



# Tax Credits Act 1999

## 1999 CHAPTER 10

At Act to provide for family credit and disability working allowance to be known, respectively, as working families' tax credit and disabled person's tax credit; and to make further provision with respect to those credits, including provision for the transfer of functions relating to them. [30th June 1999]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### *Main provisions*

#### **1 Certain benefits to be known as tax credits**

- (1) Family credit and disability working allowance shall be known, respectively, as working families' tax credit and disabled person's tax credit.
- (2) Schedule 1 to this Act (which makes provision consequential on subsection (1) above) shall have effect.

#### **2 Transfer of functions relating to tax credits**

- (1) So far as they relate to working families' tax credit or disabled person's tax credit—
  - (a) the functions of the Secretary of State or the Department under the provisions mentioned in Part I of Schedule 2 to this Act shall be functions of the Treasury;
  - (b) the functions of the Secretary of State or the Department under the provisions mentioned in Part II of that Schedule shall be functions of an officer of the Board; and
  - (c) subject to subsection (2) below, the functions of the Secretary of State or the Department under the provisions mentioned in Part III of that Schedule shall be functions of the Board.

- (2) So far as any functions referred to in subsection (1)(c) above are exercisable in relation to payment periods beginning before the commencement of this section, those functions—
- (a) shall not be functions of the Board; but
  - (b) may be discharged by the Board on behalf of the Secretary of State or the Department.
- (3) Part IV of Schedule 2 to this Act (which modifies certain enactments in their application to tax credit) shall have effect.
- (4) Part V of that Schedule (which makes provision consequential on subsection (1) above) shall have effect.

### **3 Transfer of associated property, rights and liabilities etc**

- (1) Any property, rights and liabilities to which the Secretary of State or the Department is entitled or subject immediately before the commencement of this section in connection with functions transferred to the Treasury by section 2(1) above shall be transferred to the Treasury.
- (2) Any property, rights and liabilities to which the Secretary of State or the Department is entitled or subject immediately before the commencement of this section in connection with functions transferred to the Board or an officer of the Board by section 2(1) above shall be transferred to the Board.
- (3) The property, rights and liabilities transferred by subsections (1) and (2) above do not include any right or liability in respect of which proceedings are commenced before the commencement of this section.
- (4) Her Majesty may by Order in Council make such provision for the transfer to Her Majesty's Home Civil Service of persons employed in the Northern Ireland Civil Service as appears to Her Majesty to be expedient.
- (5) A statutory instrument containing an Order in Council under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **4 Special provision for certain contracts**

- (1) This section applies to—
- (a) any contract for the supply of goods or services to the Secretary of State or the Department which relates partly to functions transferred to the Board by section 2(1) above (“transferred functions”) and partly to functions retained by the Secretary of State or the Department (“retained functions”); and
  - (b) any contract for the supply of goods or services to the Secretary of State or the Department which relates only to transferred functions or only to retained functions, but whose terms are wholly or partly determined in accordance with a contract falling within paragraph (a) above.
- (2) Section 3 above shall not apply in relation to any contract to which this section applies.
- (3) In any contract to which this section applies any term restricting the provision of goods or services under the contract to the Secretary of State or the Department shall be treated as referring also to the Board, in connection with transferred functions.

- (4) The reference to the Secretary of State in subsection (3) above includes a reference to the Department of Social Security.

*Administration and enforcement*

**5 General functions of Board**

- (1) Working families' tax credit and disabled person's tax credit shall be under the care and management of the Board.
- (2) Section 10 of the Exchequer and Audit Departments Act 1866 (gross revenues to be paid to Exchequer) shall be construed as allowing the Board to deduct payments for or in respect of tax credit before causing the gross revenues of their department to be paid to the accounts mentioned in that section.
- (3) For the purposes of the Inland Revenue Regulation Act 1890, everything that relates to tax credit shall be taken to relate to inland revenue; and the expressions "in relation to inland revenue", "Collector of Inland Revenue" and "Officer of Inland Revenue" shall be construed accordingly.
- (4) The reference in section 4(1) of that Act (appointment of collectors, officers and other persons) to collecting, receiving, managing and accounting for inland revenue shall be taken to include a reference to paying and managing tax credit.
- (5) The duties of the Board under section 13 of that Act (Board to keep accounts) shall include a duty to set forth in the accounts mentioned in that section—
- (a) the amounts of the several payments made by them of or in respect of tax credit;
  - (b) the amounts of the expenses of paying and managing tax credit; and
  - (c) the amounts received by them in respect of tax credit,
- distinguishing in each case between amounts relating to working families' tax credit and amounts relating to disabled person's tax credit.
- (6) In any declaration for the purposes of section 6 of the Taxes Management Act 1970 (declarations on taking office), whether made before or after the commencement of this section, the reference to an offence relating to inland revenue shall be taken to include a reference to an offence relating to tax credit.
- (7) Section 163(2) of the Social Security Administration Act 1992 (sums to be paid out of money provided by Parliament) shall have effect subject to subsection (2) above.

**6 Payment of tax credit by employers etc**

- (1) On the making to any person ("the employee") of any payment of, or on account of, any income assessable to income tax under Schedule E, any tax credit to which he is entitled shall, subject to and in accordance with regulations made by the Board under this section, be paid by the person making the payment ("the employer").
- (2) The Board shall make regulations with respect to the payment of tax credit by employers, and those regulations may, in particular, include provision—
- (a) for requiring employers to make payments of tax credit by reference to notifications of entitlement furnished to them by the Board;

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- (b) for the production of wages sheets and other documents and records to officers of the Board for the purpose of enabling them to satisfy themselves that tax credit has been and is being paid, in accordance with the regulations, to employees who are entitled to it;
  - (c) for requiring employers to provide information to employees (in their itemised pay statements or otherwise);
  - (d) for the funding by the Board of tax credit paid or to be paid by employers (whether by way of set off against income tax or national insurance contributions for which they are accountable to the Board or otherwise);
  - (e) for the recovery by the Board of any sums overpaid to employers under paragraph (d) above;
  - (f) for the payment of interest on sums due from or to the Board, and for determining the date from which interest is to be calculated; and
  - (g) for appeals with respect to matters arising under the regulations which would otherwise not be the subject of an appeal.
- (3) Regulations under this section—
- (a) may make different provision for different cases or circumstances; and
  - (b) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (4) This section shall come into force on 6th April 2000.

## **7 Rights of employees not to suffer unfair dismissal or other detriment**

Schedule 3 to this Act (rights of employees not to suffer unfair dismissal or other detriment) shall have effect.

## **8 Powers to obtain information**

- (1) Section 20 of the Taxes Management Act 1970 (power to call for documents etc.), and section 20B of that Act (restrictions on powers) so far as relating to section 20, shall apply in relation to an employer's compliance with regulations under section 6 above as they apply in relation to a person's tax liability or its amount.
- (2) Those sections as they so apply shall have effect as if—
- (a) any reference to the taxpayer, a taxpayer or a class of taxpayers were a reference to the employer, an employer or a class of employers;
  - (b) any reference to any provision of the Taxes Acts were a reference to regulations under section 6 above;
  - (c) any reference to the proper assessment or collection of tax were a reference to the proper award and payment of tax credit;
  - (d) the reference in section 20(8) to the taxpayer with whose liability the inspector or the Board is concerned were a reference to the employer with whose compliance with regulations under section 6 above the inspector or the Board is concerned;
  - (e) the reference in section 20B(2) to an appeal relating to tax were a reference to an appeal relating to compliance with regulations under section 6 above; and
  - (f) the reference in section 20B(6) to reasonable ground for believing that tax has, or may have been, lost to the Crown owing to the fraud of the taxpayer were a

reference to reasonable ground for believing that tax credit has, or may have been, incorrectly paid owing to the fraud of the employer.

