

Technical consultation on draft secondary legislation for the Childcare Payments Bill

Introduction

1. At Budget 2013, the Government announced the introduction of a new scheme, referred to as Tax-Free Childcare, designed to provide financial support to help working families with the cost of childcare. In particular the new scheme aims to support parents to take up paid work, or increase their existing working hours, should they wish to do so.
2. The scheme will be based on a system of childcare accounts whereby eligible parents will open an online account into which they will pay money towards their childcare costs and the Government will automatically top up amounts in the account at a rate of 20p for every 80p paid in by the parent. The amounts held in the childcare accounts will have to be used to pay for qualifying childcare.
3. Government support will be up to £2000 per child per year, although there will be no restriction on the number of qualifying children for whom support is available. Support will be restricted to children under the age of 12 and disabled children under the age of 17.

Childcare Payments Bill

4. Legislation to implement the new scheme, the Childcare Payments Bill, was introduced in the House of Commons on 5 June 2014. The Bill as introduced and accompanying Explanatory Notes together with an Impact Assessment can be found at <http://services.parliament.uk/bills/2014-15/childcarepayments/documents.html>
5. The Bill provides the overall structure of the scheme and the way in which it will operate. It also contains a number of delegated powers to be exercised by regulations made by statutory instrument which will provide for flexibility to amend the detailed rules of the scheme.

Technical Consultation on draft regulations

6. Two statutory instruments exercising the powers contained in the Bill have been prepared. The first is the draft Childcare Payments (Eligibility) Regulations which exercise the powers conferred on the Treasury. Broadly,

these regulations contain the detailed rules concerning eligibility for the scheme - for example what is meant by qualifying paid work.

7. The second Statutory Instrument is the draft Childcare Payments Regulations which exercise the powers conferred on the Commissioners for HMRC. Broadly, these regulations contain the detailed rules concerning the operation of the scheme - for example how and when a declaration of eligibility may be made.
8. This consultation invites interested parties to comment on both sets of draft regulations. Any comments on the draft regulations should be sent to tax-free.childcare@hmrc.gsi.gov.uk or Tax-Free Childcare Team, HMRC Room 1C/20, 100 Parliament Street, London SW1A 2BQ by 3 October 2014. We will also be arranging meetings to discuss the regulations and interested parties should contact us through the email address above for further details.
9. The draft regulations are published at <http://www.hmrc.gov.uk/drafts/>.

Next steps

10. Responses to this technical consultation will be reviewed and the draft regulations will be revised as appropriate before they are laid before Parliament.

Commentary on draft Regulations

Draft Childcare Payments (Eligibility) Regulations

Regulation 2 Interpretation

11. This regulation defines certain words used in the regulations.

Regulation 3 Eligible persons: partners

12. The Bill provides that for a person to be eligible for the scheme they must meet certain criteria and that, if the person has a partner, their partner must also fulfil certain criteria. The conditions that a partner must meet are contained in clauses 9 to 13 of the Bill and are:

- i. the requirement to be in paid work;
- ii. the requirement not to exceed a specified income limit;
- iii. the requirement not to be in receipt of universal credit;
- iv. the requirement not to be in an Employer-Supported Childcare scheme providing tax reliefs and National Insurance disregards for childcare vouchers or directly-contracted childcare;
- v. the requirement not to be receiving other childcare support - for example support under the Childcare Grant administered by the Student Loans Company

13. The Bill also provides that regulations can specify when a person is to be treated, or not treated, as another person's partner for the purposes of the scheme.

14. Regulation 3 provides that two people are regarded as partners if they are both over 16 and are either married or in a civil partnership and sharing a household or living together as a married couple or as civil partners. Where there is a polygamous relationship, the regulation provides that the first two parties to the marriage will be treated as partners but subsequent spouses will not be treated as partners for the purposes of the scheme. This takes the same approach as universal credit.

15. Regulation 3 excludes partners who are temporarily absent from the household for more than 6 months (for example, where a partner is on an extended visit to overseas relatives), or are in prison, from being treated as partners for the purposes of the scheme. The regulation specifically excludes prisoners in order to ensure that a person with a partner serving a sentence of less than 6 months will not be excluded from the scheme because their partner cannot meet the 'in work' rules.

Regulation 4 When a person is regarded as responsible for a child

16. The Bill provides for a person to be eligible for the scheme if they are responsible for a child. This includes a parent but could also be any person who has responsibility for the child.

17. Regulation 4 provides further detail about what is meant by having responsibility for a child. The main requirement is that the child normally lives with the person.
18. However, a person will not be regarded as responsible for a child if a child is absent from the household for more than 6 months or is in prison or being looked after by a local authority (except for short term respite care).

