

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (CORONAVIRUS, MISCELLANEOUS AMENDMENTS)
REGULATIONS 2020

2020 No. 534

1. Introduction

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

2. Purpose of the instrument

- 2.1 This instrument makes changes to tax credits regulations. These include provisions to protect a claimant's entitlement to receive Working Tax Credit (WTC) and to allow workers to continue to receive WTC if they would otherwise have been engaged in remunerative work were it not for the impact of Covid-19. Also included are provisions which provide for certain payments – for example, vouchers or monetary sums paid in lieu of free school meals – to be disregarded as income for tax credits purposes.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It is with regret that this instrument is laid in breach of the 21-day rule which requires the laying of an instrument 21 days before its provisions take effect.
- 3.2 It is also regretted that the instrument will be laid and come into force during recess.
- 3.3 This instrument will come into force the day after laying as the first set of WTC claimants whose entitlement was reduced by the impacts of the coronavirus pandemic have reached the end of the period during which tax credits legislation allows HMRC to treat them as working their "normal" hours. The volume of claimants who are affected is expected to increase significantly from mid-May 2020. Therefore, these measures need to be in place as soon as possible to avoid entitlement to WTC being reduced or ended.
- 3.4 Breaching the 21-day rule will ensure WTC claimants are not removed from tax credits where – absent the impact of the coronavirus pandemic – they would have been able to remain in tax credits.
- 3.5 This instrument needs to take effect on 23 May 2020.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

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

4. Extent and Territorial Application

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

5. European Convention on Human Rights

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

6. Legislative Context

- 6.1 This instrument makes a number of changes to the 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 Income Regulations”) and the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) (“the Claims Regulations”).
- 6.2 Section 7 of the Tax Credits Act 2002 (c.21) sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Income Regulations provide for what is or is not to be counted, or treated, as income.
- 6.3 Section 10 of the Tax Credits Act 2002 (c.21) sets out that the entitlement of a person (a claimant) to Working Tax Credit is dependent on them being engaged in qualifying remunerative work. Section 10(2) makes provision into what is, or is not, qualifying remunerative work.
- 6.4 The Claims Regulations are made under the powers in section 6 of the Tax Credits Act 2002 which provide the deadlines within which changes of circumstances that increase the tax credits maximum rate must be reported.

7. Policy background

What is being done and why?

- 7.1 Tax credits are a means-tested form of support which provides help to millions of families with a wide variety of differing circumstances. WTC provides support for working people on a low income. It tops up the earnings of workers on low to moderate incomes, targeting support to those in work at the lowest income levels.
- 7.2 Tax credits awards are calculated based on claimants’ income. The rules for calculating income for tax credits generally mirror those for income tax, which means that claimants do not have to carry out a separate calculation of their income but can use figures calculated for tax purposes.
- 7.3 The government introduced the Coronavirus Job Retention Scheme (CJRS) to provide for payments to be made to employers as a result of them incurring costs of employment in respect of furloughed employees arising from the health, social and economic emergency in the United Kingdom due to coronavirus and coronavirus disease. The government introduced the Self-Employment Income Support Scheme (SEISS) to provide for payments to be made to persons carrying on a trade the business of which has been adversely affected by the coronavirus pandemic.

