EXPLANATORY MEMORANDUM TO

THE CHILDCARE PAYMENTS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2026

2026 No. 279

1. Introduction

1.1 This Explanatory Memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and is laid before Parliament by Command of His Majesty.

1.2 This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Declaration

2.1 The Rt Hon James Murray MP, Chief Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 James Knipe, Deputy Director for Welfare Policy in HMRC confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Graham Spencer at HMRC can be contacted by email at the following address with any queries regarding the instrument: graham.spencer@hmrc.gov.uk. Alternatively, the department can be contacted by telephone: 03000 559 125.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This instrument makes two minor, technical clarifications to existing Tax-Free Childcare (TFC) legislation to correct earlier drafting oversights. These amendments ensure that the provisions operate as originally intended and that the legislative framework is legally coherent and technically accurate. The amendments do not alter policy intent or change the practical application of the legislation. Their effect is confined to clarifying the existing provisions and securing the proper functioning of the statutory scheme.

Where does the legislation extend to, and apply?

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

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

5. Policy Context

What is being done and why?

5.1 TFC is designed with the intent to provide financial support to eligible parents, helping them enter work or increase their working hours. The scheme requires parents to be in paid work and to meet the minimum income threshold to qualify.

5.2 The Childcare Payments (Eligibility) Regulations 2015 ("the Eligibility Regulations"), regulation 9 concerning TFC eligibility, require each parent in the household to be in 'qualifying paid work', either employed or self-employed, with reconfirmation of their status every three months. The intent of this condition is to ensure that the assistance given to help people to work is correctly targeted. Where any parent is not working, the household is normally considered ineligible on the basis that a non-working parent could provide childcare.

5.3 Exceptions to this rule exist for parents who are not currently working due to specific forms of statutory leave, such as maternity, paternity, adoption or shared parental leave specified in regulation 12(1) of the Eligibility Regulations. In these cases, individuals are treated as being in qualifying paid work and are deemed to meet minimum income criteria. The intent of this is to allow parents on such statutory leave continued access to childcare support for those children not subject to the relevant leave and enable them to plan childcare ahead of time for when they return to work.

Parental Bereavement Leave and Pay in EEA and Switzerland as qualifying paid work

5.4 Parental Bereavement Leave and Pay was introduced in England, Scotland and Wales by the Government in 2020 and was subsequently added to regulation 12(1) of the Eligibility Regulations. Northern Ireland (NI) introduced its own Parental Bereavement Leave and Pay in 2022 and further amendments were made to the Eligibility Regulations to reflect NI's separate statutory provisions.

5.5 These amendments ensure that parents taking this statutory leave throughout the UK are treated as being in qualifying paid work for the purposes of TFC. However, at the time the amendments were made, the corresponding updates were not applied to regulation 12(7), which enables citizens of prescribed European Economic Area (EEA) states and Switzerland to be treated as in qualifying paid work where they receive benefits substantially similar to the UK statutory benefits listed in regulation 12(1).

5.6 Due to this drafting oversight, the EEA/Swiss equivalent for parental bereavement leave and pay was not included in the TFC legislation and is now being corrected.

5.7 No one has been denied access in the past year due to the omission of Parental Bereavement Leave and Pay as no applicant has fallen within this criterion.

Making a correction to the 31-Day Rule Amendment

5.8 The Childcare Payments (Eligibility) (Amendment and Transitional Provisions) Regulations 2025 aligned the TFC application period with the Free Childcare for Working Parents (FCWP) scheme, enabling parents to apply for both schemes concurrently and ensuring coherence between the two offers.

5.9 The Joint Committee on Statutory Instruments (JCSI) identified a drafting inconsistency regarding the description of the end of the applicable period in which a person can apply for TFC before they start or return to work, where "ends on" had been used instead of "ends with". HMRC agreed the required correction would clarify when the period ends and align with the FCWP legislation. HMRC undertook to amend the wording at the first available opportunity.

5.10 HMRC has consistently applied the correct interpretation in practice, and no one has been disadvantaged by the current wording.

Summary

5.11 Both the Parental Bereavement Leave and Pay and 31-day rule corrections are strictly technical and minor clarifications to existing legislation; they do not expand eligibility or change operational practice.

5.12 The amendments introduce no new burdens, processes or compliance obligations and do not affect interactions with related benefits. The drafting correction removes ambiguity, strengthens alignment with the FCWP legislation, and supports accurate operational delivery.

