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STATUTORY INSTRUMENTS

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**2002 No. 2005**

**The Working Tax Credit (Entitlement  
and Maximum Rate) Regulations 2002**

PART 2 **U.K.**

CONDITIONS OF ENTITLEMENT

*Child care element*

**Entitlement to child care element of working tax credit **U.K.****

**13.**—(1) The determination of the maximum rate must include a child care element where that person, or in the case of a joint claim at least one of those persons, is incurring relevant child care charges and—

- (a) is a person, not being a member of a married or unmarried couple, engaged in remunerative work; or
- (b) is a member or are members of a married or unmarried couple where—
  - (i) both are engaged in remunerative work; or
  - (ii) one member is engaged in remunerative work and the other is incapacitated.

(2) For the purposes of paragraph (1) a person is not treated as incurring relevant child care charges where the average weekly charge calculated in accordance with regulation 15 is nil or where an agreement within regulation 15(4) has not yet commenced.

(3) A person is not engaged in remunerative work for the purposes of paragraph (1) where that person is treated as being in remunerative work by virtue only of either—

- (a) regulation 5, or
- (b) paragraph (1) of regulation 7 in circumstances where the absence from work arises from the need to care for a recently adopted child or from the acquisition of a surrogate child,

unless immediately prior to the adoption of the child, the granting of the parental order for the surrogate child or the birth of the child (as the case may be) that person was responsible for another child.

(4) For the purposes of paragraph (1)(b)(ii) the other member of a couple is incapacitated in any of the circumstances specified in paragraphs (5) to (8).

(5) The circumstances specified in this paragraph are where either council tax benefit or housing benefit is payable under Part 7 of the Contributions and Benefits Act to the other member or his partner and the applicable amount of the person entitled to the benefit includes—

- (a) a disability premium; or
- (b) a higher pensioner premium by virtue of the satisfaction of—
  - (i) in the case of council tax benefit, paragraph 11(2)(b) of Schedule 1 to the Council Tax Benefit (General) Regulations 1992 <sup>M1</sup>;

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(ii) in the case of housing benefit, paragraph 10(2)(b) of Schedule 2 to the Housing Benefit (General) Regulations 1987<sup>M2</sup>,

on account of the other member's incapacity or either regulation 13A(1)(c) of Council Tax Benefit (General) Regulations 1992 (treatment of child care charges)<sup>M3</sup> or, as the case may be, regulation 21A(1)(c) of the Housing Benefit (General) Regulations 1987 (treatment of child care charges)<sup>M4</sup> applies in that person's case;

(6) The circumstances specified in this paragraph are where there is payable in respect of him one or more of the following pensions or allowances—

- (a) short-term incapacity benefit under section 30A of the Contributions and Benefits Act<sup>M5</sup>;
- (b) long term incapacity benefit under section 40 or 41 of the Contributions and Benefits Act<sup>M6</sup>;
- (c) attendance allowance under section 64 of that Act;
- (d) severe disablement allowance under section 68 of that Act;
- (e) disability living allowance under section 71 of that Act;
- (f) increase of disablement pension under section 104 of that Act;
- (g) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (b), (d) or (e) above.

(7) The circumstances specified in this paragraph are where a pension or allowance to which sub-paragraph (b), (d), (e) or (f) of paragraph (6) refers, was payable on account of his incapacity but has ceased to be payable only in consequence of his becoming a patient.

(8) The circumstances specified in this paragraph are where he has an invalid carriage or other vehicle provided to him under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977<sup>M7</sup>, section 46 of the National Health Service (Scotland) Act 1978<sup>M8</sup>; or Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>M9</sup>.

#### Marginal Citations

**M1** S.I. 1992/1814.

**M2** S.I. 1987/1971.

**M3** Regulation 46A was inserted by regulation 2 of S.I. 1994/1924.

**M4** Regulation 21A was inserted by regulation 5 of S.I. 1994/1924.

**M5** Section 30A was inserted by section 1(1) of the Social Security (Incapacity for Work) Act 1994 (c.18) and amended by section 64 of the Welfare Reform and Pensions Act 1999 (c.30).

