



# Childcare Payments Act 2014

## 2014 CHAPTER 28

An Act to make provision for and in connection with the making of payments to persons towards the costs of childcare; and to restrict the availability of an exemption from income tax in respect of the provision for an employee of childcare, or vouchers for obtaining childcare, under a scheme operated by or on behalf of the employer. [17th December 2014]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Introductory*

#### **1 Entitlement to receive money towards costs of childcare**

(1) This Act contains provision for HMRC to make payments (“top-up payments”) to be used towards the costs of qualifying childcare.

For the meaning of “qualifying childcare”, see section 2.

(2) A person is entitled to receive a top-up payment for an entitlement period in respect of a child if—

- (a) the person is an eligible person for the entitlement period (see section 3),
- (b) the person has made a valid declaration of eligibility for the entitlement period (see section 4),
- (c) the child is a qualifying child (see section 14),
- (d) the person holds a childcare account in respect of the child (see section 15), and
- (e) a qualifying payment is made into the childcare account during the entitlement period (see section 19).

(3) HMRC must pay the top-up payment into the childcare account.

- (4) The amount of the top-up payment is 25% of the amount of the qualifying payment.  
(For provision limiting the amount of qualifying payments that may be made into a childcare account in an entitlement period, see section 19(4).)
- (5) Regulations may amend subsection (4) so as to substitute a different percentage for the percentage for the time being specified there.
- (6) Sections 17 to 25 contain provision about childcare accounts, including restrictions on the kinds of payments that may be made from childcare accounts.
- (7) Sections 26 to 29 contain provision about obtaining and sharing information.
- (8) Sections 30 to 34 contain special rules about persons who are claiming tax credits or universal credit.
- (9) Sections 35 to 55 contain provision about penalties and other enforcement powers, including powers to recover top-up payments in certain circumstances.
- (10) Sections 56 to 61 contain provision about reviews and appeals.
- (11) Section 62 contains provision enabling HMRC in certain circumstances to compensate persons who have been deprived of the opportunity to receive top-up payments.
- (12) Sections 63 and 64 contain provision for the withdrawal of tax exemptions in respect of certain kinds of employer-provided childcare schemes.

## **2 Qualifying childcare**

- (1) In this Act “childcare” means any form of care or supervised activity for a child that is not provided in the course of the child’s compulsory education.
- (2) Childcare that is provided for a person is “qualifying childcare” for the purposes of this Act if—
  - (a) it is registered or approved childcare, and
  - (b) the main reason, or one of the main reasons, for incurring the costs of the childcare is—
    - (i) to enable the person to work, or
    - (ii) where the person has a partner, to enable both the person and the person’s partner to work.
- (3) Regulations may—
  - (a) make provision about what is, or is not, to be regarded as registered or approved childcare for the purposes of this section;
  - (b) define what is meant by “work” for the purposes of this section;
  - (c) specify cases where the condition in subsection (2)(b) is to be treated as met;
  - (d) specify cases where that condition does not need to be met.
- (4) Regulations made under subsection (3)(a) may, in particular, provide that childcare provided outside the United Kingdom is registered or approved childcare if it is provided by a person approved by an organisation that is accredited by a person or body under an enactment.

- (5) Subsection (2) is subject to any direction made under section 50 (which enables HMRC in certain circumstances to direct that childcare provided by a person is not qualifying childcare).

### *Eligibility*

## **3 Eligible persons**

- (1) A person is an eligible person for an entitlement period if—
- (a) the person meets the conditions of eligibility in sections 6 to 13, and
  - (b) in a case where the person has a partner, the person's partner meets the conditions of eligibility in sections 9 to 13.
- (2) In sections 6 to 13 “the date of the declaration” means the day on which the person makes a declaration of eligibility for the entitlement period (see section 4).
- (3) Sections 6 to 13 need to be read with—
- (a) regulations made under them, and
  - (b) regulations made under subsection (4).
- (4) Regulations may provide for exceptions to the requirement for any of the conditions of eligibility in sections 6 to 13 to be met by a person.
- (5) Regulations may make provision about when a person is, or is not, to be regarded as another person's partner for the purposes of this Act.

## **4 Declarations of eligibility**

- (1) For the purposes of this Act a “declaration of eligibility” is a statement made by a person for an entitlement period which states that the person is an eligible person for the entitlement period.
- (2) A declaration of eligibility made by a person for an entitlement period is “valid” for the purposes of this Act if—
- (a) HMRC are satisfied that the person is an eligible person for the entitlement period,
  - (b) on the day on which the declaration is made, there is no other person who—
    - (i) holds an active childcare account in respect of the relevant child (see subsection (4)), or
    - (ii) is seeking to hold an active childcare account in respect of that child (see subsection (5)), and
  - (c) the declaration is made in accordance with regulations under this section.
- (3) But subsection (2)(b) does not apply for the purpose of determining whether a declaration of eligibility made for the purposes of opening a childcare account is valid (see instead section 17(2)(c)).
- (4) In subsection (2)(b) “the relevant child” means the child in respect of whom the person making the declaration holds a childcare account.

For what is meant by an “active” childcare account, see section 17(3).

- (5) For the purposes of this section a person is “seeking to hold an active childcare account” if—
- (a) the person has applied to open a childcare account and the application has not yet been determined,
  - (b) the person has made a valid declaration of eligibility for an entitlement period which has not yet begun, or
  - (c) the person has made a declaration of eligibility for an entitlement period which, if valid, would result in the person holding an active childcare account for that period.
- (6) Regulations may make further provision about declarations of eligibility, including, in particular—
- (a) provision specifying, or enabling HMRC to specify, information which a person making a declaration of eligibility is required to provide to HMRC;
  - (b) provision specifying, or enabling HMRC to specify, the form and manner in which declarations of eligibility may be made;
  - (c) provision specifying the times when declarations of eligibility may be made;
  - (d) provision about the consequences of making a declaration of eligibility—
    - (i) after the beginning of the entitlement period for which it is made, or
    - (ii) at such other time as may be specified;
  - (e) provision for any consequences specified by virtue of paragraph (d) not to apply in specified circumstances or if specified conditions are met;
  - (f) provision specifying circumstances in which a person, or a person of a specified description, may make a declaration of eligibility on another person’s behalf, including provision enabling HMRC to appoint a person for that purpose;
  - (g) provision treating things done, or omitted to be done, by a person who makes a declaration of eligibility on another person’s behalf as having been done, or omitted, by that other person.
- (7) In subsection (6) “specified” means specified in the regulations.

## **5 Entitlement periods**

- (1) The length of an entitlement period is 3 months.
- This is subject to the following provision.
- (2) Regulations may—
- (a) amend subsection (1) so as to alter the length of an entitlement period, and
  - (b) in consequence of any provision made under paragraph (a), amend any reference in this Act to a period which begins on the day on which a declaration of eligibility is made and is the same length as an entitlement period.
- (3) Regulations may make further provision about entitlement periods, including, in particular—
- (a) provision for determining when entitlement periods are to begin or end, and
  - (b) provision enabling HMRC, in circumstances specified in the regulations, to vary the length of an entitlement period in particular cases.

- (4) Provision made by virtue of subsection (3)(b) may not enable HMRC to vary the length of an entitlement period by more than a month.

### *Conditions of eligibility*

#### **6 The person must be 16 or over**

A person meets the condition of eligibility in this section if the person is at least 16 years old on the date of the declaration.

#### **7 The person must be responsible for the child**

- (1) A person meets the condition of eligibility in this section if, at the date of the declaration, the person is responsible for the relevant child.
- (2) In subsection (1) “the relevant child” means the child in respect of whom the person holds, or wishes to open, a childcare account.
- (3) Regulations may make provision as to the circumstances in which a person is, or is not, to be regarded as responsible for a child for the purposes of this Act.

#### **8 The person must be in the UK**

- (1) A person meets the condition of eligibility in this section if the person is in the United Kingdom on the date of the declaration.
- (2) Regulations may—
- (a) specify circumstances in which a person is to be treated as being, or not being, in the United Kingdom;
  - (b) specify circumstances in which temporary absence from the United Kingdom is disregarded;
  - (c) modify the application of this Act in relation to persons of a specified description who are treated as being in the United Kingdom for the purposes of this Act.
- (3) In subsection (2) “specified” means specified in the regulations.

#### **9 The person and his or her partner must be in qualifying paid work**

- (1) A person meets the condition of eligibility in this section if the person is in qualifying paid work on the date of the declaration.
- (2) Regulations may—
- (a) make provision as to what is, or is not, qualifying paid work, and
  - (b) specify circumstances in which a person is, or is not, to be regarded as in such work.
- (3) Regulations under subsection (2) may, in particular—
- (a) make provision for calculating a person’s expected income from any work for a period specified in the regulations,
  - (b) provide that a person is in qualifying paid work only if the person’s expected income from the work for the period, taken together with the person’s expected

- income from any other work for the period, is greater than or equal to an amount specified in, or determined in accordance with, the regulations, and
- (c) specify cases in which the condition mentioned in paragraph (b) does not need to be met.

## **10 The income of the person and his or her partner must not exceed limit**

- (1) A person meets the condition of eligibility in this section if, at the date of the declaration, the person's expected income for the relevant tax year is not greater than an amount specified in, or determined in accordance with, regulations for the purposes of this section.
- (2) Regulations may make provision for calculating a person's expected income for a tax year.
- (3) Regulations may provide that a person is treated as meeting the condition of eligibility in this section (whether or not any provision has been made under subsection (1)) if the person does not expect to pay income tax at the additional rate or the dividend additional rate for the relevant tax year.
- (4) Regulations may provide that a person is treated as not meeting the condition of eligibility in this section in any of the following cases—
- (a) if the person has made, or expects to make, a claim under section 809B of the Income Tax Act 2007 (claim for remittance basis to apply) for the relevant tax year;
  - (b) if the person expects section 809E of that Act (application of remittance basis in certain cases without claim) to apply to the person for the relevant tax year;
  - (c) if the person meets any other conditions specified in the regulations.
- (5) In this section “the relevant tax year”, in relation to a declaration of eligibility, means the tax year in which the date of the declaration falls.

## **11 Neither the person nor his or her partner may be claiming universal credit**

- (1) A person meets the condition of eligibility in this section if, at the date of the declaration—
- (a) universal credit is not payable to the person in respect of any relevant assessment period (see subsection (2)), and
  - (b) there is no subsisting claim that would result in universal credit becoming payable to the person in respect of a relevant assessment period.
- (2) In subsection (1) “relevant assessment period”, in relation to a declaration of eligibility, means any assessment period (within the meaning of the relevant legislation) that includes—
- (a) the date of the declaration, or
  - (b) the whole or any part of the entitlement period for which the declaration is made.
- (3) For the purposes of subsection (1) universal credit is payable to a person in respect of a relevant assessment period if it would be so payable but for the reduction of the award of universal credit to nil under the relevant legislation.