What was the previous policy, how is this different?

5.13 There is no change in policy, the amendments are purely to ensure the legislation matches exactly with the policy intent and to be consistent with the FCWP legislation.

6. Legislative and Legal Context

How has the law changed?

Parental Bereavement Leave and Pay in EEA and Switzerland as qualifying paid work

6.1 In England, Scotland and Wales, Parental Bereavement Leave and Pay was established by the Parental Bereavement (Leave and Pay) Act 2018 which originated as a private member's bill and was subsequently implemented through regulations coming into force on 6 April 2020.

6.2 In Northern Ireland, Parental Bereavement Leave and Pay was established by the Parental Bereavement (Leave and Pay) Act 2022. The Act broadly mirrors the framework in Great Britain and was subsequently implemented through regulations, coming into force on 6 April 2022.

6.3 To include recipients of this new benefit as being in qualifying paid work, the Eligibility Regulations were amended by the Parental Bereavement Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations 2020 for England, Scotland and Wales and later by the Parental Leave and Pay (Consequential Amendments to Subordinate Legislation) Regulations (Northern Ireland) 2022. This altered regulation 12(1) which sets out the types of qualifying leave by adding subsections (n) and (o).

6.4 However, these amendments mistakenly failed to extend to regulation 12(7) which allows citizens of prescribed states to be in qualifying paid work for the purposes of TFC when they are receiving benefits from that state which are substantially the same as the qualifying UK benefits in regulation 12(1).

Making a correction to the 31-Day Rule Amendment

6.5 As explained in paragraphs 5.8 to 5.10, the amendment made by regulation 2 of the Childcare Payments (Eligibility) (Amendment and Transitional Provisions) Regulations 2025 refers to the period of relevant leave ending on a date pertaining to the new childcare term dates:

> *Immediately preceding the start of the period specified in the first column and ends on the day before the day on which P starts or returns to work.*

The JCSI referred to the drafting convention that such a date should be 'ends with' rather than 'ends on' the day before the leave finishes.

6.6 This amendment substitutes, in each instance, the applicable period specified in column 2 of the table in paragraph (2A) of regulation 9 of the Childcare Payments (Eligibility) Regulations 2015 so that the period ends at the end of the day before the day on which a person starts or returns to work instead of ending on the day before without being clear what time of the day the period ends.

Why was this approach taken to change the law?

6.7 This is the only possible approach to make the necessary correction and clarification to the legislation to align it with the policy intent and HMRC practice.

7. Consultation

Summary of consultation outcome and methodology

7.1 HMRC has engaged with officials of the Department for Education and HM Treasury to ensure the amendments operate as intended.

7.2 A public consultation has not been undertaken in respect of these amendments, as they are minor in nature and are expected to deliver a beneficial outcome for parents. No adverse stakeholder response is anticipated.

8. Applicable Guidance

8.1 HMRC continually updates its guidance and public-facing communications. The guidance on the 31-day rule does not need to be altered because of this amendment. HMRC will clarify information on equivalent EEA/Swiss benefits in both internal and customer-facing guidance.

8.2 The Tax-Free Childcare Technical Manual can be found on the GOV.UK website[1].

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because it contains no changes to policy.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because they are minor technical amendments which provide clarity to existing legislation.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector because they are minor technical amendments which provide clarity to existing legislation.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HMRC will not undertake formal monitoring as these are minor clarifications.

[1] Tax-Free childcare Technical Manual: https://www.gov.uk/hmrc-internal-manuals/tax-free-childcare-technical-manual

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This instrument corrects a drafting inconsistency highlighted by the JCSI[2] in S.I. 2025/857 regarding how the end of the period for applying for TFC before starting or returning to work was described. Appendix 7 of the Committee's report published 17 October 2025 sets out HMRC's response which undertook to correct this at the earliest opportunity.

11.2 HMRC will adopt the free issue procedure for this instrument as it corrects two drafting oversights from earlier amendments made by S.I. 2020/354 and S.I. 2025/857. The Department confirms that it has consulted the SI Registrar on the use of the free issue procedure in relation to this instrument.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts'').

[2] JCSI Thirty-Fifth Report of Session 2024-26: https://committees.parliament.uk/publications/49760/documents/266791/default/