Regulation 5 Meaning of qualifying child

19. The Bill provides that regulations will define what is meant by a qualifying child for the purpose of the scheme. Regulation 5 provides that a child is a qualifying child until the first week in September following their eleventh birthday or, for disabled children, until the first week in September following their sixteenth birthday.
20. It is intended that there will be a phased rollout of the scheme, so that all under 12s are eligible within the first year of introduction. This regulation may therefore be amended to provide for different start dates, for example for different descriptions of children once the precise details of the rollout have been decided.
21. The regulation also defines a disabled child as one in respect of whom disability living allowance, personal independence payment or armed forces independence payment is paid, or who has certification that they are blind or have severe visual impairment.
22. The rules which refer to UK legislation above may not be applicable to individuals who are treated as being in the UK but do not live in the UK. Paragraph (2)(a)(iv) therefore provides rules for equivalent provisions in the EEA to ensure parity of treatment for these people.

Regulation 6 Temporary absence from the UK

23. The Bill provides that in order to be eligible for the scheme, a person must be in the UK on the date of declaration of their eligibility for the scheme. Broadly, a person will meet the condition to be in the UK if they are present and ordinarily resident in the UK. This follows the approach of tax credits, National Insurance and Child Benefit. Regulations 6, 7 and 8 provide the detailed rules for determining when a person will be treated as being, or not being in the UK.
24. Regulation 6 provides that any absence from the UK of up to 8 weeks, for example a holiday, is to be disregarded provided that the person is in all other respects an eligible person immediately before the period of absence begins. Longer absences of up to 6 months may also be disregarded if the person is being treated for an illness or accompanying their partner or child who is being treated for an illness, or the absence is due to the death of the person's partner or child or a close relative. The regulation defines 'close relative' as the person's parent or parent-in-law, son or son-in-law, daughter or daughter-in-law, siblings, step-parents and step-sons and daughters, brother or sister.

25. Temporary absences of up to 6 months are also disregarded where the person is working outside the UK as a mariner or oil rig worker. This allows the account-holder continuing entitlement even if they are temporarily working and living outside the UK in these specific situations.

Regulation 7 Individuals treated as being, or not being, in the United Kingdom

26. A person will be treated as being in the UK if they are ordinarily resident in the UK. The term “ordinarily resident” is not defined, but takes its established meaning so that a person will be treated as ordinarily resident in the UK if they are normally residing there (apart from temporary or occasional absences), and their residence here has been adopted voluntarily and for settled purposes as part of the regular order of their life for the time being. Crown Servants (for example diplomats) and members of the Armed Forces, (together with any accompanying partners), who are posted overseas will also be treated as being in the UK provided that they were resident in the UK immediately before their posting or, if there are consecutive postings, then immediately before the first of those.
27. In addition, individuals who are resident in other Member States of the EU and the EEA who are working in the UK will also be treated as being in the UK for the purposes of the scheme.
28. Individuals who are not ordinarily resident in the UK will not be eligible for the scheme except where regulation 8 applies.
29. Clause 10 of the Bill provides for an upper income limit so that a person (and their partner if they have one) will not be eligible for the scheme if their income is such that they are liable to pay income tax at the additional rate or the dividend additional rate. Treaty non-residents are taxed in the UK as non-residents and may have income that is exempt from UK taxation and not therefore taken into account for the purposes of deciding the rate at which they should pay tax. This regulation therefore provides that such individuals are to be treated as not being in the UK and so will not be eligible for the scheme.
30. This regulation also provides that non-UK and non-EEA nationals who are in the UK but are subject to immigration control will not be treated as being in the UK for the purposes of the scheme. Immigration control for example includes people who need permission to enter or remain in the UK but do not yet have it or have permission to enter or remain in the UK but not to claim benefits or use other public funds, such as getting NHS treatment.

Regulation 8 Individuals not ordinarily resident, but treated as being in the United Kingdom

31. Under this regulation certain groups who are physically present in the UK will not also need to meet the ‘ordinarily resident in the UK’ test in order to meet the condition in clause 8 of the Bill. These groups are:
- (i) refugees
 - (ii) people who have been granted certain sorts of leave to be in the UK under the Immigration Act 1971, and

- (iii) a person who is not subject to immigration control and is in the UK by virtue of deportation, expulsion or other removal by compulsion of law from another country to the United Kingdom.

Regulation 9 The requirement to be in qualifying paid work

- 32. The Bill provides for regulations to specify what is meant by qualifying paid work in order for the person, and their partner if they have one, to be eligible for the scheme.
- 33. Regulation 9 provides that a person (and their partner if they have one) must be in paid work (as an employed or self-employed person), which is further defined as work done for payment and excludes charitable or voluntary activities where a payment may be made to cover expenses. A person is required to have a minimum amount of expected income from that work for a specified period. This period is defined as the period for which the person is making their declaration or, where the person is making an application to open an account, for the 3 months starting with the date of declaration. The minimum amount of expected income is based on a person working 8 hours a week at the prevailing rate of the National Minimum Wage and is described as the 'relevant threshold'. This means that based on the current rate of the National Minimum Wage¹ for those aged 21 or over, parents would each have to earn a little over £50 a week on average to qualify for the scheme or just over £650 across a quarterly entitlement period.
- 34. Paragraph (5) provides the formula for calculating the relevant threshold so that the 8 hours Minimum Wage amount is multiplied by the number of weeks within the specified period to provide a minimum expected income amount that needs to have been earned over the whole period. This means that a person who has irregular earnings over a period, for example a shift worker who works one week on and one week off, can remain eligible for the scheme if their expected income over the period exceeds the relevant threshold.
- 35. Where a person is both employed and self-employed, their expected income will be the aggregate of their expected income from employment and self-employment (paragraph (6)).
- 36. Regulation 9(2) provides that a person who has accepted an offer of paid work on or before the date of declaration and is due to start work within 7 days will be regarded as being in work. This will support parents in the transition to the workplace and allow parents to arrange and settle their child(ren) into childcare in advance.

