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STATUTORY INSTRUMENTS

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**2002 No. 2005**

**TAX CREDITS**

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

*Made - - - - 30th July 2002*

*Coming into force in accordance with regulation 1*

Whereas a draft of this instrument, which prescribes the amount in excess of which, by virtue of subsection (2) of section 12 of the Tax Credits Act 2002<sup>(1)</sup>, charges are not to be taken into account for the purposes of that subsection, and which also contains the first regulations made under sections 11 and 12 of that Act, has been laid before, and approved by resolution of, each House of Parliament: Now, therefore, the Treasury, in exercise of the powers conferred upon them by sections 10, 11, 12, 65(1) and (7) and 67 of the Tax Credits Act 2002<sup>(2)</sup>, hereby make the following Regulations:

**PART 1**

**GENERAL**

**Citation, commencement and effect**

1. These Regulations may be cited as the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 and shall come into force—

- (a) for the purpose of enabling claims to be made, on 1st August 2002;
- (b) for the purpose of enabling decisions on claims to be made, on 1st January 2003; and
- (c) for all other purposes, on 6th April 2003;

and shall have effect for the tax year beginning on 6th April 2003 and subsequent tax years.

**Interpretation**

2.—(1) In these Regulations, except where the context otherwise requires—

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(1) 2002 c. 21. The first regulations made under sections 11 and 12 are subject to approval by resolution of each House of Parliament by virtue of section 66(2)(b) and (c) of the Act.  
(2) Section 67 is cited because of the meaning it ascribes to “prescribed”.

“the Act” means the Tax Credits Act 2002, and a reference without more to a numbered section is a reference to the section of the Act bearing that number;

“the Board” means the Commissioners of Inland Revenue;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992<sup>(3)</sup>;

“child” has the same meaning as it has in the Child Tax Credit Regulations 2002<sup>(4)</sup>;

“claim” means a claim for working tax credit and “joint claim” and “single claim” have the meanings respectively assigned in section 3<sup>(6)</sup>;

“claimant” means the person making a claim and, in the case of a joint claim, means either of the claimants;

“couple” means a married couple or an unmarried couple;

“the determination of the maximum rate” means the determination of the maximum rate of working tax credit;

“employed”, except in the expression “self-employed” means employed under a contract of service and includes the holding of an office, the emoluments of which are chargeable to Schedule E, and cognate expressions shall be construed accordingly;

“employment zone” means an area within Great Britain designated by the Employment Zones Regulations 2000<sup>(5)</sup> for the purposes of section 60 of the Welfare Reform and Pensions Act 1999<sup>(6)</sup>;

“employment zone programme” means a programme which is—

- (a) established for one or more employment zones, and
- (b) designed to assist claimants for a jobseeker’s allowance to obtain sustainable employment;

“initial claim” has the same meaning as in section 11(1) of the Social Security Administration Act 1992<sup>(7)</sup>;

“local authority” means—

- (a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;
- (b) in relation to Wales, the council of a county or county borough; or,
- (c) in relation to Scotland, a council constituted under section 2 of the Local Government, etc. (Scotland) Act 1994<sup>(8)</sup>;

“patient” means a person (other than a person who is serving a sentence, imposed by a court, in a prison or youth custody institution or, in Scotland, a young offenders' institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations 1975<sup>(9)</sup>;

“period of award” shall be construed in accordance with section 4;

“qualifying young person” means a person who satisfies regulation 5 of the Child Tax Credit Regulations 2002;

“relevant child care charges” has the meaning given by regulation 14;

(3) 1992 c. 4.

(4) S.I. 2002/2007.

(5) S.I. 2000/721.

(6) 1999 c. 30.

(7) 1992 c. 5. Section 11(1) was amended by paragraphs 1(b) and 3(b) of Schedule 1 to the Tax Credits Act 1999.

(8) 1994 c. 39.

(9) S.I. 1975/555; the relevant amending instruments are S.I. 1977/1693 and 1987/1683.

