

**EXPLANATORY MEMORANDUM TO THE
TAX CREDITS (MISCELLANEOUS AMENDMENTS NO.3)
REGULATIONS 2004**

2004 No. 2663

- 1.** This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The regulations add home computers which are exempt from income tax by virtue of section 320 of the Income Tax (Earnings & Pensions) Act 2003 to the list of payments and benefits that are disregarded in the calculation of “employment income” in regulation 4 of the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002 No. 2006). The regulations also add a reference to domiciliary care workers within the Domiciliary Care Agencies (Wales) Regulations 2004 (S.I. 2004 No. 219) to the list of eligible child care providers for the purpose of claiming the child care element of the Working Tax Credit, as contained in regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005).

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Both amendments are a result of changes to other legislation that have an impact on the tax credit regulations.

4.2 The amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002 arises from an exemption from income tax for computers loaned to employees by their employers under the Government’s new Home Computers Initiative. The income tax exemption was contained in section 79 of the Finance Act 2004.

4.3 The amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 reflects a reform made by the National Assembly for Wales to the provision of registered child care in Wales in March 2004. This mirrors existing provisions in England under which child care provided by a domiciliary care worker working for a registered agency counts as eligible care when claiming the child care element of the Working Tax Credit.

5. Extent

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

This instrument is subject to annulment and does not amend primary legislation. Accordingly, a certificate that the instrument is compatible with the Convention rights is not required.

7. Policy background

- 7.1 For tax credit purposes, “employment income” is defined primarily as any earnings from an office or employment. “Earnings” are defined by reference to section 62 of the Income Tax (Earnings and Pensions) Act 2003. This includes not just wages and salaries but also any incidental benefit obtained by an employee if that benefit has a direct monetary value or is capable of being turned into money, such as gifts of food, drink or clothes given by an employer.
- 7.2 It is possible that employees who benefit from the Government’s new Home Computer Initiative might find themselves with additional employment income for tax credit purposes. The initiative aims to improve the IT skills of the workforce by encouraging employers to lend computers to employees for use at home. In return, the employee gives up some of his or her salary but, unless the employer has obtained a derogation from the normal provisions of the Consumer Credit Act, has the right to withdraw from these arrangements after 18 months. The courts have held that the income tax definition of “earnings” applies in cases where the employee has a right not to have a benefit but to surrender it to the employer in return for additional wages or salary.
- 7.3 With effect from 6 April 2004, section 79 of the Finance Act 2004 was introduced to counter this income tax charge. Similarly, to avoid catching loaned computers as “employment income” for tax credit purposes and thereby acting as a disincentive for the Home Computer Initiative, the amending regulations insert a disregard in the principal regulations.
- 7.4 The Working Tax Credit contains an element to help meet the costs of registered or approved child care, as defined in regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations. In March 2004, the National Assembly for Wales introduced regulations to mirror those on Domiciliary Care Agencies in England. As stated in paragraph 4.3 above, these amending regulations extend the list of eligible child care providers for tax credit purposes to include domiciliary care workers employed by registered agencies in Wales.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument because it is anticipated that the impact of these regulations on business, charities or voluntary bodies will be minimal.
- 8.2 These are minor technical changes to the tax credit regulations, so the impact on the Exchequer will be negligible.

9. Contact

David Woodhouse at Inland Revenue Personal Tax, Tax Credits & Child Benefit Policy Team, (tel: 020-7438-7207 or e-mail David.Woodhouse@ir.gsi.gov.uk) can answer any queries regarding the instrument.