- (4) In the case of a declaration of eligibility made for the purposes of opening a childcare account, the reference in subsection (2) to the entitlement period for which the declaration is made is to be read as a reference to the period of 3 months beginning with the date of the declaration.
- (5) Regulations may specify other circumstances in which a person is to be treated as meeting, or not meeting, the condition of eligibility in this section.
- (6) In this section “the relevant legislation” means—
  - (a) Part 1 of the Welfare Reform Act 2012, or
  - (b) any provision made for Northern Ireland which corresponds to that Part of that Act.

## **12 The person and his or her partner must not be in a relevant childcare scheme**

- (1) A person (“P”) meets the condition of eligibility in this section if, at the date of the declaration—
  - (a) P is not an eligible employee in relation to a relevant childcare scheme (see subsections (2) and (3)),
  - (b) in a case where the declaration is made for the purposes of opening a childcare account, P intends to give P’s employer a childcare account notice (see subsection (4)) before the end of the period of 3 months beginning with the date of the declaration, or
  - (c) in a case where—
    - (i) the declaration is not made for the purposes of opening a childcare account, and
    - (ii) P is a new partner of the person making the declaration (see subsection (5)),P intends to give P’s employer a childcare account notice before the end of the entitlement period for which the declaration is made.
- (2) “Relevant childcare scheme” means—
  - (a) a scheme under which qualifying childcare vouchers (within the meaning of section 270A of ITEPA 2003) are provided for employees, or
  - (b) a scheme under which care for a child is provided for employees in circumstances in which conditions A to D in section 318A of ITEPA 2003 are met.
- (3) “Eligible employee”—
  - (a) in relation to a scheme within subsection (2)(a), has the meaning given by section 270AA of ITEPA 2003, and
  - (b) in relation to a scheme within subsection (2)(b), has the meaning given by section 318AZA of that Act.
- (4) “Childcare account notice”, in relation to a person who is an eligible employee in relation to a relevant childcare scheme, means a written notice informing the employer that the employee wishes to leave the scheme in order to be able to open a childcare account or enable the employee’s partner to do so.
- (5) For the purposes of this section P is a person’s new partner at the date of the declaration made by the person if P has not been the person’s partner at any time when the person has previously made a valid declaration of eligibility.

- (6) For provision enabling HMRC to recover top-up payments where P fails to give P's employer a childcare account notice as mentioned in subsection (1)(b) or (c), see section 39.

### **13 Neither the person nor his or her partner may be receiving other childcare support**

- (1) A person meets the condition of eligibility in this section if, at the date of the declaration—
- (a) no other relevant childcare support is payable to the person in respect of any relevant period, and
  - (b) the person has not made, and does not intend to make, a claim that would result in any other relevant childcare support becoming payable to the person in respect of any relevant period.
- (2) “Other relevant childcare support” means any payments towards the costs of childcare which are made out of funds provided by a national authority, other than—
- (a) payments under this Act, or
  - (b) payments of a description specified in regulations.
- (3) In subsection (2) “national authority” means any of the following—
- (a) a Minister of the Crown (within the meaning of the Ministers of the Crown Act 1975);
  - (b) the Scottish Ministers;
  - (c) the Welsh Ministers;
  - (d) a Northern Ireland department.
- (4) “Relevant period”, in relation to a declaration of eligibility, means a period which—
- (a) includes the date of the declaration,
  - (b) includes the whole or any part of the entitlement period for which the declaration is made, or
  - (c) falls within that entitlement period.
- (5) In the case of a declaration of eligibility made for the purposes of opening a childcare account, any reference in subsection (4) to the entitlement period for which the declaration is made is to be read as a reference to the period of 3 months beginning with the date of the declaration.

#### *Qualifying children*

### **14 Qualifying child**

- (1) For the purposes of this Act “qualifying child” means a child of a description specified in regulations.
- (2) Regulations under this section may, in particular, specify different descriptions for different periods.



### *Childcare accounts*

## **15 Childcare accounts**

- (1) In this Act “childcare account” means an account which—
  - (a) is held by a person for the purpose of receiving top-up payments in respect of a qualifying child,
  - (b) is provided by a person or body within section 16(1),
  - (c) satisfies the requirements imposed by or under this Act, and
  - (d) has been opened in accordance with this Act.
- (2) Each childcare account must be held in respect of one child only.
- (3) Regulations may—
  - (a) impose other requirements which must be satisfied in relation to childcare accounts, and
  - (b) make provision about the way in which payments may be made into, or from, childcare accounts.
- (4) Regulations may provide that a person of a specified description may, or may in specified circumstances, manage a childcare account on behalf of the account-holder.
- (5) The provision that may be made by regulations under subsection (4) includes—
  - (a) provision enabling HMRC to appoint a person for the purpose of managing a childcare account on the account-holder’s behalf, and
  - (b) provision specifying functions in relation to the management of a childcare account which persons, or persons of a specified description, may not perform on an account-holder’s behalf.
- (6) In subsections (4) and (5) “specified” means specified in the regulations.
- (7) Where a contract is entered into by or on behalf of a person who is 16 or 17 years old in connection with a childcare account held by the person, the contract has effect as if the person had been 18 or over when it was entered into.
- (8) If the Commissioners so consent, fees may be charged in connection with a childcare account by the account provider.
- (9) But the account provider may not charge any fees merely for—
  - (a) providing a childcare account,
  - (b) enabling a qualifying payment to be made into a childcare account (see section 19), or
  - (c) enabling a payment to be made from a childcare account in respect of qualifying childcare for the child in respect of whom the account is held.
- (10) In this Act—
  - (a) the “account-holder”, in relation to a childcare account, means the person who holds the childcare account, and
  - (b) the “account provider”, in relation to a childcare account, means the person or body who provides the childcare account.

## 16 Account providers

- (1) Childcare accounts may be provided by any of the following—
  - (a) the Commissioners for Her Majesty's Revenue and Customs,
  - (b) a person or body with whom the Commissioners have entered into arrangements for the provision of childcare accounts, and
  - (c) if the Treasury so determine, the Director of Savings ("the Director").
- (2) If the Director provides childcare accounts, the Director must in doing so act in accordance with any arrangements made between the Director and the Commissioners with respect to the provision of childcare accounts.
- (3) Arrangements made between the Commissioners and a person or body within paragraph (b) or (c) of subsection (1) may include provision for the making of payments by the Commissioners to the person or body in respect of the provision of childcare accounts (and accordingly nothing in section 15(8) or (9) affects the inclusion of such provision in the arrangements).
- (4) If the Commissioners provide childcare accounts—
  - (a) any reference to the account provider paying an amount to HMRC from a childcare account, or to HMRC directing the account provider to do so, is to be read as a reference to HMRC deducting the amount from the account,
  - (b) any requirement for the account provider to notify HMRC of any matter, or for HMRC to notify the account provider of any matter, is to be disregarded, and
  - (c) any requirement for the account provider to give anything to HMRC, or for HMRC to give anything to the account provider, is to be disregarded.

## 17 Opening a childcare account

- (1) A person who wishes to receive top-up payments (the "applicant") must make an application to HMRC to open a childcare account.
- (2) HMRC may grant the application only if—
  - (a) the applicant has made a valid declaration of eligibility,
  - (b) the child in respect of whom the account is to be held ("the relevant child") is a qualifying child at the date of the application, and
  - (c) on the day on which the application is granted, there is no other person who holds an active childcare account in respect of the relevant child (see subsection (3)).
- (3) For the purposes of this Act a childcare account is "active" at any time if—
  - (a) qualifying payments may be made into the account at that time (see section 19), or
  - (b) such payments could, in the absence of section 19(4) (limit on amount of qualifying payments that may be made in entitlement period), be made into the account at that time.
- (4) Regulations may make further provision about opening a childcare account, including, in particular—
  - (a) provision about the making of applications to open a childcare account, including provision enabling HMRC to specify the form and manner in which such applications may be made;

- (b) provision specifying, or enabling HMRC to specify, information which applicants must provide to specified persons or to persons of a specified description;
- (c) provision specifying circumstances in which a person, or a person of a specified description, may make an application to open a childcare account on behalf of an applicant, including provision enabling HMRC to appoint a person for that purpose;
- (d) provision requiring HMRC to provide specified information to specified persons or to persons of a specified description.

(5) In subsection (4) “specified” means specified in the regulations.

## **18 Cases where there is more than one eligible person**

- (1) If two or more persons have applied to open a childcare account in respect of the same child, HMRC may determine which of them (if any) may open a childcare account in respect of the child.
- (2) If—
  - (a) a person—
    - (i) has applied to open a childcare account in respect of a child, or
    - (ii) wishes to make a declaration of eligibility in relation to a childcare account held in respect of a child, and
  - (b) another person holds a childcare account in respect of the child,HMRC may determine which of them (if any) may hold an active childcare account in respect of the child (see section 17(3)).
- (3) For provision enabling HMRC to make an account restriction order to give effect to a determination under subsection (2), see section 24.

## **19 Payments into childcare accounts**

- (1) In this Act “qualifying payment” means any payment made into a childcare account, other than—
  - (a) a top-up payment, or
  - (b) a repayment of the whole or part of any payment made from the childcare account.But for the purposes of paragraph (b) a withdrawal made by the account-holder is not to be regarded as a payment made from a childcare account.
- (2) Any person (including the account-holder) may make a qualifying payment into a childcare account during an entitlement period, provided that—
  - (a) the account-holder has made a valid declaration of eligibility for the entitlement period, and
  - (b) the child in respect of whom the account is held is a qualifying child at the time of the payment.

This is subject to any provision made by or under this Act.

- (3) More than one qualifying payment may be made into a childcare account during an entitlement period.

- (4) But the sum of any qualifying payments made into a childcare account in an entitlement period must not exceed the relevant maximum for the entitlement period.
- (5) The relevant maximum for an entitlement period is £2,000.
- This is subject to subsection (6).
- (6) Regulations may provide, or enable HMRC to provide, that in circumstances specified in the regulations the relevant maximum for an entitlement period is an amount—
- (a) specified in, or determined in accordance with, the regulations, or
  - (b) determined by HMRC in accordance with powers conferred by the regulations.
- (7) Regulations may amend subsection (5) so as to substitute a different amount or amounts for any amount for the time being specified there.
- (8) For the purposes of subsection (4), any amount paid into a childcare account at any time during an entitlement period is to be disregarded if at a later time during the entitlement period an equivalent amount is withdrawn from the account by the account-holder.
- (9) The account provider must notify HMRC of any qualifying payments made into a childcare account.

## **20 Payments that may be made from childcare accounts**

- (1) The only payments which the account-holder may authorise to be made from a childcare account are—
- (a) payments in respect of qualifying childcare for the relevant child, and
  - (b) withdrawals made by the account-holder.
- (2) In this section “the relevant child”, in relation to a childcare account, means the child in respect of whom the account is held.
- (3) A payment within subsection (1) is referred to in this Act as a permitted payment.
- (4) A payment made from a childcare account which—
- (a) is not a permitted payment, and
  - (b) is not made by the account provider to HMRC under this Act,
- is referred to in this Act as a prohibited payment.
- (5) Permitted payments may be made from a childcare account in an entitlement period whether or not the account-holder has made a valid declaration of eligibility for the entitlement period.
- (6) Where—
- (a) a payment is made from a childcare account, and
  - (b) only part of the payment is in respect of qualifying childcare for the relevant child,
- so much of the payment as is properly attributable to the costs of qualifying childcare for the relevant child is to be treated as a permitted payment, and the remainder is to be treated as a prohibited payment.