Regulation 10 Calculation of expected income

- 37. Regulation 10 provides the rules by which a person should calculate their expected income. For an employed person, this is the amount expected to be earned by them under any employment and, if they are a UK resident working

¹ The current rate of the National Minimum Wage is £6.31 for those aged 21 and over; £5.03 for those aged 18-20, £3.72 for under 18s and £2.68 for an apprentice.

overseas, will include any foreign income expected to be earned under that employment.

38. The term ‘earnings’ is defined for the purpose of the scheme in the same way as section 62 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) so that earnings mean any salary, wages or fee; any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money's worth; and anything else that constitutes an emolument of the employment².
39. For self-employed people, their expected income will be the receipts the person expects to derive from their trade, profession or vocation less the amount of expenses (other than capital expenses) that the person expects to incur for the same purposes. Where the self-employed person is a member of a business partnership, the person's expected income will be calculated as their share of the receipts less expenses (other than capital expenses) that the partnership expects to receive.

Regulation 11 Self-employed persons: start up periods

40. This regulation provides that a newly self-employed person will not have to meet the minimum income requirement for their first four entitlement periods if their first entitlement period falls within the first 12 months of the start of their business. This is because many start-up businesses do not make a profit in their first year and therefore meeting the minimum income level may be challenging. A self-employed person will be allowed one start-up period every five years.

Regulation 12 Qualifying paid work: time off in connection with sickness or parenting.

41. Regulation 12 provides for various circumstances in which a person will not have to meet the requirement to be in paid work because they are on sick or parental leave including any period when they are receiving statutory sick pay, ordinary or additional maternity, paternity or adoption leave. This exemption will apply for the full 52 weeks maternity leave allowed and it will also be possible to have a period of sick leave before or after maternity leave and still remain eligible for the scheme. However, this exemption will not apply in relation to an application for support in respect of any child that is the reason for the parental leave.
42. This regulation also applies to the person's partner.
43. This regulation applies to both employed and self-employed individuals.
44. The rules which refer to UK legislation above may not be applicable to individuals who are treated as being in the UK but do not live in the UK, so this regulation also provides rules for equivalent provisions in the EEA to ensure parity of treatment for these people.

² HMRC Manual EIM00520(meaning of earnings).

Regulation 13 Qualifying paid work: caring, incapacity for work or limited capability for work

45. Regulation 13 provides the rules for partners where one person is a full-time carer or has limited capability for work due to a health condition or disability and their partner is in qualifying paid work (or is regarded as being in qualifying paid work under regulation 12) to be regarded as in qualifying paid work and therefore eligible for the scheme. The aim here is to provide support with childcare costs to enable the other partner to work.
46. The regulation lists the benefits that the person may be entitled to and includes incapacity benefit; severe disablement allowance; long-term incapacity benefit; carer's allowance; contributory employment and support allowance; and National Insurance credits on the grounds of incapacity for work or limited capability for work.
47. This regulation applies to both employed and self-employed individuals.
48. The rules which refer to UK legislation above may not be applicable to individuals who are treated as being in the UK but do not live in the UK so this regulation also provides rules for equivalent provisions in the EEA to ensure parity of treatment for these people.

Regulation 14 Qualifying childcare: work requirement

49. The Bill provides that for childcare to qualify for the scheme, the costs of that childcare must be incurred where the main reason, or one of the main reasons, for doing so is to enable the person to work and, if they have a partner, to enable both the person and their partner to work. The rules will not strictly tie the amount of childcare used to the number of hours worked by the parent. Parents will be free, for example, to use their childcare accounts to pay for childcare used while they are travelling to work, or to pay for childcare in blocks of time or sessions, as long as the reason for doing so is to put them in a position to work.
50. This regulation provides that the definition of work to determine whether childcare is qualifying will be the same definition provided for regulation 9(2) which provides the rules for determining what is meant by being in paid work.
51. However, the requirement that the childcare be incurred for the purpose of enabling the person to work may be disregarded for any period when the person or their partner is on sick or parental leave as described in Regulation 12.

Regulation 15 Income not to exceed a certain level

52. The Bill provides an upper income limit so that to be eligible for the scheme a person must not expect to earn income above a certain level. This condition must also be met by the partner of that person, if they have one. This upper limit applies to income from all sources, including income from property, investments and dividends.

