

Office of the Minister for Social Development and Employment
Chair, Cabinet Business Committee

Social Security (Childcare Subsidy) Amendment Regulations 2024

Proposal

- 1 This paper seeks agreement to the attached Social Security (Childcare Subsidy) Amendment Regulations 2024. These regulations will allow the Childcare Subsidy to be paid for top up payments required by educators for children attending licensed home-based early childhood education (ECE) services¹ that are funded under the 20 Hours ECE policy.

Relation to government priorities

- 2 The Government is committed to addressing the rising cost of living, and to helping people enter and remain in employment. Childcare is key to enabling parents and caregivers² to obtain and remain in employment, education, and training.
- 3 Home-based educators will be able to require top up payments for children attending licensed home-based ECE services for hours covered by the 20 Hours ECE policy. The attached Social Security (Childcare Subsidy) Amendment Regulations 2024 will amend the Social Security Regulations 2018 to enable eligible parents to access the Childcare Subsidy to help with the cost of the new top up payments.

Policy

- 4 In August 2023, Cabinet agreed to allow for home-based educators to require a new top up payment³ for children attending licensed home-based ECE services funded under 20 Hours ECE. The purpose of this payment is to make up the difference between home-based ECE educators' normal hourly fee and the amount of the Ministry of Education 20 Hours ECE funding passed-through to them by their umbrella provider.⁴
- 5 This decision was made because the hourly amount of funding pass-through received by educators may not cover their normal hourly fee. This means educators may receive less income for the hours covered by 20 Hours ECE than for other hours they work. In some instances, depending on how many children an educator is caring for and the level of pass-through, the pass-through amount can be substantially less than the minimum wage. If the portion of the pass-through is lower than the educator's normal hourly fee, educators must currently either accept lower pay or seek voluntary additional payments from parents to cover the difference over these hours. These

¹ Referred to as "approved ECE programmes" in the attached Social Security (Childcare Subsidy) Amendment Regulations 2024.

² For brevity, in the remainder of this paper, "parents" refers to parents and caregivers.

³ In SWC-23-0115, the top up payments are referred to as "new allowable payments". The Ministry of Education's ECE Funding Handbook will refer to the new allowable payments as a 'top up payment', and this is the term that is used in this paper.

⁴ SWC-23-0115 and CAB-23-MIN-0398 refer.

IN CONFIDENCE

voluntary additional payments are likely in breach of the current Ministry of Education funding conditions as they do not meet the definition of an optional charge or donation.

- 6 In December 2023, the Minister of Education agreed to retain the new top up payment for home-based educators and introduce new funding conditions to enable this.⁵ Cabinet was informed of this as part of the decision to reverse the extension of 20 Hours ECE to two-year-olds.⁶
- 7 The Childcare Subsidy and Guaranteed Childcare Assistance Payment (GCAP) are two forms of childcare assistance administered by the Ministry of Social Development (MSD) to help eligible families with the costs of childcare. The Childcare Subsidy is targeted at low to middle-income families, while GCAP helps with the costs of ECE for young parents receiving Young Parent Payments, as well as non-beneficiary young parents, and young parents who are partners of people receiving specific benefits.
- 8 At present, the Childcare Subsidy and GCAP cannot be paid for hours of ECE that are funded through 20 Hours ECE. To help parents with the additional costs resulting from the new top up payment, Cabinet agreed to allow eligible parents access to the Childcare Subsidy and GCAP to cover these payments.⁷ I support the decision to allow the Childcare Subsidy and GCAP to be used by parents to help with the cost of the new top up payments.
- 9 Allowing the Childcare Subsidy to be available for top up payments requires amendments to the Social Security Regulations 2018, which were agreed to by Cabinet in August 2023. These amendments will ensure that the Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where educators require top up payments for 20 Hours ECE for children attending licensed home-based ECE services.
- 10 I will also approve an instrument to amend the Guaranteed Childcare Assistance Payment Programme to ensure that GCAP is not payable for hours covered by 20 Hours ECE funding, except where educators require top up payments for 20 Hours ECE for children attending licensed home-based ECE services.
- 11 From 3 June 2024, MSD will be able to pay Childcare Subsidy and GCAP for top up payments, but this will only have practical effect once the relevant funding conditions come into force in the Ministry of Education's ECE Funding Handbook.

⁵ The funding conditions will state that 'Home-based educators may require payments from parents to 'top up' the amount of 20 Hours ECE funding pass-through from their service provider to match their hourly fees for hours outside of 20 Hours ECE'. In practice, the home-based educator's umbrella service provider may collect the payment on behalf of the educator. However, the service provider must pass on the full amount of the top up payment to the educator, as only the educator can require the payment.

⁶ 100-23-MIN-0006 refers.

