

**EXPLANATORY MEMORANDUM TO**  
**THE TAX CREDITS AND CHILD BENEFIT (MISCELLANEOUS AMENDMENTS)**  
**REGULATIONS 2016**

**2016 No. 360**

**1. Introduction**

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

**2. Purpose of the instrument**

- 2.1 The instrument makes changes to regulations to achieve the following outcomes for tax credits and Child Benefit purposes, starting on 6 April 2016:
- Exempting payments from the Netherlands Government to victims of persecution during the Second World War for tax credits purposes, bringing tax credits in line with a similar exemption for income tax that will be introduced by the Finance Bill 2016.
  - Amending tax credit and Child Benefit regulations as a consequence of the Social Services and Well-being (Wales) Act 2014.
  - Amending tax credit regulations to update the definition of “child care” in England as a consequence of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 and the revocation of the Domiciliary Care Agencies Regulations 2002.
  - Increasing one of the maximum rates of recovery of overpayments from other payments of tax credits from 25% to 50%, where the annual income of the claimant or joint claimants exceeds £20,000. The rate affected is the residual maximum rate that applies in any circumstances in which the existing Regulations do not provide for a different maximum rate.
  - Removing the “Skill Build” and “Skill Build +” training schemes provided in Wales from the definition of approved training for Child Benefit purposes as these schemes have ceased.
  - Removing some words that have become redundant as a result of previous amendments.

**3. Matters of special interest to Parliament**

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

- 3.1 In relation to the drafting of regulation 5(2)(b) of this instrument, the Committee may find it helpful to understand certain aspects of the underlying statutory framework.
- 3.1.1 The calculation of income for the purposes of Part 1 of the Tax Credits Act 2002 is affected by regulations made under section 7(8) and (9) of that Act, currently the Tax

Credits (Definition and Calculation of Income Regulations) 2002 (which are amended, for unrelated purposes, by regulation 3 of this instrument).

- 3.1.2 But income, as so calculated, is not directly relevant to a person's entitlement to tax credits. Under section 7 of the Act, entitlement to tax credits depends on what the 'relevant income' as defined in section 7(3), is. One effect of this is that if income (as calculated in accordance with section 7(8) and (9)) changes from year to year by less than a certain amount, the entitlement continues to be based on the earlier income, even though HMRC knows that the actual income is now different (which may cut both ways: the actual current income of which HMRC is aware may be higher or lower than the 'relevant income').
- 3.1.3 It is also relevant to note that entitlement to tax credits depends on what the relevant income is for the whole of the tax year in respect of which the credits are being paid (see the references to 'current year income' in section 7 of the Act and its definition in section 7(4)). As such the final income calculations cannot be made until after the end of the tax year in question, when the actual income for the whole of the year can be known. As a result, the information about income that is used for the purposes of Part 1 of the Act will in the meanwhile be provisional, may initially be based on information relating to an earlier year, may change in-year, and may lead to retrospective adjustments of entitlement after the end of the year. Complex provision is made for this in sections 14 to 18 of the Act.
- 3.1.4 This is why the new regulation 12A(2B)(b) that is inserted by regulation 5(2)(b) of the present instrument provides for the new £20,000 threshold to be assessed by looking at the income that the Commissioners are for the time being treating the income to be for the purposes of Part 1 of the Act. The intention is that the threshold applies to the raw income (calculated in accordance with section 7(8) and (9) of the Act) rather than the potentially different (and more outdated) figure produced by the definition of 'relevant income' in section 7(3) of the Act. In effect, the Commissioners are to use the most up to date figure that they have accepted the person's income to be for the purposes of Part 1 of the Act.

#### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### **4. Legislative Context**

- 4.1 This instrument amends the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005), the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006), the Child Tax Credit Regulations 2002 (S.I. 2002/2007), the Tax Credits (Payments by the Commissioners) Regulations 2002 (S.I. 2002/2173), and the Child Benefit (General) Regulations 2006 (S.I. 2006/223) in order to achieve the outcomes listed in paragraph 2.