- (7) Regulations may make provision for determining, for the purposes of subsection (6), how much of a payment is properly attributable to the costs of qualifying childcare for the relevant child.
- (8) For the meaning of “qualifying childcare”, see section 2.

## **21 Calculating the top-up element of payments etc**

- (1) For the purposes of this Act the “top-up element” of any amount is an amount equal to the relevant percentage of that amount.
- (2) The “relevant percentage” is the percentage given by—

$$\frac{R}{100 + R} \times 100$$

where R is the percentage for the time being specified in section 1(4).

## **22 Withdrawals**

- (1) Where the account-holder makes a withdrawal from a childcare account, the account provider must pay the corresponding top-up amount to HMRC from the childcare account.
- (2) The “corresponding top-up amount”, in relation to a withdrawal, is R% of the amount of the withdrawal, where R is the percentage for the time being specified in section 1(4).
- (3) Accordingly, the maximum amount that may be withdrawn from a childcare account at any time is the relevant percentage of the total amount of funds held in the account at that time.
- (4) The “relevant percentage” is the percentage given by—

$$\frac{100}{100 + R} \times 100$$

where R is the percentage for the time being specified in section 1(4).

- (5) A withdrawal may not be made from a childcare account at any time when a top-up payment is payable into the account.

## **23 Refunds of payments made from childcare accounts**

- (1) Where—
- (a) a payment is made to a person from a childcare account, and
  - (b) the whole or part of the payment is repayable by that person to the account-holder,
- so much of the payment as is repayable must be repaid by that person into the childcare account.
- (2) Where—
- (a) a payment made to a person consists of an amount paid from a childcare account and an amount that is not paid from the childcare account, and

- (b) the whole or part of the payment (“the repayable amount”) is repayable by that person to the account-holder,  
so much of the repayable amount as exceeds the amount not paid from the childcare account must be repaid by that person into the childcare account.
- (3) In a case where—
- (a) a person would (in the absence of this subsection) be required by subsection (1) or (2) to repay an amount (“the repayable amount”) into a childcare account, but
- (b) the childcare account has been closed,
- the person must pay the repayable amount to the person or body who was the account provider in relation to the account (“the relevant account provider”).
- (4) The relevant account provider must—
- (a) pay the top-up element of the repayable amount to HMRC, and
- (b) pay the remainder of that amount to the person who held the childcare account.
- (For provision about calculating the top-up element of an amount, see section 21.)

## 24 Imposing restrictions on childcare accounts

- (1) If such conditions as may be specified in regulations are met, HMRC may make an account restriction order.
- (2) An “account restriction order” is an order imposing any of the following restrictions in relation to a childcare account specified in the order—
- (a) a restriction that prevents the making of any qualifying payments into the childcare account;
- (b) a restriction that prevents the making of any payments from the childcare account in respect of qualifying childcare.
- (3) Regulations may, in particular, provide that HMRC may make an account restriction order where—
- (a) a person wishes—
- (i) to open a childcare account in respect of a child, or
- (ii) to make a declaration of eligibility in relation to a childcare account held in respect of a child, and
- (b) another person holds a childcare account in respect of the child.
- (4) Regulations may make further provision about account restriction orders, including, in particular—
- (a) provision about the procedure for making an account restriction order;
- (b) provision enabling an account restriction order to impose a restriction for a period specified in the order (which may be unlimited);
- (c) provision enabling an account restriction order to provide that a restriction does not apply in such cases as may be specified in the order;
- (d) provision enabling a person who wishes to open a childcare account or make a declaration of eligibility to apply to HMRC for an account restriction order to be made in relation to another person who holds a childcare account;
- (e) provision enabling an account restriction order to be revoked, including provision for the account-holder to apply for its revocation;

- (f) provision specifying the circumstances in which such an application may be granted.
- (5) If an account restriction order is made in relation to a childcare account—
- (a) HMRC must give a copy of the order to the account-holder and to the account provider, and
  - (b) the account provider must comply with the order.

## **25 Closure of childcare accounts**

- (1) Regulations may make provision about closing childcare accounts.
- (2) The provision that may be made by regulations under this section includes, in particular—
- (a) provision requiring a childcare account to be closed in specified circumstances or if specified conditions are met;
  - (b) provision about what is to happen to any funds held in a childcare account when it is closed;
  - (c) provision for the repayment to HMRC of a proportion of any such funds, calculated in accordance with the regulations.
- (3) In subsection (2) “specified” means specified in the regulations.

### *Information*

## **26 Power to obtain information or documents**

- (1) HMRC may by notice in writing require a person of a description specified in regulations to provide information or documents which HMRC require in connection with their functions under this Act.
- (2) HMRC may require a person to provide information or a document only if it is in the person’s possession or power.
- (3) Regulations may make provision about notices under subsection (1), including, in particular—
- (a) provision requiring a notice to contain information specified in the regulations;
  - (b) provision requiring, or enabling a notice to require, information or documents to be provided in a form or manner specified in the regulations or the notice;
  - (c) provision requiring, or enabling a notice to require, information or documents to be provided at a time, or within a period, specified in the regulations or the notice;
  - (d) provision requiring, or enabling a notice to require, information or documents to be provided in respect of a period specified in the regulations or the notice;
  - (e) provision specifying descriptions of information or document which a notice may not require a person to provide;
  - (f) provision about determining in specified cases whether information or documents are of such a description, including provision for that determination to be made by a person or body specified in the regulations.

**27 Information sharing between HMRC and others**

- (1) Subsection (2) applies to information which is held as mentioned in section 18(1) of the Commissioners for Revenue and Customs Act 2005 (confidentiality).
- (2) Information to which this subsection applies may be disclosed to any person for use for the purpose of enabling or assisting the exercise of any of the functions of HMRC under this Act.
- (3) Information disclosed in reliance on subsection (2) may not be further disclosed to any other person without the authority of the Commissioners (which may be general or specific).
- (4) A person who holds information may disclose that information to HMRC if the disclosure is made for the purposes of the exercise by HMRC of their functions under this Act.
- (5) This section does not limit the circumstances in which information may be disclosed apart from this section.
- (6) In section 127 of the Welfare Reform Act 2012 (information-sharing between Secretary of State and HMRC), in subsection (7), in the definition of “HMRC function”—
  - (a) at the end of paragraph (a), omit “or”, and
  - (b) at the end of paragraph (b) insert “, or
  - (c) which is conferred by or under the Childcare Payments Act 2014;”.

**28 Wrongful disclosure of information received by others from HMRC**

- (1) If revenue and customs information relating to a person is disclosed in contravention of section 27(3) and the identity of the person—
  - (a) is specified in the disclosure, or
  - (b) can be deduced from it,
 section 19 of the Commissioners for Revenue and Customs Act 2005 (wrongful disclosure) applies in relation to the disclosure as it applies in relation to a disclosure of such information in contravention of section 20(9) of that Act.
- (2) “Revenue and customs information relating to a person” has the meaning given by section 19(2) of the Commissioners for Revenue and Customs Act 2005.

**29 Supply of information to HMRC by childminder agencies**

- In section 83A of the Childcare Act 2006 (supply of information to HMRC etc by childminder agencies), in subsection (2), in paragraph (b), for the words from “for the purposes of” to the end of that paragraph substitute “for the purposes of—
- (i) their functions in relation to tax credits, or
  - (ii) their functions under the Childcare Payments Act 2014;”.



*Special rules affecting tax credit and universal credit claimants*

**30 Termination of tax credit awards**

- (1) In this section “the relevant day”, in relation to a person who has made a declaration of eligibility for an entitlement period, means—
- (a) the first day of the entitlement period, or
  - (b) if later, the day on which the declaration of eligibility for the entitlement period was made.

- (2) This subsection applies where—
- (a) a person (“P”) has made a valid declaration of eligibility for an entitlement period,
  - (b) an award of a tax credit is or has been made—
    - (i) to P or to a person who is P’s partner on the relevant day (whether on a single claim or a joint claim), or
    - (ii) to both of them on a joint claim, and
  - (c) the award is for a period that includes the relevant day.

- (3) Where subsection (2) applies, the award of the tax credit terminates immediately before the relevant day, regardless of whether the decision on the claim was made before or after the relevant day.

This is subject to subsections (4) to (7).

- (4) Where a person has made a valid declaration of eligibility for more than one entitlement period beginning during the determination period (see subsection (5)), the award of the tax credit is terminated immediately before the day which is the relevant day in relation to the first of those entitlement periods.

- (5) In subsection (4) the “determination period”, in relation to an award of a tax credit, means the period—
- (a) beginning with the day on which the claim for the tax credit was made, and
  - (b) ending with the day on which the decision on the claim was made.

- (6) Where—
- (a) a person has applied for a review under section 21A of the Tax Credits Act 2002 of a decision not to make an award of a tax credit or to terminate such an award, and
  - (b) the conclusion on the review is that the decision is varied or cancelled,
- subsection (3) does not apply in respect of the award in relation to any entitlement period beginning before the day on which the person is notified of the conclusion on the review.

- (7) Where—
- (a) a person has brought an appeal under section 38 of the Tax Credits Act 2002 against a decision not to make an award of a tax credit or to terminate such an award, and
  - (b) the appeal is upheld,
- subsection (3) does not apply in respect of the award in relation to any entitlement period beginning before the day on which the person is notified of the decision on the appeal.

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- (8) Where an award of a tax credit made to a person is terminated by virtue of this section—
- (a) HMRC must notify the person of that fact,
  - (b) the tax credits legislation applies in relation to the person with such modifications as may be made in regulations, and
  - (c) the amount of any tax credit to which the person is entitled is to be calculated in accordance with the tax credits legislation, subject to any such modifications of that legislation.
- (9) Regulations may make further provision for the purpose of securing that, where a person makes a valid declaration of eligibility, any entitlement of the person, or a person who is the person's partner, to payments under the tax credits legislation ceases immediately before the relevant day.
- (10) Regulations under subsection (9) may, in particular—
- (a) provide that the tax credits legislation applies in relation to the person whose entitlement to such payments has ceased with such modifications as may be specified in the regulations, and
  - (b) apply any provision of this section with such modifications as may be so specified.
- (11) If—
- (a) a person makes a declaration of eligibility for an entitlement period, and
  - (b) at any time after the relevant day HMRC determine that the declaration was not valid,
- that does not affect anything done by virtue of this section as a result of the making of the declaration.
- (12) In this section—
- “joint claim” and “single claim” have the same meaning as in the Tax Credits Act 2002;
- “the tax credits legislation” means the Tax Credits Act 2002 and any provision made under that Act.
- (13) This section ceases to have effect when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force.

