

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS AND CHILD BENEFIT (MISCELLANEOUS AMENDMENTS)
REGULATIONS 2021

2021 No. 1286

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty’s Revenue and Customs on behalf of Her Majesty’s Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument amends The Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) to ensure that payments under the Household Support Fund and equivalent Devolved Administration schemes are disregarded as income for the purposes of calculating entitlement to tax credits.

2.2 This instrument also makes minor consequential changes to tax credits and Child Benefit regulations to account for the introduction of Scottish disability assistance, a Scottish training programme known as “No One Left Behind”, and the Approval of Home Childcare Providers (Wales) Scheme 2021. These changes ensure that entitlement to tax credits and Child Benefit remains unaffected by these initiatives’ introduction.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Section 7 of the Tax Credits Act 2002 sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Tax Credits (Definition and Calculation of Income) Regulations 2002 provide for what is or is not to be treated as relevant income.

6.2 Sections 9 and 11 of the Tax Credits Act 2002 set out the conditions which determine the maximum rate at which a person may be entitled to Child Tax Credit or Working Tax Credit, respectively.

- 6.3 Section 12 of the Tax Credits Act 2002 sets out the conditions which determine whether a person may be entitled to the child care element of Working Tax Credit.

7. Policy background

What is being done and why?

Tax credits and the Household Support Fund

- 7.1 Tax credits are a means-tested form of financial support which provide help to millions of people with a wide variety of differing circumstances. Working Tax Credit provides support for working people on a low income, with or without children. Its design helps ensure that people have incentives to increase their working hours and increase their earnings.
- 7.2 Tax credits awards are 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 Household Support Fund is available to councils in England until 31 March 2022. The funding will primarily be used to provide support over winter to households in need of help with the cost of food, energy, water and other essentials. Devolved Administrations have responsibility for any equivalent schemes.
- 7.4 This instrument will amend the Tax Credits (Definition and Calculation of Income) Regulations 2002 to include a reference to the Household Support Fund and equivalent Devolved Administration schemes so that payments from such schemes are to be disregarded as income for tax credits purposes, meaning recipients will receive the full benefit of the support payment.

Scottish disability assistance

- 7.5 Tax credits awards consist of a basic element and additional elements depending on claimants' circumstances. Claimants may be entitled to disability elements if they or their children meet certain conditions.
- 7.6 Entitlement to tax credits disability elements depends, in part, on claimants or their children being in receipt of a qualifying disability benefit, such as Disability Living Allowance (DLA) or Personal Independence Payment (PIP).
- 7.7 Policy governing some social security benefits has been devolved to Scotland, and the Scottish Government is using its devolved powers to replace some disability benefits previously delivered by the Department for Work and Pensions (including DLA and PIP).
- 7.8 This instrument will amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) to ensure that Scottish disability assistance for adults, which is replacing adult DLA and PIP in Scotland, will be considered a qualifying disability benefit for the purpose of determining entitlement to disability elements in Working Tax Credit, and the appropriate rate of those elements.
- 7.9 The instrument will also amend the Child Tax Credit Regulations 2002 (S.I. 2002/2007) to ensure that only claimants who are in receipt of the higher-rate care component of Scottish disability assistance in respect of a child or young person for whom they are responsible, continue to meet the entitlement conditions for the severe

disability element of Child Tax Credit. This amendment follows changes made to Scottish disability assistance for children since the regulations were previously amended to account for this assistance in the Tax Credits, Child Benefit, Guardian's Allowance and Childcare Payments (Miscellaneous Amendments) Regulations 2020 (S.I. 2020/297).

No One Left Behind

- 7.10 Entitlement to Child Benefit and Child Tax Credit in respect of a young person under the age of 20 is dependent (amongst other things) on the qualifying young person being in "approved training". The list of approved training is provided in Regulation 1(3) of the Child Benefit (General) Regulations 2006 (S.I. 2006/223) and cross-referenced by the Child Tax Credit Regulations 2002.
- 7.11 The Scottish Government has confirmed that it is introducing a new scheme in 2022, known as "No One Left Behind", which they intend to be considered as approved training for the purposes of Child Benefit and Child Tax Credit eligibility.
- 7.12 This instrument will amend the definition of approved training in regulation 1(3) to include the new scheme and ensure that claimants responsible for young persons under 20 undertaking this training can continue to be eligible in respect of the payment of Child Benefit and Child Tax Credit.

The Approval of Home Childcare Providers (Wales) Scheme 2021

- 7.13 In order for a Working Tax Credit claimant to be entitled to the child care element, they must be incurring and paying relevant child care charges. "Child care" is defined in regulation 14(2) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.
- 7.14 The Welsh Government has introduced a replacement to its 2007 scheme which accredits home childcare providers in Wales, such as nannies, and allows parents who use such providers to continue to claim relevant benefits.
- 7.15 The regulations already include the 2007 scheme in the definition of "child care" in Wales. This instrument adds the 2021 scheme to this definition, in order that Working Tax Credit claimants who take part in this scheme continue to be entitled to the child care element.

8. European Union Withdrawal and Future Relationship

- 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 The Social Security Advisory Committee, an advisory non-departmental public body, has been consulted on the proposed regulations.
- 10.2 No separate consultation exercise has been conducted as this instrument makes minor consequential changes to tax credits and Child Benefit legislation.

11. Guidance

- 11.1 Guidance for tax credits claimants is available through the tax credits helpline and via <https://www.gov.uk/topic/benefits-credits/tax-credits>.
- 11.2 Guidance for Child Benefit claimants is available through the Child Benefit helpline and via <https://www.gov.uk/topic/benefits-credits/child-benefit>.

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 A full Impact Assessment has not been prepared for this instrument because it makes minor consequential changes which have no impact on business or other sectors.

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 minimal: the instrument makes minor consequential changes which will not be monitored further.
- 14.2 The instrument does not include a statutory review clause as it does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Gregory Coulter, Policy Lead in Her Majesty's Revenue and Customs (gregory.coulter@hmrc.gov.uk), can be contacted with any queries regarding the instrument.
- 15.2 Edmund Hair, Deputy Director for Tax Credits and Child Benefit Policy in Her Majesty's Revenue and Customs, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Simon Clarke MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.