53. Regulation 15 provides that the maximum income level is reached if the person expects to pay UK income tax at the additional rate or the dividend additional rate for the tax year in which they make their declaration of eligibility for the scheme. 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 payable by people whose total income in a tax year exceeds £150,000 and includes some dividend income.
54. The UK tax rates are not applicable to individuals who are not liable to UK income tax so rules are also provided to calculate an equivalent threshold for these people. This regulation also provides that a person is to be treated as exceeding the maximum income 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. A person who is taxed on the remittance basis is only subject to UK taxation on their overseas income and gains that are brought to the UK.) This is to achieve parity with taxpayers within the UK as it is possible that a person taxed on the remittance basis could have income outside the UK which exceeds £150,000.

Regulation 16 Neither the person nor his or her partner may be claiming universal credit

55. The eligibility rule in clause 11 of the Bill that neither the person, nor their partner if they have one, may be claiming universal credit will not be relevant to individuals who are treated as being in the UK but do not live in the UK, as universal credit will not be available in the person's country of residence. This regulation provides rules for equivalent provisions to ensure parity of treatment for these people.

Regulation 17 Application of sections 12 and 13 to EEA residents

56. The eligibility rules in clauses 12 and 13 of the Bill provide that neither the person - nor their partner if they have one - may be included in an Employer-Supported Childcare scheme which provides either childcare vouchers or directly-contracted childcare or receiving other childcare support. These rules will not be relevant to individuals who are treated as being in the UK but do not live in the UK as those methods of support will not be available in the person's country of residence. This regulation provides rules for equivalent provisions to ensure parity of treatment for these people.

Regulation 18 Power to disqualify tax credit and universal credit claimants: change of circumstances

57. The Bill provides that a person may not receive support under both universal credit or tax credits and the new scheme at the same time. It is, however, inevitable that some individuals will experience genuine changes in their circumstances resulting in a need to apply for tax credit or universal credit. A person can start claiming tax credits or universal credit during an entitlement period for which they are entitled to top-up payments, if their personal circumstances do change.

58. To prevent constant switching between regimes resulting in short periods of overlap support from both schemes, where a person has not had a change in their personal circumstances, the Bill provides that a person may be disqualified from the scheme. This can happen if they claim tax credits or universal credit during an entitlement period for which they are entitled to top-up payments, and then, within 12 months, return to the new scheme. On the first occasion a person will be given a warning notice. If they continue to move between the schemes in this way, they will then be disqualified.
59. As set out in the Bill, there will be no such disqualification from the scheme where there has been a change of circumstance since the beginning of the entitlement period. This regulation sets out what is to be regarded as a change of circumstance to prevent disqualification from the scheme. The permitted changes in circumstances are:
- i. the person or their partner no longer meet the conditions of eligibility, for example, the requirement to be in paid work;
 - ii. there is a change in the composition of the person's household, for example a partner joins the household;
 - iii. a person becomes responsible for another child which means that they become eligible for tax credits or universal credit;
 - iv. the person or their partner is absent from the household for one month;
 - v. a child is awarded or ceases to be entitled to disability living allowance or personal independence payment or armed forces independence payment ;
 - vi. a change in employment;
 - vii. any change that means the person is claiming tax credits or universal credit for the first time.

Draft Childcare Payments regulations

Regulation 2 Interpretation

60. This regulation defines certain words used in the regulations.

Regulation 3 Qualifying childcare: registered or approved childcare

61. The Bill provides that childcare must be registered or approved to qualify for the scheme. Regulation 3 sets out the types of childcare which are registered or approved and will qualify for the scheme.
62. Childcare in England will qualify if it is provided by a person registered with HM Chief Inspector of Schools under Part 3 of the Childcare Act 2006 for example a childminder or nanny. This means that the person will be named on one of two registers maintained by the Office for Standards in Education, Children's Services and Skills (Ofsted) which is the non-ministerial government department of the Inspector of Schools.
63. Childcare will also qualify if it is provided by:
- i. a school, at any time where the child has not reached compulsory school age;

- ii. a school, as part of the school activities, out of school hours (for example after-school clubs) where the child has reached compulsory school age; or
 - iii. a domiciliary care provider registered with the Care Quality Commission under the Health and Social Act 2008 (for example a care worker or nurse from an agency registered for providing care in the home).
64. Paragraphs (3) to (5) provide the rules for care provided in Wales, Scotland and Northern Ireland and allow childcare inspected by the relevant devolved authority to qualify for the scheme.
65. Paragraph (6) provides the rules for qualifying childcare outside the United Kingdom. Such childcare must be approved by an organisation accredited by the Secretary of State for example the Minister for Defence. The aim of this regulation is to provide for qualifying childcare that may be used by Crown Servants or members of the armed forces when serving outside the UK.
66. Care provided by a parent or parent's partner, by a close relative of the child in the child's home, or by a foster parent of the child will not qualify for the scheme.
67. The regulation also provides that childcare in England and Northern Ireland will not be qualifying childcare if the childcare provider is in breach of the requirement to register with the appropriate authority, for example because of an outstanding action or inquiry.