## **9 Penalties for fraud etc. and failures to comply**

- (1) Where a person fraudulently or negligently makes any incorrect statement or declaration in connection with a claim for tax credit, he shall be liable to a penalty not exceeding the amount of the difference specified in subsection (2) below.
- (2) The difference is that between—
  - (a) the amount of tax credit to which the claimant is or was entitled in the payment period to which the claim relates; and
  - (b) the amount of tax credit to which he would have been so entitled if the statement or declaration had been correct.
- (3) Where a person—
  - (a) fails to furnish any information or evidence in accordance with regulations under section 5(1)(h) or (hh) of the Administration Act so far as relating to tax credit;
  - (b) fails to produce any document or record, or to provide any information, in accordance with regulations under section 6 above; or
  - (c) fails to deliver any document or furnish any particulars in accordance with the provisions applied by section 8(1) above,he shall be liable, subject to section 10 below, to the penalties mentioned in subsection (4) below.
- (4) The penalties are—
  - (a) a penalty not exceeding £300; and
  - (b) if the failure continues after a penalty is imposed under paragraph (a) above, a further penalty or penalties not exceeding £60 for each day on which the failure continues after the day on which the penalty under that paragraph was imposed (but excluding any day for which a penalty under this paragraph has already been imposed).
- (5) Where a person fraudulently or negligently—
  - (a) furnishes any incorrect information or evidence of a kind mentioned in regulations under section 5(1)(h) or (hh) of the Administration Act so far as relating to tax credit;
  - (b) produces any incorrect document or record, or provides any incorrect information, of a kind mentioned in regulations under section 6 above; or
  - (c) delivers any incorrect document or furnishes any incorrect particulars of a kind mentioned in the provisions applied by section 8(1) above,he shall be liable to a penalty not exceeding £3,000.
- (6) Where, in the case of any employee—
  - (a) an employer refuses or repeatedly fails to make payments of tax credit in accordance with regulations under section 6 above; and
  - (b) the Board cancels the notification of entitlement with a view to the payments being made by officers of the Board,the employer shall be liable to a penalty not exceeding £3,000.
- (7) Where, in the case of any employee, an employer fraudulently or negligently—

- (a) makes or receives incorrect payments in a tax year in pursuance of regulations under section 6 above; or
- (b) delivers an incorrect return of payments made or received by him in that year in pursuance of such regulations,

he shall be liable, subject to section 10 below, to a penalty not exceeding £3,000; but no such penalty shall be imposed in respect of any incorrect payments in respect of which a penalty has been imposed under subsection (6) above.

- (8) In this section “the Administration Act” means the Social Security Administration Act 1992 or the Social Security Administration (Northern Ireland) Act 1992.

## 10 Penalties: supplementary

- (1) No penalty shall be imposed—
  - (a) under subsection (4) of section 9 above in respect of a failure within subsection (3)(a) or (c) of that section; or
  - (b) under subsection (4)(b) of that section in respect of a failure within subsection (3)(b) of that section,
 at any time after the failure has been remedied.
- (2) A penalty under section 9(7) above shall not be imposed before the end of the tax year in question; and no more than one such penalty may be imposed (by reference to any one employee) in relation to any tax year.
- (3) Section 118(2) of the Taxes Management Act 1970 (extra time for compliance etc.) shall apply for the purposes of section 9(3) and (6) above as it applies for the purposes of that Act.
- (4) Schedule 4 to this Act (penalties: procedure and appeals) shall have effect.

## 11 Liability of company directors etc

- (1) Sections 121C and 121D of the Social Security Administration Act 1992 (liability of directors etc. for company’s contributions), and sections 115B and 115C of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland), shall apply in relation to amounts—
  - (a) which the Board have paid or credited to a body corporate for the purpose of funding tax credit; and
  - (b) which the body is liable, and has failed, to repay,
 as they apply in relation to national insurance contributions which a body corporate is liable, and has failed, to pay.
- (2) Those sections as they so apply shall have effect as if—
  - (a) any reference to Secretary of State or the Department were a reference to an officer of the Board;
  - (b) any reference to an appeal tribunal constituted under Chapter I of Part I of the 1998 or Chapter I of Part II of the Social Security (Northern Ireland) Order 1998 were a reference to the Special Commissioners;
  - (c) the reference in sections 121C(1)(a) and 115B(1)(a) to the time prescribed for the purpose there mentioned were a reference to the time prescribed for that purpose by regulations made by the Board; and

- (d) the definitions of “appeal tribunal” in sections 121D(6) and 115C(6) were omitted.
- (3) Regulations under subsection (2)(c) above shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

## **12 Disclosure of information**

- (1) Section 182 of the Finance Act 1989 (disclosure of information) shall be amended in accordance with subsections (2) to (5) below.
- (2) In subsection (1)—
  - (a) after “tax functions” there shall be inserted “, tax credit functions”; and
  - (b) after paragraph (a) there shall be inserted—
    - “(aa) to working families' tax credit or disabled person's tax credit in respect of any identifiable person.”
- (3) After subsection (2) there shall be inserted—
  - “(2AA) In this section “tax credit functions” means the functions relating to working families' tax credit or disabled person's tax credit—
    - (a) of the Board and their officers,
    - (b) of any person carrying out the administrative work of the General Commissioners or the Special Commissioners, and
    - (c) of any other person providing, or employed in the provision of, services to any person mentioned in paragraph (a) or (b) above.”
- (4) In subsection (4)—
  - (a) in paragraph (b), after “tax functions” there shall be inserted “, tax credit functions”; and
  - (b) in paragraph (c), after “tax functions” there shall be inserted “, tax credit functions” and after sub-paragraph (i) there shall be inserted—
    - “(ia) to working families' tax credit or disabled person's tax credit in respect of any identifiable person.”
- (5) In subsection (5)(b), after “tax or duty” there shall be inserted “, to working families' tax credit or disabled person's tax credit”.
- (6) Schedule 5 to this Act (use and exchange of information) shall have effect.

## **13 Documents and forms**

Documents and forms relating to payment periods beginning before the commencement of this section may be used on and after that date even though they contain references to family credit or disability working allowance.

*Miscellaneous and supplemental***14 Persons qualifying for disabled person's tax credit**

(1) Subject to subsection (6) below, section 129 of the Social Security Contributions and Benefits Act 1992 (disabled person's tax credit) and section 128 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (equivalent provision for Northern Ireland) shall be amended in accordance with subsections (2) to (5) below.

(2) In subsection (1), for "or (2A)" there shall be substituted ", (2A) or (2C)".

(3) In subsection (2)(a), for "56 days" there shall be substituted "182 days".

(4) After subsection (2B) there shall be inserted the following subsections—

"(2C) A person qualifies under this subsection if—

- (a) the condition mentioned in subsection (2D) below is satisfied;
- (b) a medical practitioner (within the meaning of the Administration Act) certifies, not more than 14 days before the date when the claim for disabled person's tax credit is made—
  - (i) that in his opinion the person will continue to have the disability in question for a period of at least six months; or
  - (ii) that in his opinion the person will continue to have that disability for the remainder of his life; and
- (c) the level of the person's expected earnings is lower, by at least the required amount, than it would have been if he had not had the disability.

(2D) The condition is that there are 140 qualifying days, the last falling within the period of 56 days immediately preceding the date when the claim for disabled person's tax credit is made, which are days in respect of which—

- (a) statutory sick pay has been payable to the person;
- (b) the lower rate of short-term incapacity benefit has been payable to him;
- (c) income support has been payable to him on grounds of incapacity; or
- (d) earnings have been credited to him under regulations made under section 22(5) above.