“Schedule E” means the Schedule so described in the Taxes Act;

“self-employed” means engaged in the carrying on of a trade profession or vocation;

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc. Act 1993(10) out of sums allocated to it for distribution under that section;

“surrogate child” means a child in respect of whom an order has been made under section 30 of the Human Fertilisation and Embryology Act 1990(11);

“the Taxes Act” means the Income and Corporation Taxes Act 1988(12);

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the Department for Employment and Learning (“the relevant paying authority”);
- (b) to a person in respect of his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction—
  - (i) provided by, or in pursuance of arrangements made with, the relevant paying authority, or
  - (ii) approved by the relevant paying authority in relation to him,

but does not include an allowance, paid by a Government department, Northern Ireland department or the Scottish Executive to or in respect of a person by reason of the fact that he is training as a teacher, or is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973(13), section 2 or 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945(14), or section 1(1) of the Employment and Training Act (Northern Ireland) 1950(15);

“week” means a period of seven days beginning with midnight between Saturday and Sunday.

(2) For the purposes of these Regulations a person is responsible for a child or qualifying young person if he is treated as being responsible for that child or qualifying young person in accordance with the rules contained in regulation 3 of the Child Tax Credit Regulations 2002.

(3) A reference in these Regulations to an enactment applying to Great Britain but not to Northern Ireland shall, unless the context otherwise requires, include a reference to the corresponding enactment applying in Northern Ireland.

### **Other elements of working tax credit**

3.—(1) For the purposes of determining the maximum rate of working tax credit, in addition to the basic element and the disability element(16), the following elements are prescribed—

- (a) a 30 hour element;
- (b) a second adult element;

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(10) 1993 c. 39.

(11) 1990 c. 37.

(12) 1988 c. 1.

(13) 1973 c. 50: section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19).

(14) 1945 c. 6 (N.I.): sections 2 and 3 were amended by section 1 of the Disabled Persons (Employment) Act (Northern Ireland) 1960 (c. 4 (N.I.)) and Schedule 18 to the Education and Libraries (Northern Ireland) Order 1986 (S.I. 1986/594 (N.I. 3)).

(15) 1950 c. 29 (N.I.): section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)).

(16) Subsections (2) and (3) of section 11 of the Act provide that working tax credit shall include the basic element and the disability element, whilst subsection (5) provides for the possibility of including other elements.

- (c) a lone parent element;
- (d) a child care element;
- (e) a severe disability element; and
- (f) a 50 plus element.

(2) It is a condition of entitlement to the other elements of working tax credit that the person making the claim for working tax credit is entitled to the basic element.

(3) If the claim for working tax credit is a joint claim, and both members of the couple satisfy the conditions of entitlement for—

- (a) the disability element,
- (b) the severe disability element, or
- (c) the 50 plus element,

the award must include two such elements.

## PART 2

### CONDITIONS OF ENTITLEMENT

#### *Basic element*

#### **Entitlement to basic element of Working Tax Credit: qualifying remunerative work**

4.—(1) Subject to the qualification in paragraph (2), a person shall be treated as engaged in qualifying remunerative work if, and only if, he satisfies all of the following conditions.

##### *First condition*

The person—

- (a) is working at the date of the claim; or
- (b) has an offer of work which he has accepted at the date of the claim and the work is expected to commence within 7 days of the making of the claim.

In relation to a case falling within sub-paragraph (b) of this condition, references in the second third and fourth conditions below to work which the person undertakes are to be construed as references to the work which the person will undertake when it commences.

In such a case the person is only to be treated as being in qualifying remunerative work when he begins the work referred to in that sub-paragraph.

##### *Second condition*

The person—

- (a) is aged at least 16 and undertakes work for not less than 16 hours per week if—
  - (i) there is a child or qualifying young person for whom he or his partner is responsible, or
  - (ii) he has a physical or mental disability which puts him at a disadvantage in getting a job,
- (b) satisfies the conditions in regulation 18, or
- (c) is aged at least 25 and undertakes not less than 30 hours work per week in any other case.

##### *Third condition*

The work which the person undertakes is expected to continue for at least 4 weeks after the making of the claim or, in a case falling within sub-paragraph (b) of the first condition, after the work starts.

*Fourth condition*

The work is done for payment or in expectation of payment.

Paragraphs (3) and (4) provide the method of determining the number of hours of qualifying remunerative work that a person undertakes.

Regulations 5 to 8 apply in relation to periods of absence from work connected with childbirth or adoption, sickness, seasonal absence from work in relation to which there is a recognised yearly cycle of employment and those who have a gap between periods of work.

