

EXPLANATORY MEMORANDUM TO
THE CIVIL PARTNERSHIP ACT 2004 (TAX CREDITS, Etc)
(CONSEQUENTIAL AMENDMENTS) ORDER 2005

S.I. 2005 No. 2919

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

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

2. **Description**

This order makes amendments to Tax Credits, Child Benefit and Guardian's Allowance regulations as a consequence of the Civil Partnership Act 2004. The amendments will provide for the treatment of civil partners or those couples living as civil partners to be equalised with that of married or unmarried couples for the purposes of determining entitlement to Tax Credits, Child Benefit and Guardian's Allowance. It also makes consequential amendments to Child Trust Funds and Social Security.

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

None

4. **Legislative Background**

The Civil Partnership Act 2004 introduces the provision of "Civil Partnership" for couples of the same sex. Section 1 provides for a civil partnership to be formed by two persons of the same sex, when they register as civil partners. It will confer on a same-sex couple the status of being each other's civil partner and will be formed by going through a registration procedure, which will have a comparable status to marriage. It is the Government's policy that civil partners should in general be subject to all the same legal rights and responsibilities as married couples.

This order provides for the treatment of civil partnerships and couples living as civil partners to be aligned with that of married and unmarried couples for the purposes of determining entitlement to Tax Credits and Child Benefit. They also make the equivalent changes to the rules concerning claiming and payment of tax credits and Child Benefit.

Section 254(1) of the Civil Partnership Act introduced Schedule 24, which made amendments to child support and social security primary legislation for Child Benefit and Guardian's Allowance and to the Tax Credits Act 2002. The general intention is that for the purposes of social security, which includes

Child Benefit and Tax Credits, couples in a civil partnership will be treated in the same way as a married couple. In order to achieve equal treatment, co-habiting same-sex couples who do not choose to enter into a civil partnership will be treated in the same way as a co-habiting unmarried couple.

5. Extent

This instrument applies to all of the United Kingdom

6. European Convention on Human Rights

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

7. Policy Background

As a result of the introduction of the Civil Partnership Act 2004 a number of consequential amendments are being made to the following regulations:

Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

Tax Credits (Definition and Calculation of Income) Regulations 2002

Child Tax Credit Regulations 2002

Tax Credits (Claims and Notifications) Regulations 2002

Tax Credits (Payments by the Commissioners) Regulations 2002

Tax Credits (Immigration) Regulations 2003

Tax Credits (Residence) Regulations 2003

Tax Credits (Provision of Information)(Functions Relating to Health) Regulations 2003

Child Benefit (General) Regulations 2003

Guardian's Allowance (General) Regulations 2003

Child Benefit and Guardian's Allowance (Administration) Regulations 2003

Child Benefit and Social Security (Fixing and Adjustment of Rates) Regulations 1976

Child Benefit and Social Security (Fixing and Adjustment of Rates) (Northern Ireland) Regulations 1976

Child Trust Fund Regulations 2004

Social Security Benefit (Computation of Earnings) Regulations 1996

Social Security Benefit (Computation of Earnings) Regulations (Northern Ireland) 1996

Each of the amendments will extend the policy that currently exists for married and unmarried couples to civil partners and those couples living together as civil partners as follows:

Article 1 – provides that the Order shall come into force on 5 December 2005, when the Civil Partnership Act 2004 enters into force.

Article 2 – amends the Working Tax Credit (Entitlement & Maximum Rate) Regulations to insert the new definition of a “couple” to include same-sex couples. It also amends the rule under which child care provided by a relative is not eligible for the child care element of the working tax credit by referring to a relative by a civil partnership, thus putting such relationships on the same footing as marriage.

Article 3 – amends the Tax Credits (Definition & Calculation of Income) Regulations to insert the new definition of a “couple”. It also amends the definitions of “family” (e.g. see item 5 in Table 1), “claimant’s partner” (e.g. see item 1 (b) in Table 5) and “claimant’s former spouse”.

