CHILDCARE PAYMENTS BILL

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Childcare Payments Bill as brought from the House of Commons on 18th November 2014. They have been prepared by HM Revenue and Customs (HMRC) in order to assist the reader in understanding the Bill. They do not form part of the Bill and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. Therefore where a clause or part of a clause does not seem to require any explanation or comment, none is given.

BACKGROUND AND SUMMARY

3. The Childcare Payments Bill introduces a new scheme which provides financial support to help working families with the cost of childcare and help those with responsibility for children to take up paid work, or to work for longer, where they may be deterred from doing so because of the need to meet childcare costs.

4. Once the scheme is implemented, the Government will make a top-up payment of £2 for every £8 which a person pays towards childcare. Government support will be capped at a maximum of £2,000 per child each year, although there will be no restriction on the number of children for whom support is available. The scheme will be managed by HMRC and the Government intends to introduce it in autumn 2015.

5. The introduction of the scheme was announced by the Chancellor of the Exchequer at Budget 2013 when it was described as "tax-free childcare". The use of that term reflected the fact that the 20% Government top-up payments in effect represent the basic rate tax element which would apply to the income used by the individual to fund their childcare costs. It was also intended to make clear that the receipt of financial benefits under the scheme will not give rise to any liability to income tax or National Insurance Contributions (NICs) on the part of the recipient.

6. The scheme will replace some existing tax and NICs reliefs which are provided for childcare. These are known as Employer-Supported Childcare or ESC, and include childcare

vouchers, childcare which the employer provides by an agreement with a childcare provider (known as directly-contracted childcare) and workplace nurseries. Workplace nurseries will not be affected by the new Bill and will continue to receive unlimited tax and NICs relief. Subsequent references to Employer-Supported Childcare in these Explanatory Notes only refer to childcare vouchers and directly-contracted childcare.

7. Under the childcare voucher model of Employer-Supported Childcare, an employer typically withholds part of an employee's salary which they pay into a childcare voucher account operated by an independent voucher provider. The money held within that account can then be spent on childcare. There is a financial incentive for the employer to offer their employees an Employer-Supported Childcare scheme in that the amounts withheld from salary and paid into the accounts are exempt from income tax and both employees' and employers' NICs.

8. Tax and NICs reliefs will be withdrawn from employees and employers where the employee enters a childcare voucher or directly-contracted childcare scheme after the new scheme has come into force. However, those employees who are in such a scheme at that date can continue to receive the reliefs for as long as they remain eligible, provided that their employer continues to operate it.

9. The Government published a formal consultation document on the design and operation of the new scheme on 5th August 2013 and 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.

10. The Bill confers a number of powers to make regulations and these notes explain how these powers are intended to be used. Draft regulations were published by HMRC for consultation from 14th July to 3rd October 2014. The final regulations will be made after the Bill has received Royal Assent.

HOW THE SCHEME WILL OPERATE

11. A person will be eligible to receive Government support (referred to as a 'top-up payment') if:

- they meet the eligibility conditions;
- they provide information to demonstrate their eligibility in a declaration to HMRC, and HMRC agrees, based on that information, that they are eligible;
- they have a child who qualifies for support;

- they have opened a childcare account in accordance with the scheme; and

- they, or another person, pay money into the childcare account.

12. The eligibility conditions which must be met are that:

- the person is at least 16 years of age;

- the person is responsible for the child (whether or not they are the child's biological or legal parent);

- the person is in the UK;

- the person (and their partner if they have one) is in paid work, whether as an employee or as a self-employed person, and earns more than a minimum income from that work (it is intended that this will be set in regulations at the amount the individual would earn by working 8 hours a week at the national minimum wage);

- the person's income (and that of their partner if they have one) does not exceed a certain level (it is intended that this will be set in regulations at the amount which will make the individual liable to pay income tax at the additional rate, or £150,000 per year); and

- the person (and their partner if they have one) is not claiming universal credit, and is not in receipt of other publicly-funded support for their childcare costs. Any tax credits award will automatically cease when they join the scheme.

13. The declaration which someone who wishes to receive support must make to HMRC is referred to as a declaration of eligibility. A person will be required to make a declaration when they first apply to open a childcare account and periodically thereafter when they wish to reconfirm their entitlement to support.

14. Once a person is entitled to support they will remain entitled for a period of time, referred to as an 'entitlement period', which will generally last for three months. This will be the case even if their circumstances change during an entitlement period so that they cease to meet some or all of the eligibility rules.

15. This means that a person will not be required to make any further declaration during the entitlement period. However, in order to qualify for further top-up payments in the next entitlement period, they will need to make a further declaration of eligibility before the start of that period.

16. The account into which a person pays money and into which the Government will make top-up payments is referred to in the Bill as a childcare account. The Bill contains rules which apply to childcare accounts and specifically what types of payment can be made into and out of such accounts.

17. The Bill also contains rules which are designed to deal with error and fraud. These include new powers to enable HMRC to request documents and information in order to verify declarations of eligibility which an individual has made in order to receive Government top-up payments. Further powers also allow HMRC to recover top-up payments which were claimed by someone who was not entitled to them and to impose penalties for dishonest or careless behaviour.

OVERVIEW OF THE STRUCTURE OF THE BILL

18. The Bill consists of 75 clauses which are laid out as follows:

- clauses 1 and 2 provide an overview of the scheme and define what is meant by qualifying childcare;
- clauses 3 to 5 define the terms "eligible person", "declaration of eligibility" and "entitlement period" for the purposes of the scheme;
- clauses 6 to 13 set out the eligibility conditions which a person must meet to be entitled to receive Government support;
- clause 14 defines the term "qualifying child" for the purposes of the scheme;
- clauses 15 to 25 set out the rules which apply to childcare accounts;
- clauses 26 to 29 give HMRC the power to obtain information or documents relating to the operation of the scheme, including the sharing of information with other bodies;
- clauses 30 to 34 provide special rules which apply to those who claim tax credits or universal credit;
- clauses 35 to 41 describe the situations in which top-up payments from Government may be recovered;
- clauses 42 to 48 set out the penalties which can be imposed where the rules of the scheme are breached;

- clauses 49 to 55 give HMRC further enforcement powers, including the power to charge interest and recover debts;

- clauses 56 to 61 set out the procedures enabling a person to seek a review of, or to appeal against, a decision made by HMRC;

- clause 62 contains rules which require HMRC to make compensation payments to a person who has been unable to receive top-up payments to which they were entitled;

- clauses 63 and 64 provide for the withdrawal of tax relief provided in respect of certain Employer-Supported Childcare schemes;

- clauses 65 to 68 contain general provisions, including giving HMRC the responsibility for managing the scheme and clarifying that payments from Government are not subject to tax as income in the hands of the individual who receives them; and

- clauses 69 to 75 are final provisions, including setting the territorial extent of the Bill and its short title once it has received Royal Assent.

TERRITORIAL EXTENT AND APPLICATION

19. The Bill extends to England and Wales, Scotland and Northern Ireland.

20. There is a convention that Westminster does not normally legislate with regard to matters within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature in question.

21. In relation to Northern Ireland, the subject-matter of the Bill (apart from the tax provisions) is within the legislative competence of the Northern Ireland Assembly. The Bill includes a provision that would make the operation of the new scheme an excepted matter for the purposes of the Northern Ireland Act 1998. A Legislative Consent Motion was approved by the Northern Ireland Assembly on 4th November 2014 providing consent for the UK Parliament to proceed with the Bill and also to amend Schedule 2 to the Northern Ireland Act 1998 to make the scheme an excepted matter.

22. In relation to Scotland and Wales, the Bill does not deal with devolved matters. The Bill does not therefore give rise to any need for a Legislative Consent Motion in relation to the Scottish Parliament or the National Assembly for Wales.

COMMENTARY ON CLAUSES

INTRODUCTORY

Clause 1: Entitlement to receive money towards costs of childcare

23. Clause 1 entitles a person to receive Government support with their childcare costs (referred to as 'top-up payments') if:

- they meet the eligibility conditions;
- they provide information to demonstrate their eligibility in a declaration to HMRC and HMRC agrees, based on that information, that they are eligible;
- they have a child who qualifies for support;
- they have opened a childcare account in accordance with the scheme; and
- they (or another person) pay money into the childcare account.

24. Once a person becomes entitled to top-up payments they will remain entitled for a period of time, which will generally be three months. This is referred to as an 'entitlement period' in the Bill. They will remain entitled for the period even if their personal circumstances change in a way that means they cease to meet some or all of the eligibility conditions. This means that a person will not be required to make contact every time they experience a change in their circumstances which might have a bearing on their eligibility. There are further details about entitlement periods in clause 5.

25. Top-up payments will be paid at a rate of 25% of the amount of money paid into the childcare account. For example, where a person pays £80 into a childcare account, the value of the top-up payment will be 25% of that amount, or £20. Subsection (5) allows the rate of top-up payments to be changed in regulations.

26. The remainder of the clause signposts other parts of the Bill, including those relating to how childcare accounts operate, HMRC's power to obtain information and special rules relating to tax credits and universal credit.

Clause 2: Qualifying childcare

27. Clause 2 defines the terms "childcare" and "qualifying childcare" for the purposes of the Bill. Money in a childcare account can only be spent on childcare which is qualifying childcare.

28. Childcare is defined in subsection (1) as any type of supervised activity or care for a child, except for care which they receive in the course of their compulsory education. Childcare includes care provided by nurseries, play schemes, childminders and nannies.

29. The definition of "qualifying childcare" in subsection (2) is in two parts, the first of which is that the childcare is registered or approved. The types of childcare which are registered or approved for these purposes will be set out in regulations, but it is intended that this will follow the approach currently taken for other schemes like universal credit. This will include childcare that is regulated by Ofsted, its counterparts in Wales, Scotland and Northern Ireland or similar regulatory bodies.

30. The second part of the definition of "qualifying childcare" in subsection (2) is that the main reason, or one of the main reasons, for incurring the costs of the childcare is to enable the person to work. In cases where that person has a partner, the main reason, or one of the main reasons, for incurring the childcare costs must be to enable both the person and their partner to work.

