EXPLANATORY MEMORANDUM TO

THE CHILDCARE PAYMENTS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2022

2022 No. 1148

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury and His Majesty's Revenue and Customs and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to make miscellaneous amendments to two sets of regulations which govern Tax-Free Childcare (TFC) (referred to in legislation as childcare payments). These are the Childcare Payments (Eligibility) Regulations 2015 (SI 2015/448) (the Eligibility Regulations) and the Childcare Payments Regulations 2015 (SI 2015/522) (the Payments Regulations). Both these sets of Regulations are made under the Childcare Payments Act 2014 (the Act).

2.2 The changes to the Eligibility Regulations will ensure fairness in two cases: persons in receipt of Scottish benefits; and persons affected by tax rules that treat persons as deemed employees where services are provided through an agency, managed service company or other intermediary. They remove a provision that was time limited and is now redundant. The regulations also correct two errors in the Eligibility Regulations, as detailed below.

2.3 The change to the Payments Regulations will permit HMRC to require a declaration of eligibility to be accompanied by a confirmation regarding applicants' self-employment details.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 As outlined at paragraph 2.2 above, regulations 2(3) and 2(5) of this instrument make minor corrections to the Eligibility Regulations. In accordance with paragraph 4.7.6 of Statutory Instrument Practice, HMRC has consulted the SI Registrar. This instrument is issued free of charge to all known recipients of the Eligibility Regulations, due to the nature of the errors being corrected i.e. typographical and missing wording.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument makes changes to ensure persons covered by new benefits, devolved to Scotland and replacing United Kingdom (UK) benefits, will be treated equally with persons in other UK jurisdictions in relation to TFC.

6.2 This instrument will ensure that workers taxed by virtue of Chapters 7 to 10 of the Income Tax (Earnings and Pensions) Act 2003 will be able to rely on payments that are treated as earnings from employment under agency workers, managed service companies and off-payroll working tax rules to be eligible for TFC.

6.3 This instrument will allow HMRC the discretion to require declarants to confirm their self-employment status alongside the declaration of eligibility. If HMRC requires the confirmation and the declarant is not able to provide this, the declaration of eligibility will be invalid.

6.4 This instrument will correct two previous errors in the Eligibility Regulations and remove a further provision in those Regulations that is now redundant.

7. Policy background

What is being done and why?

7.1 The Social Security (Scotland) Act 2018 provides for various UK benefits to be devolved to Scotland. This instrument makes changes to ensure that Scottish parents and children neither lose entitlement to TFC nor entitlement to enhanced access to top-up as a result.

7.2 It widens the definition of disability living allowance to encompass adult disability payments, which are replacing personal independence payments (PIP) in Scotland. This will ensure that 16-year-old children in Scotland that receive this new benefit are treated as disabled. It also adds Scottish carer's assistance, which will replace carer's allowance in Scotland, to the list of benefits where those in receipt may be treated as in qualifying paid work so long as they have a working partner.

7.3 In agency workers, managed service companies and off-payroll working tax rules workers are deemed to be in employment and taxed via Pay As You Earn. In recent years the off-payroll working tax rules were reformed for workers providing services to public bodies and medium and large private sector clients. This instrument addresses the rules as they stand on the day it is made and makes clear that parents covered by agency workers, managed service companies and off-payroll working tax rules are entitled to rely on any payments that are treated as earnings from employment under those rules in demonstrating that they are in qualifying paid work.

7.4 The definition of employment is being widened to include work covered by agency workers, managed service companies and off-payroll working tax rules. The rules for calculating employment income are also being widened to include payments that are treated as earnings from employment under those tax rules.

7.5 HMRC is required to satisfy itself that parents making declarations of eligibility are in fact eligible. An area where this has been difficult is where declarants rely on self-employment, but they have not filed required tax returns and do not have sufficient alternative evidence.

7.6 The instrument permits HMRC the discretion to request a confirmation from a declarant that wishes to rely on a self-employment, that they have made their tax

returns as required. This discretion will be used after the declaration has been made by the declarant, when HMRC is testing whether the declaration is valid. Where HMRC exercises this discretion, and the declarant cannot provide the confirmation, the declaration of eligibility is invalid.

7.7 This instrument will correct two earlier errors in the Eligibility Regulations. These are in the rules for being considered in qualifying paid work and in the rules for start-up periods for the newly self-employed, where the rules for being in qualifying paid work are more generous.

7.8 This instrument will remove a coronavirus-related provision that applied to critical workers in the 6 April 2020 to 5 April 2021 tax year. As that tax year is now over the provision is now redundant.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidating regulations at present.

10. Consultation outcome

10.1 HMRC has not formally consulted before introducing the amendment regulations. However, the Social Security Advisory Committee, which is an independent statutory body that provides impartial advice on social security and related matters, has considered these regulatory changes under its Memorandum of Understanding with HMRC.

11. Guidance

11.1 HMRC will work with the Government Digital Service to ensure that online childcare service guidance for parents makes the impacts of the changes on parents clear. Guidance on getting TFC is at https://www.gov.uk/get-tax-free-childcare.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 HMRC will monitor customer contacts and experiences to ensure the service to customers continues to be good and that guidance is clear.

14.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015. John Glen MP, Chief Secretary to the Treasury has made the following statement.

"In my view the provisions of the Childcare Payments (Miscellaneous Amendment) Regulations 2022 will not have a negative impact on parents."

15. Contact

15.1 Phil Mattacks at HM Revenue and Customs, telephone: 03000585501 or email: phil.mattacks@hmrc.gov.uk, can answer any queries regarding the instrument.

15.2 James Knipe, Deputy Director for Tax Free Childcare, at HM Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 John Glen MP, Chief Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.