Regulation 9 prescribes the conditions which must be satisfied by, or exist in relation to, a person so that he is to be treated as having a physical or mental disability which puts him at a disadvantage in getting a job.

(2) A person who would otherwise satisfy the conditions in paragraph (1) shall not be regarded as engaged in qualifying remunerative work to the extent that he is—

- (a) engaged by a charitable or voluntary organisation, or is a volunteer, if the only payment received by him or due to be paid to him is a payment by way of expenses which falls to be disregarded under item 1 in Table 7 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002;
- (b) engaged in caring for a person who is not a member of his household but is temporarily residing with him if the only payment made to him for providing that care is disregarded income by virtue of item 3 or 4 in Table 8 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002;
- (c) engaged on a scheme for which a training allowance is being paid;
- (d) participating in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations 1996<sup>(17)</sup> or the Preparation for Employment Programme specified in regulation 75(1)(a)(v) of the Jobseeker's Allowance Regulations (Northern Ireland) 1996<sup>(18)</sup>;
- (e) engaged in an activity in respect of which—
  - (i) a sports award has been made, or is to be made, to him, and
  - (ii) no other payment is made, or is expected to be made, to him; or
- (f) participating in an employment zone programme, that is to say a programme established for one or more areas designated pursuant to section 60 of the Welfare Reform and Pensions Act 1999<sup>(19)</sup>, and subject to the Employment Zones Regulations 2000<sup>(20)</sup> if he receives no payments under that programme other than—
  - (i) discretionary payments disregarded in the calculation of a claimant's income under item 6(b) in Table 8 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002; or
  - (ii) training premiums.

(3) The number of hours for which a person undertakes qualifying remunerative work is—

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(17) S.I. 1996/207. Regulation 75 was substituted by S.I. 1997/2863 and relevant amendments were made by S.I. 2000/721 and 1978 and 2001/1029.

(18) S.R. 1996 No. 198. Regulation 75 was substituted by regulation 8 of S.R. 1997 No. 541 and paragraph (1)(a)(v) inserted by regulation 5(a) of S.R. 2001 No. 151.

(19) 1999 c. 30.

(20) S.I. 2000/721. Relevant amendments were made by S.I. 2000/1279 and 1305 and 2001/261 and 1865.

- (a) in the case of an apprentice, employee or office-holder the number of hours of such work which he normally performs—
  - (i) under the contract of service or of apprenticeship under which he is employed; or
  - (ii) in the office in which he is employed;
- (b) in the case of an agency worker, the number of hours in respect of which remuneration is normally paid to him by an employment agency with whom he has a contract of employment; or
- (c) in the case of a person who is self-employed, the number of hours he normally performs for payment or in expectation of payment.

This is subject to the following qualification.

(4) In reckoning the number of hours of qualifying remunerative work which a person normally undertakes—

- (a) any period of customary or paid holiday, and
- (b) any time allowed for meals or refreshment, unless the person is, or expects to be paid earnings in respect of that time,

shall be disregarded.

### **Maternity leave**

5. For the purposes of the second and fourth conditions in regulation 4(1) a woman is treated as engaged in qualifying remunerative work for the requisite number of hours during any period for which maternity allowance or statutory maternity pay is paid to her; if she was so engaged (under a contract of service or a contract for services) immediately before the time when that payment began.

### **Periods for which statutory sick pay payable**

6.—(1) For the purposes of the second and third conditions in regulation 4(1), a person is treated as engaged in qualifying remunerative work for the requisite number of hours during any period for which statutory sick pay is paid to him, if he was so engaged immediately before that payment began.

(2) A person who is self-employed is treated as engaged in qualifying remunerative work for the requisite number of hours during any period for which he would have been entitled to statutory sick pay but for the fact that the work he performed in the week immediately before the period began, although done for payment or in expectation of payment, was not performed under a contract of service.

### **Term time and other seasonal workers**

7.—(1) For the purposes of the conditions in regulation 4(1), paragraph (2) applies if a person—

- (a) works at a school, other educational establishment or other place of employment,
- (b) there is a recognisable cycle to his employment there; and
- (c) the length of that recognisable cycle is one year and includes periods of school holidays or similar vacations during which he does not work.

