

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS
2007

2007 No. 824

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

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

2. **Description**

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

Firstly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations to update the definition of “employment zone” (the same change is made later to the Tax Credits (Definition and Calculation of Income) Regulations).

Secondly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations by inserting a new paragraph to clarify that a person serving a custodial sentence or remanded in custody awaiting trial or sentence (other than a person on remand who would qualify by virtue of regulation 7B) and is engaged in work (whether inside or outside a prison) while serving a sentence or remanded in custody shall not be regarded as being in “qualifying remunerative work” for the purposes of a claim to tax credits.

Thirdly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations to extend a claimant’s entitlement to Working Tax Credit from a maximum of 26 weeks of ordinary maternity leave to 39 weeks if also taking additional maternity leave. Exactly the same applies to the amendments to adoption leave.

Fourthly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations to extend the range of childcare that is eligible for the childcare element of Working Tax Credit to include, in England, care provided by a childcare provider registered under the Childcare (Voluntary Registration) Regulations 2007 and, in Wales, by a childcare provider approved under the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007.

Fifthly, the regulations amend the Tax Credits (Definition and Calculation of Income) Regulations. They update the definition of “employment zone” and the provision dealing with the conversion of income paid in a foreign currency to Sterling. They provide that various sources of income, principally the operational allowance paid to Armed Forces personnel for service in a combat zone, are to be disregarded as income for tax credit purposes. The regulations also amend the Tax Credits (Definition and Calculation of Income) Regulations to include as “employment income” any payments received by a prisoner working either inside prison or outside prison on licence. This is to ensure that prisoners’ income is included as part of the household income. The regulations also update the definition of “student income” in relation to England.

Finally, the regulations amend the Tax Credits (Claims and Notifications) Regulations and the Tax Credits (Payments by the Commissioners) Regulations 2002. These amendments respectively bring forward from 31 August to 31 July the deadline for returning annual renewal forms and give the Commissioners greater flexibility in determining the amount of any further tax credit payment where an award has been amended.

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

None

4. Legislative background

There are amendments to the Tax Credits (Definition and Calculation of Income) Regulations and the Working Tax Credit (Entitlement and Maximum Rate) Regulations to include a reference to the Employment Zones (Allocation to Contractors) Pilot Regulations 2006 (S.I. 2006 No. 962) currently in force.

Other amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations extend entitlement to that tax credit for periods of additional paid maternity and adoption leave periods arising from the Work and Families Act 2006.

The amendments to regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations extend the range of eligible childcare for the purposes of the childcare element of Working Tax Credit.

The amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations regarding prisoners have been made to make clear, for the avoidance of doubt, that work done by a prisoner during a prison sentence or while on remand is not ‘qualifying remunerative work’ for Working Tax Credit purposes.

Consequential amendments to the Tax Credits (Definition and Calculation of Income) Regulations largely arise from the Finance Act 2006. These include the exemption from income tax of one mobile phone per employee and the replacement of Extra Statutory Concession A100 (dealing with payments to or in respect of victims of National Socialist persecution) by the new section 756A of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA). The definition

of “student income” is updated in relation to England by reference to the Education (Student Support) Regulations 2007 (S.I. 2007 No. 176) while the change in relation to prisoners’ income arises as a direct consequence of the amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations outlined above.

Amendments to Tax Credits (Claims and Notifications) Regulations 2002 bring forward the date by which a person or persons claiming tax credits must respond to a notice made under section 17 of the Tax Credits Act from 31 August to 31 July.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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

7. Policy background

Child and Working Tax Credit awards are initially based on the claimants’ current personal circumstances (e.g. the number of children in the household, hours normally worked each week) and on the annual income of the previous tax year. Initial awards are subject to finalisation after the end of the current tax year.

The Work and Families Act 2006 made changes to maternity and adoption pay periods, as a result of which from April 2007 the maximum period for which statutory maternity and adoption pay and maternity allowance is payable is extended from 26 to 39 weeks. The Working Tax Credit (Entitlement and Maximum Rate) Regulations need to be amended to ensure that a claimant continues to be treated as remaining in work for the additional period of maternity or adoption leave, whether or not they receive statutory maternity pay, statutory adoption pay or maternity allowance.

The Childcare Act 2006 extended the definition of childcare in England to include various activity-based forms of childcare not previously regarded as eligible for tax credit support. This statutory instrument ensures that any childcare that is registered with the voluntary part of the Ofsted Childcare Register (which comes into force on 1 April 2007) is ‘eligible’.

The range of eligible childcare in Wales will be extended to include care approved under the new Welsh approval scheme covering care provided in the child’s own home or, where provided for a number of children from different homes at the same time, in the home of one or more of those children.

These regulations put beyond doubt that the work done by a prisoner serving a custodial sentence or on remand is not ‘qualifying remunerative work’ for Working Tax Credit purposes.