(2E) For the purposes of subsections (2C) and (2D) above—

- (a) the required amount, in relation to a person's expected earnings, is—
  - (i) 20 per cent of what those earnings would have been if he had not had the disability; or
  - (ii) if the amount given by sub-paragraph (i) above is less than the prescribed amount, the prescribed amount;
- (b) qualifying days are days forming part of a single period of incapacity for work within the meaning of Part XI of this Act; and
- (c) income support is payable to a person on grounds of incapacity if and only if he satisfies the condition in section 124(1)(e) above by virtue of being a person who—
  - (i) is, or is treated as, incapable of work for any purposes of this Act; or



(ii) is treated as capable of work by virtue of regulations under section 171E below.

(2F) Sections 3 and 112 above shall apply as if this section were included in Parts I to V of this Act.”

- (5) In subsection (8), after “allowance” there shall be substituted “, or the level of a person’s expected earnings,”.
- (6) In section 128(2E)(c) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992, as inserted by subsection (4) above, for “124(1)(e)” there shall be substituted “123(1)(e)” and for “171E” there shall be substituted “167E”.
- (7) In section 11(3)(b) of the Social Security Administration Act 1992 (repeat claims), for the words from “he” to “that paragraph” there shall be substituted—
- “(i) he qualified under subsection (2) of section 129 of the Contributions and Benefits Act by virtue of paragraph (a) of that subsection, or of there being payable to him a benefit under an enactment having effect in Northern Ireland and corresponding to a benefit mentioned in that paragraph; or
  - (ii) he qualified under subsection (2C) of that section or of section 128 of the Northern Ireland Contributions and Benefits Act,”.
- (8) In section 9(3)(b) of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland), for the words from “he” to “that paragraph” there shall be substituted—
- “(i) he qualified under subsection (2) of section 128 of the Contributions and Benefits Act by virtue of paragraph (a) of that subsection, or of there being payable to him a benefit under an enactment having effect in Great Britain and corresponding to a benefit mentioned in that paragraph; or
  - (ii) he qualified under subsection (2C) of that section or of section 129 of the Great Britain Contributions and Benefits Act,”.
- (9) This section, except subsection (3) above (and subsection (1) above so far as relating to that subsection), applies to claims made, or treated as made, on or after 1st October 2000.

## **15 New category of child care providers for tax credit purposes**

- (1) The Secretary of State may by regulations make a scheme for establishing a new category of persons whose charges for providing child care are to be taken into account for the purpose of determining—
- (a) the appropriate maximum working families' tax credit for the purposes of section 128(5) of the Social Security Contributions and Benefits Act 1992 or section 127(5) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992; or
  - (b) the appropriate maximum disabled person’s tax credit for the purposes of section 129(8) of the Social Security Contributions and Benefits Act 1992 or section 128(8) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

- (2) A scheme so made shall—
- (a) provide that a person shall not fall within the new category unless he is approved by an accredited organisation in accordance with such criteria as may be determined by or under the scheme;
  - (b) authorise the making of grants or loans to, and the charging of reasonable fees by, accredited organisations; and
  - (c) include such other provisions as the Secretary of State considers necessary or expedient.
- (3) In subsection (2) above “accredited”, in relation to an organisation, means accredited by the Secretary of State in accordance with such criteria as may be determined by or under the scheme.
- (4) Regulations under this section—
- (a) may make different provision for different cases or circumstances or for different areas;
  - (b) may make such incidental, supplemental, consequential and transitional provision as appears to the Secretary of State to be necessary or expedient; and
  - (c) shall be made by statutory instrument which, subject to subsection (5) below, shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (5) A draft of the first regulations to be made under this section shall be laid before each House of Parliament and those regulations shall not be made unless the draft has been approved by a resolution of each House.

## 16 Northern Ireland

- (1) Working families' tax credit and disabled person's tax credit shall be excepted matters for the purposes of the Northern Ireland Act 1998.
- (2) For the purposes of that Act, a provision of—
- (a) any Act of the Northern Ireland Assembly; or
  - (b) any Bill for such an Act,
- which amends or repeals a provision to which subsection (3) below applies shall not be treated as dealing with working families' tax credit or disabled person's tax credit if the amendment or repeal affects rights conferred by Schedule 3 to this Act and other employment rights in the same way.
- (3) This subsection applies to the provisions of the Employment Rights (Northern Ireland) Order 1996 which are amended or applied by Schedule 3 to this Act.

## 17 Financial provisions

- (1) There shall be paid out of money provided by Parliament—
- (a) any expenses incurred by the Board or the Secretary of State in consequence of this Act; and
  - (b) any increase attributable to this Act in the sums payable out of money so provided under any other Act.
- (2) There shall be paid into the Consolidated Fund any increase attributable to this Act in the sums payable into that Fund under any other Act.

## 18 Interpretation

In this Act, except where the context otherwise requires—

“appeal tribunal” means an appeal tribunal constituted under Chapter I of Part I of the Social Security Act 1998 or Chapter I of Part II of the Social Security (Northern Ireland) Order 1998;

“the Board” means the Commissioners of Inland Revenue;

“the Department” means the Department of Health and Social Services for Northern Ireland;

“employer” and “employee” shall be construed in accordance with section 6 above;

“General Commissioners” and “Special Commissioners” have the same meanings as in the Taxes Management Act 1970;

“payment period” means a period for which amounts are payable to a person by virtue of—

(a) section 128(3) of the Social Security Contributions and Benefits Act 1992 (family credit) or section 129(6) of that Act (disability working allowance); or

(b) section 127(3) or 128(6) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland);

“tax credit” means working families' tax credit or disabled person's tax credit;

“tax year” means any period of a year beginning on 6th April.

## 19 Transitional provision, savings and repeals

- (1) Any function falling within subsection (1)(a) or (c) of section 2 above which is a power to make subordinate legislation may be exercised by the Treasury or, as the case may be, the Board at any time after the passing of this Act if the subordinate legislation made in the exercise of the power comes into force after the commencement of that section.
- (2) Nothing in section 2 above affects the validity of anything done by or in relation to the Secretary of State or the Department before the commencement of that section; and anything which at that date is in the process of being done by or in relation to the Secretary of State or the Department may—
  - (a) if it relates to functions transferred by subsection (1) of section 2 above to the Treasury, be continued by or in relation to the Treasury;
  - (b) if it relates to functions transferred by that subsection to the Board or an officer of the Board, be continued by the Board or, as the case may be, an officer of the Board.
- (3) Any authority, appointment, decision, determination, approval, consent or direction given or made or other thing done, or having effect as if given, made or done, by the Secretary of State or the Department in connection with functions transferred by subsection (1) of section 2 above shall have effect as if given, made or done by the Treasury or, as the case requires, the Board or an officer of the Board in so far as that is required for continuing its effect after the commencement of that section.
- (4) The enactments specified in Schedule 6 to this Act are repealed to the extent specified in the third column of that Schedule.

**20 Short title, commencement and extent**

- (1) This Act may be cited as the Tax Credits Act 1999.
- (2) This Act, except—
  - (a) this section;
  - (b) section 6;
  - (c) subsections (2) and (4) to (9) of section 14 (and subsection (1) of that section, except so far as relating to subsection (3)); and
  - (d) subsection (1) of section 19,shall come into force on 5th October 1999.
- (3) This Act extends to Northern Ireland.

## SCHEDULES

### SCHEDULE 1

Section 1(2).