(2) If this paragraph applies, the periods mentioned in paragraph (1)(c) are disregarded in determining whether the conditions in regulation 4(1) are satisfied.

## Gaps between jobs

8. For the purposes of the conditions in regulation 4(1) a person shall be treated as being engaged in qualifying remunerative work for the requisite number of hours if he has been so engaged within the past 7 days.

### *Disability element*

#### **Disability element and workers who are to be treated as at a disadvantage in getting a job**

9.—(1) The determination of the maximum rate must include the disability element, if any person in respect of whom the claim is made—

- (a) undertakes qualifying remunerative work for at least 16 hours per week;
  - (b) satisfies paragraph (2); and—
  - (c) has any of the disabilities listed in Part 1 of Schedule 1, or, in the case of an initial claim, satisfies the condition in Part 2 of Schedule 1.
- (2) A person satisfies this paragraph in any of the Cases listed below.

##### *Case A*

For at least one day in the 182 days immediately preceding the making of the claim the claimant, or, in the case of a joint claim, at least one of the claimants, must have been in receipt of the higher rate of short-term incapacity benefit, long-term incapacity benefit or severe disablement allowance(21).

##### *Case B*

For at least one day in the 182 days immediately preceding the making of the claim the applicable amount for the claimant, or, in the case of a joint claim, at least one of the claimants, must have included a higher pensioner or disability premium determined—

- (a) in the case of income support, in accordance with paragraphs 10(1)(b) or (2)(b) or 11, and 12, of Part III of Schedule 2 to the Income Support (General) Regulations 1987(22);
- (b) in the case of income-based jobseeker's allowance, in accordance with paragraph 12(1) (a), (b)(ii) or (c) or 13, and 14 of Schedule 1 to the Jobseeker's Allowance Regulations 1996(23);
- (c) in the case of housing benefit, in accordance with paragraphs 10(1)(b) or (2)(b) or 11, and 12 of Part III of Schedule 2 to the Housing Benefit (General) Regulations 1987(24);
- (d) in the case of council tax benefit, in accordance with paragraphs 11(1)(b) or (2)(b) or 12, and 13 of Part III of Schedule 1 to the Council Tax Benefit (General) Regulations 1992(25).

##### *Case C*

At the date of the claim there is payable to the claimant, or in the case of a joint claim, to at least one of the claimants—

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- (21) Severe disablement allowance ceased to be payable to new claimants by virtue of the coming into force of section 88 of and paragraphs 26 and 27 of Schedule 8 and Part 4 of Schedule 13 to the Welfare Reform and Pensions Act 2000, but continues to be payable to existing beneficiaries whose period of incapacity for work began before 6th April 2001 (see article 4 of S.I. 2000/2958).
- (22) S.I. 1987/1967. Relevant amending instruments are S.I. 1988/1967, 1991/2742, 1992/468, 1993/1150, 1994/2139 and 3061, 1995/482 and 2303, 1998/2231, 1998/2231, 1999/2566, 2000/681 and 724.
- (23) S.I. 1996/207. Relevant amending instruments are S.I. 1996/2538, 1998/2231, 1999/2566 and 2000/724.
- (24) S.I. 1987/1971. Relevant amending instruments are S.I. 1988/1971, 1991/2742, 1993/317, 1994/2137, 1995/560, 626 and 2303, 1998/2231, 1999/2566, 2000/681 and 724.
- (25) S.I. 1992/1814. Relevant amending instruments are S.I. 1994/2137, 1995/560, 626 and 2303, 1998/2231, 1999/2566 and 2000/724.

- (a) a disability living allowance;
- (b) an attendance allowance;
- (c) a mobility supplement or a constant attendance allowance which is paid, in either case, in conjunction with a war pension or industrial injuries disablement benefit.

*Case D*

At the date of the claim the claimant, or, in the case of a joint claim, one of the claimants, has an invalid carriage or other vehicle provided under section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977<sup>(26)</sup>, section 46 of the National Health Service (Scotland) Act 1978<sup>(27)</sup> or Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972<sup>(28)</sup>.