31. This means that a person cannot use the money in their childcare account, which the Government will have topped up, to pay for childcare that enables them to pursue leisure activities. For example, if a person works for one day a week and pursues a hobby for two days a week, they will be able to use the funds in their childcare account to pay for childcare only for their one working day a week. They will not be able to use their childcare account to pay for childcare for the two days a week when they pursue their hobby.

32. However, a person will be able to use the funds in their childcare account to pay for childcare that puts them in a position to work, as well as for childcare while they are actually at work. This means, for example, that they can use their childcare account to pay for childcare that enables them to travel to and from work.

33. What is meant by "work" in this context will be set out in regulations made under subsection (3). These regulations can also set out further rules about when the "main reason" condition will be treated as being met and describe circumstances where it does not need to be met. The Government intends to make regulations providing that the "main reason" condition will not need to be met when a person is not working because they are on annual, sick or parenting leave (for example maternity, paternity or adoption leave) from paid work.

34. Subsection (4) allows regulations to be made under subsection (3)(a) to treat childcare as qualifying childcare if it is provided outside the UK by a person who has been approved by a legally accredited organisation. This enables certain people who work abroad and are accompanied by their families (such as members of the UK armed forces and UK diplomats) to qualify for top-up payments in the same way as those who are based in the UK. Because Ofsted and its devolved counterparts can only regulate childcare which is provided within the UK, an alternative approval mechanism is needed in such cases.

35. Subsection (5) provides that the definition of qualifying childcare is subject to clause 50, which allows HMRC to exclude childcare provided by a specified person from being treated as qualifying childcare if they have acted dishonestly in order to obtain top-up payments.

ELIGIBILITY

Clause 3: Eligible persons

36. Clause 3 defines the term "eligible person for an entitlement period" for the purposes of the scheme.

37. Subsection (1) provides that, in order to be an eligible person, a person has to meet all of the conditions set out in clauses 6 to 13. A person who has a partner will not be an eligible person unless, in addition, their partner meets the conditions in clauses 9 to 13. These conditions must be met on the day on which the person makes a declaration of eligibility to HMRC: this is referred to in these clauses as the date of the declaration.

38. Regulations can provide further details about the eligibility conditions, and subsection (4) allows them to set out circumstances in which the conditions do not need to be met.

39. Subsection (5) provides that regulations can specify when a person will be treated, or not treated, as another person's partner for the purposes of the scheme.

Clause 4: Declarations of eligibility

40. Clause 4 defines the term "declaration of eligibility" for the purposes of the Bill as a statement made by a person that they are an eligible person for an entitlement period.

41. Subsection (2) describes the three conditions which need to be met for a declaration of eligibility to be valid. These are that:

- HMRC are satisfied that the person making the declaration meets all of the eligibility conditions (the scheme will operate on a 'check now, process later'

basis, whereby HMRC will check a person's eligibility before accepting their declaration and giving them access to top-up payments);

- on the day that the declaration is made, no other person holds or is in the process of seeking to hold an active childcare account (by having made an application that has not yet been granted or a declaration of eligibility that has not yet been determined as valid, or in respect of which the entitlement period has not yet begun) for the same child. This will ensure that only one childcare account can receive top-up payments in respect of a particular child at any one time; and

- the declaration is made in accordance with regulations made under this clause.

42. Where a person makes a declaration of eligibility which meets these three conditions, that declaration will be treated as valid and the person will be entitled to top-up payments for the full entitlement period, even if they cease to meet one or more of the eligibility conditions before the end of that entitlement period.

43. Subsection (3) provides for a different rule in cases where a person is seeking to open a childcare account. In this situation the rule in subsection (2)(b) is disapplied and the person is allowed to apply to open a childcare account. However the person will be unable to open an account while another person has an active account for the same child. If there is an existing active account and the account-holder declines to give way for the new applicant, HMRC will decide which person has the better case for having the account.

44. Subsection (6) allows regulations to set out more detailed rules about declarations of eligibility including:

- rules requiring a person to provide information to HMRC;

- rules which specify how declarations of eligibility should be made;

- rules determining when declarations of eligibility should be made;

- the treatment of cases where a declaration of eligibility is made late;

- situations where someone can make a declaration of eligibility on someone else's behalf and how that declaration will be treated; and

- rules determining who is considered to have made the declaration when the task is undertaken by someone else.

45. Regulations made under subsection (6) will include, for example, a requirement for declarations of eligibility to be made electronically wherever possible and a requirement that,

once a childcare account is open, subsequent declarations of eligibility must be made at least 7 days before the start of the next entitlement period.

Clause 5: Entitlement periods

46. Clause 5 provides for the length of an entitlement period to be 3 months, but enables that to be amended or varied.

47. Subsections (2) and (3) enable regulations to make a general amendment of the length of an entitlement period or to enable HMRC to vary it in particular cases. Regulations may also make provision about when an entitlement period begins or ends.

48. Regulations will, for example, allow HMRC to determine that a person's entitlement periods will end around the middle of the month, to avoid the beginnings and ends of months when payments into and out of childcare accounts are most likely. They will also allow HMRC to set a person's entitlement periods for a child so that they coincide with the entitlement periods of a childcare account for a child's sibling.

CONDITIONS OF ELIGIBILITY

Clause 6: The person must be 16 or over

49. Clause 6 sets out the first of the eligibility conditions. This is that the person making the declaration of eligibility must be at least 16 years of age.

Clause 7: The person must be responsible for the child

50. Clause 7 sets out the second condition of eligibility. This is that the person making the declaration is responsible for the child. Such a person does not have to be the child's biological or legal parent, but could be any person who has responsibility for the child (such as a member of the child's extended family).

51. Further rules can be set out in regulations made under subsection (3) specifying the circumstances in which a person will be treated as responsible, or not responsible, for a child for the purposes of the scheme. The Government intends to make regulations providing that a person must normally live with a child in order to be regarded as responsible for that child.

Clause 8: The person must be in the UK

52. Clause 8 sets out the third condition of eligibility. This is that the person making the declaration of eligibility is in the UK.

53. Subsection (2)(a) permits regulations to be made to provide rules for determining when a person will be treated as being, or not being, in the UK. The Government intends to make regulations providing that, for example, members of the armed forces who have been posted overseas, and residents of EEA states who are working in the UK, are to be treated as being in the UK.

54. Subsection (2)(b) permits regulations to be made that allow temporary absences from the UK to be disregarded. The Government intends to make regulations providing, for example, that any absence from the UK of up to 8 weeks is to be disregarded, and in certain circumstances, such as where a person experiences a period of illness, longer absences may also be disregarded.

55. Subsection (2)(c) permits regulations to be made that allow provisions of the Bill to be modified in certain circumstances where people who are not in the UK are treated as being in the UK. The Government intends to make regulations that will, for instance, provide an equivalent to the requirement that a person must not be in receipt of universal credit, since universal credit will not be available in the person's country of residence if they live outside the UK.

Clause 9: The person and his or her partner must be in qualifying paid work

56. Clause 9 sets out the fourth condition of eligibility. This condition has to be met not only by the person making the declaration of eligibility but also by any partner that they may have (see clause 3(1)). The condition is that on the date of the declaration the person in question is in qualifying paid work.

57. The definition of qualifying paid work will be set out in regulations made under subsection (2). The Government intends to make regulations requiring the person to have a minimum amount of expected income from that work for the entitlement period for which they are making their declaration (or, where the person is making an application to open a childcare account, for the three months starting with the date of the declaration). This minimum expected income will be the amount that the person would expect to receive if they were paid the national minimum wage for 8 hours a week.

58. The Government intends to make regulations that will provide rules to determine how a person's expected income from work is to be calculated, in order to assess whether the minimum expected income is met. For employed people this will simply be the amount they earn from the employment. For self-employed people it will be the receipts the person expects to derive from their trade, profession or vocation less the amount of expenses (other than capital expenses) the person expects to incur wholly and exclusively for the purposes of that trade, profession or vocation. Where a person is both employed and self-employed, the minimum expected income rule will apply to the aggregate of their expected income from their employment and their self-employment.

59. It is intended that further regulations will specify cases in which a newly self-employed person will not be required to meet the minimum expected income rule for their first 4 entitlement periods. This is because many start-up businesses do not make a profit in their first year.

Clause 10: The income of the person and his or her partner must not exceed limit

60. Clause 10 sets out the fifth condition of eligibility. This is that the person must not expect to receive income above a certain level when they make a declaration of eligibility. This condition must also be met by any partner of that person.

61. The maximum income limit is not restricted to income from employment or self-employment, but applies to income from all sources, including income from property, investments and dividends.

62. The amount of income, and how it should be calculated, will be specified in regulations made under subsections (1) and (2). Subsections (3) and (4) enable regulations to treat the condition as being or not being satisfied in certain cases. The Government intends to make regulations under subsection (3) to provide that a person will meet this condition where, in the tax year in which their declaration of eligibility falls, they do not expect to be liable to pay income tax at the additional rate or the dividend additional rate. The additional rate of tax is currently set at 45% and is payable by people whose total income in a tax year exceeds £150,000. The dividend additional rate is currently set at 37.5% and is paid by people whose total income in a tax year exceeds £150,000 and includes some dividend income.

63. The Government intends to make regulations under subsection (4) to provide that a person is to be treated as if their income exceeds the maximum limit where they expect to be taxed on the remittance basis. This is an alternative, and optional, basis of taxation which is available to a person who is resident but not domiciled in the UK. It means that they are only subject to UK tax on income and gains that are brought to the UK.

64. Subsection (4)(c) permits regulations to provide for further groups of people to be treated as not meeting the condition in this clause.

Clause 11: Neither the person nor his or her partner may be claiming universal credit

65. Clause 11 sets out the sixth condition of eligibility. This is that the person who makes a declaration of eligibility must not be claiming universal credit on the date on which they make that declaration. This condition must also be met by any partner of that person. This clause prevents a person receiving childcare support under this scheme and universal credit at the same time.

66. Subsection (1) provides that a person meets this condition where, on the date of the declaration, universal credit is not payable to them and they have not made a claim which would lead to universal credit becoming payable to them for the relevant assessment period.

