EXPLANATORY MEMORANDUM TO

THE CHILDCARE PAYMENTS (ELIGIBILITY) REGULATIONS 2015

2015 No. 448

1. This explanatory memorandum has been prepared on behalf of the Treasury by HM Revenue and Customs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument contains the detailed rules concerning eligibility for top-up payments under the scheme enacted by the Childcare Payments Act 2014.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument has not been subject to pre-laying scrutiny.

3.2 The instrument contains the first use of the regulation making powers in the Childcare Payments Act 2014. All of those powers came into force on the day on which the Act was passed.

3.3 Sections 69 and 70 of the Act provide that all the powers relied upon in this instrument (apart from those sections themselves) are to be exercised by the Treasury and are subject to the draft affirmative procedure. Save in the case of the powers in section 2(3)(b) to (d), it is only the first use of the powers that requires the affirmative procedure.

3.4 Regulation 5 defines a qualifying child for the purposes of the Act, by reference to the maximum qualifying age of that child, which is higher for disabled children. It is envisaged that the childcare payments scheme will be introduced in stages, starting with children younger than the maximum age set out in this regulation. Paragraphs (3) and (4) give effect to the definition of qualifying child by tracking this staged commencement of the Act by reference to age. So they have transitional effect and are made using the power in section 69(4)(b).

3.5 Regulations 16 and 17 modify the application of sections 11, 12 and 13 of the Act in relation to residents of another EEA state in paid work in the United Kingdom. Such persons are, under regulation 7(1)(d), treated for the purposes of the Act as being in the United Kingdom (the condition of eligibility in section 8). Regulations 16 and 17 are made using the power in section 8(2)(c).

4. Legislative Context

4.1 The Childcare Payments Act 2014 enacted a new scheme designed to provide financial support to help working families with the costs of childcare. The scheme will be based on a system of childcare accounts. Eligible parents will open an online account into which they will pay money and the Government will automatically top-up amounts in the account at a rate of 20p for every 80p paid in by the parent up to a maximum amount every three months. The amounts held in the childcare accounts will have to be used to pay for qualifying childcare.

4.2 The Act provides for 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 the detailed rules of the scheme. Two main statutory instruments exercising many of the powers contained in the Act have been prepared. This instrument contains further details of the conditions that a person must meet in order to receive top-up payments. Another instrument, the Childcare Payments Regulations, contains the detailed rules concerning the operation of the scheme and is the subject of a separate explanatory memorandum.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury has made the following statement regarding Human Rights:

In my view the provisions of the Childcare Payments (Eligibility) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 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 costs 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.

7.2 The scheme will be based on a system of childcare accounts. Eligible parents will open an online account into which they will pay money 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.

7.3 Government support will be up to £2000 per child per year. Parents will be able to have one account per 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.

7.4 Legislation to enact the new scheme, the Childcare Payments Act, received Royal Assent on 17th December 2014.

7.5 A person will be eligible to receive top-up payments under the scheme if they have a qualifying child, meet the eligibility conditions, provide information to demonstrate that they are eligible, open a childcare account and pay money into that account. In order to be an eligible person, a person has to meet certain conditions, namely; be 16 or over; be responsible for the child; be in the UK; be in qualifying paid work; not expect to receive income above a certain level; not be claiming universal credit; not be in a relevant childcare scheme; and not be receiving certain other types of childcare support. In addition if they have a partner, their partner must be in qualifying paid work; not expect to receive income above a certain level; not be claiming universal credit; not be in a relevant childcare scheme and not be receiving certain other types of childcare support.

7.6 This instrument provides detailed rules on what it means to be: a person's partner; responsible for a child; a qualifying child; in the UK; and in qualifying paid work. The income rules and some rules concerning the movement of individuals between this scheme and tax credits and universal credit are also provided in this instrument.

8. Consultation outcome

8.1 The Government published a formal consultation document on the design and operation of the new scheme on 5th August 2013 and the consultation ended on 14th October 2013. The response to the consultation was published on 18th March 2014. A further consultation was published on 23rd May 2014 and ran until 27th June 2014 on how childcare accounts will be provided under the new scheme. The response to that consultation was published on 29th July 2014.

8.2 Formal consultation on this draft instrument took place between 14th July and 3rd October 2014 in line with Government guidance on public consultation. The response to that consultation will be published shortly.

8.3 13 organisations responded to the consultation and respondents generally welcomed the opportunity to comment on the scheme. Some respondents raised policy questions 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.

8.4 The Government has responded to some concerns raised by making some amendments to the draft regulations. For example, the 7 day window in regulation 9 during which a person could apply for a childcare account in anticipation of starting work has been extended to 14 days. In addition, the rules to determine the minimum earnings threshold for self-employed individuals have been redrafted to take into consideration that a self-employed individual's earnings often fluctuate over a period.

8.5 Further details will be found in the published response document.

9. Guidance

9.1 HM Revenue and Customs will be publishing further guidance on the operation of the scheme. Draft guidance was published on 16th October 2014.

10. Impact

10.1 The instrument in itself does not impact on business, charities or voluntary bodies.

10.2 The instrument in itself does not impact on the public sector.

10.3 An Impact Assessment for the Childcare Payments Act (including secondary legislation) was published on 18th November 2014 and is available at https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment and

http://www.parliament.uk/documents/impact-assessments/IA14-09A.pdf
It remains an accurate summary of the impacts that apply to this instrument.

11. Regulating small business

11.1 The instrument only applies to individuals and does not apply to small business.

12. Monitoring & review

12.1 The policy will be reviewed two years after full implementation of the scheme to assess whether Tax-Free Childcare is delivered effectively and supports working families as intended. Further details are provided in the published Impact Assessment at https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment and

http://www.parliament.uk/documents/impact-assessments/IA14-09A.pdf.

13. Contact

Craig Mason at HM Revenue and Customs Tel: 03000 585276 or email: Craig.Mason@hmrc.gsi.gov.uk can answer any queries regarding the instrument.