*Case E*

The claimant, or in the case of a joint claim, one of the claimants must—

- (a) have—
  - (i) received, on account of his incapacity for work, statutory sick pay, occupational sick pay, short term incapacity benefit payable at the lower rate or income support, for a period of 140 qualifying days; or
  - (ii) been credited with Class 1 or Class 2 contributions under the Contributions and Benefits Act for a period of 20 weeks on account of incapacity for work;
 

where the last of those days or weeks (as the case may be) falls within 56 days of the making of the claim; and
- (b) have a disability, at the date of claim, which is likely to last for at least six months, or for the rest of his life if his death is expected within that time; and
- (c) have gross earnings which are less than they were before the disability began by at least the greater of 20 per cent. and £15 per week.

For the purpose of this Case “qualifying days” are days which form part of a single period of incapacity for work within the meaning of Part 11 of the Contributions and Benefits Act.

*Case F*

The claimant or, in the case of a joint claim, at least one of the claimants must have been—

- (a) undertaking training for work for at least one day in the 56 days immediately preceding the claim; and
- (b) receiving long-term incapacity benefit, severe disablement allowance or the higher rate of short-term incapacity benefit within 56 days before the first day of that training.

Here “training for work” means training for work received—

- (a) in pursuance of arrangements made under section 2(1) of the Employment and Training Act 1973, section 2(3) of the Enterprise and New Towns (Scotland) Act 1990<sup>(29)</sup> or section 1(1) of the Employment and Training Act (Northern Ireland) 1950<sup>(30)</sup>; or
- (b) on a course which a person attends for 16 hours or more a week and the primary purpose of which is the teaching of occupational or vocational skills.

(3) If—

<sup>(26)</sup> 1977 c. 49.

<sup>(27)</sup> 1978 c. 29.

<sup>(28)</sup> S.I. 1972/1265 (N.I. 14).

<sup>(29)</sup> 1990 c. 35.

<sup>(30)</sup> 1950 c. 29 (N.I.): section 1 was amended by Article 3 of the Employment and Training (Amendment) (Northern Ireland) Order 1988 (S.I. 1988/1087 (N.I. 10)).

- (a) a claim for working tax credit is made or treated as made not later than the end of 8 weeks commencing with the last day of the claimant's previous award,
- (b) on the claim which resulted in that award the claimant qualified for the disability element by virtue of falling within Case A, Case B or Case E of paragraph (2), and
- (c) the claimant satisfies regulation 9(1)(a),

he shall be treated on the claim mentioned in sub-paragraph (a) as if he still qualified as mentioned in sub-paragraph (b).

(4) In the case of an initial claim for working tax credit paragraph (3) shall have effect as if—

- (a) in sub-paragraph (a) for “the claimant's previous award” there were substituted “the claimant's last award for disabled person's tax credit”; and
- (b) in sub-paragraph (b) for the words from “the disability element” to the end there were substituted “that tax credit by virtue under subsection (2) or (2C) of section 129 of the Contributions and Benefits Act(31)”.

(5) A person who satisfies paragraph (1)(c) is to be treated, for the purposes of the Act, as having a physical or mental disability which puts him at a disadvantage in getting a job.

#### *30 hour element*

### **30 hour element**

**10.**—(1) The determination of the maximum rate must include a 30 hour element if the claimant, or in the case of a joint claim, at least one of the claimants, is engaged in qualifying remunerative work for at least 30 hours per week.

(2) The determination of the maximum rate must also include the 30 hour element if—

- (a) the claim is a joint claim,
- (b) at least one of the claimants is responsible for one or more children or qualifying young people,
- (c) the aggregate number of hours for which the couple engage in qualifying remunerative work is at least 30 hours per week, and
- (d) at least one member of the couple engages in qualifying remunerative work for at least 16 hours per week.

#### *Second adult element*

### **Second adult element**

**11.**—(1) The determination of the maximum rate must include the second adult element if the claim is a joint claim unless—

- (a) one of the claimants is aged 50 or over;
- (b) the 50 plus element is payable; and
- (c) neither of the claimants is engaged in qualifying remunerative work for at least 30 hours per week.

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(31) Section 129 has been amended: relevant amendments are those made by paragraph 2 of Schedule 9 to the Local Government Finance Act 1992 (c. 14), section 10 of, and paragraph 32 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c. 18), paragraph 34 of Schedule 2 to the Jobseekers Act 1995 (c. 18), section 14 of, and paragraphs 1(b) and 2(h) of Schedule 1 to the Tax Credits Act 1999 (c. 10) and Part IV of Schedule 13 to the Welfare Reform and Pensions Act 1999 (c. 30). The section is to be repealed by Schedule 6 to the Act.