Regulation 4 Entitlement periods

68. The Bill provides that the standard entitlement period is 3 months. Regulation 4 provides that the first entitlement period begins on the day on which HMRC has confirmed that the applicant is eligible for the scheme. Subsequent entitlement periods begin on the day after the previous entitlement period ends. This means that each entitlement period will begin on the same day of the month, except where an entitlement period ends in the last few days of the month, in which case the regulation sets out special rules to ensure that entitlement periods flow consecutively and consistently.

Regulation 5 Variation of entitlement periods

69. Regulation 5 allows HMRC to vary the length of the first entitlement period so that it, and all following entitlement periods, will end around the middle of the month, and so be less likely to disrupt payments (as days around the end of the month are when payments into and out of childcare accounts are most likely). Entitlement periods can also be varied so that for example entitlement periods for siblings' accounts can be aligned making the process as simple as possible for applicants.
70. The Bill provides that the maximum value of qualifying payments (the relevant maximum) which a person can make into a childcare account in an entitlement period is £2000. This figure will need to be adjusted proportionately for entitlement periods that are not a standard 3 months. This

regulation provides the formula to calculate the relevant maximum. The number of days in the entitlement period is divided by 91, which represents the length of an average quarter (365 days in a year divided by 4 quarters and rounded off), and multiplied by £2000. For example, if an entitlement period is varied so that there are 75 days in the entitlement period then the relevant maximum for that period would be calculated as £1648.35 (rounded off). If the account holder deposited the maximum £1,648.35 this would be topped-up by £412.09.

Regulation 6 Declarations of eligibility

71. The Bill provides that a person must make a statement or declaration of eligibility that they meet the conditions for the scheme. Regulation 6 allows HMRC to specify the form and precise content of the declaration and require it to be made electronically where possible. Customer guidance will be provided by HMRC in due course.
72. Declarations must be made when a person applies to open an account and to confirm ongoing eligibility for each subsequent entitlement period (“a reconfirming declaration”). Parents will be notified of the specific window in which they can make a reconfirming declaration. This will last 21 days in order to enable them to reconfirm their eligibility at a time that suits. In order for there to be no disruptions to entitlement periods and payments, this period will run from 28 days before the start of the entitlement period for which they are declaring, and end 7 days before the start of that entitlement period.
73. Account-holders may nevertheless make a reconfirming declaration during the 7 days immediately before the start of the entitlement period, but if they do so HMRC will not be obliged to determine that the declaration is valid (so that, under clause 4(2)(a) of the Bill, qualifying payments can be made into the childcare account) until 7 days after the declaration has been made. This is to encourage people to reconfirm during the notified 21 day period so that HMRC can process the reconfirmation in good time before the start of the entitlement period, and payments into and out of the childcare account will not be disrupted. The process will be designed so that an account-holder will receive a series of prompts reminding them to make their reconfirming declarations in good time.

Regulation 7 Late declarations of eligibility

74. All declarations of eligibility must be made by the end of the entitlement period for which they are made. A declaration of eligibility made during the entitlement period for which it is made is a “late declaration”.
75. As for declarations made in the 7 days before the start of the entitlement period, where a late declaration is made HMRC will not be obliged to determine that the declaration is valid until 7 days after the declaration is made. Only then will it be possible for qualifying payments to be made into the childcare account. In practice parents will need to avoid making their declaration in the final 7 days of the entitlement period for which they are declaring, because HMRC will not be obliged to determine the validity of such

a declaration until after the entitlement period has ended, when qualifying payments will no longer be possible.

76. The other consequence of making a late declaration is that the account-holder's 'relevant maximum' (the maximum qualifying payment that may be made into the childcare account for an entitlement period) may be reduced. This will occur when the account holder is unable to confirm that they were eligible throughout the period, up to the point they reconfirmed. The relevant maximum will be reduced to an amount proportionate to the time between the date HMRC determine that the declaration is valid and the end of the entitlement period. The amount of relevant maximum will be calculated using the formula provided in this regulation so that the number of days between HMRC determining that the declaration is valid and the end of the entitlement period is divided by 91, which represents the length of an average quarter (365 days in a year divided by 4 quarters and rounded off), and multiplied by £2000. For example, if a declaration is late so that the entitlement period is reduced to 61 days, then the relevant maximum for that period would be calculated as £1340.66 (rounded off). If the account holder deposited the maximum £1,340.66 this would be topped-up by £335.17.
77. However, it is inevitable that some otherwise eligible individuals will make late declarations and it is not intended that individuals who do so, but who have otherwise met the eligibility conditions from the start of the entitlement period, should lose out on their entitlement to top-up payments. Therefore, paragraph (4) of this regulation allows HMRC to treat late declarations as timely if they are satisfied that the applicant (and their partner if they have one) continuously met the conditions of eligibility since the beginning of the entitlement period and not just on the day of the reconfirming declaration. In these circumstances, the person's relevant maximum for the entitlement period will not be reduced.
78. For example, if an individual forgets to make a timely reconfirmation towards the end of their first entitlement period (EP1) for their second entitlement period (EP2) and makes a late declaration two months into EP2, and they have met the eligibility conditions throughout the period from the start of EP2 up to and including the date of declaration, they will be eligible for the full relevant maximum for EP2 even though there is only one month of the entitlement period to run.