#### PROVISION CONSEQUENTIAL ON RENAMING OF BENEFITS

- 1 In the enactments mentioned in paragraphs 2 to 6 below—
  - (a) for the words “family credit”, wherever they occur, there shall be substituted the words “working families’ tax credit”; and
  - (b) for the words “disability working allowance”, wherever they occur, there shall be substituted the words “disabled person’s tax credit”.
- 2 In the Social Security Contributions and Benefits Act 1992 the enactments are—
  - (a) section 30C(5) (days etc. of incapacity for work);
  - (b) section 42(1) (entitlement to certain benefits after period of employment etc.);
  - (c) section 45A(1) and (2) (effect of family credit and disability working allowance on earnings factor);
  - (d) section 68(10) (entitlement to severe disablement allowance);
  - (e) section 122(1) (meaning of “week” etc.);
  - (f) section 123(1)(b) and (c) (income related benefits);
  - (g) section 128(1) to (6) (family credit);
  - (h) section 129(1), (2), (2A)(a) and (5) to (9) (disability working allowance).
- 3 In the Social Security Administration Act 1992 the enactments are—
  - (a) section 5(2)(c) and (d) (regulations about claims etc.);
  - (b) section 11(1) (initial and repeat claims);
  - (c) section 71(11)(c) and (d) (overpayments);
  - (d) section 124(2)(b) (provisions relating to age, death and marriage);
  - (e) section 150(10)(b)(i) and (ii) (transitional provision in relation to uprating);
  - (f) section 163(2)(d)(ii) and (iii) (payment out of money provided by Parliament);
  - (g) section 179(5)(b) and (c) (reciprocal agreements with countries outside UK);
  - (h) section 191 (general interpretation).
- 4 In the Social Security Contributions and Benefits (Northern Ireland) Act 1992 the enactments are—
  - (a) section 30C(5) (days etc. of incapacity for work);
  - (b) section 42(1) (entitlement to certain benefits after period of employment etc.);
  - (c) section 45A(1) and (2) (effect of family credit and disability working allowance on earnings factor);
  - (d) section 68(10) (entitlement to severe disablement allowance);
  - (e) section 121(1) (meaning of “week” etc.);
  - (f) section 122(1)(b) and (c) (income related benefits);

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- (g) section 127(1) to (6) (family credit);
  - (h) section 128(1), (2), (2A)(a) and (5) to (9) (disability working allowance).
- 5 In the Social Security Administration (Northern Ireland) Act 1992 the enactments are—
- (a) section 5(2)(c) and (d) (regulations about claims etc.);
  - (b) section 9(1) (initial and repeat claims);
  - (c) section 69(11)(c) and (d) (overpayments);
  - (d) section 155(5)(b) and (c) (reciprocal agreements with countries outside UK);
  - (e) section 167 (interpretation).
- 6 In other legislation the enactments are—
- (a) note (a) to Part I of Schedule 6 to the Magistrates' Courts Act 1980 (fees to be taken by Clerks to Justices);
  - (b) section 70(2)(b) of the Transport Act 1982 (payments in respect of applicants for exemption from wearing seat belts);
  - (c) section 617(2)(a) of the Income and Corporation Taxes Act 1988 (benefits not treated as income for purposes of Income Tax Acts);
  - (d) in the Children Act 1989—
    - (i) section 17(9) (persons not liable to make repayments of assistance);
    - (ii) section 29(3) (persons not liable to pay certain charges);
    - (iii) paragraph 21(4) of Schedule 2 (persons not liable to contribute towards maintenance);
  - (e) Article 131(3)(b) of the Education Reform (Northern Ireland) Order 1989 (charges and remissions policies);
  - (f) in the Child Support Act 1991—
    - (i) section 47(3)(b) (fees);
    - (ii) section 54 (interpretation);
  - (g) in the Child Support (Northern Ireland) Order 1991—
    - (i) Article 2(2) (interpretation);
    - (ii) Article 44(2)(b) (fees);
  - (h) section 29(7)(a) and (b) of the Jobseekers Act 1995 (pilot schemes);
  - (i) section 24(2) of the Child Support Act 1995 (compensation payments);
  - (j) section 22(4)(a) of the Children (Scotland) Act 1995 (persons not liable to make repayments of assistance);
  - (k) in the Children (Northern Ireland) Order 1995;
    - (i) Article 2(2) (interpretation);
    - (ii) Article 18(9) (persons not liable to make repayments of assistance);
    - (iii) Article 24(3) (persons not liable to pay certain charges);
    - (iv) Article 39(4) (persons not liable to contribute towards maintenance);
  - (l) Article 17(2) of the Child Support (Northern Ireland) Order 1995 (compensation payments);
  - (m) Article 31(7)(a) and (b) of the Jobseekers (Northern Ireland) Order 1995 (pilot schemes);

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- (n) Article 25(2) of the Road Traffic (Northern Ireland) Order 1995 (payments in respect of applicants for exemption from wearing seat belts);
- (o) section 77(1)(e) of the Housing Grants, Construction and Regeneration Act 1996 (entitlement to home repair assistance);
- (p) section 457(4)(b)(ii) and (iv) of the Education Act 1996 (charges and remissions policies);
- (q) section 8(3)(d) and (e) of the Social Security Act 1998 (power of Secretary of State to decide claims);
- (r) Article 9(3)(d) and (e) of the Social Security (Northern Ireland) Order 1998 (power of Department to decide claims).

## SCHEDULE 2

Section 2.

### TRANSFER OF FUNCTIONS

#### PART I

##### PROVISIONS CONFERRING FUNCTIONS TRANSFERRED TO TREASURY

- 1 In the Social Security Contributions and Benefits Act 1992—
  - (a) section 45A(2)(a) (calculation of additional pension);
  - (b) section 123(1)(b) and (c) (power to prescribe schemes for working families' tax credit and disabled person's tax credit);
  - (c) section 128 (entitlement to working families' tax credit etc.);
  - (d) section 129 (entitlement to disabled person's tax credit etc.);
  - (e) section 134(1) and (2) (exclusions from benefit based on capital or entitlement to other benefits);
  - (f) section 135(1) and (2) (applicable amount);
  - (g) section 136 (income and capital).
- 2 Section 150 (annual uprating of benefits) of the Social Security Administration Act 1992.
- 3 In the Social Security Contributions and Benefits (Northern Ireland) Act 1992—
  - (a) section 45A(2)(a) (calculation of additional pension);
  - (b) section 122(1)(b) and (c) (power to prescribe schemes for working families' tax credit and disabled person's tax credit);
  - (c) section 127 (entitlement to working families' tax credit etc.);
  - (d) section 128 (entitlement to disabled person's tax credit etc.);
  - (e) section 130(1) and (2) (exclusions from benefit based on capital or entitlement to other benefits);
  - (f) section 131(1) and (2) (applicable amount);
  - (g) section 132 (income and capital).
- 4 Section 132 (annual uprating of benefits) of the Social Security Administration (Northern Ireland) Act 1992.

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## PART II

### PROVISIONS CONFERRING FUNCTIONS TRANSFERRED TO OFFICERS OF BOARD

- 5        In the Social Security Act 1998—
- (a) section 1(a) (certain functions transferred to Secretary of State); and
  - (b) in Chapter II of Part I—
    - (i) section 8(1)(a) and (c) (certain decisions);
    - (ii) so much of section 9(1) as confers power to revise decisions under section 8 of that Act; and
    - (iii) section 11(2) and (3) (questions of fact requiring special expertise).
- 6        In the Social Security (Northern Ireland) Order 1998—
- (a) Article 3(a) (certain functions transferred to Department); and
  - (b) in Chapter II of Part II—
    - (i) Article 9(1)(a) and (c) (certain decisions);
    - (ii) so much of Article 10(1) as confers power to revise decisions under Article 9 of that Order; and
    - (iii) Article 12(2) and (3) (questions of fact requiring special expertise).