67. Subsection (1) refers to universal credit payable for "a relevant assessment period". This term is defined in subsection (2) as any assessment period for the purposes of universal credit in which a declaration of eligibility is made or in which all or part of an entitlement period falls. This means that a person will fail to meet the condition in this clause if universal credit is payable to them for a period which coincides with the date they make their declaration of eligibility or with the entitlement period for which they are making the declaration.

68. Subsection (3) provides that for the purposes of subsection (1), if the person has a universal credit award of nil (for example, where a sanction under universal credit has been applied) they will still be treated as having universal credit payable to them and so will not meet the eligibility condition in this clause.

69. Subsection (4) deals with cases where a person is making a declaration of eligibility in order to open a childcare account. In such a situation, the person will not yet know the date of their first entitlement period, and so the three-month period following the date of that declaration is to be used instead.

70. Subsection (5) allows regulations to be made to specify other circumstances in which a person will be treated as meeting this condition of eligibility.

Clause 12: The person and his or her partner must not be in a relevant childcare scheme

71. Clause 12 sets out the seventh condition of eligibility. This is that neither the person nor their partner (if they have one) is included in an Employer-Supported Childcare scheme which provides either childcare vouchers or directly-contracted childcare. This prevents a person receiving childcare support under this scheme and benefiting from these tax and NICs reliefs at the same time. However a person may continue to benefit from a workplace nursery provided by their employer and still be eligible for support under this scheme.

72. Subsection (1) provides that a person meets this condition of eligibility if neither they nor their partner is an "eligible employee" in respect of a "relevant childcare scheme" on the date they make a declaration of eligibility. A "relevant childcare scheme" is one in which an employer provides their employees with either childcare vouchers or directly-contracted childcare under Employer-Supported Childcare.

73. However, if the person making the declaration or their new partner (that is, a partner who was not their partner at the time of the person's earlier declaration of eligibility) is an eligible employee the condition is met if the eligible employee intends to give their employer

a "childcare account notice". This is a notice informing the employer that they wish to leave the relevant childcare scheme in order to open a childcare account. This means that a person is allowed to wait until they are certain that they are eligible for the new scheme before they need to leave their Employer-Supported Childcare scheme.

74. Subsection (3) defines "eligible employee" as having the meaning given by section 270AA or 318AZA of the Income Tax (Earnings and Pensions) Act 2003, which are inserted by clauses 63 and 64 of the Bill.

Clause 13: Neither the person nor his or her partner may be receiving other childcare support

75. Clause 13 sets out the eighth condition of eligibility. This is that the person must not be receiving certain other types of childcare support. This condition must also be met by any partner of that person. This stops a person or their partner receiving support under the scheme when they are already benefiting from other childcare support.

76. For example, a person will not meet this condition if they are receiving support under the Childcare Grant administered by the Student Loans Company, which provides up to 85% financial support towards students' childcare costs. However, a person will still meet this condition if they benefit from payments that are made directly to their childcare provider, such as free early years provision. Regulations may also be made to provide other exemptions from this condition.

77. Subsections (1) and (4) stipulate that, on the date that they make a declaration of eligibility, the person must not be entitled to receive other forms of Government childcare support, or have made a claim to such support, for a period which includes the date of declaration or coincides or overlaps with the entitlement period for which the declaration is made.

78. Subsection (5) deals with cases where a person is making a declaration of eligibility in order to open a childcare account. In such a situation, the person will not yet know the date of their first entitlement period, and so the three-month period following the date of that declaration is to be used instead.

QUALIFYING CHILDREN

Clause 14: Qualifying child

79. Clause 14 allows regulations to define a qualifying child for the purposes of the scheme. The Government intends to make regulations providing that a qualifying child is one aged under 12 (or, in the case of a disabled child, under 17).

80. Regulations will provide a definition of disabled child. This will include, for example, a child for whom disability living allowance or personal independence payment is payable.

81. Subsection (2) provides that regulations made under this clause can set different definitions of a qualifying child to apply for different periods.

CHILDCARE ACCOUNTS

Clause 15: Childcare accounts

82. Clause 15 deals with the rules which apply to childcare accounts.

83. A childcare account is defined in subsection (1) as an account which a person holds for the purpose of receiving Government top-up payments in respect of a qualifying child, which meets the rules set out in the Bill, and which is provided by an account provider as defined in clause 16.

84. Subsection (2) provides that a childcare account can only be held for a single qualifying child. This means that, where a person has responsibility for two or more qualifying children, they must hold a separate childcare account for each child in order to receive Government top-up payments.

85. Subsection (4) permits regulations to be made which allow a person to operate a childcare account on behalf of an account-holder. This will allow, for example, an account-holder to nominate their partner to manage their childcare account.

86. Subsection (7) provides that, where a contract is entered into by or on behalf of a person aged 16 or 17, it will have the same effect as if that person were aged 18 or over. This is to ensure that contracts relating to childcare accounts entered into by persons aged 16 or 17 years old are legally binding.

87. Subsection (8) allows an account provider to charge fees in connection with childcare accounts, provided that HMRC gives its consent. This would allow an account provider, for example, to charge a person a fee for using a credit card to pay money into a childcare account. However, this is subject to subsection (9) which prevents an account provider from charging fees for providing and operating the account.

Clause 16: Account providers

88. Clause 16 provides the rules about who may be an account provider for the purposes of the scheme. These permit three different categories of provider:

- the Commissioners for HMRC, which would allow HMRC itself to be an account provider, in addition to being responsible for administering the scheme more generally. As HMRC and the account provider would, in this case, be one and the same, subsection (4) modifies the Bill to deal with places where HMRC and the account provider would otherwise be two separate bodies, for example, where an account provider is required to give or notify something to HMRC;

- any person or body with whom HMRC have entered into arrangements for the provision of childcare accounts, which would allow one or more public or private sector entities to be an account provider, by agreement with HMRC; and

- the Director of Savings, which would allow the Treasury to determine that National Savings and Investments (NS&I), an executive agency of the Treasury, should be an account provider. If NS&I do provide accounts, they must do so in accordance with any arrangements made with the Commissioners for HMRC.

89. Subsection (3) provides that arrangements made between HMRC and an account provider may include provision for the making of payments by HMRC to the account provider for the provision of childcare accounts. Such payments are not subject to the restrictions on fees imposed by subsection (9) of clause 15.

Clause 17: Opening a childcare account

90. Clause 17 provides the rules which apply when a childcare account is opened.

91. Subsection (1) requires a person to apply to HMRC to open a childcare account if they wish to receive top-up payments. Such a person is referred to as the applicant.

92. Subsection (2) permits HMRC to grant an application to open a childcare account, provided that the applicant has made a valid declaration of eligibility, the child is a qualifying child at the date of the application, and no-one else holds an active childcare account for the same child on the date that the application is granted. An active childcare account (defined in subsection (3)) is one where the account-holder has made a valid declaration of eligibility for the current entitlement period, so that qualifying payments can be made into the account.

93. Subsection (4) permits regulations to be made providing further rules for opening childcare accounts. The Government intends that these regulations will include, for example, a requirement for applications to be made electronically where possible and rules permitting someone to operate a childcare account on someone else's behalf.

Clause 18: Cases where there is more than one eligible person

94. Clause 18 deals with situations where two or more persons are eligible to hold a childcare account for a child, but they cannot decide between themselves who should have the active account and, therefore, receive top-up payments. This could happen if one person already has an active childcare account and another person wishes to either open one, or to reactivate an existing inactive one, in respect of the same child.

95. In such cases, HMRC will be able to decide which of them, if any, should be allowed to hold an account. If HMRC decide that a person who holds an active childcare account for a child should no longer have the active childcare account, they will be able to impose an account restriction order on that person's childcare account under clause 24, so that the other person can have an active childcare account.

96. Subsection (3) is a signpost to the provision (clause 24) enabling HMRC to make an account restriction order to give effect to the decision.

Clause 19: Payments into childcare accounts

97. Clause 19 deals with payments that can be made into a childcare account.

98. An account-holder or any other person may make qualifying payments into a childcare account at any time during an entitlement period, provided the account-holder has made a valid declaration of eligibility for that entitlement period and the child is a qualifying child when the payment is made. Multiple qualifying payments may be made into a childcare account in an entitlement period. An account provider must notify HMRC of any qualifying payments made into a childcare account to enable HMRC to make the associated top-up payment.

99. The maximum value of qualifying payments which can be made into a childcare account in an entitlement period is £2,000, although this can be adjusted by regulations. Regulations can also adjust the maximum qualifying payment in particular cases. For example, regulations may provide for the maximum to be adjusted proportionately for entitlement periods that are not the standard 3 months.

100. There are two types of payments into childcare accounts that are not qualifying payments. The first is a top-up payment, which means that it will not itself attract a top-up payment when it is paid into a childcare account. The second type of payment is a repayment made into the childcare account. This deals with cases where an account-holder overpays their childcare provider from their childcare account, and the childcare provider returns the amount overpaid to the childcare account. Because the repayment will already include a top-up

element, it should not attract a further top-up payment. However, where an amount that has previously been withdrawn by the account-holder is re-deposited into the account, the corresponding top-up element of the withdrawal will have been returned to HMRC under clause 22, so that payment will not include a top-up element and should, therefore, qualify for a top-up payment.

Clause 20: Payments that may be made from childcare accounts

101. Clause 20 provides the rules which apply when payments are made from a childcare account.

102. Subsection (1) restricts the types of payment that can be made from a childcare account to:

- payments for qualifying childcare for the child for whom the account is held; and

- withdrawals made by the account-holder.

Such payments are defined by subsection (3) as a 'permitted payment'.

103. Subsection (4) provides that any payment from a childcare account that is not a permitted payment or made by the account provider to HMRC will be a prohibited payment.

104. Subsection (5) allows permitted payments to be made from a childcare account during an entitlement period, whether or not the account-holder has made a valid declaration of eligibility for that period. This allows an account-holder to continue to spend accumulated balances in their childcare account for qualifying purposes even when they are no longer entitled to further top-up payments because they have not reconfirmed their eligibility.

105. Subsection (6) deals with payments made from a childcare account where only part of the payment is for the purpose of qualifying childcare. In such cases, only that part of the payment which is attributable to qualifying childcare provided for the relevant child will be treated as a permitted payment, and the rest will be treated as a prohibited payment.

