

CHILDCARE PAYMENTS ACT 2014

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Conditions of Eligibility

Section 6: The person must be 16 or over

48. **Section 6** sets out the first of the eligibility conditions. This is that the person making the declaration of eligibility must be at least 16 years of age.

Section 7: The person must be responsible for the child

49. **Section 7** sets out the second condition of eligibility. This is that the person making the declaration is responsible for the child. Such a person does not have to be the child's biological or legal parent, but could be any person who has responsibility for the child (such as a member of the child's extended family).
50. Further rules can be set out in regulations made under subsection (3) specifying the circumstances in which a person will be treated as responsible, or not responsible, for a child for the purposes of the scheme. The Government intends to make regulations providing that a person must normally live with a child in order to be regarded as responsible for that child.

Section 8: The person must be in the UK

51. **Section 8** sets out the third condition of eligibility. This is that the person making the declaration of eligibility is in the UK.
52. Subsection (2)(a) permits regulations to be made to provide rules for determining when a person will be treated as being, or not being, in the UK. The Government intends to make regulations providing that, for example, members of the armed forces who have been posted overseas, and residents of EEA states who are working in the UK, are to be treated as being in the UK.
53. Subsection (2)(b) permits regulations to be made that allow temporary absences from the UK to be disregarded. The Government intends to make regulations providing, for example, that any absence from the UK of up to 8 weeks is to be disregarded, and in certain circumstances, such as where a person experiences a period of illness, longer absences may also be disregarded.
54. Subsection (2)(c) permits regulations to be made that allow provisions of the Act to be modified in certain circumstances where people who are not in the UK are treated as being in the UK. The Government intends to make regulations that will, for instance, provide an equivalent to the requirement that a person must not be in receipt of universal credit, since universal credit will not be available in the person's country of residence if they live outside the UK.

Section 9: The person and his or her partner must be in qualifying paid work

55. **Section 9** sets out the fourth condition of eligibility. This condition has to be met not only by the person making the declaration of eligibility but also by any partner that they may have (see section 3(1)). The condition is that on the date of the declaration the person in question is in qualifying paid work.
56. The definition of qualifying paid work will be set out in regulations made under subsection (2). The Government intends to make regulations requiring the person to have a minimum amount of expected income from that work for the entitlement period for which they are making their declaration (or, where the person is making an application to open a childcare account, for the three months starting with the date of the declaration). This minimum expected income will be the amount that the person would expect to receive if they were paid the national minimum wage for 8 hours a week.
57. The Government intends to make regulations that will provide rules to determine how a person's expected income from work is to be calculated, in order to assess whether the minimum expected income is met. For employed people this will simply be the amount they earn from the employment. For self-employed people it will be the receipts the person expects to derive from their trade, profession or vocation less the amount of expenses (other than capital expenses) the person expects to incur wholly and exclusively for the purposes of that trade, profession or vocation. Where a person is both employed and self-employed, the minimum expected income rule can be met by their expected employed income, their expected self-employed income or the aggregate of their expected income from their employment and their self-employment.

Section 10: The income of the person and his or her partner must not exceed limit

58. **Section 10** sets out the fifth condition of eligibility. This is that the person must not expect to receive income above a certain level when they make a declaration of eligibility. This condition must also be met by any partner of that person.
59. The maximum income limit is not restricted to income from employment or self-employment, but applies to income from all sources, including income from property, investments and dividends.
60. The amount of income, and how it should be calculated, will be specified in regulations made under subsections (1) and (2). Subsections (3) and (4) enable regulations to treat the condition as being or not being satisfied in certain cases. The Government intends to make regulations under subsection (3) to provide that a person will meet this condition where, in the tax year in which their declaration of eligibility falls, they do not expect to be liable to pay income tax at the additional rate or the dividend additional rate. The additional rate of tax is currently set at 45% and is payable by people whose total income in a tax year exceeds £150,000. The dividend additional rate is currently set at 37.5% and is paid by people whose total income in a tax year exceeds £150,000 and includes some dividend income.
61. The Government intends to make regulations under subsection (4) to provide that a person is to be treated as if their income exceeds the maximum limit where they expect to be taxed on the remittance basis. This is an alternative, and optional, basis of taxation which is available to a person who is resident but not domiciled in the UK. It means that they are only subject to UK tax on income and gains that are brought to the UK.
62. Subsection (4)(c) permits regulations to provide for further groups of people to be treated as not meeting the condition in this section.