## PART III

### PROVISIONS CONFERRING FUNCTIONS TRANSFERRED TO BOARD

- 7        Such of the provisions of—
- (a) the Social Security Contributions and Benefits Act 1992;
  - (b) the Social Security Administration Act 1992, except Part XIII (advisory bodies and consultation);
  - (c) the Social Security Contributions and Benefits (Northern Ireland) Act 1992; and
  - (d) the Social Security Administration (Northern Ireland) Act 1992, except Part XII (advisory bodies and the duty to consult),
- as are not mentioned in Part I of this Schedule.
- 8        Such of the provisions of—
- (a) Chapter II of Part I of the Social Security Act 1998 (which makes provision about social security decisions and appeals); and
  - (b) Chapter II of Part II of the Social Security (Northern Ireland) Order 1998 (which makes similar provision for Northern Ireland),
- as are not mentioned in Part II of this Schedule.
- 9        Any subordinate legislation made under any of the provisions mentioned in Part I of this Schedule or this Part.

## PART IV

### MODIFICATION OF ENACTMENTS

- 10      (1) Section 71 of the Social Security Administration Act 1992 (overpayments: general), and section 69 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland), shall have effect in any case where



the overpayment was made in respect of tax credit as if for subsections (8) and (9) there were substituted—

“(8) An amount recoverable under subsection (1) above in any year of assessment—

- (a) shall be treated for the purposes of Part VI of the Taxes Management Act 1970 (collection and recovery) as if it were tax charged in an assessment and due and payable;
- (b) shall be treated for the purposes of section 203(2)(a) of the Income and Corporation Taxes Act 1988 (PAYE) as if it were an underpayment of tax for a previous year of assessment.

(8A) Where—

- (a) an amount paid in respect of a claim is recoverable under subsection (1) above; and
- (b) a penalty has been imposed under section 9(1) of the Tax Credits Act 1999 (penalties for fraud etc.) on the ground that a person fraudulently or negligently made an incorrect statement or declaration in connection with that claim,

the amount shall carry interest at the rate applicable from the date on which it becomes recoverable until payment.

(9) The rate applicable for the purposes of subsection (8A) above shall be the rate from time to time prescribed under section 178 of the Finance Act 1989 for those purposes.”

(2) After paragraph (gg) of section 178(2) of the Finance Act 1989 (setting rates of interest) there shall be inserted—

“(gh) section 71(8A) of the Social Security Administration Act 1992, and section 69(8A) of the Social Security Administration (Northern Ireland) Act 1992, as they have effect in any case where the overpayment was made in respect of working families' tax credit or disabled person's tax credit;”.

11 The following sections—

- (a) section 110 of the Social Security Administration Act 1992 (appointment and powers of inspectors); and
- (b) section 104 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland),

shall not apply to the extent that the provisions, matters or Acts concerned relate to tax credit or in any case where the benefit concerned is tax credit.

12 The following sections—

- (a) section 111 of the Social Security Administration Act 1992 (delay, obstruction etc. of inspector); and
- (b) section 105 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland),

shall not apply in any case where the exercise of the power, or the question, information or document, relates to tax credit.

13 The following sections—

- (a) sections 111A and 112 of the Social Security Administration Act 1992 (dishonest and fraudulent representations); and

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(b) sections 105A and 106 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland), shall not apply in any case where the benefit or other payment or advantage is or relates to, or the failure to notify relates to, tax credit.

14 The following sections—

(a) section 113 of the Social Security Administration Act 1992 (breach of regulations); and

(b) section 107 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland),

shall not apply in the case of a provision relating to tax credit.

15 The following sections—

(a) section 115A of the Social Security Administration Act 1992 (penalty as alternative to prosecution); and

(b) section 109A of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland),

shall not apply in any case where the overpayment is in respect of tax credit.

16 The following sections—

(a) sections 182A and 182B of the Social Security Administration Act 1992 (return and redirection of post); and

(b) sections 158A and 158B of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland),

shall not apply in any case where the social security post, or the offences or the information the accuracy of which is to be checked, relates to tax credit.

17 The words “, family credit” shall cease to have effect in—

(a) section 6(1) of the Child Support Act 1991 (recovery of child support maintenance from absent parent); and

(b) Article 9(1) of the Child Support (Northern Ireland) Order 1991 (corresponding provision for Northern Ireland).

18 (1) The words “Disability working allowance” shall cease to have effect in—

(a) column 2 of Schedule 2 to the Social Security (Recovery of Benefits) Act 1997 (benefits which are listed benefits for the purposes of that Act); and

(b) column 2 of Schedule 2 to the Social Security (Recovery of Benefits) (Northern Ireland) Order 1997 (benefits which are listed benefits for the purposes of that Order).

(2) Nothing in sub-paragraph (1) above shall affect the operation of that Act or that Order in cases where the payments or likely payments referred to in section 1(1)(b) of that Act or, as the case may be, Article 3(1)(b) of that Order are for a payment period beginning before the commencement of that sub-paragraph.

19 The following provisions—

(a) section 27 of the Social Security Act 1998 (restrictions on entitlement to benefit in certain cases of error); and

(b) Article 27 of the Social Security (Northern Ireland) Order 1998 (corresponding provision for Northern Ireland),

shall not apply in any case where the determination relates to tax credit.

## PART V

### CONSEQUENTIAL PROVISIONS

#### *References to Secretary of State etc.*

- 20 In accordance with section 2(1) above—
- (a) section 175 of the Social Security Contributions and Benefits Act 1992 (regulations, orders etc.);
  - (b) section 176(3) of that Act (statutory instruments that are subject to negative procedure);
  - (c) section 189 of the Social Security Administration Act 1992 (regulations and orders);
  - (d) section 190(3) of that Act (certain statutory instruments subject to negative procedure);
  - (e) section 172(9) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (certain statutory instruments subject to negative procedure);
  - (f) section 132(1) of the Social Security Administration (Northern Ireland) Act 1992 (corresponding order for uprating of benefits);
  - (g) section 79(1) of the Social Security Act 1998 (regulations and orders); and
  - (h) section 80(2) of that Act (certain statutory instruments subject to negative procedure),
- shall be construed, in relation to tax credit, as if references in those provisions to the Secretary of State were references to the Treasury or, as the case may be, the Board.

- 21 In relation to tax credit, references in Chapter II of Part I of the Social Security Act 1998 (social security decisions and appeals) to a decision of the Secretary of State shall, where the context so requires in consequence of section 2(1) above, be construed as references to a decision of the Board or, as the case may be, an officer of the Board.

#### *References to Department etc.*

- 22 In accordance with section 2(1) above—
- (a) section 171(1) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
  - (b) section 165(1) of the Social Security Administration (Northern Ireland) Act 1992; and
  - (c) Article 74(1) of the Social Security (Northern Ireland) Order 1998 (regulations and orders),
- (which provide for regulations and orders to be made by the Department) shall be construed, in relation to tax credit, as if the references in those provisions to the Department were references, as the case may be, to the Treasury or the Board.
- 23 In relation to tax credit, references in Chapter II of Part II of the Social Security (Northern Ireland) Order 1998 (social security decisions and appeals) to a decision of the Department shall, where the context so requires in consequence of section 2(1) above, be construed as references to a decision of the Board or, as the case may be, an officer of the Board.

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*Social Security Contributions and Benefits Act 1992*

- 24 Section 123(2) of the Social Security Contributions and Benefits Act 1992 (public inspection of schemes prescribed under section 123(1)) shall be construed, in relation to tax credit, as if the reference to local offices of the Department of Social Security were a reference to offices of the Board.
- 25 Section 175(7) of that Act (regulations and orders exercisable only in conjunction with Treasury) does not apply in relation to regulations made by the Treasury by virtue of section 2(1) above.

*Social Security Administration Act 1992*

- 26 Sub-paragraphs (i) and (ii) of paragraph (a) of subsection (1) of section 165 of the Social Security Administration Act 1992 (which provides for adjustments between the National Insurance Fund and the Consolidated Fund) shall cease to have effect.
- 27 Section 189(8) of that Act (orders and regulations which require Treasury consent) does not apply in relation to orders made by the Treasury by virtue of section 2(1) above.

