

# **TAX CREDITS ACT 2002**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part 3: Supplementary**

##### ***Section 58: Administrative arrangements for claims***

199. Jobcentre Plus staff, who will administer benefits on behalf of the DWP, and their equivalents in Northern Ireland on behalf of DSD, may also carry out functions that relate to tax credits, child benefit and guardian's allowance, such as assisting people to make a claim. Section 58 provides a power to make regulations to allow for these administrative arrangements.

##### ***Section 59: Use and disclosure of information***

200. *Section 59* gives effect to Schedule 5, which is concerned with providing powers to the Board to:

- pool information it holds for any of its functions;
- disclose tax credits, child benefit and guardian's allowance information to other Government Departments in certain circumstances; and
- obtain information from other Government Departments for the purpose of carrying out its functions under the Act.

##### ***Schedule 5: Use and disclosure of information***

201. *Paragraph 1* allows the Board, or any person providing services to it, to use information it holds for the purposes of its functions relating to tax credits, child benefit and guardian's allowance for any of those functions. Information may also be supplied to any person providing services to the Board, for the purposes of, or in connection with, those functions.

202. *Paragraph 2* allows the Board to pool information it holds for the purposes of any of its functions. Information held for the purposes of, or relating to, tax credits, child benefit, guardian's allowance, tax, national insurance contributions, statutory maternity pay, statutory sick pay, or any other function of the Board may be used for any other of those functions. Information may also be supplied to and used by anyone providing services to the Board, for the purposes of the Board's functions or in connection with the services provided.

203. *Paragraph 3* allows DWP or DSD to use the information they hold in relation to social security benefits (including child benefit or guardian's allowance) or tax credits to exercise certain administrative functions in relation to tax credits, child benefit or guardian's allowance given to them by regulations under the Act or social security legislation

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204. *Paragraph 4* enables the Board to provide information relating to child benefit, guardian's allowance or tax credits to the Secretary of State or DSD to enable them to carry out their statutory functions in respect of social security, child support, war pensions and certain authorised functions relating to evaluation and statistical studies.
205. *Paragraph 4(3)* enables an officer authorised by the Secretary of State or DSD specifically for this purpose to require tax credits, child benefit and guardian's allowance information to be provided to the Secretary of State or Northern Ireland Department for social security or child support purposes.
206. *Paragraph 5* allows the Board to provide tax credits, child benefit and guardian's allowance information to the Secretary of State or the Department of Employment and Learning in Northern Ireland for certain functions related to employment and training which will be set out in regulations.
207. Current social security legislation imposes a criminal sanction on any member of staff in DWP or its Northern Ireland equivalent if any information held by it is disclosed to any unauthorised third party. This restriction on disclosure of information is very similar to the restrictions placed on the Board and its officers so, as in the Tax Credit Act 1999, no further restriction on onward disclosure of information is necessary.
208. *Paragraph 6* allows information held by the Secretary of State or the appropriate Northern Ireland Departments in connection with social security, child support, war pensions, employment and training to be provided to the Board. The Board may require information held in connection with child support or social security to be provided.
209. *Paragraphs 7 and 8* allow the Board to provide tax credits, child benefit and guardian's allowance information to authorities administering housing benefit and council tax benefit. The authorities may not pass on information they have received except to someone who could have received it direct from the Board anyway or in connection with certain civil and criminal proceedings. The Board may require authorities administering housing benefit or council tax benefit to supply to them information relevant to the administration of those benefits, for tax credits, child benefit and guardian's allowance purposes.
210. *Paragraph 9* allows the Board to provide tax credits, child benefit and guardian's allowance information to the Department of Health, and the respective departments in the devolved administrations, for certain purposes related to health, which will be set out in regulations. *Sub-paragraph (3)* provides that information supplied under this paragraph may not be passed on to anyone else, except to someone who could have received it direct from the Board or for use in civil or criminal proceedings, and then only with the consent of the Board.
211. *Sub-paragraph (4)* makes it a criminal offence to disclose information which has been supplied under this paragraph, unless *sub-paragraph (3)* applies, the disclosure was required by a court order, the person to whom the information relates gave consent or the information had been anonymised.
212. *Paragraph 10* allows the Board to provide child benefit and guardian's allowance information to civil servants and others to enable them to provide services covered by section 114(1) of the Learning and Skills Act 2000. Those services relate to encouraging, enabling or supporting participation in education or training. *Sub-paragraph (3)* provides that information supplied under this paragraph may not be passed on to anyone else, except to someone who could have received it direct from the Board or for use in civil or criminal proceedings, and then only with the consent of the Board.
213. *Sub-paragraph (4)* makes it a criminal offence to disclose information which has been supplied under this paragraph, unless *sub-paragraph (3)* applies, the disclosure was required by a court order, the person to whom the information relates gave consent or the information had been anonymised.