Regulation 8 Circumstances where eligible persons unable to act – receivers etc

79. This regulation provides for circumstances where a person meets all the eligibility criteria but has had a receiver appointed by the Court of Protection in England and Wales or the equivalent in Scotland and Northern Ireland to manage their affairs. For example a person may be responsible for a child and be in paid work but lack capacity to make specific decisions and so require someone to manage their affairs. The receiver will be able to make a declaration of eligibility, open a childcare account and manage a childcare account on behalf of that person.

Regulation 9 Circumstances where eligible persons unable to act – other appointed persons

80. This regulation deals with circumstances in which a person is unable to act but no receiver (or equivalent) has been appointed; for example the account-holder has an accident and is unable to manage the account but could remain eligible for some time due to the provision to treat people on sick leave as if they are working. The social security rules allow someone to be appointed by the Secretary of State to manage a person's benefits and if someone has been appointed under that provision, then that person will also be able to make a declaration of eligibility, and open and manage a childcare account on behalf of the person who is unable to act. If nobody has been appointed under that rule, then HMRC can appoint a person (who has applied in writing to HMRC to be appointed) to make a declaration of eligibility, and open and manage a childcare account on behalf of the person who is unable to act. The person concerned must be a "natural person" (that is, not a legal person such as a company) and must be over the age of 18. These appointments will cease if HMRC terminates the appointment, or the person appointed resigns from the appointment with one month's notice or if a receiver is appointed.

Regulation 10 Appointment by account-holder to manage childcare accounts

81. It is likely that there may be circumstances where an account-holder may wish someone to be able to manage the childcare account on their behalf. For example there may be times when it would be more practicable for the account-holder's partner to make payments from the account. This regulation allows an account-holder to nominate another individual to manage the account, but to avoid any conflict of interest within the scheme that person cannot be an account provider or connected to an account provider or a person who is providing childcare for the account-holder.
82. The nominated person will not be allowed to make a declaration of eligibility in respect of, or manage more than, 5 childcare accounts. This is to prevent large-scale 'childcare account management' activities. There is one exception, where the nominated person is the account-holder's partner. This is so as not to disadvantage families with more than 5 children. Nominations must be made before the nominated person performs any actions on behalf of the account-holder.

Regulation 11 Opening a childcare account

83. This regulation provides that applications to open an account must be made electronically and in a particular form. The applicant will need to provide information to identify details for themselves, their partner if they have one and the child in respect of whom they wish to open the account. HMRC will require applicants to provide the Child Benefit number if there is a Child Benefit award. Where the applicant is not the payee of the Child Benefit award and does not know the number, they will need to provide another relevant form of evidence as specified by HMRC, for example the child's birth certificate, to confirm the child's details.

84. Self-employed individuals need to provide their (Self-Assessment) unique taxpayer reference or a statement that they have registered as self-employed with HMRC. Any non-UK applicant whose partner works in another EEA state will be required to produce evidence that their partner is in qualifying paid work.
85. Examples of the information that will be required at registration were provided in Box 5A of *Delivering Tax Free Childcare: the Government's response to the consultation on design and operation*³ and this table is reproduced at Annex A. (It does not address the somewhat different information that will need to be provided by non-residents.)

Regulations 12, 13 and 14 Payments into a childcare account: variation of relevant maximum

86. Regulation 12 provides that the relevant maximum is reduced in two specific circumstances. These are when the child ceases to qualify for the scheme during an entitlement period or when a late reconfirmation terminates a tax credits claim. When one of these circumstances applies the relevant maximum is reduced in accordance with regulation 13.
87. Regulation 13 provides the formula to determine the relevant maximum for the circumstances described in regulation 12. Where a child no longer qualifies for the scheme, the amount of relevant maximum will be calculated so that the number of days between the start of the entitlement period and the child ceasing to be a qualifying child (which will always be in the September following the child's birthday) is divided by 91, which represents the length of an average quarter (365 days in a year divided by 4 quarters and rounded off), and multiplied by £2000. For example, if the child was only eligible for 21 days of the entitlement period, then the relevant maximum for that period would be calculated as £461.54 (rounded off). If the account holder deposited the maximum £461.54 this would be topped-up by £115.39.
88. A similar formula is used where a tax credit award is terminated, the difference being that the number of days ('A') which is divided by 91 is the number of days between the relevant day and the end of the entitlement period. The 'relevant day' is set out in subsection (1) of Clause 29 of the Childcare Payments Bill and in the case of a late declaration is the day the person makes their declaration of eligibility.
89. For example, a person receiving support under the scheme experiences a change in circumstances (for example a household breakdown) during an entitlement period (EP1) and makes a tax credits claim. So at the reconfirmation point for EP2, at the end of EP1, the person is in receipt of tax credits. They could reconfirm but they do not as they wish to remain in tax credits. The person's circumstances change again part way through EP2 and they decide they would now prefer to be in the new scheme. On day 70 of EP2 they make a declaration of eligibility. The person's tax credits award is terminated on day 69, the day before the relevant day. Because the person has

³https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318953/PU1607_Tax_free_Childcare_response.pdf

received tax credits support for 69 days of this entitlement period the relevant maximum is reduced for the EP2 from the relevant day until the end of the entitlement period. This means that for EP2 there is neither an overlap nor a gap between the person's support under the two schemes.