- 7.4 This instrument includes changes to tax credit rules to allow claimants affected by the impacts of the coronavirus pandemic to continue to satisfy the conditions for entitlement to WTC and to ensure that the regulations complement CJRS and SEISS.
- 7.5 Under the CJRS employers can furlough employees and apply for a grant that covers 80% of their usual monthly wage costs, up to £2,500 a month, plus the associated Employer National Insurance contributions and pension contributions.
- 7.6 The SEISS provides a grant to eligible self-employed individuals, worth 80% of their profits up to a cap of £2,500 per month.
- 7.7 The government's policy intent is that, for the period of the CJRS, furloughed workers and the self-employed should not be disadvantaged by losing entitlement to support they would "normally" get from tax credits.
- 7.8 This instrument makes changes to allow WTC entitlement to continue for up to 8 weeks after the CJRS ends in order for claimants to establish their normal hours worked.
- 7.9 This instrument also makes changes to allow claimants impacted by the coronavirus pandemic but not participating in the CJRS or SEISS to continue to satisfy the 'hours normally worked' and working 'for' or 'in expectation of payment' conditions of WTC.
- 7.10 This instrument makes changes to prevent workers who are furloughed or treated as being furloughed from combining their furloughed hours with hours worked in extra jobs, where prior to Covid-19 they did not meet the eligibility conditions for the WTC "30 hour element".
- 7.11 This instrument temporarily increases the current one-month time limit to three months for claimants who are critical workers to inform HMRC of changes of circumstances that affect entitlement to tax credits, to help claimants who have been unable to contact HMRC due to the coronavirus pandemic.
- 7.12 The Emergency Volunteering Leave (EVL) provisions in the Coronavirus Act enable emergency volunteers who have specialist skills, qualifications and/or experience to take unpaid leave from their usual job to help provide continuous support to front-line services for placements of two, three or four consecutive weeks, and be able to claim compensation for lost earnings from the Department of Health and Social Care equal to the National Minimum Wage. WTC claimants who are not giving up remunerative work would be eligible for expenses of £20 a day.
- 7.13 This instrument includes changes to treat WTC claimants who volunteer under EVL as if they were working their normal hours for the duration of the scheme. It also includes changes to disregard payments made under the EVL as income for the purposes of calculating entitlement to tax credits.
- 7.14 The Secretary of State for Health and Social Care has announced the NHS and Social Care Coronavirus Life Assurance (England) Scheme, a new £60,000 death in service lump sum payment for families of frontline NHS workers who pass away in service as a result of Covid-19. This instrument makes changes to ensure the capital from the death in service benefit will be disregarded, but that any interest from capital received by the recipient is taken into account as income. This is in line with the normal treatment of capital in tax credits.

- 7.15 During the coronavirus pandemic, the Department for Education in England and its equivalents in the devolved administrations have introduced voucher schemes or cash replacements in place of free school meals. This instrument legislates to disregard those vouchers or monetary sums paid in lieu of free school meals as income for the purposes of calculating entitlement to tax credits.
- 7.16 Finally, the rules for calculating income for tax credits generally mirror those for income tax. This instrument legislates to include payments received from the SEISS; Small Business Grant Fund; Retail, Hospitality and Leisure Grant Fund; Fishing Industry Support schemes and the devolved administration equivalents (e.g. the Scottish Government's Newly Self-Employed Hardship Fund) as trading income for tax credits, which means that claimants do not have to carry out a separate calculation of their income but can use figures calculated for tax purposes.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

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

9. Consolidation

- 9.1 There are no plans to consolidate any of the regulations which are amended by this instrument.

10. Consultation outcome

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

11. Guidance

- 11.1 Information relating to these changes to legislation will be incorporated into leaflets, forms and manuals where appropriate on an ongoing basis. Internal guidance and standard operating procedures will also be updated.
- 11.2 Guidance is provided for tax credits claimants online through the GOV.UK website and through the tax credits helpline. Where claimants need more detail on how to calculate their income for tax credits purposes, they are referred to income tax guidance, which is also available on the GOV.UK website.
- 11.3 Guidance for CJRS is available at: <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme>.
- 11.4 Guidance for SEISS is available at: <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>.

12. Impact

- 12.1 There is no, or no significant, impact on business, charities or voluntary bodies.
- 12.2 There is no, or no significant impact on the public sector.
- 12.3 All changes made by this instrument relate to individuals and the majority of the changes are to maintain the current state of tax credits.
- 12.4 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

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

14.2 HMRC monitors awards of tax credits on an ongoing basis. This analysis is published at: <https://www.gov.uk/government/collections/personal-tax-credits-statistics>.

14.3 The regulation does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

15.1 Saheed Dawood at HMRC (telephone: 03000 551303 or email: Saheed.Dawood@hmrc.gov.uk) can answer any queries regarding the instrument.

15.2 James Dunstan, Deputy Director for Tax Credits and Child Benefit policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Chief Secretary to the Treasury, the Rt Hon Steve Barclay MP, can confirm that this Explanatory Memorandum meets the required standard.