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STATUTORY INSTRUMENTS

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**2016 No. 793**

**CHILDCARE  
PAYMENT SCHEME**

**The Childcare Payments (Eligibility)  
(Amendment) Regulations 2016**

*Made* - - - - *21st July 2016*  
*Laid before Parliament* *22nd July 2016*  
*Coming into force* - - *5th September 2016*

The Treasury, in exercise of the powers conferred by sections 9(2) and (3) and 10(2) and (3) of the Childcare Payments Act 2014<sup>(1)</sup>, make the following Regulations:

**Citation and commencement**

1. These Regulations may be cited as the Childcare Payments (Eligibility) (Amendment) Regulations 2016 and come into force on 5th September 2016.

**Amendments to the Childcare Payments (Eligibility) Regulations 2015**

2. The Childcare Payments (Eligibility) Regulations 2015<sup>(2)</sup> are amended as follows.
3. In regulation 2 (interpretation)—
  - (a) for the definition of “minimum weekly income” substitute—

““minimum weekly income” means the amount a person would be paid for 16 hours of work a week at the hourly rate set out in regulations 4, 4A and 4B of the National Minimum Wage Regulations 2015<sup>(3)</sup>”;
  - (b) in the definition of “personal independence payment” at the end insert “or Part 5 of the Welfare Reform (Northern Ireland) Order 2015<sup>(4)</sup>”.
4. In regulation 12 (qualifying paid work: time off in connection with sickness or parenting)—
  - (a) in paragraph 1(h) omit “or article 112AA or 112BB of the Employment Rights (Northern Ireland) Order 1996”;

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(1) 2014 c. 28.

(2) S.I. 2015/448.

(3) S.I. 2015/621. Regulation 4 was substituted by, and regulations 4A and 4B were inserted by S.I. 2016/68.

(4) S.I. 2015/2006 (N.I. 1)

(b) in paragraph (1)(1) after “1996” insert “or articles 107E or 107G of the Employment Rights (Northern Ireland) Order 1996(5)”.

5. In regulation 15 (income not to exceed a certain level)—

(a) in paragraph (1) for “to pay income tax at the additional rate or the dividend additional rate” substitute “their adjusted net income to exceed £100,000”;

(b) in paragraph (2) for “to pay income tax at the additional rate or the dividend additional rate on the hypothetical net income of that person” substitute “their hypothetical adjusted net income to exceed £100,000”;

(c) in paragraph (4) for the definition of “hypothetical net income” substitute—

““adjusted net income” has the meaning given in section 58(1) of the Income Tax Act 2007(6);

“hypothetical adjusted net income” is the amount that would be that individual’s adjusted net income if that individual’s income tax liability were calculated on the basis that the individual—

(a) was UK resident for the tax year concerned (and the year was not a split year);

(b) was domiciled in the United Kingdom for that tax year;

(c) in that tax year, did not fall to be regarded as resident in a country outside the United Kingdom for the purposes of double taxation arrangements having effect at the time;

(d) for that tax year, had made a claim for any available relief under section 6 of the Taxation (International and Other Provisions) Act 2010(7) (as required by subsection (6) of that section).

An individual’s adjusted hypothetical net income for a tax year is, to the extent that it is not sterling, to be calculated by reference to the average exchange rate for the year ending on 31 March in the tax year concerned.”.

*David Evennett  
Mel Stride*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

21st July 2016

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(5) S.I. 1996/1919 (N.I. 16). Articles 107E and 107G were inserted by section 2 of the Work and Families Act (Northern Ireland) 2015 (2015 c. 1.).

(6) 2007 c. 3.

(7) 2010 c. 8.

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) (“the 2015 Regulations”) which contain the detailed requirements a person must satisfy in order to be able to receive top-up payments under the Childcare Payments Act 2014 (c. 28) (“the Act”).

Regulation 3(a) amends regulation 2 of the 2015 Regulations and changes the definition of “minimum weekly income”. It raises the minimum income parents must earn per week to be eligible for top-up payments from 8 to 16 hours at the hourly rate set out in the National Minimum Wage Regulations 2015 (S.I. 2015/621). The single hourly rate for persons over 25 is now known as the National Living Wage rate.

Regulation 3(b) amends the definition of “personal independence payment” (“PIP”) by adding a definition for Northern Ireland following the introduction of PIP’s from 20th June 2016 in Northern Ireland.

Regulation 4 amends regulation 12 of the 2015 Regulations which is concerned with the condition that a person (and their partner) must be in qualifying paid work and it treats certain persons as satisfying the condition during periods when they receive statutory sick pay, maternity or paternity pay or when a person is on statutory leave for reasons connected with the birth or adoption of a child. The amendments update cross references to the relevant Northern Ireland legislation the effect of which was to replace additional paternity leave with shared parental leave since 5th April 2015.

Regulation 4(b) updates cross references to Northern Ireland legislation that refers to entitlement to shared parental leave in connection with birth and adoption.

Regulation 5 amends regulation 15 of the 2015 Regulations by lowering the maximum level of income for eligibility under the Act from £150,000 to £100,000 per parent, per year including special provision for persons who are not domiciled in the UK and who are subject to the remittance basis for income tax. Regulation 5(c) replaces the definition of “hypothetical net income”, with a definition of “adjusted net income” and a definition of “hypothetical adjusted net income” which is a new term used in the amended regulation 15(2) of the 2015 Regulations referring to the amount of income of those persons who are not domiciled in the UK.

A full Impact Assessment of the effect that the childcare payments scheme will have on the costs of business and the voluntary sector was published on 18th November 2014 alongside The Childcare Payments Act 2014 and is available from the gov.uk website at <https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment>. It remains an accurate summary of the impacts that apply to this instrument.