**M6** Sections 40 and 41 were substituted by paragraphs 8 and 9 respectively of Schedule 1 to the Social Security (Incapacity for Work) Act 1994. Section 41(5) was further amended by paragraph 21(4) of Schedule 4 to the Pensions Act 1995.

**M7** 1977 c.49.

**M8** 1978 c.29.

**M9** S.I. 1972/1265 (N.I. 14).

#### U.K.

**14.**—(1) For the purposes of section 12 of the Act charges incurred for child care are charges paid by the person, or in the case of a joint claim, by either or both of the persons, for child care provided for any child for whom the person, or at least one of the persons, is responsible. In these Regulations, such charges are called “relevant child care charges”.

- (2) “Child care” means care provided for a child—
- (a) in England and Wales—
    - (i) by persons registered under Part 10A of the Children Act 1989 <sup>M10</sup>;
    - (ii) in schools or establishments which are exempted from registration under Part 10A of the Children Act 1989 by virtue of paragraph 1 or 2 of Schedule 9A <sup>M11</sup> to that Act;
    - (iii) in respect of any period between his eighth birthday and the day preceding the first Tuesday in September following his twelfth birthday, where the care is provided out of school hours, by a school on school premises or by a local authority; or
    - (iv) by a child care provider approved by an accredited organisation within the meaning given by regulation 4 of the Tax Credit (New Category of Child Care Provider) Regulations 1999 <sup>M12</sup>;
  - (b) in Scotland—
    - (i) by a person in circumstances where the care service provided by him consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001 <sup>M13</sup> and is registered under Part 1 of that Act; or
    - (ii) by a local authority in circumstances where the care service provided by the local authority consists of child minding or of day care of children within the meaning of section 2 of the Regulation of Care (Scotland) Act 2001 and is registered under Part 2 of that Act;
  - (c) in Northern Ireland—
    - (i) by persons registered under Part XI of the Children (Northern Ireland) Order 1995 <sup>M14</sup>; or
    - (ii) by institutions and establishments exempt from registration under that Part by virtue of Article 121 of that Order; or
  - (d) in any part of the United Kingdom—
    - (i) by a child care provider approved by an accredited organisation within the meaning given by regulation 4 of the Tax Credit (New Category of Child Care Provider) Regulations 2002 <sup>M15</sup>; or
    - (ii) by a child care provider approved in accordance with a scheme made by the appropriate national authority under section 12(5) of the Act.
- (3) For the purposes of this regulation a person is a child until the last day of the week in which falls the 1st September following that child’s fifteenth birthday (or sixteenth birthday if the child is disabled).
- (4) For the purposes of paragraph (3) a child is disabled where—
- (a) a disability living allowance is payable in respect of that child, or has ceased to be payable solely because he is a patient;
  - (b) the child is registered as blind in a register compiled by a local authority under section 29 of the National Assistance Act 1948 <sup>M16</sup> (welfare services) or, in Scotland, has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local authority in Scotland, or, in Northern Ireland has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a Health and Social Services Board; or
  - (c) the child ceased to be registered as blind in such a register within the 28 weeks immediately preceding the date of claim.

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(5) Charges paid in respect of the child's compulsory education or charges paid by a person to a partner or by a partner to the person in respect of any child for whom either or any of them is responsible are not relevant child care charges.

(6) Where regulation 15(4) (agreement for the provision of future child care) applies—

- (a) the words "charges paid" in paragraph (1) include charges which will be incurred, and
- (b) the words "child care provided" in paragraph (1) include care which will be provided.

(7) Where regulation 13(3) applies, the reference in paragraph (1) to a child for whom the person, or at least one of the persons, is responsible does not include any child born or child adopted or surrogate child acquired during a period of absence from employment in connection with childbirth or adoption within regulation 5.

(8) Relevant child care charges are calculated on a weekly basis in accordance with regulation 15.