106. For example, a person with responsibility for two children but with a childcare account for only one of them might place both children with a childcare provider and make a single payment for the childcare from the account. In such a case, half of that payment would be a permitted payment and half would be a prohibited payment.

107. Subsection (7) allows regulations to set rules for determining how much of a payment is to be attributed between permitted and prohibited payments for the purposes of subsection (6).

Clause 21: Calculating the top-up element of payments made from childcare accounts

108. Clause 21 determines how much of a payment or other amount consists of top-up payments.

109. Subsection (1) defines the top-up element of any payment made from a childcare account as the amount equal to the relevant percentage of that payment. Subsection (2) provides a method for calculating the relevant percentage, which would accommodate any change in the rate at which top-up payments are made under clause 1(4). The current relevant percentage is 20%.

Clause 22: Withdrawals

110. Clause 22 provides the rules which apply where an account-holder withdraws amounts from a childcare account.

111. If an account-holder makes a withdrawal from a childcare account, subsection (1) requires the account provider to pay the corresponding top-up amount, calculated under subsection (2), to HMRC. Therefore, if an account-holder withdraws £400 from the childcare account, the corresponding top-up amount will be £100 which the account provider must pay to HMRC.

112. Subsection (3) provides that, as the corresponding top-up amount of any withdrawal must be paid to HMRC, the maximum amount which can be withdrawn from a childcare account is the 'relevant percentage' of the total amount in the account at any time. Where top-up payments are provided at the rate of 25% of a qualifying payment, the relevant percentage will be 80%.

113. Subsection (5) prevents a withdrawal from being made from a childcare account when a top-up payment is payable into the account. This is to ensure that the required 80:20 ratio between account-holder funds and top-up payments is maintained.

Clause 23: Refunds of payments from childcare accounts

114. Clause 23 sets out the rules which apply when payments from a childcare account are refunded. These rules are needed to deal with payments from childcare accounts that are too high and lead to the childcare provider giving a refund.

115. If a payment is made from a childcare account and the whole or part of that payment becomes repayable to the account-holder, subsection (1) requires it to be repaid into the childcare account. This is because any refund will contain a top-up element which needs to be spent on qualifying childcare or returned to HMRC.

116. An example of this could be where an account-holder makes an advance payment of £1,000 to a nursery from their childcare account, but the nursery cannot provide all of the childcare and they give the account provider a refund of £500. Because of the calculation in clause 21, this will consist of a qualifying payment of £400 and a top-up element of £100. The refund must be returned to the childcare account, but because of clause 19(1)(b) it will not attract a further top-up payment. Once this amount has been returned to the account, the account-holder will be able either to spend the £500 on qualifying childcare or to withdraw their original £400 qualifying payment, in which case the £100 of top-up will be returned to HMRC.

117. Subsection (2) deals with cases where a repayment is made partly of money from a childcare account and partly of money which is not from the childcare account. In such cases, any part of the repayment which is more than the amount that is not from the childcare account must be put into the childcare account.

118. To illustrate this, assume that an account-holder needs to pay £1,000 for qualifying childcare, but because they only have £700 in their childcare account they pay the remaining £300 from their bank account. However, the childcare provider subsequently refunds £500 which is treated as consisting of £300 from the bank account and £200 from the childcare account. The £200 must be repaid into the childcare account and will not attract a top-up payment.

119. Subsections (3) and (4) deal with cases where the childcare account has been closed before the repayment can be made into it. In such cases the childcare provider must pay the repayment to the account provider. The account provider must then return the top-up element to HMRC and pay the remainder to the person that held the account.

Clause 24: Imposing restrictions on accounts

120. Clause 24 provides rules which permit HMRC to restrict the use of childcare accounts in certain circumstances.

121. Subsection (1) enables HMRC to make an order imposing restrictions on a childcare account where conditions set out in regulations are met. It is intended that regulations will set out these conditions which will include cases where an account-holder has an outstanding debt relating to their childcare account or where HMRC believes that the childcare account will be used for fraudulent purposes.

122. Subsection (2) provides that such an order made by HMRC will require the account provider to impose restrictions on a childcare account which can:

- prevent qualifying payments being paid into the account (which will mean that the account-holder will not receive further top-up payments); and/or

– prevent payments being made from the account for qualifying childcare (with the effect that the account-holder will be unable to spend top-up payments on childcare).

123. Subsection (3) allows regulations to be made to permit HMRC to make an account restriction order where a person wants to open a childcare account or make a declaration of eligibility but is prevented from doing so because someone else already holds a childcare account in respect of the same child. This addresses the situations described in clause 18 and permits HMRC to determine which person will be allowed to have the active childcare account.

Clause 25: Closure of childcare accounts

124. Clause 25 provides for regulations which apply when a childcare account is closed.

125. Subsections (1) and (2) permit regulations to be made about closing childcare accounts. Regulations will include provision for non-active childcare accounts to be closed after two years, or one year in cases where the child is no longer a qualifying child, and provision for what is to happen to any funds remaining in the childcare account in such cases.

INFORMATION

Clause 26: Power to obtain information or documents

126. Clause 26 provides HMRC with the power to request information or documents.

127. Subsection (1) allows HMRC to issue a written notice requesting information or documents which are relevant to the operation of the scheme. Regulations will set out the categories of people who can be required to provide information or documents.

128. Subsection (2) provides that HMRC may require a person to provide information only if it is in their possession or the person is authorised to provide that information or document.

129. Subsection (3) enables regulations to make provision about notices requiring information or documents.

Clause 27: Information sharing between HMRC and others

130. Clause 27 permits the sharing of data between HMRC and others for purposes relating to the scheme.

131. Subsections (1) and (2) permit HMRC to disclose information that would otherwise be confidential under section 18(1) of the Commissioners for Revenue and Customs Act 2005,

including information held by persons providing services to HMRC, to any person for the purpose of enabling or assisting the exercise of any function of HMRC under the Bill.

132. Subsection (3) provides that information which has been disclosed in accordance with subsection (2) may be passed on to another person only with the general or specific consent of the Commissioners for HMRC.

133. Subsection (4) permits others, for example other Government departments, to disclose information to HMRC for the purposes of exercising its functions under this Bill.

134. Subsection (5) ensures that this section does not affect existing powers to supply information.

135. Subsection (6) extends an existing information gateway between HMRC and the Department for Work and Pensions to this scheme.

Clause 28: Wrongful disclosure of information received by others from HMRC

136. Clause 28 sets out the rules which apply where information received by others from HMRC is wrongfully disclosed.

137. Subsections (1) and (2) make it a criminal offence for a person who receives information from HMRC to pass on that information to others if it would allow a person to be identified. It does this by extending the existing offence in section 19 of the Commissioners for Revenue and Customs Act 2005, which protects information while it is held by HMRC, to also protect information that HMRC supplies to another person under clause 27.

Clause 29: Supply of information to HMRC by childminder agencies

138. Clause 29 amends section 83A of the Childcare Act 2006. This section requires childminder agencies to provide information to HMRC for the purposes of tax credits. Clause 29 expands this requirement to cover information for the purposes of this scheme as well.

SPECIAL RULES AFFECTING TAX CREDIT AND UNIVERSAL CREDIT CLAIMANTS

Clause 30: Termination of tax credit awards

139. Clause 30 automatically terminates a person's tax credit award, or a tax credit award made to their partner (whether as a result of a joint or single claim), when they make a valid declaration of eligibility under the scheme. This prevents anyone from receiving support under both tax credits and the new scheme. The automatic termination means a person who is

on tax credits who decides to move to the new scheme does not need to do anything in relation to their tax credit award: the award will simply terminate when they move across.

140. Subsections (1) to (3) set out how a person's, or their partner's, tax credits award is to cease in relation to their entitlement under the new scheme. If the person is opening a new childcare account their tax credits award will cease with effect from the day before their first entitlement period begins. If they already have a childcare account, and have a new partner who is on tax credits, the partner's tax credits award will cease immediately before the first entitlement period that starts after they become the person's partner (or, if the person does not make a timely declaration of eligibility for that entitlement period, the day before the person makes their declaration of eligibility).

141. Subsections (4) and (5) provide that if a person makes a valid declaration of eligibility for more than one entitlement period during the period when they are waiting for their or their partner's tax credit claim to be decided, the tax credit award will cease immediately before the first entitlement period for which a declaration of eligibility was made (or if later, the day before the person made their declaration of eligibility for that period).

142. Subsections (6) and (7) deal with cases where a person or their partner appeals against, or seeks a review of, a decision relating to their entitlement to tax credits. In these circumstances the usual rule in subsections (1) to (3) that the person's or their partner's tax credit award will cease immediately before the first entitlement period (or the day before the person makes their declaration of eligibility for that period) will not apply in relation to any entitlement period beginning before the person is notified of the outcome of their tax credit appeal or review.

143. Subsection (8) requires HMRC to notify a person if their tax credit award is terminated by virtue of this clause. The tax credits legislation will apply to the person, subject to any modifications made in regulations to deal with the consequences of terminating a tax credit award under this clause. This is to ensure that a person's entitlement to tax credits ceases at the appropriate time and their tax credit award is calculated correctly.

144. Subsections (9) and (10) allow for further provision to be made by regulations to deal with payments that relate to tax credits, such as provisional payments made after the end of the tax year where a person is entitled to make a tax credit claim for the new year, but has yet to do so. Regulations may modify the application of tax credits legislation and the provisions of this clause to deal with the consequences of ceasing entitlement under this provision. This is to ensure that a person's entitlement to these payments ceases at the appropriate time and their award is calculated correctly.

145. Subsection (11) provides that where a declaration of eligibility under the Bill is subsequently found to be invalid, this does not affect anything done under this clause as a result of the making of that declaration.

146. Subsection (13) provides that the clause will cease to have effect when Part 1 of the Tax Credits Act 2002 is repealed by Schedule 14 to the Welfare Reform Act 2012. This is because this clause will be unnecessary when tax credits have been replaced by universal credit.