⁷ SWC-23-0115 refers. Cabinet also agreed to the use of the Early Learning Payment (ELP), which is paid to parents enrolled in Family Start or Early Start, for children aged 18 months – 3 years. As 20 Hours ECE will not be extended to 2-year-olds, there is no longer an intersection between ELP and 20 Hours ECE.

Timing and 28-day rule

- 12 The Social Security (Childcare Subsidy) Amendment Regulations 2024, if approved, will be submitted to the Executive Council for consideration on 29 April 2024, published in the New Zealand Gazette by 6 May 2024 to comply with the 28-day rule, and will come into force on 3 June 2024. The amendments to the GCAP Programme will also come into force on this date.

Compliance

- 13 The Social Security (Childcare Subsidy) Amendment Regulations 2024 comply, where applicable, with the following:
- 13.1 the principles of the Treaty of Waitangi
 - 13.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993
 - 13.3 the principles and guidelines set out in the Privacy Act 2020
 - 13.4 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.

Regulations Review Committee

- 14 There are no grounds for the Regulations Review Committee to draw the Social Security (Childcare Subsidy) Amendment Regulations to the attention of the House of Representatives under Standing Order 319.

Certification by Parliamentary Counsel

- 15 The Social Security (Childcare Subsidy) Amendment Regulations 2024 have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

Regulatory Impact Statement

- 16 In August 2023, a Review Panel of MSD Principal Analysts considered that the information and analysis summarised in the Regulatory Impact Statement to support the proposal to amend the Social Security Regulations 2018 to allow the Childcare Subsidy to be used for the new top up payments did not meet the Quality Assurance criteria.⁸
- 17 As this proposal is a flow-on from wider decisions about top up payments for 20 Hours ECE, the Review Panel recognised that this limited the scope of options considered, and analysis undertaken. The Review Panel recognised that while the analysis in the paper is as good as could be expected in the circumstances, it does not meet the criteria.

⁸ SWC-23-0115 refers.

Climate Implications of Policy Assessment

- 18 The Climate Implications of Policy Assessment (CIPA) team has been consulted and confirms that the CIPA requirements do not apply to this proposal as the threshold for significance is not met.⁹

Use of external resources

- 19 No external resources were used in the development of this paper.

Consultation

- 20 The following agencies have been consulted: Ministry of Education, Oranga Tamariki – Ministry for Children, the Treasury, Te Puni Kōkiri, Ministry for Pacific Peoples, Ministry for Women, Te Kawa Mataaho (Public Service Commission). The Department of the Prime Minister and Cabinet has been informed.

Publicity

- 21 The ability for eligible parents to use the Childcare Subsidy and GCAP to help pay for top up payments required by educators for children attending licensed home-based ECE services funded under 20 Hours ECE will be published on the MSD website. It will also be referenced in the ECE Funding Handbook, which is published on the Ministry of Education's website.

Proactive Release

- 22 I intend to proactively release this paper subject to the provisions of the Official Information Act 1982.

Recommendations

The Minister for Social Development and Employment recommends that the Cabinet Business Committee:

- 1 **note** that in August 2023, Cabinet agreed to:
 - 1.1 create a new top up payment to be required for children attending home-based early childhood education (ECE) services funded under 20 Hours ECE policy;
 - 1.2 allow parents and caregivers access to the Childcare Subsidy and Guaranteed Childcare Assistance Payment (GCAP) to pay for top up payments required by home-based educators for 20 Hours ECE; and
 - 1.3 amend the Social Security Regulations 2018 to ensure that the Childcare Subsidy is not payable for hours covered by 20 Hours ECE funding, except where home-based educators require top up payments for 20 Hours ECE;
- 2 **note** that the Minister for Social Development and Employment will approve an instrument that will amend the Guaranteed Childcare Assistance Payment Programme to make it clear that GCAP is not payable for hours covered by 20 Hours ECE

⁹ SWC-23-0115 refers.

IN CONFIDENCE

funding, except where home-based educators require top up payments for 20 Hours ECE for children attending licensed home-based ECE services;

- 3 **note** that the Social Security (Childcare Subsidy) Amendment Regulations 2024 will give effect to the decisions referred to in recommendation 1.3 above;
- 4 **authorise** the submission to the Executive Council of the Social Security (Childcare Subsidy) Amendment Regulations 2024;
- 5 **note** that the Social Security (Childcare Subsidy) Amendment Regulations 2024 will come into force on 3 June 2024;
- 6 **note** that the instrument to amend the Guaranteed Childcare Assistance Payment Programme to give effect to the decision referred to in recommendation 2 above will come into force on 3 June 2024.

Authorised for lodgement

Hon Louise Upston

Minister for Social Development and Employment