### **31 Power to provide for automatic termination of universal credit**

- (1) Regulations may make provision for the purpose of securing that, where a person has made a valid declaration of eligibility—
- (a) any award of universal credit made to the person, or to a person who is the person's partner, is terminated,
  - (b) any claim which the person, or a person who is the person's partner, has made for universal credit may not be proceeded with, and
  - (c) any entitlement of the person, or a person who is the person's partner, to payments under relevant social security legislation ceases.
- (2) The provision that may be made by regulations under subsection (1) includes—
- (a) provision amending this Act, including—
    - (i) provision amending or repealing section 11, and

- (ii) provision made in consequence of any provision made by regulations under subsection (1);
- (b) provision conferring power on the appropriate national authority to make regulations containing—
  - (i) provision about calculating, in a case falling within subsection (1)(a) to (c), the amount of any payment to which a person is entitled;
  - (ii) provision modifying the application of any relevant social security legislation, or any provision made under any such legislation, in such a case.
- (3) In subsection (2)(b) “the appropriate national authority” means—
  - (a) in relation to universal credit payable under Part 1 of the Welfare Reform Act 2012, the Secretary of State;
  - (b) in relation to universal credit payable under any provision made for Northern Ireland which corresponds to that Part of that Act, a Northern Ireland department.
- (4) The following is “relevant social security legislation” for the purposes of this section—
  - (a) the Social Security Administration Act 1992;
  - (b) the Social Security Administration (Northern Ireland) Act 1992;
  - (c) the Social Security Act 1998;
  - (d) the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10));
  - (e) Part 1 of the Welfare Reform Act 2012;
  - (f) any provision made for Northern Ireland which corresponds to that Part of that Act.

### **32 Power to disqualify tax credit claimants from obtaining top-up payments**

- (1) This section applies in relation to a person (“P”) if—
  - (a) P, or a person who is P’s partner, makes a claim (whether a single or a joint claim) that results in an award of a tax credit being made for a relevant period (see subsection (2)),
  - (b) the claim is made during an entitlement period for which P or P’s partner has made a valid declaration of eligibility,
  - (c) there has not been a change of circumstances in relation to P or P’s partner since the beginning of the entitlement period, and
  - (d) P, or a person who is P’s partner, makes a declaration of eligibility within the period of 12 months beginning with the day on which the claim was made.
- (2) In subsection (1)(a) “relevant period”, in relation to an entitlement period, means a period that includes the whole or any part of the entitlement period.
- (3) If this section applies in relation to a person, HMRC may give the person a warning notice.
- (4) A warning notice is a notice stating that, if this section or section 33 (power to disqualify universal credit claimants from obtaining top-up payments) applies in relation to the person at any time during the period of 4 years beginning with the day on which the notice is given, HMRC may give the person a disqualification notice (see section 34).
- (5) Regulations may make provision—

- (a) about what is, or is not, to be regarded as a change of circumstances in relation to a person for the purposes of this section;
  - (b) specifying cases in which something which would otherwise be a change of circumstances is not to be treated as such for the purposes of this section.
- (6) Regulations may amend subsection (1)(d) so as to substitute a different period for the period for the time being specified there.
- (7) In this section “joint claim” and “single claim” have the same meaning as in the Tax Credits Act 2002.

### **33 Power to disqualify universal credit claimants from obtaining top-up payments**

- (1) This section applies in relation to a person (“P”) if—
- (a) P, or a person who is P’s partner, makes a claim (whether jointly or otherwise) that results in universal credit becoming payable for a relevant assessment period (see subsection (2)),
  - (b) the claim is made during an entitlement period for which P or P’s partner has made a valid declaration of eligibility,
  - (c) there has not been a change of circumstances in relation to P or P’s partner since the beginning of the entitlement period, and
  - (d) P, or a person who is P’s partner, makes a declaration of eligibility within the period of 12 months beginning with the day on which the claim was made.
- (2) In subsection (1)(a) “relevant assessment period”, in relation to an entitlement period, means any assessment period (within the meaning of the relevant legislation) that includes the whole or any part of the entitlement period.
- (3) If this section applies in relation to a person, HMRC may give the person a warning notice.
- (4) A warning notice is a notice stating that, if this section or section 32 (power to disqualify tax credit claimants from obtaining top-up payments) applies in relation to the person at any time during the period of 4 years beginning with the day on which the notice is given, HMRC may give the person a disqualification notice (see section 34).
- (5) Regulations may make provision—
- (a) about what is, or is not, to be regarded as a change of circumstances in relation to a person for the purposes of this section;
  - (b) specifying cases in which something which would otherwise be a change of circumstances is not to be treated as such for the purposes of this section.
- (6) Regulations may amend subsection (1)(d) so as to substitute a different period for the period for the time being specified there.
- (7) In this section “the relevant legislation” means—
- (a) Part 1 of the Welfare Reform Act 2012, or
  - (b) any provision made for Northern Ireland which corresponds to that Part of that Act.

### **34 Disqualification notices**

- (1) If—

- (a) a person has been given a warning notice under section 32(3) or 33(3), and
  - (b) section 32 or 33 applies in relation to the person at any time during the period of 4 years beginning with the day on which the notice is given,
- HMRC may give the person a disqualification notice under this section.
- (2) Where a person has been given a disqualification notice—
    - (a) the person may not open a childcare account,
    - (b) no qualifying payments may be made into any childcare account held by the person, and
    - (c) any declaration of eligibility made by the person for an entitlement period for which the notice has effect is not valid.
  - (3) A disqualification notice has effect for the period specified in the notice.
  - (4) But a disqualification notice may not have effect for a period longer than 3 years.
  - (5) The period specified in a disqualification notice—
    - (a) may begin before the day on which the notice is given, but
    - (b) may not begin before the start of the entitlement period for which the declaration of eligibility that resulted in the giving of the notice was made.
  - (6) If HMRC give a person a disqualification notice, HMRC must give a copy of the notice to any person or body which provides childcare accounts.
  - (7) HMRC may revoke a disqualification notice.

*Recovery of top-up payments*

**35 Recovery of top-up payments where tax credits award made on a review**

- (1) This section applies where—
  - (a) a person (“P”), or (in the case of a joint claim) P or P’s partner at the time of the claim, applies for a review under section 21A of the Tax Credits Act 2002 of a decision not to make an award of a tax credit or to terminate such an award, and
  - (b) the conclusion on the review is that the decision is varied or cancelled.
- (2) P is liable to pay HMRC an amount equal to the sum of—
  - (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
  - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
  - (a) it falls within the review period (see subsection (4)),
  - (b) it is a period for which an award of a tax credit is made, or continues, as a result of the variation or cancellation of the decision, and
  - (c) where the award has been made to P and P’s partner on a joint claim, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (4) The “review period” means the period which—

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- (a) begins with the day on which the decision was made, and
- (b) ends with—
  - (i) the day on which the person who applied for the review is notified of its conclusions, or
  - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.
- (6) In this section “joint claim” has the same meaning as in the Tax Credits Act 2002.
- (7) For provision about terminating an award of a tax credit when a declaration of eligibility is made for a subsequent entitlement period, see section 30.

### **36 Recovery of top-up payments where tax credits award made on appeal**

- (1) This section applies where—
  - (a) a person (“P”), or (in the case of a joint claim) P or P’s partner at the time of the claim, has brought an appeal under section 38 of the Tax Credits Act 2002 against a decision not to make an award of a tax credit or to terminate such an award, and
  - (b) the appeal is upheld.
- (2) P is liable to pay HMRC an amount equal to the sum of—
  - (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
  - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
  - (a) it falls within the appeal period (see subsection (4)),
  - (b) it is a period for which an award of a tax credit is made, or continues, as a result of the appeal being upheld, and
  - (c) where the award has been made to P and P’s partner on a joint claim, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (4) The “appeal period” means the period which—
  - (a) begins with the day on which the decision was made, and
  - (b) ends with—
    - (i) the day on which the person who brought the appeal is notified of the decision on the appeal, or
    - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.
- (6) In this section “joint claim” has the same meaning as in the Tax Credits Act 2002.

- (7) For provision about terminating an award of a tax credit when a declaration of eligibility is made for a subsequent entitlement period, see section 30.

### **37 Recovery of top-up payments where universal credit award made on revision**

- (1) This section applies where any of the following decisions has been revised under section 9 of the Social Security Act 1998 or Article 10 of the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10))—
- (a) a decision not to make an award of universal credit to a person (“P”) or to P and P’s partner jointly;
  - (b) a decision to terminate such an award.
- (2) P is liable to pay HMRC an amount equal to the sum of—
- (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
  - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (3) The “relevant period” means the period in relation to which the following conditions are met—
- (a) it falls within the revision period (see subsection (4)),
  - (b) it is a period for which an award of universal credit is made, or continues, as a result of the revision of the decision, and
  - (c) where the award has been made to P and P’s partner jointly, the person who was P’s partner at the time of the decision has been P’s partner throughout the period.
- (4) The “revision period” means the period which—
- (a) begins with the day on which the decision was made, and
  - (b) ends with—
    - (i) the day on which the person in relation to whom the decision was made is notified that the decision has been revised, or
    - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (5) In subsection (2)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.

### **38 Recovery of top-up payments where universal credit award made on appeal**

- (1) This section applies where—
- (a) a person (“P”), or (in the case of a claim made jointly) P or P’s partner at the time of the claim, has brought an appeal under the appropriate legislation against a decision not to make an award of universal credit or to terminate such an award, and
  - (b) the appeal is upheld.
- (2) In subsection (1) “the appropriate legislation” means any of the following—
- (a) the Social Security Act 1998;
  - (b) the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10));

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- (c) Part 1 of the Welfare Reform Act 2012;
  - (d) any provision made for Northern Ireland which corresponds to that Part of that Act.
- (3) P is liable to pay HMRC an amount equal to the sum of—
- (a) any top-up payments made to P for an entitlement period falling wholly within the relevant period, and
  - (b) the relevant proportion of the sum of any top-up payments made to P for an entitlement period falling partly within the relevant period.
- (4) The “relevant period” means the period in relation to which the following conditions are met—
- (a) it falls within the appeal period (see subsection (5)),
  - (b) it is a period for which an award of universal credit is made, or continues, as a result of the appeal being upheld, and
  - (c) where the award has been made to P and P’s partner jointly, the person who was P’s partner at the time of the claim has been P’s partner throughout the period.
- (5) The “appeal period” means the period which—
- (a) begins with the day on which the decision was made, and
  - (b) ends with—
    - (i) the day on which the person who brought the appeal is notified of the decision on the appeal, or
    - (ii) if that day falls within an entitlement period for which P has made a valid declaration of eligibility, the last day of the entitlement period.
- (6) In subsection (3)(b) the “relevant proportion”, in relation to top-up payments made for an entitlement period, means a proportion equal to the proportion of the entitlement period which falls within the relevant period.