Clause 31: Power to provide for automatic termination of universal credit

147. Clause 31 allows regulations to be made to terminate a person's or their partner's universal credit award or entitlement to payments related to universal credit, where the person has made a valid declaration of eligibility under the new scheme. This is to prevent anyone from receiving universal credit or related payments at the same time as claiming childcare support under the new scheme.

148. Subsection (2) gives the Treasury power to amend the Bill by regulations in order to provide that entitlement to universal credit ceases when a person has made a valid declaration of eligibility under the new scheme, and to amend or repeal the eligibility criteria in clause 11. This would mean that a universal credit award made to a person who moved to the new scheme would simply terminate when they moved across. The subsection also enables the Secretary of State or a Northern Ireland department to be given power to make regulations to ensure that a person's or their partner's entitlement to universal credit is calculated correctly where an award is terminated under this clause.

Clause 32: Power to disqualify tax credit claimants from obtaining top-up payments

149. Clause 32 allows HMRC to disqualify a person from receiving top-up payments or give them a warning notice if they or their partner make a successful claim for tax credits while they are receiving support under the scheme and the person or the person's partner (who could be a new partner) makes a declaration of eligibility within 12 months of making the claim for tax credits. A person can only be disqualified if they have been given a warning notice in the last four years.

150. This does not apply if the circumstances of the person or the person's partner changed after the beginning of the entitlement period in which the tax credits claim was made. Subsection (5) allows for regulations to set out what is, or is not, to be regarded as a change of circumstances for these purposes.

151. A person can only be given a disqualification notice if they have had a warning notice under this clause or clause 33. A warning notice is defined in subsection (4) as a notice which tells the person that they may receive a disqualification notice if they make a claim for tax credits or universal credit in the same way within a four-year period.

Clause 33: Power to disqualify universal credit claimants from obtaining top-up payments

152. Clause 33 is similar to clause 32 and applies to people who claim universal credit. It allows HMRC to disqualify such a person from receiving top-up payments if the person or their partner makes a successful claim for universal credit while they are receiving support under this Bill and the person, or their partner (who may be a new partner), makes a declaration of eligibility within 12 months of the date on which the claim for universal credit was made.

Clause 34: Disqualification notices

153. Clause 34 provides the rules about when HMRC may give a disqualification notice to a person who has been given a warning notice under clause 32 or 33.

154. Subsection (1) requires HMRC to give the person a warning notice under clause 32 or 33 before they can disqualify a person from receiving top-up payments.

155. Where HMRC gives a person a disqualification notice, they cannot open a childcare account, no payments can be made into a childcare account which they hold and any declaration of eligibility they have made is invalid. A copy of the disqualification notice must be given to the account provider.

156. A disqualification notice lasts for the period stated in the notice. However, under subsection (4), a notice cannot remain in force for longer than 3 years.

157. Subsection (5) stipulates that the period stated in a disqualification notice may begin before the date of the notice but cannot commence before the beginning of the entitlement period for which the declaration of eligibility which caused the notice to be given was made. This might apply where a person makes a late declaration of eligibility, with the effect that the disqualification notice can be backdated to the start of the entitlement period for which they are making their late declaration.

158. Subsection (7) allows HMRC to revoke a disqualification notice.

RECOVERY OF TOP-UP PAYMENTS

Clause 35: Recovery of top-up payments where tax credits award made on a review

159. Clause 35 sets out the rules that apply where a person who has a childcare account, or the person's partner, has applied for a review of a decision not to make, or to terminate, a tax credit award and the decision is changed. If this means that they receive a backdated tax credit award, there would be a period when they would have received support under both

schemes. The clause allows for the recovery of top-up payments received during any entitlement period or part of an entitlement period that overlaps with both the period of the tax credits review and the period for which a tax credit award was made or continued as a result of the review decision. The effect of this provision is to prevent a person getting support under both schemes.

160. Subsection (2) provides that the person must pay HMRC an amount equal to the top-up payments made for an entitlement period falling within the "relevant period", or the "relevant proportion" of top-up payments where only part of the entitlement period overlaps with the "relevant period". For example, if a person has received £500 of top-up payments during an entitlement period, and one month of that entitlement period falls within the "relevant period", the amount the person would be liable to pay would be a third of £500. Where a person has not received any top-up payments there will be nothing for them to pay.

161. Subsections (3) and (4) set out how the "relevant period" is to be determined. This is a period that falls within both the "review period" and the period for which a tax credit award was made or continued as a result of the review. The "review period" is defined as starting on the day the decision is made and ending on the day the person who applied for the review is notified of its conclusions or, if that day is part way through an active entitlement period, the last day of that entitlement period. Thus the review period is the maximum period for which the person could have been entitled to childcare support under both schemes.

Clause 36: Recovery of top-up payments where tax credit award made on appeal

162. Clause 36 sets out the rules that apply where a person has a childcare account and the person or their partner also has an ongoing tax credit appeal which is subsequently upheld. If the person's tax credit appeal is upheld their tax credit award will be backdated, possibly for some months, and therefore there could be a significant period when the person is entitled to support under both this scheme, and under the tax credits scheme. The clause allows for the recovery of top-up payments received during any entitlement period that falls within both the appeal period and the period for which the award of tax credits is made or continued as a result of the appeal decision. The effect of this provision is to prevent a person getting support under both schemes.

163. Subsection (1) provides for this rule to apply where a person or their partner have an appeal upheld against a decision either not to make an award of tax credits or to terminate a tax credit award.

164. Subsection (2) provides that the person must pay HMRC an amount equal to the top-up payments made for an entitlement period falling within the "relevant period", or the "relevant proportion" of top-up payments where only part of the entitlement period overlaps with the "relevant period". Subsection (5) sets out that the "relevant proportion" of any top-up payments is equal to the proportion of the entitlement period which falls within the relevant period.

165. Subsections (3) and (4) set out how the "relevant period" is to be determined. This is a period which falls within both the appeal period and the period for which the award of tax credits is made or continued as a result of the appeal decision. The "appeal period" begins on the day on which the decision which is the subject of the appeal is made and ends on the day the person is notified of the decision of the appeal or, if that day is part way through an active entitlement period, the last day of that period.

Clause 37: Recovery of top-up payments where universal credit award made on revision

166. Clause 37 makes provision about universal credit which corresponds to that made by clause 35 in relation to tax credits.

Clause 38: Recovery of top-up payments where universal credit award made on appeal

167. Clause 38 makes provision about universal credit which corresponds to that made by clause 36 in relation to tax credits.

Clause 39: Recovery of top-up payments where person fails to give childcare account notice

168. Clause 39 sets out the rules that apply where a person has a childcare account, they or their partner are part of a childcare scheme as set out in clause 12 and they fail to leave that scheme. This clause allows HMRC to recover top-up payments that the person has received.

169. Subsection (1) provides for the clause to apply where a person makes a declaration of eligibility in a case where they or their partner are included in an employer's tax-exempt childcare scheme and they (or their partner) fail to leave the scheme before the end of the "relevant period". Under subsection (3) an amount equal to any top-up payments made in the entitlement period will be payable to HMRC by the person who made the declaration.

170. Subsection (2) defines the "relevant period" as the entitlement period for which the declaration was made, or, if the declaration was made when opening a childcare account, the three-month period beginning with the day the declaration was made.

Clause 40: Recovery of top-up payments in other cases

171. Clause 40 sets out other circumstances when HMRC will be able to recover top-up payments. It means that top-up payments will be recoverable if they are paid to a person who was not entitled to them, or when they are used for non-qualifying purposes.

172. Subsection (1) provides that if a top-up payment is made into a person's childcare account and that person is not entitled to it, the person must pay HMRC an amount equal to

the amount of the top-up payment received. Subsection (9) refers to clause 21 which sets out how the top-up element of a prohibited payment is calculated.

173. Subsection (2) provides that in cases where a person causes or allows a prohibited payment (see clause 20) to be made from a childcare account, where they knew or ought to have known that it was a prohibited payment, that person will be liable to repay HMRC an amount that does not exceed the value of the top-up element of the prohibited payment concerned.

174. Subsection (3) provides that where a person fails to make a payment in accordance with clause 23 the person is liable to pay HMRC the top-up element of that payment.

175. Subsection (4) provides that where a prohibited payment from a childcare account is made to a person due to the dishonest action by them or another person, each person involved in the dishonest action will be liable to repay HMRC the top-up element of the prohibited payment in question.

176. Subsection (5) provides that where a company is liable to pay an amount to HMRC in accordance with subsection (3) or (4) and that liability is because of the dishonesty of one of its directors or officers, that person along with the company is also liable to repay HMRC the amount. Subsection (8) applies where a Scottish partnership is liable to repay an amount under this clause as a result of dishonesty by a partner or by a person acting as a partner. In such cases, both that person and the partnership will be liable to pay that amount to HMRC.

177. Subsection (7) provides that where a company is managed by its members (for example, a co-operative), subsection (5) will apply to the actions of a member in relation to the management of the company as if that person were a director of that company.

Clause 41: Assessment and enforcement of recoverable amounts

178. Clause 41 describes the process by which HMRC may assess and enforce amounts which are recoverable under clauses 35 to 40. HMRC must notify a person if it assesses that they are liable to repay such an amount.

179. Subsections (2) and (3) impose time limits on HMRC for making assessments. An assessment must be made by the earlier of:

- four years from the time the person first became liable to pay the amount to HMRC (or, in cases of dishonesty, 20 years from that time), or

- 12 months from the day HMRC first believed, or had reasonable grounds to believe, that the person was liable to pay the required amount.

180. Subsection (5) requires a person to pay an amount assessed under this clause:

- within 30 days, if they do not apply for a review;
- within 30 days of the end of the review, if they do not appeal against its conclusion; and
- if they do appeal, on the day the appeal is decided or withdrawn.

181. Subsection (4) provides that if two or more people have been notified that they are liable to pay an amount to HMRC as a result of an assessment relating to subsection (3) or (4) of clause 40, then that can be enforced against them either individually or together.

182. Subsection (6) provides that the requirement to pay any amount to HMRC can be enforced in the same way as income tax which is due.