When claiming tax credits, claimants are generally required to report income of a full tax year which is chargeable to income tax. This reflects the fact that tax credits are part of the tax system. Because the Tax Credits (Definition and Calculation of Income) Regulations 2002 refer to tax law definitions of income, any relevant changes in tax law (for example, those made by the Finance Act 2006) should be reflected in the tax credits definition of “income”.

The operational allowance paid to Armed Forces personnel in respect of service in a combat zone is to be disregarded as income for the purpose of tax credits.

Regulation 1 provides that these Regulations shall come into force on 6 April 2007.

Regulation 2 introduces the amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.

Regulation 3 updates regulation 2 (interpretation) of those Regulations by updating the definition of “employment zone” to reflect that the Employment Zones (Allocation to Contractors) Pilot Regulations 2005 have now been replaced by the Employment Zones (Allocation to Contractors) Pilot Regulations 2006 (S. I. 2006 No. 962);

Regulation 4 amends regulation 4(2) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations to provide that a person who is serving a custodial sentence or has been remanded in custody, and is engaged in work (whether inside or outside a prison) while he is serving the sentence or remanded in custody, shall not be regarded as engaged in qualifying remunerative work.

Regulation 5 updates regulation 5 (1) (time off in connection with childbirth and adoption) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations. It inserts references to the first 13 weeks of additional maternity and adoption leave periods under sections 73 and 75B respectively of the Employment Rights Act 1996 (c. 18) and the equivalent Northern Ireland legislation in regulation 5 of the 2002 Regulations.

Regulation 6 amends regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations which prescribes categories of eligible child care for the purposes of entitlement to the child care element. The amendments extend the range of eligible childcare by adding:

- care provided by a child care provider registered under the Childcare (Voluntary Registration) Regulations 2007; and
- care provided by a childcare provider under the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007.

Regulation 7 introduces the amendments to the Tax Credits (Definition and Calculation of Income) Regulations 2002.

Regulation 8 updates regulation 2(2) (interpretation) of those Regulations. It updates the definition of “employment zone” to reflect that the Employment Zones (Allocation to Contractors) Pilot Regulations 2005 have now been replaced by the Employment Zones (Allocation to Contractors) Pilot Regulations 2006 (S. I. 2006 No. 962).

Regulation 9 updates regulation 3 (calculation of income of claimant) of those Regulations. It amends the provision governing the conversion rate at which foreign incomes can be converted into Sterling for the purpose of tax credit claims.

Regulation 10 amends regulation 4 (employment income) of those Regulations. It amends regulation 4(1) to include in that provision a person who is serving a custodial sentence or has been remanded in custody awaiting trial or sentence and who is paid an amount for work done while he is serving the sentence or remanded in custody. That amount is to be treated as “employment income”. It further inserts in Table 1 (Payment and benefits disregarded in the calculation of employment income):

- a new item 3A to disregard the payment by the Secretary of State for Defence of an operational allowance to members of Her Majesty’s forces in respect of service in a specified operational area; and
- a new item 11F to disregard the provision of one mobile phone for an employee.

Regulation 11 amends regulation 8 (student income) of those Regulations to reflect changes made to student support in England by the Education (Student Support) Regulations 2007.

Regulation 12 updates regulation 10 (2) (investment income) of those Regulations to reflect that Extra Statutory Concession A100 (dealing with certain payments by banks and building societies in respect of accounts held by victims of National Socialist persecution) has been superseded by the new section 756A inserted into ITTOIA by section 64 (2) of the Finance Act 2006.

Regulation 13 amends regulation 12 (foreign income) of the Tax Credits (Definition and Calculation of Income) Regulations to reflect the same exemption of certain unclaimed accounts containing compensation for Holocaust victims from income tax for payments from overseas banks and building societies.

Regulation 14 amends regulations 11 (3) (a) and 33 (a) of the Tax Credits (Claims and Notifications) Regulations 2002 to bring forward the deadline for returning annual renewal forms from 30 August to 31 July. This is in line with the announcement in the Pre-Budget Report of 6 December 2006 and will mean that by 31 July 2007, tax credit awards for 2006-07 will be finalised and initial claims for 2007-08 will be treated as made.

Regulation 15 amends the Tax Credits (Payments by the Commissioners) Regulations 2002 to give the Commissioners of Her Majesty's Revenue and Customs (HMRC) greater flexibility in determining the amount of any further payments of tax credit where an award of tax credit is amended. HMRC intend to use this discretion to implement the announcement made in the Pre-Budget Report 2005 on 5 December 2005, that from April 2007, when claimants report a fall in income during the year, their tax credit payments will be adjusted for the rest of the year but will not include a one-off payment for the earlier part of the year. At the end of the year, their award will be finalised when their actual income is known. If they have been underpaid, a further payment will be made in the ordinary way.

Regulation 16 amends the Tax Credits (Miscellaneous Amendments) Regulations 2006 to omit a provision which is now spent as a consequence of regulation 14 of these regulations.

8. Impact

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

The Exchequer impact of these changes is reflected in the relevant Budget forecasts.

Consultation

There is no statutory requirement to consult on these regulations.

9. Contact

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