Section 11: Neither the person nor his or her partner may be claiming universal credit

63. **Section 11** sets out the sixth condition of eligibility. This is that the person who makes a declaration of eligibility must not be claiming universal credit on the date on which they

make that declaration. This condition must also be met by any partner of that person. This prevents a person receiving childcare support under this scheme and universal credit at the same time.

64. Subsection (1) provides that a person meets this condition where, on the date of the declaration, universal credit is not payable to them and they have not made a claim which would lead to universal credit becoming payable to them for the relevant assessment period.
65. Subsection (1) refers to universal credit payable for ‘a relevant assessment period’. This term is defined in subsection (2) as any assessment period for the purposes of universal credit in which a declaration of eligibility is made or in which all or part of an entitlement period falls. This means that a person will fail to meet the condition in this section if universal credit is payable to them for a period which coincides with the date they make their declaration of eligibility or with the entitlement period for which they are making the declaration.
66. Subsection (3) provides that for the purposes of subsection (1), if the person has a universal credit award of nil (for example, where a sanction under universal credit has been applied) they will still be treated as having universal credit payable to them and so will not meet the eligibility condition in this section.
67. Subsection (4) deals with cases where a person is making a declaration of eligibility in order to open a childcare account. In such a situation, the person will not yet know the date of their first entitlement period, and so the three-month period following the date of that declaration is to be used instead.
68. Subsection (5) allows regulations to be made to specify other circumstances in which a person will be treated as meeting this condition of eligibility.

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

69. **Section 12** sets out the seventh condition of eligibility. This is that neither the person nor their partner (if they have one) is included in an Employer-Supported Childcare scheme which provides either childcare vouchers or directly-contracted childcare. This prevents a person receiving childcare support under this scheme and benefiting from these tax and NICs reliefs at the same time. However a person may continue to benefit from a workplace nursery provided by their employer and still remain eligible for support under this scheme.
70. Subsection (1) provides that a person meets this condition of eligibility if neither they nor their partner is an ‘eligible employee’ in respect of a ‘relevant childcare scheme’ on the date they make a declaration of eligibility. A ‘relevant childcare scheme’ is one in which an employer provides their employees with either childcare vouchers or directly-contracted childcare under Employer-Supported Childcare.
71. However, if the person making the declaration or their new partner (that is, a partner who was not their partner at the time of the person’s earlier declaration of eligibility) is an eligible employee the condition is met if the eligible employee intends to give their employer a ‘childcare account notice’. This is a notice informing the employer that they wish to leave the relevant childcare scheme in order to open a childcare account. This means that a person is allowed to wait until they are certain that they are eligible for the new scheme before they need to leave their Employer-Supported Childcare scheme.
72. Subsection (3) defines ‘eligible employee’ as having the meaning given by section 270AA or 318AZA of the Income Tax (Earnings and Pensions) Act 2003, which are inserted by sections 63 and 64 of the Act.

Section 13: Neither the person nor his or her partner may be receiving other childcare support

73. **Section 13** sets out the eighth condition of eligibility. This is that the person must not be receiving certain other types of childcare support. This condition must also be met by any partner of that person. This stops a person or their partner receiving support under the scheme when they are already benefiting from other childcare support.
74. For example, a person will not meet this condition if they are receiving support under the Childcare Grant administered by the Student Loans Company, which provides up to 85% financial support towards students' childcare costs. However, a person will still meet this condition if they benefit from payments that are made directly to their childcare provider, such as free early years provision. Regulations may also be made to provide other exemptions from this condition.
75. Subsections (1) and (4) stipulate that, on the date that they make a declaration of eligibility, the person must not be entitled to receive other forms of Government childcare support, or have made a claim to such support, for a period which includes the date of declaration or coincides or overlaps with the entitlement period for which the declaration is made.
76. Subsection (5) deals with cases where a person is making a declaration of eligibility in order to open a childcare account. In such a situation, the person will not yet know the date of their first entitlement period, and so the three-month period following the date of that declaration is to be used instead.