

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS, CHILD BENEFIT AND CHILDCARE PAYMENTS
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2019

2019 No. 364

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument makes changes to tax credits, Child Benefit and Tax-Free Childcare regulations. As well as making consequential changes following changes elsewhere to ensure that claimants maintain their entitlement, it also updates various references to Departments in Northern Ireland that no longer exist and to a number of outdated references in domestic legislation which have been revoked and replaced by the Immigration (European Economic Area) Regulations 2016.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument makes consequential amendments to the Child Tax Credit Regulations 2002 and the Tax Credits (Polygamous Marriages) Regulations 2003 following a request from the Joint Committee on Statutory Instruments for a memorandum on two minor issues in the Child Tax Credit (Amendment) Regulations 2018 (S.I. 2018/1130).

Other matters of interest to the House of Commons

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 This instrument makes a number of changes to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) ("the Income

Regulations”), the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) (“the Claims Regulations”), the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“the Entitlement Regulations”), the Childcare Payments Regulations 2015 (S.I. 2015/522) (“the Childcare Regulations”), the Tax Credits (Administrative Arrangements) Regulations 2002 (S.I. 2002/3036) (“the Administrative Arrangements Regulations”), the Tax Credits (Official Error) Regulations 2003 (S.I. 2003/692) (“the Official Error Regulations”), the Child Benefit (General) Regulations 2006 (S.I. 2006/223) (“the Child Benefit Regulations”), the Child Benefit and Guardian’s Allowance (Administration) Regulations 2003 (S.I. 2003/492) (“the Child Benefit and Guardian’s Allowance Regulations”), the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) (“the Residence Regulations”), the Tax Credits (Polygamous Marriages) Regulations 2003 (S.I. 2003/742) (“the Polygamous Marriages Regulations”) and the Child Tax Credit Regulations 2002 (S.I. 2002/2007) (“the Child Tax Credit Regulations”).

- 6.2 Section 7 of the Tax Credits Act 2002 (c. 21) sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Income Regulations set out how a claimant’s relevant income is to be calculated. Regulation 3 amends the Income Regulations so that certain additional types of payment are not brought into account as income for tax credit purposes. It also removes references to payments that are no longer made.
- 6.3 Regulation 2 amends the Entitlement Regulations to continue to recognise registered or approved childcare used by Armed Forces personnel and their families based anywhere in the world; and recognise registered or approved childcare used by Working Tax Credit (WTC) claimants in another European Economic Area (EEA) country.
- 6.4 Regulations 7(2) and 11(4) and (5) amend the Residence Regulations and the Child Benefit Regulations to provide that a person relying on a right to reside in the United Kingdom (UK) under regulation 16(5) of the Immigration (European Economic Area) Regulations 2016, is treated as being in the UK for the purposes of claiming Child Tax Credit or Child Benefit. This will only apply if they are lawfully working in the UK and covered by an agreement made between the European Union (EU) and a non-EEA country under Article 217 of the Treaty on the Functioning of the EU, which provides for the equal treatment in the field of social security.
- 6.5 Regulations 2(2), 2(3), 3(2), 4(2), 5(2), 6(2) and (3), 8(2), 11(2) and 11(3) of this instrument amend outdated references in domestic legislation and names of Departments in Northern Ireland that no longer exist.
- 6.6 Regulations 7(2), and 11(4) and (5) of this instrument update a number of outdated references in tax credits and Child Benefit legislation by replacing references to the Immigration (European Economic Area) Regulations 2006, which have been revoked, with references to the Immigration (European Economic Area) Regulations 2016.
- 6.7 Regulation 10 of this instrument amends Regulation 9 of the Child Benefit and Guardian’s Allowance Regulations to allow for a claimant to withdraw their claim for Child Benefit or Guardian’s Allowance by whatever means the Board may decide to accept, including by telephone, where a decision is yet to be made on that claim.
- 6.8 Regulations 4(3) and 9 of this instrument make minor consequential amendments to the Child Tax Credit Regulations and the Polygamous Marriages Regulations

following a request from the Joint Committee on Statutory Instruments in November 2018.