Sub-paragraph (c) is subject to the following qualification.

- (2) Paragraph (1)(c) does not apply if at least one of the claimants—
- (i) is responsible for a child or a qualifying young person; or
  - (ii) satisfies regulation 9(1).

*Lone parent element*

**Lone parent element**

- 12.** The determination of the maximum rate must include the lone parent element if—
- (a) the claim is a single claim; and
  - (b) the claimant is responsible for one or more children or qualifying young people.

*Child care element*

**Entitlement to child care element of working tax credit**

**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**(32)**;

(ii) in the case of housing benefit, paragraph 10(2)(b) of Schedule 2 to the Housing Benefit (General) Regulations 1987**(33)**,

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)**(34)** or, as the case may be, regulation 21A(1)(c) of the Housing Benefit (General) Regulations 1987 (treatment of child care charges)**(35)** 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**(36)**;

(b) long term incapacity benefit under section 40 or 41 of the Contributions and Benefits Act**(37)**;

(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**(38)**, section 46 of the National Health Service (Scotland) Act 1978**(39)**; or Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972**(40)**.

**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**(41)**;

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**(32)** S.I. 1992/1814.

**(33)** S.I. 1987/1971.

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

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

**(36)** 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).

**(37)** 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.

**(38)** 1977 c. 49.

**(39)** 1978 c. 29.

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

**(41)** Part 10A of the Children Act 1989 was inserted by section 79 of the Care Standards Act 2000 (c. 14).

- (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>(42)</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>(43)</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>(44)</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>(45)</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>(46)</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>(47)</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

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<sup>(42)</sup> Schedule 9A to the Children Act 1989 (c. 41) was inserted by Schedule 3 to the Care Standards Act 2000.

<sup>(43)</sup> S.I. 1999/3110.

<sup>(44)</sup> 2001 asp 8.

<sup>(45)</sup> S.I. 1995/755 (N.I. 2).

<sup>(46)</sup> S.I. 2002/1417.

<sup>(47)</sup> 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).

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.

(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.

### **Calculation of relevant child care charges**

**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**

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

#### *Severe disability element*

#### **Severe disability element**

**17.—**(1) The determination of the maximum rate must include the severe disability element if the claimant, or, in the case of a joint claim, one of the claimants satisfies paragraph (2).

(2) A person satisfies this paragraph if a disability living allowance, attributable to the care component payable at the highest rate prescribed under section 72(3) of the Contributions and Benefits Act or an attendance allowance at the higher rate prescribed under section 65(3) of that Act—

- (a) is payable in respect of him; or
- (b) would be so payable but for a suspension of benefit by virtue of regulations under section 113(2) of the Contributions and Benefits Act (suspension during hospitalisation), or an abatement as a consequence of hospitalisation.

*50 plus element*

**50 plus element**

**18.**—(1) The determination of the maximum rate must include the 50 plus element if—

- (a) in the case of a single claim, the claimant satisfies paragraph (3), or
- (b) in the case of a joint claim, at least one of the claimants satisfies that paragraph.

This is subject to the qualification in paragraph (2).

(2) The 50 plus element shall not be payable in respect of a claimant—

- (a) for a continuous period of longer than 12 months; or
- (b) for periods amounting in aggregate to more than 12 months if the gap between any consecutive pair of those periods is not more than 26 weeks.

(3) A claimant satisfies this paragraph if—

- (a) he is aged at least 50;
- (b) he started work within the preceding three months but on or after 6th April 2003; and
- (c) he undertakes qualifying remunerative work for at least 16 hours per week; and
- (d) he satisfies the condition in paragraph (4), (6), (7), (8) or (9).

(4) The condition is that—

- (a) for a period of at least six months immediately before his starting work as mentioned in paragraph (3)(b), or
- (b) for consecutive periods, amounting in the aggregate to at least six months, the last of which ends immediately before his starting work as mentioned in paragraph (3)(b),

paragraph (5) is satisfied.

(5) This paragraph is satisfied while the claimant is receiving—

- (a) income support;
- (b) a jobseeker's allowance;
- (c) incapacity benefit;
- (d) severe disablement allowance; or
- (e) both a state retirement pension and the minimum income guarantee under the Income Support (General) Regulations 1987.

