

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS
2008

2008 No. 604

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

This statutory instrument amends the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002 No. 2006), the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005), the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002 No. 2014) and the Tax Credits (Payments by the Commissioners) Regulations 2002 (S.I. 2002 No. 2173).

Firstly, the regulations amend the Tax Credits (Definition and Calculation of Income) Regulations to disregard a Council Tax Relief payment by the Secretary of State for Defence to a member of Her Majesty's Forces.

Secondly, the regulations further amend the Tax Credits (Definition and Calculation of Income) Regulations to omit any payment to which section 623 of the Income Tax (Earnings & Pensions) Act 2003 (ITEPA) formerly applied.

Thirdly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations by placing the meaning of child care for both England and Wales under separate headings for each territory.

Fourthly, the regulations amend the Tax Credits (Claims and Notifications) Regulations to change the circumstances when a claim for tax credit is treated as made for the purposes of regulation 11 of those regulations.

Finally, the regulations amend the Tax Credits (Payments by the Commissioners) Regulations to give the Commissioners for HMRC discretion in determining the amount of any further payments of tax credit and provide for the factors that the Commissioners may take into account in determining those payments.

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

None

4. Legislative background

Section 7 (8) of the Tax Credits Act 2002 provides that regulations may make provision to define what is, or is not, income for the purposes of claims to the child and/or working tax credits. The definition of “income” for tax credits purposes is found in the Tax Credits (Definition & Calculation of Income) Regulations 2002, as subsequently amended. The latest amendments to these regulations arise in part from an announcement by the Secretary of State for Defence in September 2007 about the introduction of a new payment for Armed Forces personnel serving overseas to mitigate council tax liabilities while abroad.

Also, section 623 of the Income Tax (Earnings & Pensions) Act 2003 was repealed as part of the simplification of the tax rules on pension savings in the Finance Act 2004 but a transitional Order retained the tax charge for surplus AVCs paid between 6 April 2006 and 6 July 2006. Because we ask tax credit claimants initially to report income of the previous tax year, Regulation 5 (1) (m) of the Definition & Calculation of Income Regulations was retained until 5 April 2008, by which time there should be none of these payments to take into account for tax credit purposes.

Section 12 of the Tax Credits Act 2002 provides that the working tax credit should contain an element in respect of child care costs. Sub-section (3) of section 12 provides that these child care charges must be of a “prescribed description”. The regulations setting out the types of child care which qualify for the child care element are contained in regulation 14 of the Working Tax Credit (Entitlement & Maximum Rate) Regulations. This regulation is amended to provide separate definitions of ‘child care’ for England and Wales.

Section 17 of the Tax Credits Act 2002 provides that at the end of the tax year, HMRC must give notice to a person or persons to whom tax credits have been awarded, stating the circumstances and income upon which the award has been based. The claimants are required to confirm that their circumstances are unchanged or, if their circumstances have changed, to state how they differ from those set out in the end of year notice. The end of year notice and declaration thus serve to finalise the previous award and are treated as a claim for the new tax year. Regulation 11 of the Tax Credits (Claims & Notifications) Regulations 2002 outlines the circumstances in which a claim is to be treated as made. Paragraph (3) of regulation 11 is amended to change the circumstances when a claim for tax credits is treated as made.

Section 65 (2) of the Tax Credits Act 2002 states that the power to regulate the amounts payable under section 24 is exercisable by the Commissioners of HMRC. Section 24 then goes on to describe the manner in which a tax credit, or any element of a tax credit, is to be paid. Regulation 12 of the Tax Credits (Payments by the Commissioners) Regulations sets out how the amounts to be paid are determined. Regulation 12 is amended to allow HMRC to base this on an estimate of income in the current year. HMRC will use this flexibility to set provisional payments based on an estimate of income where an up to date figure

has not been provided, calculated by uprating the latest available figure they hold on the claimant's income by average earnings.