7. Policy background

What is being done and why

- 7.1 Tax credits are a means-tested form of support which provides help to millions of families with a wide variety of differing circumstances. Child Tax Credit supports families with children. Working Tax Credit provides support for working people on a low income. It tops up the earnings of workers on low to moderate incomes, targeting support to those in work at the lowest income levels.
- 7.2 Tax credits awards are calculated on the basis of claimants' income. The rules for calculating income for tax credits generally mirror those for income tax, which means that claimants do not have to carry out a separate calculation of their income but can use figures calculated for tax purposes.
- 7.3 Tax-Free Childcare is a scheme to help working parents with the cost of childcare needed for work. Parents open a childcare account for each of their children, deposit funds into it and the Government tops them up by £2 for every £8 deposited. The balance can then be spent on qualifying childcare. Qualifying childcare is childcare that is registered or approved by the Office for Standards in Education, Children's Services and Skills or an equivalent body.
- 7.4 Child Benefit is a tax free payment made to parents or people with responsibility for children under 16, or under 20 if they remain in full-time approved education or training, in recognition of the costs of bringing up children.
- 7.5 Treasury Ministers announced at Budget 2016 that any top-ups that the Northern Ireland Government make to non-taxable benefits should be exempt from tax. This ensures a fair and consistent tax system. Ministers agreed that the tax credits position should continue to follow the tax system for the treatment of top-ups. This instrument amends the Income Regulations to ensure that these payments provided by Northern Ireland's Discretionary Support Scheme are not taken into account as income for the purposes of a tax credits award.
- 7.6 This instrument updates various references in tax credits and Child Benefit regulations to Departments in Northern Ireland that no longer exist (namely the Department for Employment and Learning, Department of Economic Development and Department for Social Development).
- 7.7 This instrument updates a number of outdated references in domestic legislation. References to the Immigration (European Economic Area) Regulations 2006 and to Directive 2004/38/EC are both out of date and will be replaced by reference to the Immigration (European Economic Area) Regulations 2016. Other associated references, made obsolete as a consequence of updating references from the 2006 to the 2016 Regulations, will also be removed.
- 7.8 This instrument makes changes to the Entitlement Regulations to reflect a recent Northern Irish Social Security Commissioners decision¹ to put beyond doubt that HMRC can continue to pay the childcare element of WTC to Armed Forces personnel and their families based anywhere in the world; and provide certainty to claimants

¹ NB v HMRC (TC) [2016] NICom 47

who have entitlement to the childcare element of WTC by virtue of the direct effect of EU law. This change also ensures that Tax-Free Childcare payments can continue to be legally paid to Ministry of Defence (MoD) personnel based overseas (EU or non-EU) and to non-MoD claimants using childcare providers regulated to the equivalent standard in another EEA member state or Switzerland.