#### **Modifications etc. (not altering text)**

**C1** Reg. 14 applied (for specified purposes and with effect in accordance with reg. 1 of the amending S.I.) by [The Tax Credits \(Definition and Calculation of Income\) Regulations 2002 \(S.I. 2002/2006\)](#), [regs. 1, 4\(4\)](#) Table 1 Item 15

#### **Marginal Citations**

**M10** Part 10A of the Children Act 1989 was inserted by section 79 of the [Care Standards Act 2000 \(c.14\)](#).

**M11** Schedule 9A to the [Children Act 1989 \(c.41\)](#) was inserted by Schedule 3 to the Care Standards Act 2000.

**M12** S.I. 1999/3110.

**M13** 2001 asp 8.

**M14** S.I. 1995/755 (N.I. 2).

**M15** S.I. 2002/1417.

**M16** 1948 c.29; section 29 was amended by the [National Assistance \(Amendment\) Act 1959 \(c.30\)](#), [section 1\(2\)](#); the [Mental Health \(Scotland\) Act 1960 \(c.61\)](#), [sections 113\(1\)](#) and 114 of and Schedule 4 to the [Social Work \(Scotland\) Act 1968 \(c.49\)](#), [section 95\(2\)](#) and Schedule 9 Part 1; the [Local Government Act 1972 \(c.70\)](#), sections 195(6), 272(1), [Schedule 23 paragraph 2](#) and Schedule 30; the [Employment and Training Act 1973 \(c.50\)](#), [section 14\(1\)](#) and Schedule 3 paragraph 3; the [National Health Service Act 1977 \(c.49\)](#), [section 129](#) and Schedule 15 paragraph 6; the [Health and Social Services and Social Security Adjudications Act 1983 \(c.41\)](#), [section 30](#) and Schedule 10 Part I; the [Children Act 1989 \(c.41\)](#) section 108(5) and Schedule 13 paragraph 11(2); and the [National Health Service and Community Care Act 1990 \(c.19\)](#), [section 44\(7\)](#).

### **Calculation of relevant child care charges** **U.K.**

**15.**—(1) Relevant child care charges are calculated by aggregating the average weekly charge paid for child care for each child in respect of whom charges are incurred in the most recent four complete weeks.

This is subject to paragraph (2).

(2) In any case in which the charges in respect of child care are paid monthly, the average weekly charge for the purposes of paragraph (1) is established—

- (a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52; or
- (b) where the charges are for variable monthly amounts, by aggregating the charges for the previous 12 months and dividing the total by 52.

(3) In a case where there is insufficient information for establishing the average weekly charge paid for child care in accordance with paragraphs (1) and (2), an officer of the Board shall estimate the charge—

- (a) in accordance with information provided by the person or persons incurring the charges; and
  - (b) by any method which in the officer's opinion is reasonable.
- (4) If a person—
- (a) has entered into an agreement for the provision of child care; and
  - (b) will incur under that agreement relevant child care charges in respect of child care during the period of the award,

the average weekly charge for child care is based upon a written estimate of the future weekly charges provided by that person.

### Change of circumstances **U.K.**

16.—(1) There is a relevant change in circumstances if—

- (a) there is any change in the child care provided during the period of an award; or
- (b) the relevant child care charges—
  - (i) exceed the average weekly charge calculated in accordance with regulation 15 by £10 a week or more;
  - (ii) are less than the average weekly charge calculated in accordance with regulation 15 by £10 a week or more; or
  - (iii) are nil.

If there is a relevant change in circumstances, the amount of the child care element of working tax credit shall be recalculated with effect from the specified date.

(2) For the purposes of paragraph (1), the weekly relevant child care charge is the aggregate of the weekly charge paid for child care for each child in respect of whom charges are incurred in each of the four consecutive weeks in which the change occurred.

(3) If in any case the charges in respect of child care are paid monthly, the weekly relevant child care charge for the purposes of paragraph (1) is established—

- (a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52; or
- (b) where the charges are for variable monthly amounts, by aggregating the charges for the previous 12 months and dividing the total by 52.

(4) In a case where there is insufficient information for establishing the weekly relevant child care charge paid for child care in accordance with paragraphs (2) and (3), an officer of the Board shall estimate the charge—

- (a) in accordance with information provided by the person or persons incurring the charges; and
  - (b) by any method which in the officer's opinion is reasonable.
- (5) For the purpose of paragraph (1) the specified date is—
- (a) where the child care charges are increased, the later of—
    - (i) the first day of the week in which the change occurred, and
    - (ii) the first day of the week in which falls the day which is three months prior to the date notification of the change is given;

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- (b) where the child care charges are decreased, the first day of the week following the four consecutive weeks in which the change occurred.

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