PENALTIES

Clause 42: Penalties for inaccurate declarations of eligibility

183. Clause 42 provides a penalty for making an inaccurate declaration of eligibility.

184. A person who makes an inaccurate declaration of eligibility is liable to a penalty if the inaccuracy is careless or deliberate. A person who makes an inaccurate declaration of eligibility, or for whom an inaccurate declaration of eligibility is made by someone acting on their behalf, is liable to a penalty if the person becomes aware of the inaccuracy after the declaration has been made but does not take reasonable steps to inform HMRC. An inaccuracy is careless if the person making the declaration of eligibility failed to take reasonable care.

185. Subsections (4) and (5) provide that the penalty will be 50% of the amount of the maximum available top-up payment for the entitlement period for which the declaration of eligibility was made if the inaccuracy was deliberate, or 25% if it was careless.

186. For a standard entitlement period, the maximum available top-up payment will be £500, as this is 25% of the maximum qualifying payment that can currently be made under clause 19. This would mean that the penalty for deliberate inaccuracy is £250 and the penalty for careless inaccuracy is £125.

187. However, if the maximum qualifying payment had been amended under subsection (6) of clause 19 the maximum available top-up payment would reflect this amount. Subsection (7) also provides that if a person has asked HMRC to increase the maximum payment, the penalty is to be calculated on the basis of that higher amount.

Clause 43: Penalties for failure to comply with information notice

188. Clause 43 deals with the enforcement of notices under clause 26 which require the provision of information or documents (referred to in this clause as an "information notice").

189. Subsection (1) allows HMRC to issue a warning notice to a person who has failed to comply with an information notice which has become final. Subsection (6) explains when an information notice becomes final. This is:

- at the end of the period during which the person could have requested a review of the decision to issue the information notice (usually 30 days after the information notice is given – see clause 57);

- if the person has asked for a review of the decision to issue an information notice but has not appealed against it, at the end of the period in which they could have made such an appeal (see clause 59); or

- if the person has appealed against the notice, on the date on which the appeal is decided or withdrawn.

190. A warning notice is defined in subsection (2) as a notice which requires a person to comply with an information notice within 30 days of the date on which the warning notice is issued.

191. If the person who has received a warning notice does not comply with the information notice, subsection (3) provides that they are liable to a penalty. The maximum amount of this penalty is £300, which can be amended by regulations.

192. Subsection (7) provides that if a person has been granted an extension of the time limit for requesting a review of, or appealing against, an information notice, any warning notice has no effect. This means that a further warning notice would need to be issued before they could be subject to a penalty.

Clause 44: Penalties for providing inaccurate information or documents

193. Clause 44 allows penalties to be imposed in cases where a person provides inaccurate information or documents to HMRC in response to an information notice.

194. Subsections (1) to (4) provide that a person who provides inaccurate information or documents in response to an information notice is liable to a penalty if:

- the inaccuracy was careless or deliberate (an inaccuracy is careless if the person failed to take reasonable care);

- they knew of the inaccuracy when they provided the information or documents, but did not tell HMRC about it; or

- they became aware of the inaccuracy after they provided the information or documents, but they did not take reasonable steps to inform HMRC.

195. Subsection (5) provides that the maximum penalty for providing inaccurate information or documents is £3,000, which can be amended by regulations made under subsection (6).

Clause 45: Penalties for making prohibited payments

196. Clause 45 enables penalties to be imposed on a person who makes repeated prohibited payments from a childcare account or permits such payments to be made. A prohibited payment is defined in clause 20.

197. A person will be liable to a penalty if:

- they have caused or permitted a prohibited payment to be made from their childcare account;

- as a result of that prohibited payment, they became liable to repay the top-up amount and have been assessed under clause 41;

- HMRC has given them a warning notice under subsection (2); and

- they then cause or permit a further prohibited payment to be made from their childcare account within 4 years of being given the warning notice and are assessed under clause 41 as liable to repay the top-up amount.

198. Subsection (2) sets out the conditions that must be met before HMRC can give a warning notice. As set out above, these are that they must have caused or permitted a prohibited payment to be made from their childcare account and have been notified of an assessment under clause 41 in respect of that prohibited payment. That assessment must also have become final. An assessment becomes final, under subsection (7), when it can no longer be reviewed or appealed against.

199. Subsections (4) and (5) provide that a warning notice given to a person in respect of prohibited payments ceases to have effect if the person is notified of a penalty under this clause, but that HMRC may issue a new warning notice in respect of the prohibited payment to which the penalty applies, thus triggering the start of another 4-year period, and enabling HMRC to issue a further penalty if subsequent prohibited payments are made within this period.

200. Subsection (6) provides that the penalty for prohibited payments will be 25% of the repayable top-up element that has been assessed under clause 41. For example, if the prohibited payment was £500 (of which £100 was the top-up element), the penalty would be £25.

201. Subsection (8) provides that if a person has been granted an extension of the time limit for requesting a review of, or appealing against, an assessment under clause 41, any warning notice has no effect. This means that a further warning notice would need to be issued before they could be subject to a penalty.

Clause 46: Penalties for dishonestly obtaining top-up payments, etc

202. Clause 46 sets out the penalties HMRC can impose on people whose conduct involves dishonesty. It allows HMRC to impose a civil penalty in cases where a criminal prosecution is not pursued.

203. A person is liable to a penalty if, in order to obtain a top-up payment or a payment from a childcare account for themselves or another person, they act or fail to act, and their conduct involves dishonesty.

204. Subsection (3) provides that the maximum penalty is £3,000, or the sum of the "relevant amounts" that have been obtained, whichever is greater. A "relevant amount" is defined in subsection (4) as either the amount of the top-up payments, or an amount equal to the top-up element (as calculated under clause 21) of any payments that are dishonestly made from a childcare account.

205. If a company is liable to a penalty under this clause as a result of the dishonesty of one of its directors or officers, subsection (6) provides that a penalty can also be issued to that person. Similar provisions are made in subsections (8) and (9) in relation to the partners in a Scottish firm and the managing members of a corporate body.

206. Regulations under subsection (5) may amend the amount of the £3,000 penalty.

Clause 47: Assessment and enforcement of penalties

207. Clause 47 sets out how HMRC may assess and enforce any penalty that a person has become liable to under the Bill. HMRC must notify a person if it assesses that they are liable to a penalty.

208. Subsections (2) and (3) impose time limits on HMRC for assessing penalties. An assessment must be made by the earlier of:

- four years from the day the person first became liable to the penalty (or, in cases of dishonesty, 20 years from that time); and

- 12 months after the day HMRC first believed, or first had reasonable grounds to believe, the person was liable to the penalty.

209. A person must pay a penalty as a result of an assessment under this clause:

- within 30 days, if they do not apply for a review;

- within 30 days of the end of the review, if they do not appeal against its conclusion; and

- if the person has appealed against the penalty, on the day on which the appeal is determined or withdrawn.

210. Subsection (5) provides that any penalty imposed under the Bill can be enforced as if it were an assessment of income tax which is due.

Clause 48: Double jeopardy

211. Clause 48 ensures that a person will not be liable to any penalty under the Bill if they have been convicted of a criminal offence for the same conduct. This means that no-one will be liable to both a criminal conviction and a civil penalty for the same offence.

OTHER ENFORCEMENT POWERS

Clause 49: Disqualification orders

212. Clause 49 allows HMRC to disqualify a person from receiving support under the scheme by making a disqualification order.

213. Subsections (1) to (5) provide that HMRC can make a disqualification order against a person if any of these conditions apply:

- the person has been notified of a penalty on more than one occasion in the 4 years before the disqualification order is made;

- the person has been convicted of a criminal offence or notified of a civil penalty under clause 46 of the Bill for dishonestly acting or failing to act in order to obtain a top-up payment or a payment from a childcare account, either for themselves or for another person; or

– the person has been convicted of a criminal offence for dishonestly acting or failing to act in order to obtain a relevant benefit (which will be defined in regulations under subsection (6)), either for themselves or another person. This permits HMRC to disqualify a person from receiving support under this scheme if they have been convicted of an offence in relation to benefits under other schemes.

214. Subsection (7) prevents a person who is subject to a disqualification order from opening a childcare account, making qualifying payments into an existing childcare account or making a valid declaration of eligibility for as long as the order is in force.

215. Subsection (8) provides that a disqualification order will remain in force for the period stated in the order. However, subsection (9) provides that this cannot be longer than 3 years.

216. Subsection (10) obliges HMRC to ensure that, when a disqualification order is made, a copy of the order is given to the person to whom it relates and any account provider. This will ensure that the account provider is aware that the person is disqualified, which means that they cannot open a childcare account.

217. Subsection (11) allows HMRC to revoke a disqualification order. HMRC will do so, for example, where the person who is subject to the order has successfully sought a review of the decision to make that order.

Clause 50: Power to exclude childcare from being qualifying childcare

218. Clause 50 enables HMRC to exclude care provided by a particular childcare provider from being qualifying childcare under the Bill. This will mean that the childcare provider in question will be unable to provide childcare for the purposes of the scheme.

219. Subsections (1) and (2) enable HMRC to direct that childcare provided by a person is not qualifying childcare if they have been convicted of a criminal offence or notified of a penalty under clause 46 for dishonestly acting or failing to act in order to obtain a payment from a childcare account.

220. Subsection (3) provides that a direction under this clause will have effect for 12 months starting with the day on which it was made. This period can be amended in regulations under subsection (4).

221. Subsection (5) provides that any direction made against a person also applies to any company of which that individual is a director or officer, any corporate body (such as a co-operative) of which the person is a managing member and any Scottish firm of which the individual is a partner. The direction will no longer apply to an organisation if the person ceases to hold such a position.

222. Subsection (6) obliges HMRC to notify both the childcare provider and any account provider in any case where a childcare provider has been excluded from the scheme. HMRC must also bring such cases to the attention of anyone else who might be affected by the exclusion, such as account-holders.

223. Subsection (7) provides that HMRC can revoke any disqualification order made under this clause.

Clause 51: Power to charge interest

224. Clause 51 enables HMRC to charge interest on unpaid penalties and recoverable top-up payments.

225. Subsection (1) enables HMRC to charge a person interest if they have not paid a recoverable top-up payment or penalty assessed under clause 41 or 47 by the due date. If it does so, HMRC must notify the person in writing that interest has been charged on the outstanding amount.