### **39 Recovery of top-up payments where person fails to give childcare account notice**

- (1) This section applies where—
- (a) a person has made a declaration of eligibility for an entitlement period,
  - (b) on the day on which the person made the declaration, the person, or a person who was the person’s partner at that time, (“E”) was an eligible employee in relation to a relevant childcare scheme, and
  - (c) E has failed to give E’s employer a childcare account notice before the end of the relevant period (see subsection (2)).
- (2) In subsection (1)(c) “the relevant period” means—
- (a) the entitlement period for which the declaration was made, or
  - (b) where the declaration was made for the purposes of opening a childcare account, the period of 3 months beginning with the day on which it was made.
- (3) The person who made the declaration is liable to pay HMRC an amount equal to the sum of any top-up payments made to the person for the entitlement period.
- (4) Expressions used in this section and in section 12 have the same meaning in this section as they have in that section.



#### **40 Recovery of top-up payments in other cases**

- (1) If—
  - (a) a top-up payment is made into a childcare account, and
  - (b) the account-holder is not entitled to the top-up payment,the account-holder is liable to pay HMRC an amount equal to the amount of the top-up payment.
- (2) If—
  - (a) a person who holds a childcare account causes or permits a prohibited payment to be made from the account, and
  - (b) at the time of the payment the person knew, or ought to have known, that the payment was a prohibited payment,the person is liable to pay HMRC an amount not exceeding the top-up element of the prohibited payment.
- (3) If a person fails to make a payment in accordance with a requirement imposed by subsections (1) to (3) of section 23 (refunds of payments made from childcare accounts), the person is liable to pay HMRC the top-up element of the payment.
- (4) If a prohibited payment is made to a person from a childcare account as a result of the dishonesty of that or some other person, each of those persons is liable to pay HMRC the top-up element of the prohibited payment.
- (5) Where—
  - (a) a body corporate is liable under subsection (3) or (4) to pay an amount to HMRC, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a person falling within subsection (6),that person (as well as the body corporate) is liable to pay that amount to HMRC.
- (6) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (7) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (8) Where—
  - (a) a Scottish firm is liable under subsection (3) or (4) to pay an amount to HMRC, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a partner of the firm or a person purporting to act as such a partner,that person (as well as the firm) is liable to pay that amount to HMRC.
- (9) For provision about calculating the top-up element of a payment, see section 21.

#### **41 Assessment and enforcement of recoverable amounts**

- (1) Where a person is liable under any of sections 35 to 40 (“the relevant section”) to pay an amount to HMRC—
  - (a) HMRC may assess the amount, and

- (b) if they do so, they must notify the person.
- (2) No assessment may be made under this section after—
- (a) the end of the period specified in subsection (3), or
  - (b) if earlier, the end of the period of 12 months beginning with the day on which HMRC first believed, or had reasonable grounds for believing, that the person was liable under the relevant section to pay an amount to HMRC.
- (3) The period referred to in subsection (2)(a) is—
- (a) the period of 4 years beginning with the day on which the person became liable under the relevant section to pay an amount to HMRC, or
  - (b) in a case where the person became liable under the relevant section to pay an amount to HMRC as a result of the person's dishonesty, the period of 20 years beginning with that day.
- (4) Where two or more persons—
- (a) are liable under section 40(3) or (4) to pay an amount to HMRC, and
  - (b) have each been notified of an assessment under this section in respect of the amount,
- each of those persons is jointly and severally liable to pay the amount assessed under this section.
- (5) Where a person is notified of an assessment under this section, the amount payable as a result of the assessment must be paid—
- (a) in a case where the person does not apply for a review of the assessment within the period specified in section 57(2)(a), before the end of that period,
  - (b) in a case where the person applies for a review of the assessment but does not give notice of an appeal against the assessment, before the end of the period in which notice of such an appeal could have been given, or
  - (c) in a case where notice of such an appeal has been given, on the day on which the appeal is determined or withdrawn.
- (6) A requirement to pay an amount to HMRC under any of sections 35 to 40 may be enforced as if the amount were income tax charged in an assessment and due and payable.
- See also sections 52 to 54 (which contain further powers to recover amounts owed to HMRC).

### *Penalties*

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

- (1) A person is liable to a penalty under this section if the person meets condition A or B.
- (2) Condition A is that—
- (a) the person makes a declaration of eligibility that contains an inaccuracy, and
  - (b) the inaccuracy is careless or deliberate.
- An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (3) Condition B is that—

- (a) a declaration of eligibility containing an inaccuracy is made by or on behalf of a person,
  - (b) the person discovers the inaccuracy after the declaration of eligibility has been made, and
  - (c) the person fails to take reasonable steps to inform HMRC.
- (4) In a case where the inaccuracy is deliberate, the amount of the penalty is 50% of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made.
- (5) In any other case, the amount of the penalty is 25% of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made.
- (6) “The maximum available top-up payment” for an entitlement period is the amount that would be payable by HMRC if qualifying payments equal to the relevant maximum for the entitlement period were made into the childcare account in respect of which the declaration was made.

(For the relevant maximum for an entitlement period, see section 19(5) and (6).)

- (7) If—
- (a) in the absence of this subsection, the relevant maximum for the entitlement period for which the declaration of eligibility was made would be the amount specified in section 19(5), but
  - (b) the person made representations to HMRC that the relevant maximum for the entitlement period should be a greater amount determined by or under regulations under section 19(6),

then for the purposes of subsection (6) above the relevant maximum for the entitlement period is to be taken to be that greater amount.

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

- (1) If—
- (a) a person fails to comply with a notice under section 26 (an “information notice”) before the end of the period within which the person was required to comply with it, and
  - (b) the information notice has become final (see subsection (6)),
- HMRC may give the person a warning notice.
- (2) A “warning notice” is a notice requiring the person to comply with the information notice before the end of the period of 30 days beginning with the day on which the warning notice is given.
- (3) If a person fails to comply with a warning notice given under this section, the person is liable to a penalty under this section.
- (4) The amount of the penalty may not exceed £300.
- (5) Regulations may amend subsection (4) so as to substitute a different amount for the amount for the time being specified there.
- (6) An information notice becomes final—

- (a) in a case where the person does not apply for a review of the decision to give the information notice within the period specified in section 57(2)(a), at the end of that period,
- (b) in a case where—
  - (i) the person applies for a review of the decision but does not give notice of an appeal against the decision, and
  - (ii) the decision has not been cancelled,
 at the end of the period in which notice of an appeal against the decision could have been given, or
- (c) in a case where—
  - (i) notice of such an appeal has been given, and
  - (ii) the decision has not been quashed on appeal,
 on the day on which the appeal is determined or withdrawn.

## (7) Accordingly—

- (a) if a person is granted an extension of the period for making an application for a review of a decision to give an information notice, any warning notice given to the person in respect of the information notice before the application for the review is made is of no effect, and
- (b) if a person is permitted to give notice of an appeal against an information notice after the end of the period mentioned in subsection (6)(b), any warning notice given to the person in respect of the information notice before the notice of appeal is given is of no effect.

**44 Penalties for providing inaccurate information or documents**

- (1) A person is liable to a penalty under this section if—
  - (a) in complying with a notice under section 26, the person provides inaccurate information or provides a document that contains an inaccuracy, and
  - (b) condition A, B or C is met.
- (2) Condition A is that the inaccuracy is careless or deliberate.  
An inaccuracy is careless if it is due to a failure by the person to take reasonable care.
- (3) Condition B is that the person knows of the inaccuracy at the time the information or document is provided but does not inform HMRC at that time.
- (4) Condition C is that the person—
  - (a) discovers the inaccuracy some time later, and
  - (b) fails to take reasonable steps to inform HMRC.
- (5) The amount of a penalty under this section may not exceed £3,000.
- (6) Regulations may amend subsection (5) so as to substitute a different amount for the amount for the time being specified there.

**45 Penalties for making prohibited payments**

- (1) A person is liable to a penalty under this section if—
  - (a) HMRC has given the person a warning notice under this section,

- (b) at any time when the warning notice has effect, the person causes or permits a prohibited payment to be made from a childcare account held by the person, and
  - (c) the person is notified of an assessment under section 41 in respect of the prohibited payment.
- (2) HMRC may give a person a warning notice under this section if—
  - (a) the person causes or permits a prohibited payment to be made from a childcare account held by the person,
  - (b) the person is notified of an assessment under section 41 in respect of the prohibited payment, and
  - (c) the assessment has become final (see subsection (7)).
- (3) A warning notice is a notice which—
  - (a) subject to subsection (4), has effect for a period of 4 years beginning with the day on which the notice is given (“the relevant 4-year period”), and
  - (b) states that the person will be liable to a penalty under this section if at any time during the relevant 4-year period the person causes or permits a prohibited payment to be made from a childcare account held by the person.
- (4) If a person is notified of a penalty under this section, the warning notice given to the person under this section ceases to have effect.
- (5) But subsection (4) does not prevent HMRC from giving the person a fresh warning notice as a result of the prohibited payment in respect of which the person was notified of the penalty.
- (6) Where a person is liable to a penalty under this section for causing or permitting a prohibited payment to be made, the amount of the penalty is 25% of the amount assessed under section 41 in respect of the prohibited payment.
- (7) For the purposes of this section an assessment under section 41 becomes final—
  - (a) in a case where the person does not apply for a review of the assessment within the period specified in section 57(2)(a), at the end of that period,
  - (b) in a case where—
    - (i) the person applies for a review of the assessment but does not give notice of an appeal against the assessment, and
    - (ii) the assessment has not been cancelled,at the end of the period in which notice of an appeal against the assessment could have been given, or
  - (c) in a case where—
    - (i) notice of such an appeal has been given, and
    - (ii) the assessment has not been quashed on appeal,on the day on which the appeal is determined or withdrawn.
- (8) Accordingly—
  - (a) if a person is granted an extension of the period for making an application for a review of an assessment, any warning notice given to the person in respect of the assessment before the application for the review is made is of no effect, and
  - (b) if a person is permitted to give notice of an appeal against an assessment after the end of the period mentioned in subsection (7)(b), any warning notice given

to the person in respect of the assessment before the notice of appeal is given is of no effect.

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

- (1) A person (“P”) is liable to a penalty under this section if—
  - (a) for the purpose of obtaining a relevant payment for P or another (see subsection (2)), P does, or omits to do, any act, and
  - (b) P’s conduct involves dishonesty.
- (2) The following payments are “relevant payments”—
  - (a) a top-up payment;
  - (b) a payment from a childcare account.
- (3) The amount of the penalty may not exceed—
  - (a) £3,000, or
  - (b) the sum of any relevant amounts obtained as mentioned in subsection (1), whichever is greater.
- (4) In subsection (3) “relevant amount” means—
  - (a) in the case of a top-up payment, the amount of the payment, and
  - (b) in the case of a payment from a childcare account, an amount equal to the top-up element of the payment.