90. Regulation 14 provides details of other cases where the relevant maximum will need to be varied. In all of these cases the basic relevant maximum remains as £2,000 (or whatever other figure results from calculations under regulation 5) but this is added to in order to compensate the account holder for one of a series of circumstances. These are as follows:
- i. A person wins an appeal or a review of an HMRC decision. The relevant maximum will in this instance be increased to fairly compensate for any loss suffered before the decision under challenge is quashed. For example on 1 January a person applies to open a childcare account and makes a declaration of eligibility. On 1 February, HMRC decides not to grant the application. On 2 February, the applicant applies for a review of the decision and on 28 February HMRC confirms its initial decision. The applicant then appeals this decision on 1 March and on 1 April the appeal is upheld so that HMRC's original decision must be reversed. On 3 April HMRC opens the childcare account. The relevant maximum will be increased to compensate for the period (roughly two months) where the person was denied access to government support under the scheme.
 - ii. A person has applied to open an account but HMRC is waiting for Employment Support Allowance or Carer's Allowance to come into payment for the person or their partner, in order to be able to confirm the applicant's eligibility. The relevant maximum will be increased to fairly allow for the time between the date of application for the account and the date HMRC confirms eligibility. This is so despite the fact that in this case HMRC was not responsible for the delay. For example, on 1 January a person applies for Carer's Allowance and on 1 February applies to open a childcare account and makes a declaration of eligibility. The applicant's declaration cannot be validated because they are not an eligible person until the Carer's Allowance claim is confirmed, but otherwise they meet all the other eligibility conditions on this day. On 1 April the Carer's Allowance claim is accepted and comes into payment, backdated to 1 January. On 2 April HMRC confirms eligibility to open a childcare account. The relevant maximum will be increased to compensate for the time between 1 February and 1 April where the person did not have access to government support. The increased relevant maximum cannot be increased to compensate for the month of January when the person had not applied for the scheme.
 - iii. A person has applied to open an account for a disabled child but is waiting for disability living allowance, personal independence payment or Armed Forces Independence Payment to come into payment. The relevant maximum will be increased similarly to case II above.

91. The increases in relevant maximum referred to in cases (i), (ii) and (iii) above may be spread to provide benefit over several entitlement periods. This will always be with the agreement of the account holder and reflects the fact that account holders will commonly not have sufficient funds to use up the whole of their additional relevant maximum in a single entitlement period.
92. The rules which refer to UK legislation above may not be applicable to individuals who are treated as being in the UK but do not live in the UK. Paragraph (4) provides rules for equivalent provisions in the EEA to ensure parity of treatment for these people.

Regulation 15 Compensatory payments

93. The Bill provides for compensatory payments to be made to provide compensation for any top-up payments which a person has, through no fault of their own, not been able to receive. For some applicants an increase in the relevant maximum as provided for in regulation 14 may be sufficient compensation. However, it may not be the most appropriate form of redress if the person's childcare costs do not exceed the standard relevant maximum as they will be unable to make use of the increase. So for scenarios (i) to (iii) above, a person will be able to receive a compensatory payment instead. In addition, a compensatory payment can also be made where the circumstances in scenario (ii) apply but the applicant is no longer eligible for another reason unconnected with the ESA or CA award and for scenario (iii) where there is no longer a qualifying child.
94. The regulation provides that the maximum compensatory payment that can be made is 20% of the qualifying childcare costs which have been spent by the person during the period in which the person lost out on top-up payments (subject to the same maximum that would have applied had the person had a childcare account). The person will be required to produce evidence of the amounts paid for example a receipt in order for a compensation payment to be made.
95. However, a compensation payment may be reduced if the account-holder has already received some restitution by way of an increase in relevant maximum under regulation 14.

Regulation 16 Account restriction orders

96. The Bill provides that restrictions may be placed on an account to prevent further qualifying payments being made into the account, or payments being made from the account for qualifying childcare. This regulation provides the conditions by which HMRC is able to restrict the use of childcare accounts.
97. An account restriction order may be made if a person is required to return a top-up payment to HMRC but does not do so within the time allowed. The main circumstances in which a top-up payment needs to be returned are:
- i. When a person or a person's partner has opened a childcare account at a point when they are appealing against a decision not to allow

them to claim tax credit or universal credit. If the person then successfully wins this review or appeal against the tax credits or universal credit decision, this will result in a backdated tax credit or universal credit award. This means that they will have received support under both schemes. The Bill provides that any top-up payments that a person received during the same period in which they also received a backdated tax credit award, be returned to HMRC.