226. Subsection (2) provides that if HMRC notifies a person that interest will be charged, the amount outstanding will attract interest from the "start date" until either the date specified in the notice or, if earlier, the date on which the debt is paid. If the debt has not been paid by the date specified in the notice, HMRC may issue a further notice which specifies another end date. This enables HMRC to extend the period for which interest is charged when a debt remains unpaid.

227. Subsection (3) sets out the date from which interest will be charged on debts assessed under clauses 41 and 47. For amounts assessed under clause 41, it will be the day on which the person becomes liable under clauses 35 to 40 to pay those amounts. In penalties assessed under clause 47, it will be the day on which the debt becomes overdue.

228. Subsections (4) and (5) define the end date for the interest as a specified day that cannot be more than 6 months in the future.

229. Subsections (6) and (7) provide that interest charged under this clause is payable at the same rate which applies to late payments of tax. This rate is currently set at 3%.

230. Subsection (8) provides that if two or more people have been notified that they are liable to pay interest on a debt, it can be enforced against them either individually or together.

Clause 52: Deduction of recoverable amounts from tax credit awards

231. Clause 52 allows amounts that a person owes to HMRC under clause 35 or 36, because they received a back-dated award of tax credits as a result of a review or appeal, to be deducted from the tax credit award made to them or their partner (if it is a joint claim).

232. This clause could apply, for example, if a person is refused tax credits and appeals against that decision, but successfully applies for this scheme while the appeal proceeds. If their appeal is successful, a debt to HMRC arises because they have to repay the top-up payments that they received during the appeal process. This clause allows the repayment to be taken from the back-dated tax credit award made as a result of their appeal.

Clause 53: Recovery of debts from childcare accounts

233. Clause 53 enables HMRC to recover assessed debts directly from childcare accounts. Different rules apply depending on whether the debt is for recoverable top-up payments, other debts, or a combination of both.

234. Subsection (1) provides that, in order for HMRC to be able to recover a debt from a childcare account, the account-holder must owe money in respect of this scheme because of something they did, or did not do, in connection with a childcare account that is held for the same child. They must also not have paid the debt by the time that it is due (which is set out in clauses 41(5) and 47(4)).

235. Subsections (5) to (8) apply when the debt is because HMRC is recovering top-up payments from the account-holder. In this situation, HMRC can only recover the debt from the account if it is not active when they make the direction. When the account provider removes the money from the account, they must also pay the account-holder either the amount that would need to be paid in to receive a top-up payment equal to the debt or, if the debt is more than the amount of top-up payments in the account, all of the remaining money in the account.

236. As an example, assume that an account-holder owes HMRC £400 of recoverable top-up payments. The balance in their account is £1,000, consisting of £800 of their own money and £200 top-up payments. The £200 top-up element is used to pay the debt, but the account-holder still owes £200 which is taken from the £800 of the account-holder's money.

237. Subsections (10) to (13) apply when the debt is for anything other than recoverable top-up payments. In such situations, HMRC cannot recover more than a specified percentage of the funds in the account. If top-up payments are made at a rate of 25% of qualifying payments (as clause 1(4) provides), this rate is 80%. When the account provider removes money to discharge a debt, they must also return the corresponding amount of top-up

payments to HMRC. However, the corresponding top-up payment will not go towards discharging the debt because it is not the account-holder's money.

238. Subsection (14) applies to debts which are a combination of recoverable top-up payments and other amounts. In this situation the amount of the debt that does not relate to recoverable top-up payments can be taken from the money that would otherwise be returned to the account-holder. The amount that would normally be paid to HMRC in respect of the recoverable top-up payments can be taken from the amount of corresponding top-up payment that is returned in relation to the other debt.

239. Subsection (15) provides that if childcare accounts are provided by HMRC then a direction cannot be made in respect of any fees that might be charged in relation to the childcare account.

240. Subsection (16) makes clear that the clause has no effect on HMRC's general powers to recover debts which are due and payable to HMRC.

Clause 54: Set-off

241. Clause 54 deals with certain debts owed to HMRC by the holder of an inactive childcare account.

242. Clause 22 provides that when an account-holder makes a withdrawal from a childcare account the amount of top-up payment which corresponds to that withdrawal is returned to HMRC. Under clause 54, if a withdrawal is made by the holder of an inactive account who owes HMRC a debt in respect of recoverable top-up payments, the corresponding top-up element that is returned to HMRC counts as a payment towards their debt.

243. Subsection (3) provides that if any of the top-up element of a withdrawal is used to pay a debt in this way, the amount of the withdrawal that led to this repayment cannot be added back to the relevant maximum qualifying payment for an entitlement period. This is different from the normal position, under clause 19(8), where withdrawals are added back to this maximum.

Clause 55: Order in which payments are taken to discharge debts

244. Clause 55 applies where a person owes HMRC any amount under the Bill. A person may owe different kinds of amounts to HMRC and if the person has paid off some but not all of the total debt, it is necessary to have rules to determine the order in which the different debts are to be treated as paid off. The order in which debts are discharged when HMRC receives a payment towards them is:

- penalties and other amounts;

– recoverable top-up payments as defined in clause 53;

– interest charged under clause 51.

245. A payment only counts towards a lower priority debt if all of the higher priority debts have been discharged.

246. Subsection (3) provides that, for the purpose of determining whether a relevant debt is an amount of recoverable top-up payments (so that, for example, the rules in subsections (5) to (8) of clause 53 apply), amounts paid to HMRC to discharge a relevant debt are to be treated as paying off debts relating to penalties before they are treated as paying off amounts of recoverable top-up payments.

247. Subsection (4) provides that amounts paid to HMRC are treated as paying off interest only if all other amounts owing to HMRC have been paid off. Subsection (5) similarly provides a rule which ensures that amounts of recoverable top-up payments are treated as paid off before any interest can be paid off.

REVIEWS AND APPEALS

Clause 56: Appealable decisions

248. Clause 56 lists the HMRC decisions which a person can appeal against under the Bill.

249. Before an appeal can be made against a decision, subsection (2) requires the person to have first asked for a review to be conducted under clause 57 and either for them to have been notified of its outcome, or for the deadline for HMRC to notify the person to have passed without them receiving notification.

250. Subsection (3) sets out the list of decisions that can be appealed against. These include decisions not to allow a person to open a childcare account, to restrict what money can be paid into or out of a person's account, to impose a penalty or recover top-up, to disqualify a person from the scheme or to recover debts from a person's childcare account.

251. Where a person is notified of an appealable decision, subsection (4) requires the notification to include details of the person's right to apply for a review of the decision and to appeal against the decision.

252. Subsections (5) and (6) provide rules setting out when the effect of the decision will or will not be suspended when a review has been requested or an appeal has been brought in relation to a decision. When decisions are suspended this continues until the person has been notified of the outcome of the review or appeal.

Clause 57: Review of decisions

253. Clause 57 sets out the process for a person to follow where they wish to apply for a review of a decision made by HMRC. Similar mandatory review processes apply in other Government schemes.

254. A person can ask the Commissioners for HMRC to review any decision that is listed in subsection (3) of clause 56. The person must make this request within 30 days of being notified of the decision, unless they have been granted an extension of time under clause 58. An application must be made in writing, must contain enough information to identify the person seeking the review and the decision they are appealing against, and must set out the reasons why they would like the decision to be reviewed.

255. The Commissioners must review a decision if they receive a request to do so. They can either uphold, vary or cancel the decision. When they are carrying out their review, subsection (6) requires the Commissioners to take account of any representations which the person has made, provided they have been made in reasonable time.

256. If the Commissioners notify the person that they require further information or evidence, and that information or evidence is not supplied within 15 days, subsection (7) allows them to complete the review without it.

257. The Commissioners must notify the person of the review's conclusion, the reasons for that conclusion and, if the decision is varied, details of any variation. This notification must take place within 30 days of them receiving the request for review or, if they have requested further information, 45 days. The Commissioners and the person can also agree that a different time limit applies.

258. If the Commissioners do not notify the person of the review's conclusion within the applicable time limit, subsection (10) provides that the review will be treated as having concluded that the decision has been upheld. The Commissioners must tell the person if this has happened.

Clause 58: Extension of time limit for applications for review

259. Clause 58 allows the Commissioners for HMRC to extend the time limit within which a person can request a review of a decision. If a person wants to be granted an extension of time they must apply to the Commissioners within 6 months of the end of the period in which they should have asked for a review, setting out the reasons for their application.

260. The Commissioners may extend the time limit if they are satisfied that there were special circumstances that meant it was not practicable for the person to request it within 30 days of being notified of the decision, and that it is reasonable to allow that extension.

261. Subsection (4) provides that a person cannot make another application if the Commissioners refuse their application for an extension to the time limit.

Clause 59: Exercise of right of appeal

262. Clause 59 sets out the procedure applying to appeals against decisions made by HMRC.

263. Subsection (1) assigns appeals under clause 56 to the appropriate tribunal.

264. Subsections (2) and (3) define the appropriate tribunal. They provide that an appeal is to be heard by the First-tier Tribunal or by the appeal tribunal in Northern Ireland. An appeal tribunal is one which is constituted under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998.

265. Subsection (4) enables regulations to provide that certain provisions which apply for the purposes of social security and tax appeals apply to appeals made under this Bill, and to modify those provisions for that purpose.

Clause 60: Powers of tribunal

266. Clause 60 sets out the powers of a tribunal hearing an appeal under this Bill.

267. If the appeal is against a decision to assess a penalty (or the amount of that penalty), subsection (2) allows the tribunal to uphold the penalty, set it aside, or replace it with a penalty of a different amount.

268. In any other case, subsections (3) to (5) require the tribunal to either dismiss the appeal or overturn all or part of the decision. The tribunal can only overturn a decision if it is satisfied that it was either wrong in law or was based on a factual error.

269. If the tribunal overturns a decision it can either replace it with its own decision or refer the case back for HMRC to make a new decision in accordance with the tribunal's ruling. However, the tribunal cannot direct HMRC to take any action which HMRC would not otherwise have the power to take.

270. Subsection (7) confirms that the tribunal's decision has the same effect, and can be enforced in the same manner, as an HMRC decision.