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214. *Paragraph 11* extends the offence under section 182 of the Finance Act 1989 (of disclosing information held by the Board or provided to the Tax Commissioners other than for authorised purposes) to cover information obtained in carrying out the Board's functions in relation to tax credits, child benefit and guardian's allowance.
215. *Paragraphs 12 and 13* provide for consequential amendments to the Social Security Administration Acts and the Finance Act 1997 to reflect the repeal of exchange of information powers under the Tax Credits Act 1999 and the creation of replacement powers in the Act.

***Section 60: Repeals***

216. *Section 60* gives effect to Schedule 6, which lists the provisions which are repealed or revoked as a result of the Act.

***Section 62: Transitional provisions and savings***

217. *Section 62* enables the Secretary of State, or DSD in relation to Northern Ireland, to make transitional provisions or to preserve any provisions of existing legislation otherwise repealed, in connection with the abolition of the child dependency increases in certain social security benefits. It also enables the Treasury to do the same in respect of all the provisions in the Act.

***Section 63: Tax credits appeals etc.: temporary modifications***

218. *Section 39* sets out the framework for appeals under Part 1 of the Act. That section provides for appeals to be handled by the Tax Commissioners in the same way as appeals relating to tax. However, section 63 provides for transitional arrangements for certain appeals and related matters. Those transitional arrangements will remain in place until a day appointed by order under *subsection (1)* of section 63.
219. During the lifetime of these transitional arrangements, appeals made by people claiming tax credits, but not appeals made by employers responsible for the payment of tax credits, will be to an appeal tribunal (that is, a tribunal set up under Social Security Act 1998 or, in Northern Ireland, the Social Security (Northern Ireland) Order 1998) rather than to the General or Special Commissioners. Appeals against decisions by the appeal tribunal will be to the Social Security Commissioner, rather than to the High Court or Court of Session.
220. Regulations will make provision for the procedures to be followed in relation to the hearing of such appeals since the procedures prescribed for hearings by General Commissioners and Special Commissioners may be inappropriate. Such regulations will apply the provisions contained in Chapter 2 of Part 1 of the Social Security Act 1998 and Chapter 2 of Part 2 of the Social Security (Northern Ireland) Order 1998, modified as appropriate. The regulations may also apply section 54 of the Taxes Management Act 1970, which allows for any appeal to be settled by agreement between the appellant and the Revenue with the same consequences as if the appeal had been decided by a Tribunal.
221. Similar transitional arrangements will apply in relation to proceedings for penalties, other than employer information penalties, under paragraph 3 of Schedule 2 and to applications for a direction for an enquiry under section 19 to be closed down.

***Section 64: Northern Ireland***

222. This section amends the Northern Ireland Act 1998 to make the new tax credits, child benefit and guardian's allowance excepted matters in Northern Ireland.
223. *Subsection (4)* provides that the Northern Ireland Assembly may amend or repeal any provisions of the Employment Rights (Northern Ireland) Order 1996 dealt with in Schedule 1 (in particular, when consolidating employment legislation), provided that

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the amendment or repeal affects employment rights generally. The fact that tax credits are excepted matters would otherwise prevent this.

***Section 65: Regulations, orders and schemes***

224. This section provides that orders, regulations and schemes to be made under the Act are to be made by statutory instrument, apart from orders and schemes made by the Department of Health, Social Services and Public Safety in Northern Ireland and DSD which are made by statutory rule. Regulations under sections 25 or 26 relating to appeals in Scotland require the consent of Scottish Ministers and regulations under sections 39(6) or 63(8) require the consent of the Lord Chancellor and Scottish Ministers.

***Section 66: Parliamentary etc. control of instruments***

225. *Subsection (1)* provides that certain regulations, listed in *subsection (2)*, are to be subject to the affirmative procedure. Any regulations prescribing monetary amounts that the Treasury are required by section 41 to review each year against prices will be subject to the affirmative procedure, as will regulations made by virtue of *subsection (2)* of section 12 setting the maximum amount of child care costs that may be taken into account in calculating entitlement to the child care element of working tax credit.
226. In addition, the first regulations made under sections 7(8) and (9), 9, 11, 12 and 13(2) are made subject to the affirmative procedure. These regulations make provision about the definition and calculation of income for the tax credits, prescribe the manner in which the maximum rate at which a person or persons may be entitled to child tax credit and working tax credit (including the child care element) is to be determined, and prescribe manner of determining the rate at which a person is, or persons are, entitled to a tax credit in a case where they are not necessarily entitled to the maximum rate. Subsequent regulations made under these provisions will be subject to the negative procedure.
227. A statutory instrument setting out a child care scheme made by Scottish Ministers under section 12(5) is subject to negative resolution in the Scottish Parliament (*subsection (4)*). Similarly, a statutory rule made by the Department of Health, Social Security and Public Safety in Northern Ireland under section 12(5) is subject to negative resolution in the Northern Ireland Assembly (*subsection (5)*).
228. Other statutory instruments are subject to annulment in pursuance of a resolution of either House of Parliament (the negative procedure) (*subsection (3)*).