These notes refer to the Tax Credits Act 2002 (c.21) which received Royal Assent on 8 July 2002

TAX CREDITS ACT 2002

EXPLANATORY NOTES

OVERVIEW OF THE ACT

Measures in the Act

Tax Credits

23. The provisions about the new tax credits are contained in Part 1 (sections 1 to 48 and Schedules 1, 2 and 3).

24. Sections 1 to 7 set out the general framework for the new tax credits, in particular:

- abolition of the current tax credits, the child allowances in income support and income-based jobseeker's allowance, and CDIs and their replacement by child tax credit and working tax credit (section 1);
- the functions of the Inland Revenue in respect of the new tax credits (section 2);
- the need for claims to the new credits to be made in the prescribed manner (sections 3 and 4);
- the period of awards (section 5);
- the need for claimants to notify the Inland Revenue of certain changes in their circumstances (sections 6); and
- the definition of "income" for the purposes of the new tax credits (section 7).

25. Sections 8 and 9 describe the conditions of entitlement to, and the structure of, the child tax credit. Broadly, the child tax credit will draw together all the existing income-related means of support for families with children – the child elements in income support, income-based jobseeker's allowance, WFTC and DPTC, in addition to the children's tax credit – into one payable credit. It will be available to households with at least one child under 16 (or under 19 if in full-time non-advanced education), irrespective of whether anyone in that household is working. It will consist of a basic family element and an element in respect of each child or young person (the second element will be higher in respect of any disabled or severely disabled children).

26. Sections 10 to 12 describe the conditions of entitlement to, and the structure of, the working tax credit. The working tax credit will provide support to working adults who face disadvantage because they have a disability or are in low-income households. It will draw together the adult elements in WFTC and DPTC and the employment credit for those returning to work under the current New Deal 50plus scheme. It will consist of several elements:

- a basic element;
- an element for lone parents or couples;
- a further element for those working a certain number of hours per week;

- an additional element for workers who have a disability;
- an additional element for claimants with a severe disability;
- an additional element for those over a prescribed age returning to work (this will be time limited); and
- an element to help meet child care costs with an approved provider.

27. Section 13 provides for the mechanism under which the amounts payable will be reduced if the income of the claimant, or the joint income of the claimants, exceeds a threshold to be set by regulations.

28. Sections 14 to 23 describe the decision-making process in respect of awards of and entitlement to the new tax credits and the Inland Revenue's powers to ask for information and evidence and to make enquiries.

29. Sections 24 to 30 set out the arrangements for payment of the new tax credits. Many of the details of these arrangements will be prescribed in regulations. In general, however, payments of the child tax credit will be made directly to the main carer of the child or children, in arrears at weekly or four-weekly intervals as claimants choose. The working tax credit will be paid to employees by their employers with their wages, but it will be paid directly to the self-employed or to those employees whose employer does not operate a full Pay As You Earn (PAYE) scheme. The Inland Revenue will have the power to recover overpayments of the new tax credits. Section 27, which introduces Schedule 1, is intended to ensure that employees should not suffer unfair dismissal or other detriment because of their employer's obligation to pay working tax credit.

30. Sections 31 to 36 and Schedule 2 provide for sanctions to be imposed in certain cases and for information powers in cases of suspected fraud in relation to tax credits. These cases include:

    - where incorrect statements or declarations have been made in a claim or incorrect information has been submitted in support of a claim;
    - where there has been a failure to provide required information or evidence;
    - where there has been a failure to tell the Inland Revenue about certain prescribed changes in circumstances which might affect entitlement to the credits (for example, changes in child care costs); or
    - where a person is knowingly concerned in fraudulent activity with a view to obtaining tax credits.

31. Penalties may also be imposed on employers for failing to maintain and provide accurate information or documents and for failure to make payments of working tax credit.

32. Section 37 provides for interest to be charged on an overpayment of tax credits if that overpayment is attributable to fraud or neglect on the part of the claimant. Penalties imposed under sections 31 to 33 also carry interest. The rates of interest will be set by regulations.

33. Sections 38 and 39 set out the appeal mechanism. Section 38 describes claimants' rights of appeal against Inland Revenue decisions about whether and, if so, at what rate, an award should be made and whether an award should be amended or terminated, final decisions about entitlement and any revision of those decisions, and determinations of penalties. Section 39 specifies the appeal procedures, either to the General Commissioners or, if the appellant so chooses under the Taxes Management Act 1970, to the Special Commissioners. However, until a day appointed by the Treasury by order, the appeals procedures set out in section 39 are modified by section 63, so that appeals by claimants will be heard by an appeal tribunal constituted

under Chapter 1 of Part 1 of the Social Security Act 1998 (in Northern Ireland, under Chapter 1 of Part 2 of the Social Security (Northern Ireland) Order 1998)) and any appeal against any decision made by such a tribunal will be to the Social Security Commissioner.

34. Sections 40 to 48 make supplementary provision. Section 40 requires the Board of Inland Revenue to make an annual report to the Treasury about certain matters concerning tax credits. Section 41 requires the Treasury to review certain prescribed monetary amounts each year in order to determine whether they have retained their value in relation to prices and to make a report of each review. Section 42 provide a powers to make regulations about how tax credits should apply in the case of persons subject to immigration control. Section 43 provides a similar power in relation to polygamous marriages. Section 44 makes clear, for the avoidance of doubt, that the Act is to apply to the Crown in its capacity as an employer. Section 45 provides for tax credits to be treated as inalienable. Section 46 enables the Inland Revenue to give notices in relation to tax credits in the manner and form they consider appropriate. Section 47 introduces Schedule 3, which makes consequential amendments to other legislation. Finally, section 48 sets out definitions relevant to Part 1 of the Act.

Child benefit and guardian’s allowance

35. The transfer of functions in relation to child benefit and guardian’s allowance is contained in Part 2 (sections 49 to 57 and Schedule 4). Broadly, both benefits will remain payable on the same basis as now.

36. Sections 49 and 50 set out those functions which will be transferred from the Secretary of State for Work and Pensions (and, in the case of Northern Ireland, from DSD) to the Treasury and the Inland Revenue. Functions to be transferred include the power to set the rates of benefit and conditions of entitlement, procedures for claims, payments and the recovery of overpayments, powers of enquiry and investigation, and the decision making and appeals process. Schedule 4, introduced by section 51, makes consequential amendments to other legislation in the light of the transfer of functions.

37. Section 52 provides for the Treasury or the Inland Revenue to take over all property, leases, service agreements, staff contracts and legal liabilities in respect of the responsibilities of DWP (and DSD in Northern Ireland) in relation to the functions transferred. Section 53 makes provision about the functions of the Inland Revenue in respect of child benefit and guardian’s allowance. Section 54 makes transitional provisions.

38. Sections 55 to 57 make minor changes to the entitlement rules for child benefit and guardian’s allowance to align them more closely with those for child tax credit. In particular, section 55 provides that these benefits may remain available for a certain period (to be set by regulations) after the death of a child. Section 56 removes the 182 day period during which child benefit is not available following the entry of a child or parent into the United Kingdom. Section 57 removes the existing bar to child benefit if a member of the family has tax-exempt income.