#### **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument varies as between provisions.

## **6. European Convention on Human Rights**

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

## **7. Policy background**

### *What is being done and why*

- 7.1 The Working Tax (Entitlement and Maximum Rate) Regulations 2002 are amended in order to change one aspect of the definition of eligible childcare that applies in England. It does so by replacing a reference to care for a child by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002. Those Regulations were revoked following the introduction of the Health and Social Care Act 2008. The definition will now include care provided for a child by a person registered with the Care Quality Commission as a service provider in relation to the regulated activity of personal care within paragraph 1 of Schedule 1 to the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014.
- 7.2 The Tax Credits (Definition and Calculation of Income) Regulations 2002 are amended for various purposes.
- 7.2.1 Regulation 3(2) removes a superfluous “and” from the Regulations and is a technical amendment.
- 7.2.2 Regulation 3(3) provides for an additional category of income to be disregarded in calculating income for tax credit purposes. The Netherlands’ Wuv scheme makes payments to eligible individuals that were victims of persecution in Europe or Asia during the Second World War. In order to benefit from the scheme, recipients must either have had Dutch nationality, have been a Dutch subject or persecuted on Dutch territory and later acquired Dutch nationality. Payments from the Netherlands government through the scheme are currently included in the calculation of an individual’s entitlement to tax credits. This measure will bring payments to victims of national-socialist and Japanese aggression made through the scheme into line with those made by the Federal Republic of Germany or Austria by removing them from the calculation of income for tax credits purposes. The exemption will apply from April 2016.
- 7.2.3 Regulation 3(4) makes a consequential change following the Social Services and Well-being (Wales) Act 2014. This change provides for certain direct payments made under the Welsh Act to meet a person’s need for care and support and certain payments for the provision of accommodation in respect of meeting a person’s need for care and support to be disregarded in the calculation of income for tax credit purposes.
- 7.3 Regulation 4 amends the Child Tax Credit Regulations 2002 to make consequential changes following the Social Services and Well-being (Wales) Act 2014. The effect of regulation 4 is that a person in Wales remains ineligible for child tax credit where the child or young person is being provided with funded accommodation by a Welsh local authority, under provisions of the Act that supersede provisions hitherto contained in the Children Act 1989.
- 7.4 The Tax Credits (Payments by the Commissioners) Regulations 2002 are amended to bring into force the announcement made as part of Budget 2014. With effect from April 2016, the maximum rate at which overpayments of tax credits may be recovered

from other payments of tax credits will be increased. Regulation 5 will allow a rate of up to 50% to be used when the annual income of the claimant (or the aggregated annual income of joint claimants) exceeds £20,000. This will only affect cases falling within regulation 12A(2)(c) of the 2002 Regulations, i.e. all cases which do not fall within (a) or (b). The maximum rates of 100% and 10%, respectively, which apply to cases falling within (a) and (b) are not affected by this change.

- 7.5 The Child Benefit (General) Regulations 2006 are amended for two different purposes.
- 7.5.1 Regulation 6(2) removes references to “Skill Build” and “Skill Build+” training schemes from the list of “approved training” for child benefit purposes as these schemes ceased on 31 July 2013.
- 7.5.2 Regulation 6(3) and regulation 6(4) make consequential changes following the Social Service and Well-being (Wales) Act 2014. The effect of these regulations is that a person in Wales remains ineligible for child benefit where the child or young person is being provided with funded accommodation by a Welsh local authority, under provisions of the Act that supersede provisions hitherto contained in the Children Act 1989.

#### ***Consolidation***

- 7.6 Neither the Treasury nor HMRC has plans to consolidate the various principal instruments, amended by this instrument, for which they are respectively responsible.

### **8. Consultation outcome**

- 8.1 There is no statutory requirement to consult on these Regulations. However, the Social Security Advisory Committee (SSAC) has considered these regulatory changes under its Memorandum of Understanding with HMT and HMRC.

### **9. Guidance**

- 9.1 The provisions of these amending Regulations will be reflected in the Tax Credits Technical Manuals and Child Benefit manuals available on the Gov.UK website.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An Impact Assessment has not been prepared for this instrument.

### **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

### **12. Monitoring & review**

- 12.1 These changes implement either Budget and Spending Review announcements or are consequential and technical and do not require further review.

### **13. Contact**

- 13.1 Graeme Osborne at HM Revenue & Customs Tel: 03000 586712 or email: [Graeme.osborne@hmrc.gsi.gov.uk](mailto:Graeme.osborne@hmrc.gsi.gov.uk) can answer any queries regarding the instrument, including on behalf of HM Treasury