- 7.9 This instrument makes changes to the Child Benefit Regulations and the Residence Regulations to reflect a recent Upper Tribunal decision in the case of *HMRC v HEH and Secretary of State for Work and Pensions (TC and CHB)* [2018] UKUT 237 (AAC), that a certain type of carer, whilst lawfully living and working here, and covered by a treaty made between the EU and a non-EEA country under Article 217 of the Treaty on the Functioning of the EU, is treated as being in the UK for the purposes of determining entitlement to Child Benefit and Child Tax Credit.
- 7.10 At Budget 2016, the government announced a package of changes to tackle Disguised Remuneration (DR) avoidance. This package included two charges. One to tackle the use of employment DR loan schemes and the other to tackle self-employment DR loan schemes. Loans provided by a third party and received by an employee under Part 7A of the Income Tax (Earnings and Pensions) Act 2003, fall to be taxed under the new loan charge provision. However for tax credit purposes, income falling under Part 7A is not included as employment income for tax credits. As a result, those caught by the employment loan charge will see no impact on their current tax credit award.
- 7.11 For self-employment income, the opposite is true: legislation currently treats any payment by way of a loan (or “relevant benefit” as defined in Part 2 of the Income Tax (Trading and Other Income) Act 2005) as profits of the relevant trade and taxes them accordingly at the end of the year in which it is received. As tax credits are based on income from the previous year, the effect of this means that self-employed tax credit claimants may incur a significant overpayment when the DR loan charge arises on 5 April 2019, if they have not considered the loan charge when estimating their income for 2018-19.
- 7.12 This instrument amends Regulation 6 of the Income Regulations to disregard the self-employment DR loan charge for tax credits to ensure that tax credits claimants will not receive a lower award of tax credits. The policy aim is to remove the disparity between the employed and self-employed loan charge. Further it aligns the treatment of tax credits and Universal Credit.
- 7.13 This instrument also makes changes to allow a claimant to withdraw their claim for Child Benefit or Guardian’s Allowance by telephone. This amendment aligns the legislation for the withdrawal of a claim for Child Benefit or Guardian’s Allowance with the Department for Work and Pensions (DWP) legislation for the withdrawal of a claim for a DWP administered social security benefit.
- 7.14 The Government recognises that certain Commonwealth citizens known as the Windrush Generation have been adversely impacted by measures introduced under the Home Office’s compliance laws. This instrument makes changes to Regulations 10 and 19 of the Income Regulations to disregard from a person’s income for tax credits any payments made under any compensation scheme established by the Home Office in respect of Windrush, as well as any interest arising on these payments within the 52 week period, from the date the payment is made. This will allow claimants sufficient time to determine how best to disburse the funds.

8. European Union (Withdrawal) Act

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans to consolidate any of the Regulations which are amended by these Regulations as tax credits are being replaced by Universal Credit.

10. Consultation outcome

10.1 No separate consultation exercise was conducted as this instrument makes consequential changes required in relation to changes elsewhere.

11. Guidance

11.1 Information relating to these changes to legislation will be incorporated into leaflets, forms and manuals where appropriate on an ongoing basis. Internal guidance and standard operating procedures will also be updated.

11.2 Guidance is provided for tax credits claimants online through the GOV.UK website and through the tax credits helpline. Where claimants need more detail on how to calculate their income for tax credits purposes, they are referred to income tax guidance, which is also available on the GOV.UK website.

12. Impact

12.1 The impact on businesses, charities or voluntary bodies is that provisions relating to childcare will ensure that those claiming the childcare element of Working Tax Credit can continue to receive that element to pay for childcare provided by appropriate businesses, charities and voluntary organisations.

12.2 There is no significant impact on business, charities or voluntary bodies from the other measures.

12.3 There is no significant impact on the public sector.

12.4 All changes included in this package relate to individuals and the majority of the changes are to maintain the current state of tax credits and Child Benefit.

12.5 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses.

13.2 The provisions relating to childcare will ensure that those claiming the childcare element of Working Tax Credit can continue to receive that element to pay for childcare provided by appropriate small businesses.

13.3 There is no impact on small business from the remaining measures.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that most changes made by this instrument are consequential changes rather than policy changes, and so will not be monitored further.

- 14.2 HMRC will monitor the impact of the Windrush scheme on an ongoing basis using the information provided by the Home Office as the scheme provider.
- 14.3 HMRC monitors awards of tax credits on an ongoing basis. This analysis is published at: www.gov.uk/government/collections/personal-tax-credits-statistics.
- 14.4 The regulation does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Saheed Dawood at HMRC (telephone: 03000 551303 or email: Saheed.dawood@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.
- 15.2 James Dunstan, Deputy Director for Tax credits and Child Benefit policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chief Secretary to the Treasury, the Rt Hon Elizabeth Truss, can confirm that this Explanatory Memorandum meets the required standard.