(For provision about calculating the top-up element of a payment, see section 21.)
- (5) Regulations may amend subsection (3)(a) so as to substitute a different amount for the amount for the time being specified there.
- (6) Where—
  - (a) a body corporate is liable to a penalty under this section, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a person falling within subsection (7),that person (as well as the body corporate) is liable to a penalty under this section.
- (7) The persons are—
  - (a) a director, manager, secretary or similar officer of the body corporate;
  - (b) any person who was purporting to act in such a capacity.
- (8) Where the affairs of a body corporate are managed by its members, subsection (6) applies in relation to the acts and defaults of a member, in connection with that management, as if the member were a director of the body corporate.
- (9) Where—
  - (a) a Scottish firm is liable to a penalty under this section, and
  - (b) the liability is attributable (wholly or partly) to the dishonesty of a partner of the firm or a person purporting to act as such a partner,that person (as well as the firm) is liable to a penalty under this section.

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

- (1) Where a person becomes liable to a penalty under this Act—

- (a) HMRC may assess the penalty, and
  - (b) if they do so, they must notify the person.
- (2) No assessment of a penalty may be made under this section after—
- (a) the end of the period specified in subsection (3), or
  - (b) if earlier, the end of the period of 12 months beginning with the day on which HMRC first believed, or had reasonable grounds for believing, that the person was liable to the penalty.
- (3) The period referred to in subsection (2)(a) is—
- (a) the period of 4 years beginning with the day on which the person became liable to the penalty, or
  - (b) in a case where the person became liable to the penalty as a result of the person's dishonesty, the period of 20 years beginning with that day.
- (4) Where a person is notified of an assessment under this section, the penalty payable as a result of the assessment must be paid—
- (a) in a case where the person does not apply for a review of the penalty within the period specified in section 57(2)(a), before the end of that period,
  - (b) in a case where the person applies for a review of the penalty but does not give notice of an appeal against the penalty, before the end of the period in which notice of such an appeal could have been given, or
  - (c) in a case where notice of such an appeal has been given, on the day on which the appeal is determined or withdrawn.
- (5) A penalty under this Act may be enforced as if it were income tax charged in an assessment and due and payable.

See also section 53 (recovery of debts from childcare accounts).

#### **48 Double jeopardy**

A person is not liable to a penalty under this Act in respect of anything in respect of which the person has been convicted of an offence.

#### *Other enforcement powers*

#### **49 Disqualification orders**

- (1) HMRC may make a disqualification order in relation to a person if condition A, B or C is met.
- (2) Condition A is that, on more than one occasion in the period of 4 years ending with the day on which the disqualification order is made, the person—
- (a) has become liable to a penalty under this Act, and
  - (b) has been notified of the penalty.
- (3) Condition B is that—
- (a) the person ("P") has done, or omitted to do, any act for the purpose of obtaining a relevant payment for P or another (see subsection (4)),
  - (b) P's conduct involved dishonesty, and

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*Status: This is the original version (as it was originally enacted).*

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- (c) as a result P has been convicted of an offence or has been notified of a penalty under section 46.
- (4) The following payments are “relevant payments”—
  - (a) a top-up payment;
  - (b) a payment from a childcare account.
- (5) Condition C is that—
  - (a) the person (“P”) has done, or omitted to do, any act for the purpose of obtaining a relevant benefit for P or another (see subsection (6)),
  - (b) P’s conduct involved dishonesty, and
  - (c) as a result P has been convicted of an offence.
- (6) “Relevant benefit” means any benefit or other payment of a description specified in regulations.
- (7) Where a disqualification order has effect in relation to a person—
  - (a) the person may not open a childcare account,
  - (b) no qualifying payments may be made into any childcare account held by the person, and
  - (c) any declaration of eligibility made by the person for an entitlement period for which the order has effect is not valid.
- (8) A disqualification order has effect for the period specified in the order.
- (9) But a disqualification order may not have effect for a period longer than 3 years.
- (10) If HMRC make a disqualification order under this section, HMRC must give a copy of the order to—
  - (a) the person in relation to whom the order is made, and
  - (b) any person or body which provides childcare accounts.
- (11) HMRC may revoke a disqualification order made under this section.

## **50 Power to exclude childcare from being qualifying childcare**

- (1) This section applies if—
  - (a) a person has done, or omitted to do, any act for the purpose of obtaining a payment from a childcare account,
  - (b) the person’s conduct involved dishonesty, and
  - (c) as a result the person has been convicted of an offence or has been notified of a penalty under section 46.
- (2) HMRC may direct that any childcare provided by the person is not qualifying childcare for the purposes of this Act.
- (3) A direction under this section has effect for 12 months beginning with the day on which it is made.
- (4) Regulations may amend subsection (3) so as to substitute a different period for the period for the time being specified there.
- (5) Where a direction under this section is made in relation to a person, the direction also applies in relation to—



- (a) any body corporate of which the person is a director or other officer,
  - (b) any body corporate of which the person is a member, if the affairs of the body corporate are managed by its members, and
  - (c) any Scottish firm of which the person is a partner.
- (6) HMRC must—
- (a) give a copy of a direction under this section to—
    - (i) the person or persons in relation to whom it applies, and
    - (ii) any person or body which provides childcare accounts, and
  - (b) publish the direction in the way appearing to HMRC to be best calculated to bring it to the attention of those who may be affected by it.
- (7) HMRC may revoke a direction made under this section.

## **51 Power to charge interest**

- (1) Where—
- (a) an amount has been assessed under section 41 or 47 as payable to HMRC by a person under this Act, and
  - (b) some or all of the amount has not been paid to HMRC by the time specified in section 41(5) or 47(4) (as the case may be),
- HMRC may give the person a notice in writing requiring the person to pay interest on the amount that has not been paid (“the relevant debt”).
- (2) If a notice is given to a person under this section, the relevant debt carries interest for a period which—
- (a) begins with the late payment interest start date (which may be earlier than the day on which the notice is given), and
  - (b) ends with the specified day or, if earlier, the day on which the relevant debt is paid.
- (3) “The late payment interest start date” means—
- (a) in the case of an amount assessed under section 41, the day on which the person became liable to pay it;
  - (b) in the case of a penalty, the day after the last day of the period within which the penalty is required to be paid in accordance with section 47(4).
- (4) “The specified day”, in relation to a notice given to a person under this section, means—
- (a) the day specified in the notice, or
  - (b) where on that day the relevant debt has not been paid, the day specified in a further notice given to the person by HMRC.
- (5) The specified day must fall within the period of 6 months beginning with the day on which the notice is given.
- (6) Interest under this section is payable at the late payment interest rate.
- (7) The “late payment interest rate” is—
- (a) the rate provided for in regulations made by the Treasury under section 103(1) of the Finance Act 2009, or
  - (b) if there is more than one such rate, the lowest such rate.

- (8) Where two or more persons—
- (a) have been notified of an assessment under section 41 in respect of the same amount, and
  - (b) have been given a notice under this section,
- each of those persons is jointly and severally liable to pay interest on the relevant debt.

## **52 Deduction of recoverable amounts from tax credit awards**

- (1) This section applies where, as a result of a review of, or an appeal against, a tax credits decision—
- (a) a person is required to pay an amount (“the relevant debt”) to HMRC under section 35 or 36, and
  - (b) an amount of tax credit (“the award”) is payable to the person or to the person and the person’s partner jointly.
- (2) The relevant debt may be deducted from the award before it is paid.
- (3) The requirement to pay the relevant debt is discharged to the extent that it is deducted from the award under this section.
- (4) In this section “tax credits decision” means a decision not to make an award of a tax credit or to terminate such an award.
- (5) This section ceases to have effect when the repeal of Part 1 of the Tax Credits Act 2002 made by Schedule 14 to the Welfare Reform Act 2012 has fully come into force.

## **53 Recovery of debts from childcare accounts**

- (1) This section applies where—
- (a) an amount has been assessed under section 41 or 47 as payable to HMRC under this Act by a person who holds a childcare account in respect of a child,
  - (b) the assessment was made as a result of something done, or omitted to be done, in connection with that account or any other childcare account which the person has held in respect of the child, and
  - (c) some or all of the amount assessed (“the relevant debt”) has not been paid to HMRC by the time specified in section 41(5) or 47(4) (as the case may be).
- (2) HMRC may direct the account provider to pay a specified amount from the account to HMRC in order to discharge the whole or part of the relevant debt.
- “Specified” means specified in the direction.
- (3) The account provider must comply with a direction given under this section.
- (4) Subsections (5) to (8) apply in a case where the relevant debt consists of an amount of recoverable top-up payments.
- In this section an “amount of recoverable top-up payments” means an amount which a person is liable to pay HMRC under any of sections 35 to 39 or section 40(1) (recovery of top-up payments).
- (5) HMRC may make a direction under this section only if the childcare account is not active at the time of the direction (see section 17(3)).

- (6) Where the account provider makes a payment to HMRC in accordance with the direction, the account provider must make a payment from the childcare account to the account-holder of the appropriate qualifying amount.
- (7) “The appropriate qualifying amount”, in relation to a direction under this section, is the amount which, if paid into a childcare account, would entitle the account-holder to a top-up payment equal to—
- (a) the amount specified in the direction, or
  - (b) if that amount is greater than the top-up element of the funds held in the account, the top-up element of those funds.

(For provision about calculating the top-up element of funds held in an account, see section 21.)

- (8) If the amount specified in the direction is greater than the top-up element of the funds, the difference is to be deducted from the appropriate qualifying amount by the account provider and paid to HMRC in accordance with the direction.
- (9) Subsections (10) to (13) apply in a case where the relevant debt consists of any amount other than an amount of recoverable top-up payments.
- (10) HMRC may not specify in the direction an amount which is greater than the relevant percentage of the funds held in the account.
- (11) The “relevant percentage” is the percentage given by—

$$\frac{100}{100 + R} \times 100$$

where R is the percentage for the time being specified in section 1(4).

- (12) Where the account provider makes a payment to HMRC in accordance with the direction, the account provider must make a payment from the childcare account to HMRC of the corresponding top-up amount.
- (13) “The corresponding top-up amount”, in relation to a payment made in accordance with a direction under this section, is R% of the amount of the payment, where R is the percentage for the time being specified in section 1(4).
- (14) If a direction is made under this section both in respect of an amount of recoverable top-up payments and in respect of any other amount—
- (a) any amount payable to HMRC in accordance with the direction made in respect of that other amount is to be set off against the amount payable to the account-holder by virtue of subsection (6), and
  - (b) any amount payable to HMRC by virtue of subsection (12) is to be set off against the amount payable to HMRC in accordance with the direction made in respect of the amount of recoverable top-up payments.
- (15) If the Commissioners provide childcare accounts, a direction under this section may not be made in respect of any fees charged in connection with a childcare account in accordance with section 15(8).
- (16) This section does not affect any other power of HMRC to recover amounts that are due and payable to HMRC.

**54 Set-off**

- (1) This section applies where—
  - (a) an amount (“the relevant debt”) is due and payable to HMRC under this Act by a person who holds a childcare account in respect of a child,
  - (b) the childcare account is not active (see section 17(3)), and
  - (c) the relevant debt consists of an amount which the person is liable to pay HMRC under any of sections 35 to 39 or section 40(1) (recovery of top-up payments) as a result of something done, or omitted to be done, in connection with that account or any other childcare account which the person has held in respect of the child.
- (2) If the account-holder makes a withdrawal from the childcare account, the amount payable to HMRC under section 22 (the “corresponding top-up amount” of the withdrawal) is to be set off against the relevant debt.
- (3) In a case where the whole or part of the corresponding top-up amount of a withdrawal (“the set-off amount”) is set off against the relevant debt, so much of the withdrawal as generated the set-off amount is to be ignored for the purposes of section 19(8).