Article 4 – amends the Child Tax Credit Regulations to insert the new definition of a “couple”. It also amends the rules on competing claims and determination of the maximum rate of child tax credit.

Article 5 – amends the Tax Credits (Claims & Notifications) Regulations to insert the new definition of a “couple”. It also amends:

- the provisions by which claims made by one member of a couple are treated as also made by the other member of that couple (i.e. when responding to an end-of-year notice issued by HMRC);
- where a person dies before making a joint claim with his or her partner; and
- who may give notification of a change of circumstances.

Article 6 – amends the Tax Credits (Payments by the Commissioners) Regulations to insert the new definition of a “couple”. It also amends the provisions prescribing:

- the member of a couple who is to receive payment of the child tax credit and the child care element of the working tax credit;
- the member of a couple who is to receive the working tax credit (other than the child care element); and
- where a member of a couple has died.

Article 7 – amends the Tax Credits (Immigration) Regulations to insert the new definition of a “couple” and amends the existing references to married or unmarried couples in those regulations.

Article 8 – amends the Tax Credits (Residence) Regulations to insert the new definition of a “couple” and amends the existing definition of a “partner” (see regulation 6 in the Tax Credits (Residence) Regulations concerning the partners of Crown Servants posted overseas).

Article 9 – amends the Tax Credits (Provision of Information) (Functions relating to Health) Regulations. These Regulations allow HMRC to supply tax credits information to the Department of Health and the relevant devolved authorities in Scotland, Wales and Northern Ireland for the purposes of

deciding entitlement to certain health benefits such as free milk, milk tokens or vitamins. Regulation 9 inserts the new definition of a “couple” and amends the existing reference to a married or unmarried couple.

Article 10 – amends the Child Benefit (General) Regulations to insert the new terms of “civil partnership” and “cohabiting same-sex couple” and amends the definition of the existing term “partner” accordingly. It also amends the provisions whereby:

- a member of a couple is or is not treated as contributing towards the cost of providing for a child;
- child benefit is not payable where the child in question is living with another person as his spouse (extending that measure to civil partners);
- when a person may still receive child benefit for a child who is living with another person as his spouse (again, extending that measure to civil partners); and
- which prescribes circumstances when two people are treated as residing together (for example, where spouses or unmarried partners are temporarily absent from each other and because of in-patient treatment in hospital).

Article 11 – amends the Guardian’s Allowance (General) Regulations so that entitlement to guardian’s allowance may extend to cases where the civil partnership of the child’s parents has been terminated by divorce or dissolved (and there is no court order granting custody to the other parent and no maintenance assessment).

Article 12 – amends the Child Benefit & Guardian’s Allowance (Administration) Regulations to insert the new terms “civil partnership” and “cohabiting same-sex couple”. It also amends the existing term “partner” accordingly.

Articles 13 and 14 – amend the Child Benefit & Social Security (Fixing & Adjustment of Rates) Regulations for Great Britain and Northern Ireland respectively. They amend the provisions dealing with the higher rate of child benefit for the eldest or only child and the lone parent rate so that, from 5 December 2005, same-sex couples living together will not be entitled to two such payments (thus putting them on the same footing as opposite-sex couples).

Article 15 - amends the Child Trust Funds Regulations 2004 that relate to general investment rules to include civil partner.

Articles 16 and 17 amend the Social Security (Computation of Earnings) Regulations 1996 for Great Britain and Northern Ireland respectively by extending the definition of close relative to include civil partners and same-sex couples who are living together as civil partners.

8. Impact

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

There is no reliable estimate for the number of Tax Credit, Child Benefit or Guardian's Allowance claimants who may be affected by the introduction of the civil partnership scheme, although it is expected to be a tiny minority of the claimant population. The impact on the Exchequer is therefore likely to be minimal.

There are start-up administrative costs for the Tax Credits, Child Benefit and Guardian's Allowance schemes in the region of £100,000. These costs were outlined in the full Regulatory Impact Assessment for the Civil Partnership Act 2004.

9. Contact

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