5. **Extent**

This instrument applies to all of the United Kingdom

6. **European Convention of Human Rights**

These regulations are subject to annulment and do not amend primary legislation. Accordingly, a certificate that the instrument is compatible with the Convention rights is not required.

7. **Policy background**

Amendments to the Tax Credits (Definition and Calculation of Income) Regulations

(1) The Secretary of State for Defence announced in September 2007 that, with effect from 1 April 2008, the Government intends to start making payments of a lump sum to Armed Forces personnel serving in overseas combat zones such as Afghanistan and Iraq to help them with their council tax liabilities. The same payments will, at a later date, be paid to other personnel serving in other overseas operational areas. Treasury Ministers have agreed with the Secretary of State that the payments should be exempt from income tax (by means of a clause in this year's Finance Bill) and from National Insurance contributions and that they should be disregarded from the definition of "employment income" for tax credit purposes. These amending regulations help to give effect to that Ministerial decision.

(2) Changes to Section 623 of the Income Tax (Earnings & Pensions) Act 2003 were made in the Finance Act 2004. The amendment introduced here recognises that income tax changes.

Amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations

The childcare element of Working Tax Credit is available only in respect of qualifying childcare. For tax credit purposes 'qualifying childcare' includes childcare that is provided by:

- a provider who is registered or approved by the appropriate body in England, Wales, Scotland or Northern Ireland;
- a school, out of school hours on school premises;
- a local authority;
- an approved foster carer; or
- a domiciliary care worker.

Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (as amended) sets out the various categories of qualifying childcare.

Regulation 14(2)(a) covers qualifying childcare in England and Wales and grouping England and Wales together made sense when the regulations were first drafted. However, responsibility for child care provision in Wales now lies with the National Assembly for Wales and there has been some divergence between the English and Welsh childcare regulatory systems with the result that we now have sub-paragraph (e) for England only and sub-paragraph (f) for Wales only, in addition to sub-paragraph (a) for both England and Wales. This divergence has increased with the passing of the Childcare Act 2006 in England, and HMRC have taken this opportunity to tidy up regulation 14 (2) in the Working Tax Credit (Entitlement & Maximum Rate) Regulations to place the definition of qualifying child care for England and Wales under separate headings.

Amendments to the Tax Credits (Claims and Notifications) Regulations

Where a claimant has failed to return their annual declaration by the first specified date their tax credit payments will be cease (the timing will vary from case to case). The draft regulations will allow for the claim to be restored, and backdated to 6 April, providing the claimant contacts HMRC within 30 days and will come into force for the 2008 renewals exercise. Where a claimant has good cause for not returning their annual declaration by the first specified date or within 30 days following the date on the notice to the claimant advising that tax credit payments are to cease, the award may nevertheless be reinstated provided the declaration is returned before the following 31 January and backdated to 6 April.

Amendments to the Tax Credits (Payments by the Commissioners) Regulations

The Pre-Budget report 2005 announced a package of measures which, when fully implemented, were estimated to reduce overpayments by around a third. The package included a measure to set provisional payments from 6 April 2008 based on an estimate of income where an up to date figure has not been provided, calculated by uprating the latest available figure by average earnings.

8. Impact

A Regulatory Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or the voluntary sector.

The changes to the Tax Credits (Definition and Calculation of Income) Regulations, the Working Tax Credits (Entitlement & Maximum Rate) Regulations and the Tax Credits (Claims & Notifications) Regulations will have negligible impact on the Exchequer.

The Exchequer impact of the change to the Tax Credits (Payments by the Commissioners) Regulations is reflected in the relevant Budget forecast.

Consultation

There is no statutory requirement to consult on these regulations. However, HMRC is working closely with the Ministry of Defence to legislate to exempt the Council Tax Relief payments from income tax and National Insurance contributions and to disregard them from the definition of “employment income” for tax credit purposes.

9. Contact

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