Clause 61: Cases where there is more than one eligible person

271. Clause 61 deals with appeals in cases where more than one person has applied to open an account in respect of a particular child, HMRC has made a decision as to which person

should hold an account and this has led to an appeal. This may occur if a child's parents are estranged and each of them wants to open a childcare account for the child.

272. The ways in which such disputes can lead to an appeal are covered in subsections (2), (3) and (4). The first of these in subsection (2) is where two or more persons seek to open childcare accounts for a single child at the same time and HMRC refuses one or more of the requests. The second in subsection (3) is where a person seeks to open a childcare account for a child while another person holds an active account for that child and HMRC refuses the request. The third in subsection (4) is where HMRC makes a decision whether or not to make an account restriction order in relation to another person where such an order is necessary in order for another person to open a childcare account.

273. In this situation the appeal notice must be given to every other person who applied to open an account, and they will all be treated as a party to that appeal. If the tribunal overturns HMRC's decision it must replace it with a decision of its own.

COMPENSATORY PAYMENTS

Clause 62: Compensatory payments

274. Clause 62 requires HMRC to make a compensatory payment to a person in certain circumstances. The purpose is to provide compensation for any top-up payments which a person has, through no fault of their own, not received.

275. Subsection (1) requires HMRC to pay a person a compensation payment if they have been unable to receive top-up payments in situations which will be set out in regulations. This compensation payment will be equal to 20% of the qualifying childcare costs which they have incurred, up to a maximum amount to be specified in regulations under subsection (2). Regulations under subsection (6) can modify the 20% rate. The result is that the amount paid will be equivalent to the top-up payments to which the person would have been entitled.

276. Subsection (4) allows compensatory payments to be made whether or not a person has a childcare account or made a declaration of eligibility. For example, a person could apply to open a childcare account while waiting to be paid Employment and Support Allowance, but cease to be eligible for the scheme for another reason before the claim comes into payment. The person will not have a childcare account but will still be able to receive a compensatory payment.

WITHDRAWAL OF EXISTING TAX EXEMPTIONS

Clause 63: Restrictions on claiming tax exemption for childcare vouchers and Clause 64: Restrictions on claiming tax exemption for employer-contracted childcare

277. Clauses 63 and 64 amend the Income Tax (Earnings and Pensions) Act 2003 (ITEPA) to restrict the availability of the existing tax exemptions for childcare vouchers and directly-contracted childcare (referred to here together as Employer-Supported Childcare). The purpose of the clause is to make the tax exemption unavailable to those not already in an Employer-Supported Childcare scheme on a day which will be specified in regulations under the provisions being inserted in ITEPA.

278. Subsections (2) and (3) of the clauses amend sections 270A and 318A of ITEPA, adding to them the concept of an "eligible employee". In order for an employee to continue to be eligible for the exemption from income tax for Employer-Supported Childcare, they will need to be an "eligible employee".

279. Subsection (4) of each clause inserts new sections 270AA and 318AZA after sections 270A and 318A of ITEPA and defines what is meant by an eligible employee. An employee will need to meet three eligibility conditions to be an eligible employee:

- they were employed by their employer before the relevant day and have not ceased to be employed by that employer on or after that day;

- they have been in receipt of Employer-Supported Childcare at least once in a period of 52 weeks ending on or after the relevant day; and

- they have not given their employer a 'childcare account notice' to say that they no longer want to receive Employer-Supported Childcare, so that they or their partner can open a childcare account.

280. Together, these conditions mean that an employee who was already in an Employer-Supported Childcare scheme on the relevant day will be able to continue to receive the tax exemption, as long as they have not voluntarily given up the tax exemption in order to move into the new scheme provided for by this Bill.

GENERAL

Clause 65: Functions of Commissioners for Revenue and Customs

281. Clause 65 makes the Commissioners for HMRC responsible for managing the scheme introduced by the Bill.

Clause 66: Tax treatment of top-up payments

282. Clause 66 provides that a top-up payment is not subject to income tax in the hands of the account-holder.

Clause 67: Set-off against tax liabilities etc

283. Clause 67 prevents top-up payments, amounts in childcare accounts and compensatory payments (see clause 62) from being used to set off against debts that a person owes to HMRC.

Clause 68: Northern Ireland

284. Clause 68 amends Schedule 2 to the Northern Ireland Act 1998 to make the scheme an excepted matter for the purposes of the Northern Ireland devolution settlement. This means that the scheme will apply in Northern Ireland in the same way as in the rest of the UK.

FINAL PROVISIONS

Clause 69: Regulations: general

285. Clause 69 contains general provisions about regulations under the Bill.

286. Subsection (2) provides a list of powers to make regulations under the Bill which are exercisable by HM Treasury. These include the rate at which top-up payments will be made, the definition of a qualifying child and the maximum amount of Government support available.

287. Subsection (3) provides that any power to make regulations under the Bill which is not referred to in subsection (2) is exercisable by the Commissioners for HMRC.

288. Subsection (4) permits regulations to be made under the Bill which set different rules in different areas and circumstances, deal with consequential, transitional or similar matters and allow HMRC and other persons discretion in any matter related to the scheme.

Clause 70: Regulations: Parliamentary control

289. Clause 70 sets out which regulations made under the Bill will be subject to affirmative procedure and which will be subject to negative procedure.

Clause 71: Interpretation

290. Clause 71 provides the definitions of terms used in the Bill, including "the Commissioners", "HMRC" and "tax credit".

Clause 72: Power to make consequential amendments

291. Clause 72 enables regulations to amend primary or secondary legislation where it is necessary or expedient to do so as a result of the provisions of the Bill.

Clause 73: Financial provisions

292. Clause 73 provides that, if the Commissioners for HMRC or the Director of Savings is the account provider (as permitted by clause 16):

- they are not required to pay amounts paid into childcare accounts into the Consolidated Fund, and

- amounts paid out of childcare accounts are not to be treated as expenditure of the Commissioners or the Director of Savings.

Clause 74: Extent

293. Clause 74 provides that the Bill extends to England and Wales, Scotland and Northern Ireland.

294. Subsection (2) makes clear that any amendment or repeal of another statute made by this Bill will have the same extent as the provision amended or repealed.

Clause 75: Commencement and short title

295. Clause 75 sets out the rules for commencing the provisions in the Bill and confirms that it may be cited as the Childcare Payments Act 2014 once it has received Royal Assent.

FINANCIAL EFFECTS OF THE BILL

296. Government funding for top-up payments, assuming the scheme is implemented in autumn 2015, will be:

2015/16 £245m

2016/17 £660m

2017/18 £645m

2018/19 £590m

EFFECTS OF THE BILL ON PUBLIC SECTOR MANPOWER

297. The operation of the childcare scheme, including confirming eligibility, processing top-up payments and ensuring compliance with the law, might require the recruitment of additional staff. However, this cannot be quantified until the details of the scheme have been finalised.

SUMMARY OF THE IMPACT ASSESSMENT

298. The main monetised costs will be to Government in making top-up payments.

299. No impact is anticipated on greenhouse gas emissions.

300. An updated full impact assessment will be published on the UK Parliament website.

COMPATIBILITY WITH THE EUROPEAN CONVENTION OF HUMAN RIGHTS

301. Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions in the Bill with the Convention rights (as defined by section 1 of that Act).

302. Lord Newby has made the following statement:

- "In my view the provisions of the Childcare Payments Bill are compatible with the Convention rights."

303. The main ECHR issues raised by the Bill are identified below.

Eligibility criteria

304. The eligibility criteria for the scheme are set out in clauses 6 to 13. These criteria will mean that some people are not eligible to receive support. It might be thought that this could engage rights under Article 1 of Protocol 1 ('A1P1', which guarantees the peaceful enjoyment of possessions) and Article 14 (which prohibits discrimination).

305. Entitlement to top-up payments is not a possession for the purposes of A1P1 because they do not form part of the social security system. This means that Article 14 is also not relevant because it only applies to situations which fall within the scope of another Convention right.

306. However, even if top-up payments were capable of being a possession, A1P1 would not give individuals a right to receive them unless they satisfied the eligibility criteria. If individuals are not eligible, the only requirement (under Article 14) would be that the rules of the scheme did not unreasonably discriminate between people.

307. The Department considers that the eligibility criteria in clauses 6 to 13 do not do so. Individuals who do not meet them will not have the same need as eligible people for financial support with their childcare in order to allow them to undertake paid work. As a result, these provisions are compatible with A1P1 and Article 14.

Information

308. Clauses 26 to 29 allow HMRC to obtain and share information. This engages Article 8 (right to private and family life) and could be argued to engage Article 6 (right to a fair trial).

309. HMRC can only obtain or share information if it is necessary for it to exercise its functions under this Bill properly. If it was not able to do so, it would be possible for individuals to claim support to which they were not entitled. Anyone who is required to supply information will be able to appeal to an independent tribunal if they think that they should not have to do so. Any information which HMRC obtains or shares will be processed in accordance with the Data Protection Act 1998, and it will also be a criminal offence for it to be disclosed without lawful authority. The Department considers that these powers are therefore justified and proportionate.

Penalties and other enforcement powers

310. The penalty provisions in clauses 42 to 47 and the other enforcement powers in clauses 50 and 51 may engage Article 6. However, the Department considers that there are sufficient safeguards in place. Anyone who is affected by one of these measures will be provided with information and reasons to explain why. They would then be able to appeal to an independent tribunal. Clause 48 will prevent them from being punished twice for the same offence.

COMMENCEMENT

311. The provisions in clauses 65 (functions of Commissioners for Revenue and Customs), 68 (Northern Ireland), 69 (regulations: general), 70 (regulations: Parliamentary control), 71 (interpretation), 72 (power to make consequential amendments), 73(1) (financial provision), 74 (extent), 75 (commencement) and any power to make regulations come into force on the day on which the Bill receives Royal Assent.

312. The remaining provisions of the Bill will come into force in accordance with regulations.

CHILDCARE PAYMENTS BILL

EXPLANATORY NOTES

These notes refer to the Childcare Payments Bill
as brought from the House of Commons on 18th November 2014
[HL Bill 56]

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