*Social Security Contributions and Benefits (Northern Ireland) Act 1992*

- 28 Section 122(2) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (public inspection of schemes prescribed under section 122(1)) shall be construed, in relation to tax credit, as if the reference to social security offices of the Department were a reference to offices of the Board.
- 29 Any power to make regulations conferred by the Social Security Contributions and Benefits (Northern Ireland) Act 1992 is exercisable, so far as it relates to tax credit, by statutory instrument; and section 171(2) of that Act (regulations etc. to be made by statutory rule) has effect subject to this paragraph.
- 30 Any power under any provision of that Act transferred to the Board by section 2(1) shall, if the Treasury so direct, be exercisable only in conjunction with them.

*Social Security Administration (Northern Ireland) Act 1992*

- 31 Any power to make regulations or orders conferred by the Social Security Administration (Northern Ireland) Act 1992 is exercisable, so far as it relates to tax credit, by statutory instrument; and section 165(3) of that Act (regulations and orders to be made by statutory rule) has effect subject to this paragraph.
- 32 A statutory instrument—
- (a) which contains (whether alone or with other provisions) regulations made under section 1(1) or (1C), 5(1) or 9(2) of the Social Security Administration (Northern Ireland) Act 1992 relating to tax credit; and
  - (b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,
- shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- 33 A statutory instrument containing (whether alone or with other provisions) an order under section 132 of that Act increasing any sum prescribed for the purposes of section 127(5) (appropriate maximum working families' tax credit) or 128(8) (appropriate maximum disabled person's tax credit) of the Social Security

Contributions and Benefits (Northern Ireland) Act 1992 shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House of Parliament.

34 (1) Paragraphs (a) and (b) of subsection (1) of section 145 of the Social Security Administration (Northern Ireland) Act 1992 (which provides for adjustments between the Northern Ireland National Insurance Fund and the Consolidated Fund of Northern Ireland) shall cease to have effect.

(2) In subsection (3) of that section, for “(a) to (d)” there shall be substituted “(c) or (d)”.

35 Any power under any provision of that Act transferred to the Board by section 2(1) above shall, if the Treasury so direct, be exercisable only in conjunction with them.

*Social Security (Northern Ireland) Order 1998*

36 Any power to make regulations conferred by the Social Security (Northern Ireland) Order 1998 is exercisable, so far as it relates to tax credit, by statutory instrument.

37 A statutory instrument containing (whether alone or with other provisions) regulations under Article 13(2) of that Order (persons with right of appeal to appeal tribunal) relating to tax credit shall not be made unless a draft of the instrument has been laid before Parliament and been approved by a resolution of each House of Parliament; and Article 75 of that Order (Assembly control of regulations) shall not apply to any such instrument.

38 A statutory instrument—

(a) which contains (whether alone or with other provisions) regulations made under any provision of that Order not mentioned in paragraph 37 above relating to tax credit; and

(b) which is not subject to any requirement that a draft of the instrument be laid before and approved by a resolution of each House of Parliament,

shall be subject to annulment in pursuance of a resolution of either House of Parliament; and Article 75 of that Order shall not apply to any such instrument.

SCHEDULE 3

Section 7.

RIGHTS OF EMPLOYEES NOT TO SUFFER UNFAIR DISMISSAL OR OTHER DETRIMENT

*The right not to suffer detriment*

1 (1) An employee has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by his employer, done on the ground that—

(a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) above;

(b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 above, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or

(c) the employee is entitled, or will or may be entitled, to tax credit.

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- (2) It is immaterial for the purposes of paragraph (a) or (b) of sub-paragraph (1) above—
- (a) whether or not the employee has the right; or
  - (b) whether or not the right has been infringed;
- but, for that sub-paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed, must be made in good faith.
- (3) Except where the employee is dismissed in circumstances in which—
- (a) by virtue of section 197 of the Employment Rights Act 1996 (fixed term contracts), Part X of that Act (unfair dismissal) does not apply to the dismissal; or
  - (b) in relation to Northern Ireland, by virtue of Article 240 of the Employment Rights (Northern Ireland) Order 1996 (corresponding provision for Northern Ireland), Part XI of that Order does not apply to the dismissal,
- this paragraph does not apply where the detriment in question amounts to dismissal within the meaning of that Part.

*Enforcement of right not to suffer detriment*

- 2 (1) An employee may present a complaint to an employment tribunal or, in Northern Ireland, an industrial tribunal that he has been subjected to a detriment in contravention of paragraph 1 above.
- (2) The provisions of—
- (a) sections 48(2) to (4) and 49 of the Employment Rights Act 1996 (complaints to employment tribunals and remedies); or
  - (b) in relation to Northern Ireland, Articles 71(2) to (4) and 72 of the Employment Rights (Northern Ireland) Order 1996 (complaints to industrial tribunals and remedies),
- shall apply in relation to a complaint under this paragraph as they apply in relation to a complaint under section 48 of that Act or Article 71 of that Order (as the case may be), but so that references in those provisions to the employer are construed in accordance with section 6 above.

*Right of employee not to be unfairly dismissed: Great Britain*

- 3 (1) After section 104A of the Employment Rights Act 1996 (the national minimum wage) there shall be inserted—

**“104B Tax credit**

- (1) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) of the Tax Credits Act 1999;
  - (b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 of that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or

- (c) the employee is entitled, or will or may be entitled, to working families' tax credit or disabled person's tax credit.
- (2) It is immaterial for the purposes of paragraph (a) or (b) of subsection (1) above—
- (a) whether or not the employee has the right, or
- (b) whether or not the right has been infringed,
- but, for that subsection to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.”
- (2) In section 105 of that Act (redundancy as unfair dismissal) in subsection (1)(c) (which refers to any of subsections (2) to (7A) of that section applying) for “(7A)” there shall be substituted “(7B)” and after subsection (7A) there shall be inserted—
- “(7B) This subsection applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in subsection (1) of section 104B (read with subsection (2) of that section).”
- (3) In section 108 of that Act (exclusion of right: qualifying period of employment) in subsection (3) (cases where no qualifying period is required) the word “or” at the end of paragraph (gg) shall be omitted and after that paragraph there shall be inserted—
- “(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, or”.
- (4) In section 109 of that Act (exclusion of right: upper age limit) in subsection (2) (cases where upper age limit does not apply) the word “or” at the end of paragraph (gg) shall be omitted and after that paragraph there shall be inserted—
- “(gh) subsection (1) of section 104B (read with subsection (2) of that section) applies, or”.

*Right of employee not to be unfairly dismissed: Northern Ireland*

- 4 (1) After Article 135A of the Employment Rights (Northern Ireland) Order 1996 (the national minimum wage) there shall be inserted—

**Tax credit**

- “135B) An employee who is dismissed shall be regarded for the purposes of this Part as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that—
- (a) any action was taken, or was proposed to be taken, by or on behalf of the employee with a view to enforcing, or otherwise securing the benefit of, a right conferred on the employee by regulations under section 6(2)(a) or (c) of the Tax Credits Act 1999;
- (b) a penalty was imposed on the employer, or proceedings for a penalty were brought against him, under section 9 of that Act, as a result of action taken by or on behalf of the employee for the purpose of enforcing, or otherwise securing the benefit of, such a right; or
- (c) the employee is entitled, or will or may be entitled, to working families' tax credit or disabled person's tax credit.