- ii. When a person or person's partner has declared that they will give notice to leave an Employer-Supported Childcare scheme but does not do so and therefore has received support under both schemes. The Bill provides that the person must return to HMRC any top-up payments made during the entitlement period.
- iii. Top-up payments are also required to be returned in circumstances where the person to whom they were paid was not entitled to them or when they are used for non-qualifying purposes.

98. An account restriction order may also be made when a person is liable to pay an amount in the new scheme that results from an assessment for making an inaccurate declaration of eligibility, or failing to comply with an information notice or providing inaccurate information or documents or making prohibited payments or dishonestly obtaining top-up payments and has not paid the amount within the time allowed.

99. An account restriction order may also be made if HMRC has reasonable grounds to suspect fraud relating to payments made from a childcare account for childcare, and that top-up payments will be lost from the account, and not be recoverable by Government, if the restriction is not applied.

100. An account restriction order may also be made in cases where an individual wishes to have an active childcare account for a child but some other person already holds a childcare account in respect of that child. HMRC will decide who is to have the active childcare account in such cases, which may lead to the existing childcare account being restricted to enable the second person to operate an active childcare account.

101. A restriction order will specify the period during which the restriction is in place and also which restrictions apply in the particular circumstances.

Regulation 17 Closure of a childcare account

102. This regulation provides for non-active childcare accounts (that is, childcare accounts where there is no current entitlement to receive top-up payments) to be closed after 2 years and after 1 year in cases where the child is no longer a qualifying child. When an account is closed, the top-up element of any funds remaining in the account will be calculated using the method provided for in clause 21 of the Bill and returned to HMRC, and the remaining funds (the relevant percentage) returned to the account-holder.

103. An account will also be closed when an account-holder has died and the relevant percentage returned to the account-holder's personal representatives (executor or, for an intestacy, administrator).

Regulation 18 Power to obtain information or documents

104. This regulation allows HMRC to issue an information notice requiring certain information from:

- i. the account-holder or applicant,
- ii. their partner if they have one, or their agent;
- iii. a person providing childcare to the account-holder;
- iv. the account-holder's employer;
- v. an employer or voucher provider providing Employer-Supporter Childcare as defined in clause 12 of the Bill; and
- vi. anyone who may have information relevant to suspected non-compliance with the Act.

105. HMRC must specify the reasons for requiring the information, details of the information requested and the period in which the information must be provided, and allow at least 30 days from the date of the notice for the information to be provided.

Regulation 19 Disqualification orders: meaning of relevant benefit

106. The Bill provides that a person can be disqualified from the scheme if that person has been convicted for dishonestly acting or failing to act in order to obtain another relevant benefit. This regulation defines relevant benefits by reference to the Social Security Fraud Act 2001 and includes for example universal credit, income support, or housing benefit.

107. The rules which refer to UK legislation above may not be applicable to individuals who are treated as being in the UK but do not live in the UK, so the regulation also provides rules for equivalent provisions in the EEA to ensure parity of treatment for these people.

Regulation 20 Requirement to make applications and declarations electronically

108. The scheme is being developed on a 'digital by default' basis so regulation 20 requires applications to open accounts and declarations of eligibility to be made electronically. However exceptions will be made for individuals who object to digital means on religious grounds; or are unable to use electronic communications for example due to age, or disability, or location; or because a court order prohibits their use of electronic communications. In these instances, HMRC will specify how an application or declaration may be made and further customer guidance will be provided.

Annex A: Application information requirements

- Confirmation of whether the Tax-Free Childcare registration is being made by a lone-parent or two-parent household.
- Personal details for all adults named on the application – including:
 - name;
 - address;
 - date of birth;
 - National Insurance number; and
 - email address and telephone number (for contact purposes).
- Confirmation that the individual(s) hold(s) responsibility for the child in question.
- Child’s personal details (including name, address, date of birth).
- Child Benefit reference number relating to the child.
- Where appropriate, Disability Living Allowance (or Personal Independence Payment) reference to confirm that the child is registered disabled, or relevant supporting evidence to confirm that the child is registered blind.
- Details of the employment status of all parents named on the application:
 - if employed – PAYE reference number(s) (or confirmation that employment is to begin in the next seven days); and
 - if self-employed – date of commencement of trading and Self-Assessment Unique Taxpayer Reference or evidence to confirm that it has been applied for.
- Confirmation of whether an applicant is on statutory leave.
- Declaration that all individuals named on the application meet the minimum income level.
- Declaration that no individual named on the application earns, or expects to earn, in excess of the upper income limit.
- Declaration that no individual named on the application is receiving tax credits, or that the individual wants to automatically end their entitlement to tax credits by virtue of them registering for Tax-Free Childcare.
- Declaration that no parent named on the application is in receipt of Employer-Supported Childcare tax relief and National Insurance Contributions disregard, or that such receipt will be brought to an end by virtue of them registering for Tax-Free Childcare.
- Declaration that no additional disqualifying support for the child in question is being claimed by a parent named on the application.