



HM Revenue
& Customs

Response to the technical consultation on draft secondary legislation for the Childcare Payments Act

Introduction

1. At Budget 2013, the Government announced the introduction of a new scheme, Tax-Free Childcare, designed to provide financial support to help working families with the cost of childcare. More specifically, the new scheme aims to support parents in their decision 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. Eligible parents will open an online account into which they will pay money. The Government will then 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 which enables the parent to work.
3. Government support will be up to £2,000 per child per year. Parents will be able to have one childcare account for every qualifying child. A child will qualify for the scheme until the first week in September following their eleventh birthday or, for disabled children, until the first week in September following their sixteenth birthday.

Childcare Payments Act 2014

4. Legislation to enact the new scheme received Royal Assent on 17 December 2014. The Childcare Payments Act 2014 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 Act 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 set out some of the detailed rules of the scheme.

Technical Consultation on draft regulations

6. Two statutory instruments exercising many of the powers contained in the Act were drafted for consultation. The first is the draft Childcare Payments (Eligibility) Regulations which exercise the powers conferred on the Treasury. These regulations contain the detailed rules concerning eligibility for the scheme such as 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 HM Revenue and Customs (HMRC). These regulations contain the detailed rules concerning the operation of the scheme such as how and when a declaration of eligibility must be made.

Responses to the Consultation

8. The consultation on these draft regulations opened on 14 July 2014 and closed on 3 October 2014. HMRC received comments from 13 organisations. The majority of the responses were from childcare providers and children's charities, while two were from other government departments. Annex A provides a list of the organisations who responded to the consultation. In addition HMRC offered to meet with interested stakeholders to discuss the draft regulations and held two meetings in September. Respondents welcomed the opportunity to comment on the regulations.
9. The Government is grateful to all those organisations who responded for their comments, which have been carefully considered. Some respondents raised policy questions or suggestions that were outside the scope of the consultation, for example the use of a name other than Tax-Free Childcare for the scheme and that households in which only one partner is in paid employment should benefit from the scheme.

Changes made

10. Some changes have been made to the draft regulations as a result of the representations made.
11. Several respondents suggested that the 7-day window in regulation 9 of the Eligibility regulations during which a person could apply for a childcare account in anticipation of starting work was too short to allow parents to make adequate childcare arrangements. In light of the comments made, and as announced by the Exchequer Secretary to the Treasury during the Commons Committee stage of the Childcare Payments Bill, the Government has decided to increase this period to 14 days. Parents about to start work, or about to return to work following a period of unpaid leave or parental leave¹ will be able to benefit from this change.

¹ Subject to continuing to meet the other conditions of eligibility, parents will remain eligible for Tax-Free Childcare in respect of existing children throughout periods of paid or unpaid parental leave. Parents will be able to open a childcare account in respect of the child for whom they are taking parental leave 14 days before they are due to return to work.

12. Some respondents expressed concern that some self-employed parents with fluctuating earnings will not have access to top-up payments in some entitlement periods even though over a year they may well exceed the minimum earnings threshold. In order to address this, regulation 9 has also been redrafted to allow self-employed individuals to calculate their income over a tax year, if they wish to do so.
13. Consistency with other legislation, for example new legislation introducing Shared Parental Leave, and that of the devolved administrations, was also raised by some respondents. HMRC has been working closely with other government departments and the devolved administrations in order to ensure that the legislation is consistent. The regulations have been redrafted so that a person will not have to meet the requirements to be in paid work while on Shared Parental Leave. Other minor amendments have been made to ensure legislative consistency.
14. Representations were made during consultation that additional support should be provided for disabled children in view of the generally higher childcare costs their parents can face. Similar comments were also made during the Bill's Commons Committee stage when the Exchequer Secretary to the Treasury made a commitment to consider this matter further.
15. Having considered this, the Government has decided to introduce legislation to increase the maximum amount that parents of disabled children can pay into their childcare accounts, in recognition of the higher childcare costs these families incur. For accounts for disabled children, the maximum payment for a standard three month entitlement period will be doubled to £4,000. This means that a parent with a disabled child will be able to pay up to £16,000 into their childcare account per year and receive top-up payments of up to £4,000. This will be achieved by amending section 19 of the Act through a separate statutory instrument.
16. However, the Government does not consider that it would be appropriate to increase the maximum qualifying age for a disabled child as the current maximum age is consistent with the Employer-Supported Childcare scheme and the childcare element of both tax credits and Universal Credit.

Other comments

17. Several comments were also made about the requirement for parents to use their childcare accounts to pay for childcare that enables them to do paid work. Some felt that the requirement ought to be met where a parent is doing voluntary work, for example. However, it is important that taxpayers' money is only used for childcare that enables paid work and the requirement will be applied flexibly and proportionately.
18. A few respondents also raised issues with the ways in which Tax-Free Childcare will interact with other schemes including Tax Credits, Universal Credit and Employer-Supported Childcare with particular concerns around how individuals would be able to move between schemes and identify which scheme would be the best for them. Detailed guidance and an interactive calculator will be provided so that parents will

be able to make informed decisions about which scheme is best for them. It was noted by some respondents that definitions used in Tax-Free Childcare did not always align with other schemes. HMRC has endeavoured to match definitions closely but this is not always possible as there are inevitable differences between schemes.

19. Many respondents commented on the digital design of the scheme and while recognising the advantages of this, some concern was expressed whether this would exclude some individuals from accessing the scheme. The Government wants to ensure that the scheme be widely accessible. Assistance will be provided for those unable to use digital communications. The regulations allow HMRC discretion to set out what non-digital routes it will offer or accept. HMRC will provide guidance on this issue.
20. Questions were also asked whether all communications between HMRC, individuals, the account provider, and childcare providers would be by digital means. In the vast majority of cases we will want to communicate with parents and childcare providers electronically. However, on some occasions hard copy documentation may be required, for example if an individual needed to provide a child's Birth Certificate. Questions on this and similar matters will be addressed in guidance.
21. Many respondents stressed the need for clear guidance and communications to be provided for users of the scheme. The Government recognises the need for this and comments made during this consultation will assist in producing guidance for customers and childcare providers. Draft guidance was published on 16th October and HMRC will continue to work with stakeholders and carry out targeted user research to ensure that the guidance including an interactive calculator is comprehensive and helpful.

Next Steps

22. Following the consultation, the regulations have been redrafted. The Eligibility regulations were laid before Parliament on 13 January and will be subject to the affirmative procedure in both Houses. The Payments regulations will be laid in due course and will be subject to the negative procedure.

Annex – List of Respondents

1. 4Children
2. Association of Accounting Technicians (AAT)
3. Chartered Institute of Payroll Professionals (CIPP)
4. Clybiau Plant Cymru Kids Club
5. Department for Works & Pensions
6. Every Disabled Child Matters, Contact A Family, Family and Childcare Trust and Working Families (combined response)
7. Family and Childcare Trust
8. Low Incomes Tax Reform Group (LITRG)
9. Mudiad Meithrin
10. National Day Nurseries Association (NDNA)
11. Scope
12. Scottish Council of Independent Schools
13. Welsh Government