of these regulations, the 3 academic terms begin on the following dates, the autumn term starts on 1st September, the spring term on 1st January, and the summer term on 1st April. This change will enable individuals to be treated as being in qualifying paid work and able to apply for TFC top up during the extended applicable period. As the digital system can only apply one application window to both schemes, FCWP applications made under the extended applicable period have been manually assessed since April 2024. The changes in this instrument will therefore improve both the customer experience and the ease of administration for the childcare schemes.
- 5.4 This instrument also removes references to regulation 12(1)(h) of the Eligibility Regulations which was revoked by the Childcare Payments (Eligibility) (Amendment) Regulations 2017. The redundant references being removed are the whole of regulation 12(5) and amendments in regulation 12(2) and (7)(b). These references are no longer relevant, and their removal has no impact on eligibility, as they have been inoperative since the amendments made in the Childcare Payments (Eligibility) (Amendment) Regulations 2017.

What was the previous policy, how is this different?

- 5.5 The previous policy for TFC was that a parent returning to work from specified types of leave, or planning to start a new job, would be restricted from applying for TFC until 31 days before their return/start date. It was only during the final 31 days that they were they treated as being in qualifying paid work and eligible to apply.
- 5.6 The expansion of FCWP to include 9-month-olds to 2-year-olds has led to demand for earlier confirmation of eligibility by parents and childcare providers seeking to

arrange free childcare for the start of the following term. The legislative change made in April 2024 to FCWP supported parents by allowing them the flexibility to plan and budget for childcare arrangements earlier.

- 5.7 This instrument enables eligible parents who are starting work, or returning to work after specified types of leave, to apply for a TFC account and government top up in the same way as they can for FCWP, which supports parents by giving them additional flexibility and time to financially plan their future childcare.

6. Legislative and Legal Context

How has the law changed?

- 6.1 This instrument amends the Eligibility Regulations.
- 6.2 Regulation 1, whilst providing for citation, commencement, and effect, also defines ‘expected work start date’ as having the same meaning as in regulation 2(2). Defining this phrase helps to explain that the definition sets out a number of relevant elements that the date a person starts work may be either a return to work after a period of unpaid or paid leave in accordance with regulation 12 (qualifying paid work: time off in connection with sickness or parenting) or starting a new job. It also explains that the start date is the date a person is expected to start work. This may differ from the actual start date ultimately if the start date is subsequently changed for any reason. It is the expected start date that is the relevant date for the purposes of knowing which applicable period to use.
- 6.3 Regulation 2(2) amends regulation 9 (the requirement to be in qualifying paid work) and replaces the 31-day requirement with the new applicable period. It also defines the ‘applicable period’ and ‘expected work start date’ for these Regulations.
- 6.4 Regulation 2(3)(b) amends regulation 12 (qualifying paid work: time off in connection with sickness or parenting) paragraph (4) to replace the 31-day requirement with the new applicable period and links to the definition placed within regulation 9.
- 6.5 As a miscellaneous correcting amendment, regulation 12(5) of the Eligibility Regulations is being revoked and a reference to regulation 12(5) in regulation 12(2) and a reference to regulation 12(1)(h) in regulation 12(7)(b) are being omitted from the Regulations to make corrections as their presence was made redundant as part of amendments made to those Regulations by The Childcare Payments (Eligibility) (Amendment) Regulations 2017 which revoked regulation 12(1)(h). The free issue procedure has been applied to this instrument so that it may be issued free of charge to anyone who purchased the Eligibility Regulations. Regulation 2(3)(a), (c) and (d) of this instrument correct the defect identified in that instrument. HMRC has complied with the requirement in paragraph 4.7.6 of the Statutory Instrument Practice (SIP) to consult with the S.I. Registrar on this matter.
- 6.6 Regulation 3 provides transitional provisions that apply to those customers who start or return to work between 16th October 2025 and 31st January 2026. Those customers covered by these provisions have an applicable period during this time of between 31 days and up to 15 weeks in which they are able to make an application for TFC. Regulation 3 operates by making temporary amendments to the newly amended regulation 9(2) but restricted to those customers with a work start date between 16th October and 31st January.
- 6.7 Customers with a start or return to work date after 1st February 2026 will fall within one of the three new applicable periods as set out in the table in regulation 2(2). Those

who start or return to work between 1st February and 30th April will be able to apply from the 1st January, those between 1st May and 30th September will be able to apply from 1st April and those between 1st October and 31st January will be able to apply from 1st September.

- 6.8 Customers with a work start date of before 16th October will not be affected by any of the amendments in this instrument. This is because of the effect the provisions in it not applying to that group of people. The existing unamended Regulation 9(2) will continue to apply to them.

Why was this approach taken to change the law?

- 6.9 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

- 7.1 On 25th June 2025, the Social Security Advisory Committee (SSAC) was consulted on this instrument. SSAC is an independent statutory body sponsored by the Department for Work and Pensions that provides impartial advice on social security and related matters. Under a memorandum of understanding between themselves, HM Treasury, and HMRC, SSAC provides informal scrutiny of secondary legislation for the TFC scheme. The minutes of the 25th June 2025 meeting will be published on the gov.uk website¹. A written exchange of views will also be included in the published minutes within the Annex. There were no recommendations that affected the Regulations as a result of this consultation.
- 7.2 No public consultation is necessary on these changes as they are technical in nature and are designed to give parents, who are starting work or returning to work from specified leave, access to TFC support earlier than they can now. This change will provide an improved customer journey for eligible parents.

8. Applicable Guidance

- 8.1 Guidance for TFC is available through the Childcare Choices² and gov.uk³ webpages.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

- 9.1 A full Impact Assessment has not been prepared for this instrument because no impact on the private or voluntary sector is foreseen.

Impact on businesses, charities and voluntary bodies

- 9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because it is a technical change to the eligibility criteria administered by HMRC.
- 9.3 The legislation does not impact small or micro businesses.
- 9.4 There is no, or no significant, impact on the public sector.

¹ Minutes of SSAC meetings: <https://www.gov.uk/government/publications/social-security-advisory-committee-minutes-of-meetings-in-2025>

² Guidance for Tax-Free Childcare through Childcare Choices: www.childcarechoices.gov.uk/

³ Guidance for Tax-Free Childcare through gov.uk: www.gov.uk/tax-free-childcare

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

- 10.1 HMRC is committed to monitoring the impacts of its policies and will monitor the impact of these changes as part of its wider routine monitoring of the TFC scheme. However, HMRC has no plans to specifically to monitor the impact of these changes given their minor, technical nature, and positive impact for claimants.
- 10.2 The instrument does not include a statutory review clause as it has no significant impact on business.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

- 11.1 None.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

- 13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 (“relevant European Union Acts”).