**55 Order in which payments are taken to discharge debts**

- (1) This section applies where an amount (a “relevant debt”) is due and payable to HMRC under this Act by a person.
- (2) For the purposes of this section—
  - (a) a relevant debt is within this paragraph if it consists of a penalty or other amount not falling within paragraph (b) or (c),
  - (b) a relevant debt is within this paragraph if it consists of an amount of recoverable top-up payments, and
  - (c) a relevant debt is within this paragraph if it consists of an amount of interest payable under section 51.
- (3) In determining whether a relevant debt is an amount of recoverable top-up payments for the purposes of section 53 or 54, any amount paid to HMRC by the person in the discharge of a relevant debt is to be taken to have discharged a relevant debt within paragraph (b) of subsection (2) only if any relevant debt within paragraph (a) of that subsection has been discharged.
- (4) Any amount paid to HMRC by the person in the discharge of a relevant debt is to be taken to have discharged any relevant debt within paragraph (c) of subsection (2) only if any relevant debt within paragraph (a) or (b) of that subsection has been discharged.
- (5) Any amount paid to HMRC in accordance with a direction under section 53 made in respect of a relevant debt within paragraph (b) or (c) of subsection (2) is to be taken to have discharged any relevant debt within paragraph (c) only if any relevant debt within paragraph (b) has been discharged.
- (6) In this section an “amount of recoverable top-up payments” means an amount which a person is liable to pay HMRC under any of sections 35 to 39 or section 40(1) (recovery of top-up payments).

## *Reviews and appeals*

### **56 Appealable decisions**

- (1) A person who is affected by an appealable decision (see subsection (3)) may appeal against the decision.
- (2) But a person may not appeal against any decision unless—
  - (a) the person has applied under section 57 for a review of the decision, and
  - (b) either—
    - (i) the person has been notified of the conclusion on the review, or
    - (ii) the person has not been notified of the conclusion on the review and the period for notifying the person of that conclusion has ended.
- (3) The following decisions are “appealable decisions”—
  - (a) a decision not to open a childcare account;
  - (b) a decision that a declaration of eligibility is not valid;
  - (c) a decision as to whether or not to make or revoke an account restriction order under section 24;
  - (d) a decision to give a person a notice under section 26;
  - (e) a decision to give a person a disqualification notice under section 34;
  - (f) a decision to make an assessment, or to make an assessment of a particular amount, under section 41;
  - (g) a decision to assess a penalty, or to assess a penalty of a particular amount, under section 47;
  - (h) a decision to make a disqualification order under section 49;
  - (i) a decision to make a direction under section 50;
  - (j) a decision to give a person a notice under section 51;
  - (k) a decision to give a direction under section 53.
- (4) Where a person is notified of an appealable decision under this Act, the notification must include details of the person’s right to apply for a review of the decision and to appeal against the decision.
- (5) The effect of an appealable decision falling within paragraph (d), (f), (g), (j) or (k) of subsection (3) is suspended by—
  - (a) the making of an application for a review of the decision, or
  - (b) the making of an appeal against the decision.
- (6) The effect of any other appealable decision is not suspended by the making of such an application or appeal.

### **57 Review of decisions**

- (1) A person who is affected by an appealable decision (“the applicant”) may apply to the Commissioners for Her Majesty’s Revenue and Customs for a review of the decision.
- (2) The application must be made—
  - (a) within the period of 30 days beginning with the day on which the applicant was notified of the decision, or

- (b) if the period for making the application has been extended under section 58, within the extended period.
- (3) The application must—
  - (a) be made in writing,
  - (b) contain sufficient information to identify the applicant and the decision, and
  - (c) set out the reasons for seeking a review of the decision.
- (4) If an application for a review of a decision is made to the Commissioners in accordance with this section, the Commissioners must review the decision.
- (5) On a review under this section, the Commissioners may—
  - (a) uphold the decision,
  - (b) vary the decision, or
  - (c) cancel the decision.
- (6) If the applicant makes any representations to the Commissioners at a stage which gives the Commissioners a reasonable opportunity to consider them, the Commissioners must take account of them when carrying out the review.
- (7) Where—
  - (a) the Commissioners notify the applicant of further information or evidence which they may need for carrying out the review, and
  - (b) the information or evidence is not provided to them within the period of 15 days beginning with the day on which the notice is given,the review may proceed without that information or evidence.
- (8) The Commissioners must notify the applicant of the matters set out in subsection (9) within—
  - (a) the period of 30 days beginning with the day on which the Commissioners received the application for the review,
  - (b) if the applicant has been given a notice under subsection (7), the period of 45 days beginning with that day, or
  - (c) such other period as the applicant and the Commissioners may agree.
- (9) The matters referred to in subsection (8) are—
  - (a) the conclusion on the review,
  - (b) if the conclusion is that the decision is varied, details of the variation, and
  - (c) the reasons for the conclusion.
- (10) If the Commissioners do not comply with subsection (8), the review is to be treated as having concluded that the decision is upheld.

In such a case, the Commissioners must notify the applicant of that conclusion.

## **58 Extension of time limit for applications for review**

- (1) A person who wishes to make an application for a review under section 57 may apply to the Commissioners for an extension of the period for making the application.
- (2) An application under this section—

- (a) must be made before the end of the period of 6 months beginning with the day after the last day of the period mentioned in section 57(2)(a) (“the standard period”), and
  - (b) must set out the reasons for seeking the extension.
- (3) The Commissioners may grant an extension under this section if they are satisfied that—
- (a) due to special circumstances, it was not practicable for the person to make the application under section 57 within the standard period, and
  - (b) it is reasonable in all the circumstances to grant the extension.
- (4) If an application under this section is refused, it may not be renewed.

## **59 Exercise of right of appeal**

- (1) An appeal under section 56 is to the appropriate tribunal.
- (2) “The appropriate tribunal” means—
- (a) the First-tier Tribunal, or
  - (b) in Northern Ireland, the appeal tribunal.
- (3) “Appeal tribunal” means an appeal tribunal constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998 ([S.I. 1998/1506 \(N.I. 10\)](#)).
- (4) Regulations may provide for any provision contained in or made under the following legislation to apply in relation to appeals under section 56, with such modifications as may be specified in regulations—
- (a) Chapter 2 of Part 1 of the Social Security Act 1998 (social security appeals: Great Britain);
  - (b) Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998 (social security appeals: Northern Ireland);
  - (c) section 54 of the Taxes Management Act 1970 (settling of appeals by agreement).

## **60 Powers of tribunal**

- (1) This section applies where a person is appealing to the Tribunal under section 56 against an appealable decision.
- (2) In a case where the appealable decision is a decision under section 47 to assess a penalty, or to assess a penalty of a particular amount, the Tribunal may do any of the following—
- (a) uphold the penalty;
  - (b) set aside the penalty;
  - (c) substitute for the penalty a penalty of an amount decided by the Tribunal.
- (3) In any other case, the Tribunal must either—
- (a) dismiss the appeal, or
  - (b) quash the whole or part of the decision to which the appeal relates.
- (4) The Tribunal may act as mentioned in subsection (3)(b) only to the extent that it is satisfied that the decision was wrong on one or more of the following grounds—
- (a) that the decision was based, wholly or partly, on an error of fact;

- (b) that the decision was wrong in law.
- (5) If the Tribunal quashes the whole or part of a decision, it may either—
- (a) refer the matter back to HMRC with a direction to reconsider and make a new decision in accordance with its ruling, or
  - (b) substitute its own decision for that of HMRC.

This is subject to section 61(8).

- (6) The Tribunal may not direct HMRC to take any action which they would not otherwise have the power to take in relation to the decision.
- (7) A decision of the Tribunal made by virtue of this section has the same effect as, and may be enforced in the same manner as, a decision of HMRC.
- (8) In this section “the Tribunal” means—
- (a) the First-tier Tribunal, or
  - (b) in Northern Ireland, the appeal tribunal (within the meaning of section 59(3)).

## **61 Cases where there is more than one eligible person**

- (1) This section applies in the following cases.
- (2) The first case is where—
- (a) two or more persons (“the applicants”) have applied to open a childcare account in respect of the same child, and
  - (b) any of the applicants is appealing against a decision not to allow the applicant to open a childcare account in respect of the child.
- (3) The second case is where—
- (a) one or more persons (“the applicants”) have applied to open a childcare account in respect of a child,
  - (b) another person (“the existing account-holder”) holds a childcare account in respect of the child, and
  - (c) any of the applicants is appealing against a decision not to allow the applicant to open a childcare account in respect of the child.
- (4) The third case is where—
- (a) a person is appealing against a decision not to make an account restriction order in relation to another person, or
  - (b) a person is appealing against a decision to make an account restriction order in relation to the person so as to enable another person to open a childcare account or make a declaration of eligibility in relation to such an account.
- (5) In this section “the affected parties” means—
- (a) in the case described in subsection (2), the applicants;
  - (b) in the case described in subsection (3), the applicants and the existing account-holder;
  - (c) in the case described in subsection (4), each of the persons mentioned in paragraph (a) or (b) of that subsection (as the case may be).
- (6) Notice of the appeal must be given to each of the affected parties (other than the person bringing the appeal).



- (7) Each of the affected parties is to be treated as a party to the appeal.
- (8) If the Tribunal quashes the whole or part of the decision, it must substitute its own decision for that of HMRC.
- (9) A decision of the Tribunal made by virtue of this section has the same effect as, and may be enforced in the same manner as, a decision of HMRC.
- (10) In this section “the Tribunal” has the same meaning as in section 60.

### *Compensatory payments*

## **62 Compensatory payments**

- (1) Where a person has in circumstances specified in regulations been deprived of the opportunity to receive top-up payments in respect of a child for a period, HMRC must pay the person an amount equal to 20% of the costs incurred on qualifying childcare in respect of the child during the period.
- (2) But the amount paid to a person by HMRC under this section for a period may not exceed a maximum amount specified in, or determined in accordance with, regulations.
- (3) The circumstances that may be specified in regulations under this section include, in particular—
  - (a) where an appealable decision is varied or cancelled on a review under section 57, and
  - (b) where an appealable decision is quashed (whether wholly or partly) under section 60.
- (4) Payments may be made to a person under this section regardless of whether the person—
  - (a) has opened a childcare account, or
  - (b) has made a valid declaration of eligibility.
- (5) Regulations may make further provision about making payments under this section.
- (6) Regulations may substitute a different percentage for the percentage for the time being specified in subsection (1).

### *Withdrawal of existing tax exemptions*

## **63 Restrictions on claiming tax exemption for childcare vouchers**

- (1) Section 270A of ITEPA 2003 (limited exemption from income tax for qualifying childcare vouchers) is amended as follows.
- (2) In subsection (1)—
  - (a) before “employee” insert “eligible”, and
  - (b) at the end insert—

“For the meaning of “eligible employee”, see section 270AA.”