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- (2) It is immaterial for the purposes of sub-paragraph (a) or (b) of paragraph (1)
- (a) whether or not the employee has the right, or
- (b) whether or not the right has been infringed;
- but, for that paragraph to apply, the claim to the right and, if applicable, the claim that it has been infringed must be made in good faith.”
- (2) In Article 137 of that Order (redundancy as unfair dismissal) after paragraph (6A) there shall be inserted—
- “(6B) This paragraph applies if the reason (or, if more than one, the principal reason) for which the employee was selected for dismissal was one of those specified in paragraph (1) of Article 135B (read with paragraph (2) of that Article).”
- (3) In Article 140 of that Order (exclusion of right: qualifying period of employment) in paragraph (3) (cases where no qualifying period is required) after sub-paragraph (ff) there shall be inserted—
- “(fg) paragraph (1) of Article 135B (read with paragraph (2) of that Article) applies.”.
- (4) In Article 141 of that Order (exclusion of right: upper age limit) in paragraph (2) (cases where upper age limit does not apply) after sub-paragraph (ff) there shall be inserted—
- “(fg) paragraph (1) of Article 135B (read with paragraph (2) of that Article) applies.”.

*Appeals to the Employment Appeal Tribunal*

- 5 In section 21(1) of the Employment Tribunals Act 1996 (appeal from employment tribunal to Employment Appeal Tribunal on question of law arising under or by virtue of the enactments there specified) the word “or” at the end of paragraph (ff) shall be omitted and after that paragraph there shall be inserted—
- “(fg) the Tax Credits Act 1999, or”.

SCHEDULE 4

Section 10(4).

PENALTIES: PROCEDURE AND APPEALS

*Determination of penalties by officer of Board*

- 1 (1) Subject to sub-paragraph (2) below and except where proceedings for a penalty have been instituted under paragraph 5 below, an officer of the Board authorised by the Board for the purposes of this paragraph may make a determination—
- (a) imposing a penalty under section 9 above; and
- (b) setting it at such amount as, in his opinion, is correct or appropriate.
- (2) Sub-paragraph (1) above does not apply where the penalty is imposed under subsection (3)(b) or (c) of section 9 above and is such a penalty as is mentioned in subsection (4)(a) of that section.



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- (3) Notice of a determination of a penalty under this paragraph shall be served on the person liable to the penalty and shall state the date on which it is issued and the time within which an appeal against the determination may be made.
- (4) After the notice of a determination under this paragraph has been served the determination shall not be altered except in accordance with this paragraph or on appeal.
- (5) If it is discovered by an officer of the Board authorised by the Board for the purposes of this paragraph that the amount of a penalty determined under this paragraph is or has become insufficient, the officer may make a determination in a further amount so that the penalty is set at the amount which, in his opinion, is correct or appropriate.

*Provisions supplementary to paragraph 1*

- 2 (1) Where a person who has incurred a penalty under section 9 above has died—
  - (a) a determination under paragraph 1 above which could have been made in relation to him may be made in relation to his personal representatives; and
  - (b) any penalty imposed on personal representatives by virtue of this sub-paragraph shall be a debt due from and payable out of his estate.
- (2) A penalty determined under paragraph 1 above shall be due and payable at the end of the period of thirty days beginning with the date of the issue of the notice of determination.
- (3) Part VI of the Taxes Management Act 1970 shall apply in relation to a penalty determined under paragraph 1 above as if it were tax charged in an assessment and due and payable.

*Appeals against penalty determinations*

- 3 (1) An appeal may be brought against the determination of a penalty under paragraph 1 above.
- (2) In the case of a penalty under section 9(1), (3)(a) or (5)(a) above—
  - (a) in Great Britain, the provisions of sections 12 to 15 of the Social Security Act 1998 shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against a decision under section 8 or 10 of that Act; or
  - (b) in Northern Ireland, the provisions of Articles 13 to 15 of the Social Security (Northern Ireland) Order 1998 and section 15 of the Social Security Act 1998 shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against a decision under Article 9 or 11 of that Order.
- (3) Except in the case of such a penalty, the provisions of the Taxes Management Act 1970 relating to appeals, except section 50(6) to (8), shall have effect in relation to an appeal against such a determination as they have effect in relation to an appeal against an assessment to tax.
- (4) On an appeal by virtue of sub-paragraph (3) above against the determination of a penalty under paragraph 1 above, the General or Special Commissioners may—
  - (a) if it appears to them that no penalty has been incurred, set the determination aside;

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- (b) if the amount determined appears to them to be appropriate, confirm the determination;
  - (c) if the amount determined appears to them to be excessive, reduce it to such other amount (including nil) as they consider appropriate; or
  - (d) if the amount determined appears to them to be insufficient, increase it to such amount not exceeding the permitted maximum as they consider appropriate.
- (5) An appeal from a decision of the Commissioners against the amount of a penalty which has been determined under paragraph 1 above or this paragraph shall lie, at the instance of the person liable to the penalty—
- (a) to the High Court; or
  - (b) in Scotland, to the Court of Session as the Court of Exchequer in Scotland;
- and on that appeal the court shall have the like jurisdiction as is conferred on the Commissioners by virtue of this paragraph.

*Penalty proceedings before Commissioners*

- 4 (1) An officer of the Board authorised by the Board for the purposes of this paragraph may commence proceedings for any penalty to which sub-paragraph (1) of paragraph 1 above does not apply by virtue of sub-paragraph (2) of that paragraph.
- (2) Proceedings under this paragraph shall be by way of information in writing, made to the General or Special Commissioners, and upon summons issued by them to the defendant (or defender) to appear before them at a time and place stated in the summons; and they shall hear and decide each case in a summary way.
- (3) Part VI of the Taxes Management Act 1970 shall apply in relation to a penalty determined in proceedings under this paragraph as if it were tax charged in an assessment and due and payable.
- (4) An appeal against the determination of a penalty in proceedings under this paragraph shall lie to the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland—
- (a) by any party on a question of law; and
  - (b) by the defendant (or, in Scotland, the defender) against the amount of the penalty.
- (5) On any such appeal the court may—
- (a) if it appears that no penalty has been incurred, set the determination aside;
  - (b) if the amount determined appears to be appropriate, confirm the determination;
  - (c) if the amount determined appears to be excessive, reduce it to such other amount (including nil) as the court considers appropriate; or
  - (d) if the amount determined appears to be insufficient, increase it to such amount not exceeding the permitted maximum as the court considers appropriate.

*Penalty proceedings before court*

- 5 (1) Where in the opinion of the Board the liability of any person for a penalty under section 9 above arises by reason of the fraud of that or any other person, proceedings

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for the penalty may be instituted before the High Court or, in Scotland, the Court of Session as the Court of Exchequer in Scotland.

- (2) Subject to sub-paragraph (3) below, proceedings under this paragraph shall be instituted—
- (a) in England and Wales, in the name of the Attorney General;
  - (b) in Scotland, in the name of the Advocate General for Scotland; and
  - (c) in Northern Ireland, in the name of the Attorney General for Northern Ireland.
- (3) Sub-paragraph (2) above shall not prevent proceedings under this paragraph being instituted (in England and Wales or Northern Ireland) under the Crown Proceedings Act 1947 by and in the name of the Board as an authorised department for the purposes of that Act.
- (4) Any proceedings under this paragraph instituted in England and Wales shall be deemed to be civil proceedings by the Crown within the meaning of Part II of the Crown Proceedings Act 1947 and any such proceedings instituted in Northern Ireland shall be deemed to be civil proceedings within the meaning of that Part of that Act as for the time being in force in Northern Ireland.
- (5) If in proceedings under this paragraph the court does not find that fraud is proved but considers that the person concerned is nevertheless liable to a penalty, the court may determine a penalty notwithstanding that, but for the opinion of the Board as to fraud, the penalty would not have been a matter for the court.

#### *Mitigation of penalties*

- 6 The Board may in their discretion mitigate any penalty under section 9 above, or stay or compound any proceedings for a penalty, and may also, after judgment, further mitigate or entirely remit the penalty.