- (3) In subsection (5)(a), before “employees” insert “eligible”.
- (4) After section 270A of ITEPA 2003 insert—

**“270AA Meaning of “eligible employee”**

- (1) An employee is an eligible employee for the purposes of section 270A if conditions A to C are met in relation to the employee.
  - (2) Condition A is that the employee—
    - (a) was employed by the employer immediately before the relevant day, and
    - (b) has not ceased to be employed by the employer on or after that day.
  - (3) “The relevant day” means the day specified by the Treasury in regulations for the purposes of this section.
  - (4) Condition B is that there has not been a period of 52 tax weeks ending on or after the relevant day which has not included at least one qualifying week.
  - (5) In subsection (4)—
    - “qualifying week” means a tax week in respect of which a qualifying childcare voucher has been provided for the employee under the scheme by the employer in respect of a child, and
    - “tax week” has the meaning given by section 270A(7).
  - (6) Condition C is that the employee has not given the employer a childcare account notice.
  - (7) A “childcare account notice” is a written notice informing the employer that the employee wishes to leave the scheme in order to be able to open a childcare account under section 17 of the Childcare Payments Act 2014 or enable the employee’s partner to do so.
  - (8) In subsection (7) “partner” is to be read in accordance with regulations made under section 3(5) of that Act.”
- (5) In section 717 of ITEPA 2003 (orders and regulations), in subsection (4), after “employments,” insert “section 270AA(3) (exemption from income tax for qualifying childcare vouchers: meaning of “eligible employee”),”.

**64 Restrictions on claiming tax exemption for employer-contracted childcare**

- (1) Section 318A of ITEPA 2003 (childcare: limited exemption from income tax for other care) is amended as follows.
- (2) In subsection (1)—
  - (a) before “employee” insert “eligible”, and
  - (b) after “For” insert “the meaning of “eligible employee”, see section 318AZA, and for”.
- (3) In subsection (5)(a), before “employees” insert “eligible”.
- (4) After section 318A of ITEPA 2003 insert—

**“318AZA Meaning of “eligible employee”**

- (1) An employee is an eligible employee for the purposes of section 318A if conditions A to C are met in relation to the employee.
  - (2) Condition A is that the employee—
    - (a) was employed by the employer immediately before the relevant day, and
    - (b) has not ceased to be employed by the employer on or after that day.
  - (3) “The relevant day” means the day specified by the Treasury in regulations for the purposes of this section.
  - (4) Condition B is that there has not been a period of 52 tax weeks ending on or after the relevant day which has not included at least one qualifying week.
  - (5) In subsection (4)—

“qualifying week” means a tax week in which care for a child has been provided for the employee under the scheme by the employer in circumstances in which conditions A to D in section 318A are met, and

“tax week” has the meaning given by section 318A(7).
  - (6) Condition C is that the employee has not given the employer a childcare account notice.
  - (7) A “childcare account notice” is a written notice informing the employer that the employee wishes to leave the scheme in order to be able to open a childcare account under section 17 of the Childcare Payments Act 2014 or enable the employee’s partner to do so.
  - (8) In subsection (7) “partner” is to be read in accordance with regulations made under section 3(5) of that Act.
  - (9) For the meaning of “care” and “child”, see section 318B.”
- (5) In section 318B of ITEPA 2003 (childcare: meaning of “care”, “child” etc), in subsection (1), for “318 and 318A” substitute “318 to 318AZA”.
- (6) In section 717 of ITEPA 2003 (orders and regulations), in subsection (4), before “section 343(3)” insert “section 318AZA(3) (exemption from income tax for other care: meaning of “eligible employee”).”.

*General*

**65 Functions of Commissioners for Revenue and Customs**

The matters dealt with by and under this Act are to be under the management of the Commissioners for Her Majesty’s Revenue and Customs.

**66 Tax treatment of top-up payments**

A top-up payment made into a childcare account is not to be regarded as income of the account-holder for the purposes of the Income Tax Acts.

**67 Set-off against tax liabilities etc**

The following payments are not to be regarded as a credit for the purposes of section 130 of the Finance Act 2008 (set-off)—

- (a) top-up payments;
- (b) payments under section 62 (compensatory payments);
- (c) where the Commissioners provide childcare accounts, any funds held in a childcare account.

**68 Northern Ireland**

In Schedule 2 to the Northern Ireland Act 1998 (excepted matters), after paragraph 10B insert—

“10C The operation of the Childcare Payments Act 2014.”

*Final provisions***69 Regulations: general**

- (1) Any power to make regulations under this Act is exercisable by statutory instrument.
- (2) Any power to make regulations under the following provisions of this Act is exercisable by the Treasury—
  - (a) section 1(5) (power to amend rate of top-up payment);
  - (b) section 2(3)(b) to (d) (qualifying childcare);
  - (c) sections 3, 7 to 11 and 13 (eligibility);
  - (d) section 5(2) (power to alter length of entitlement period);
  - (e) section 14 (qualifying child);
  - (f) section 19(7) (power to amend the relevant maximum);
  - (g) section 30 (termination of tax credit awards);
  - (h) section 31 (power to provide for automatic termination of universal credit);
  - (i) sections 32 and 33 (disqualification of tax credit or universal credit claimants from obtaining top-up payments);
  - (j) sections 43(5), 44(6) and 46(5) (powers to vary certain penalties);
  - (k) section 50(4) (power to alter period for which directions under section 50 have effect);
  - (l) section 62(6) (power to amend rate of compensatory payments);
  - (m) section 72 (power to make consequential amendments);
  - (n) section 75 (commencement).
- (3) Any power to make regulations under a provision of this Act that is not mentioned in subsection (2) is exercisable by the Commissioners for Her Majesty’s Revenue and Customs.
- (4) Regulations under this Act may—

- (a) make different provision for different purposes or in relation to different areas,
  - (b) contain incidental, supplemental, consequential or transitional provision or savings, and
  - (c) provide for a person to exercise a discretion in dealing with any matter.
- (5) Subsection (4) does not apply to regulations under section 75 (see instead subsection (3) of that section).

## **70 Regulations: Parliamentary control**

- (1) A statutory instrument containing regulations under this Act is subject to annulment in pursuance of a resolution of either House of Parliament, unless the instrument—
- (a) is required by subsection (3) or any other enactment to be laid in draft before, and approved by a resolution of, each House, or
  - (b) contains only regulations under section 75.
- (2) Subsection (3) applies to a statutory instrument that contains (with or without other provisions)—
- (a) regulations under section 1(5);
  - (b) regulations under section 2(3)(b), (c) or (d);
  - (c) the first regulations under each of sections 3 and 7 to 10;
  - (d) regulations under section 5(2);
  - (e) the first regulations under section 14;
  - (f) regulations under section 19(7) which substitute a lower amount for any amount for the time being specified in section 19(5);
  - (g) regulations under section 31;
  - (h) the first regulations under each of sections 32(5) and 33(5);
  - (i) regulations under section 32(6) or 33(6);
  - (j) regulations under section 43(5), 44(6) or 46(5);
  - (k) regulations under section 50(4);
  - (l) regulations under section 62(6);
  - (m) regulations under section 72.
- (3) A statutory instrument to which this subsection applies may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

## **71 Interpretation**

- (1) In this Act—
- “account-holder” has the meaning given by section 15(10);
  - “account provider” has the meaning given by section 15(10);
  - “appealable decision” has the meaning given by section 56(3);
  - “childcare” has the meaning given by section 2(1);
  - “childcare account” has the meaning given by section 15;
  - “the Commissioners” means the Commissioners for Her Majesty’s Revenue and Customs;
  - “declaration of eligibility” has the meaning given by section 4;
  - “enactment” includes—

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*Status: This is the original version (as it was originally enacted).*

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- (a) an enactment contained in subordinate legislation,
- (b) an enactment contained in, or in an instrument made under, an Act of the Scottish Parliament,
- (c) an enactment contained in, or in an instrument made under, a Measure or Act of the National Assembly for Wales, and
- (d) an enactment contained in, or in an instrument made under, Northern Ireland legislation;

“entitlement period” means a period determined in accordance with section 5;

“HMRC” means Her Majesty’s Revenue and Customs;

“ITEPA 2003” means the Income Tax (Earnings and Pensions) Act 2003;

“partner” is to be read in accordance with regulations made under section 3(5);

“permitted payment” has the meaning given by section 20(3);

“prohibited payment” has the meaning given by section 20(4);

“qualifying child” has the meaning given by section 14;

“qualifying childcare” has the meaning given by section 2(2);

“qualifying payment” has the meaning given by section 19;

“tax credit” has the same meaning as in the Tax Credits Act 2002;

“top-up element”, in relation to an amount, has the meaning given by section 21;

“top-up payment” is to be read in accordance with section 1;

“universal credit” means universal credit payable under—

- (a) Part 1 of the Welfare Reform Act 2012, or
- (b) any provision made for Northern Ireland which corresponds to that Part of that Act.

(2) In this Act—

- (a) references to a valid declaration of eligibility are to be read in accordance with section 4(2), and
- (b) references to an active childcare account are to be read in accordance with section 17(3).

## **72 Power to make consequential amendments**

(1) Regulations may make such provision amending, repealing, revoking or applying with modifications any enactment to which this section applies as the Treasury consider necessary or expedient in consequence of any provision made by or under this Act.

(2) This section applies to—

- (a) any enactment passed or made before the passing of this Act, and
- (b) any enactment passed or made on or before the last day of the Session in which this Act is passed.

## **73 Financial provisions**

(1) There is to be paid out of money provided by Parliament any increase attributable to this Act in the sums payable under any other Act out of money so provided.

- (2) Subsections (3) and (4) apply if childcare accounts are provided by the Commissioners or the Director of Savings (“the relevant account provider”).
- (3) Sums paid into childcare accounts are not to be paid into the Consolidated Fund.
- (4) Sums payable from childcare accounts are not to be regarded as expenditure of the relevant account provider.

#### **74 Extent**

- (1) Except as provided by subsection (2), this Act extends to England and Wales, Scotland and Northern Ireland.
- (2) Any amendment or repeal made by this Act has the same extent as the provision amended or repealed.

#### **75 Commencement and short title**

- (1) The following provisions of this Act come into force on the day on which this Act is passed—
  - (a) sections 65 and 68;
  - (b) sections 69 to 72, 73(1), 74 and this section;
  - (c) any power to make regulations under this Act.
- (2) The remaining provisions of this Act come into force in accordance with provision contained in regulations.
- (3) Regulations under subsection (2) may—
  - (a) make different provision for different purposes or in relation to different areas;
  - (b) make such transitory or transitional provision, or savings, as the Treasury consider necessary or expedient, including (in particular) such adaptations of provisions of this Act brought into force as appear to be necessary or expedient in consequence of other provisions of this Act not yet having come into force.
- (4) This Act may be cited as the Childcare Payments Act 2014.