#### *Time limits for penalties*

- 7 (1) A penalty under section 9(1) above relating to a claim for tax credit may be determined by an officer of the Board, or proceedings for the penalty may be commenced before the court—
- (a) at any time within six years after the date on which the penalty was incurred; or
  - (b) at any later time within three years after the final determination of entitlement to the tax credit claimed.
- (2) Any other penalty under section 9 above may be so determined, or proceedings for the penalty may be commenced before an appeal tribunal or the court, at any time within six years after the date on which the penalty was incurred or began to be incurred.

#### *Interest on penalties*

- 8 (1) After paragraph (o) of section 178(2) of the Finance Act 1989 (setting rates of interest) there shall be inserted—
- “(p) paragraph 8 of Schedule 4 to the Tax Credits Act 1999.”

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- (2) A penalty under section 9 above shall carry interest at the rate applicable under section 178 of the Finance Act 1989 from the date on which it becomes due and payable until payment.

## SCHEDULE 5

Section 12(6).

### USE AND EXCHANGE OF INFORMATION

#### *Powers of Board to use information*

- 1 (1) Information which is held—
- (a) by the Board; or
  - (b) by a person providing services to the Board, in connection with the provision of those services,
- for the purposes of any functions relating to tax credit may be used for the purposes of, or for any purposes connected with, the exercise of any such functions, and may be supplied to any person providing services to the Board for those purposes.
- (2) Information which is held—
- (a) by the Board; or
  - (b) by a person providing services to the Board, in connection with the provision of those services,
- for the purposes of any functions specified in either paragraph of sub-paragraph (3) below may be used for the purposes of, or for any purposes connected with, the exercise of any functions specified in the other paragraph of that sub-paragraph, and may be supplied to any person providing services to the Board for those purposes.
- (3) The functions referred to in sub-paragraph (2) above are—
- (a) functions relating to tax credit; and
  - (b) functions relating to tax, contributions, statutory sick pay or statutory maternity pay and functions under Part III of the Pension Schemes Act 1993 (certification of pension schemes etc.) or Part III of the Pension Schemes (Northern Ireland) Act 1993 (corresponding provision for Northern Ireland).
- (4) In this paragraph “contributions” means contributions under Part I of the Social Security Contributions and Benefits Act 1992 or Part I of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

#### *Exchange of information between Board and Secretary of State or Department: powers and duties*

- 2 (1) This paragraph applies to information which is held for the purposes of functions relating to tax credit—
- (a) by the Board; or
  - (b) by a person providing services to the Board, in connection with the provision of those services.
- (2) Information to which this paragraph applies may, and must if an authorised officer so requires, be supplied—

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*Status: This is the original version (as it was originally enacted).*

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- (a) to the Secretary of State or the Department; or
  - (b) to a person providing services to the Secretary of State or the Department,for use for the purposes of functions relating to social security benefits, child support or war pensions.
- (3) In sub-paragraph (2) above, “authorised officer” means an officer of the Secretary of State or the Department authorised for the purposes of this paragraph by the Secretary of State or the Department.
- 3 (1) This paragraph applies to information which is held for the purposes of functions relating to social security benefits, child support or war pensions—
  - (a) by the Secretary of State or the Department; or
  - (b) by a person providing services to the Secretary of State or the Department, in connection with the provision of those services.
- (2) Information to which this paragraph applies may, and must if an officer of the Board authorised by the Board for the purposes of this paragraph so requires, be supplied—
  - (a) to the Board; or
  - (b) to a person providing services to the Board,for use for the purposes of functions relating to tax credit.
- (3) The reference in sub-paragraph (1) above to social security benefits does not include a reference to tax credit.

*Exchange of information between Board and authorities  
administering certain benefits: powers and duties*

- 4 (1) This paragraph applies to information which is held for the purposes of functions relating to tax credit—
  - (a) by the Board; or
  - (b) by a person providing services to the Board, in connection with the provision of those services.
- (2) Information to which this paragraph applies may be supplied by or under the authority of the Board—
  - (a) to an authority administering housing benefit or council tax benefit; or
  - (b) to a person authorised to exercise any function of such an authority relating to such a benefit,for use in the administration of such a benefit.
- (3) Information supplied under sub-paragraph (2) above shall not be supplied by the recipient to any other person or body unless—
  - (a) it is supplied—
    - (i) by an authority to a person authorised to exercise any function of the authority relating to housing benefit or council tax benefit; or
    - (ii) by a person authorised to exercise any function of an authority relating to such a benefit to the authority;
  - (b) it is supplied for the purposes of any civil or criminal proceedings relating to the Social Security Contributions and Benefits Act 1992, the Social Security Administration Act 1992 or the Jobseekers Act 1995 or to any provision of Northern Ireland legislation corresponding to any of them; or
  - (c) it is supplied under paragraph 5 below.

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*Status: This is the original version (as it was originally enacted).*

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- 5 (1) The Board may require—
- (a) an authority administering housing benefit or council tax benefit; or
  - (b) a person authorised to exercise any function of such an authority relating to such a benefit,
- to supply benefit administration information held by the authority or other person to, or to a person providing services to, the Board for use for any purpose relating to tax credit.
- (2) In sub-paragraph (1) above “benefit administration information”, in relation to an authority or other person, means any information which is relevant to the exercise of any function relating to housing benefit or council tax benefit by the authority or other person.

*Consequential amendments*

- 6 (1) In subsection (1)(a) of section 122 of the Social Security Administration Act 1992 (supply of information held by tax authorities for fraud prevention and verification), after “121E above” there shall be inserted “or paragraph 2 of Schedule 5 to the Tax Credits Act 1999”.
- (2) In subsection (1)(a) of section 116 of the Social Security Administration (Northern Ireland) Act 1992 (corresponding provision for Northern Ireland), after “115D above” there shall be inserted “or paragraph 2 of Schedule 5 to the Tax Credits Act 1999”.
- 7 (1) Section 110 of the Finance Act 1997 (obtaining by Board and Commissioners of Customs and Excise of information from social security authorities) is amended as follows.
- (2) After subsection (5) there shall be inserted—
- “(5AA) The reference to social security benefits in subsection (5)(a) above does not include a reference to working families' tax credit or disabled person's tax credit.”
- (3) In subsection (5A), after “State)” there shall be inserted “or paragraph 3 of Schedule 5 to the Tax Credits Act 1999 (supply to Inland Revenue for purposes of tax credit of information so held)”.

SCHEDULE 6

Section 19(4).

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1991 c. 23.	The Child Support Act 1991.	In section 6(1), the words “, family credit”.  In section 46(11), the words “, family credit”.
S.I. 1991/2628 (N.I. 23).	The Child Support (Northern Ireland) Order 1991.	In Article 9(1), the words “, family credit”.

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<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1992 c. 5.	The Social Security Administration Act 1992.	In Article 43(11), the words “, family credit”.
1992 c. 8.	The Social Security Administration (Northern Ireland) Act 1992.	Section 165(1)(a)(i) and (ii).
1996 c. 17.	The Employment Tribunals Act 1996.	Section 145(1)(a) and (b).
1997 c. 18.	The Employment Rights Act 1996.	In section 21(1), the word “or” at the end of paragraph (ff).
1997 c. 27.	The Social Security (Recovery of Benefits) Act 1997.	In section 108(3), the word “or” at the end of paragraph (gg).
S.I. 1997/1183 (N.I. 12).	The Social Security (Recovery of Benefits) (Northern Ireland) Order 1997.	In section 109(2), the word “or” at the end of paragraph (gg).
		In Schedule 2, in column 2, the words “Disability working allowance”.
		In Schedule 2, in column 2, the words “Disability working allowance”.