(6) The condition is that for at least six months immediately prior to his starting work—

- (a) another person was receiving—
  - (i) the payment mentioned in subparagraphs (a) to (d) of paragraph (5); or
  - (ii) both the payments mentioned in paragraph (5)(e); and
- (b) an increase in respect of the claimant, as a dependant of the other person—
  - (i) in a case falling within subparagraph (a)(i) was payable with that payment; or
  - (ii) in a case falling within subparagraph (a)(ii) was payable with that pension.

(7) The condition is that for at least six months immediately prior to his starting work as mentioned in paragraph (3)(b) he satisfied the conditions entitling him to be credited with contributions or earnings in accordance with the Social Security (Credits) Regulations 1975(48).

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(48) S.I. 1975/556, amended by S.I. 1976/409, S.I. 1983/463, S.I. 1978/409, S.I. 1982/96, S.I. 1987/414, S.I. 1988/516, 1230, 1439 and 1545, S.I. 1989/1627, S.I. 1991/387 and 2772, S.I. 1994/1837, S.I. 1995/829, S.I. 1996/2367, S.I. 1999/2566, S.I. 2000/1483 and 3120 and S.I. 2001/518.

- (8) The condition is that—
- (a) the condition in paragraph (4)(a), (6) or (7) would have been satisfied if the reference to six months were omitted;
  - (b) immediately prior to the period during which that condition, as modified by subparagraph (a), is satisfied there is a period during which the condition in paragraph (9) is satisfied; and
  - (c) the total of the periods during which—
    - (i) the condition in paragraph (4)(a), (6) or (7), as modified by subparagraph (a), is satisfied; and
    - (ii) the condition in paragraph (9) is satisfied, equals or exceeds six months.
- (9) The condition is that the claimant, or, in the case of a joint claim, one of the claimants, is receiving—
- (a) invalid care allowance;
  - (b) bereavement allowance; or
  - (c) widowed parent's allowance.

*Death of a child or qualifying young person for whom the claimant is responsible*

**Entitlement after death of a child or qualifying young person for whom the claimant is responsible**

19.—(1) Paragraph (2) applies if—

- (a) the death occurs of a child or qualifying young person,
- (b) working tax credit is payable to a person who was, or to a couple at least one of whom was, immediately before the death responsible for that child or qualifying young person;
- (c) the prescribed conditions for an element of working tax credit were satisfied because the claimant, or at least one of the claimants, was responsible for that child or qualifying person, but would not have been satisfied but for that responsibility; and
- (d) the prescribed conditions would have continued to be satisfied but for the death.

(2) If this paragraph applies, working tax credit shall continue to be payable, as if the child or qualifying young person had not died, for the period for which child tax credit continues to be payable in accordance with regulation 6 of the Child Tax Credit Regulations 2002(49).

## PART 3

### MAXIMUM RATE

**Maximum rates of elements of working tax credit**

20.—(1) The maximum annual rate of working tax credit (excluding the child care element) payable to a single claimant or to a couple making a joint claim is the sum of whichever of the following elements are applicable—

- (a) the basic element specified in column (2) of the table in Schedule 2 at paragraph 1;

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(49) S.I. 2002/2007.

- (b) in respect of a claimant who satisfies regulation 9(1), the disability element specified in column (2) of the table in Schedule 2 at paragraph 2;
  - (c) the 30 hour element specified in column (2) of the table in Schedule 2 at paragraph 3 in respect of—
    - (i) a single claimant who works for not less than 30 hours per week,
    - (ii) a couple either or both of whom work for not less than 30 hours per week; or
    - (iii) a couple, at least one of whom is responsible for a child or a qualifying young person and at least one of whom works for 16 hours per week if their hours of work when aggregated amount to at least 30 hours per week;
  - (d) the second adult element specified in column (2) of the table in Schedule 2 at paragraph 4 where regulation 11 so provides;
  - (e) the lone parent element specified in column (2) of the table in Schedule 2 at paragraph 5 where regulation 12 applies;
  - (f) the severe disability element specified in column (2) of the table in Schedule 2 at paragraph 6—
    - (i) in respect of a single claimant who satisfies regulation 17; or
    - (ii) in respect of a member of a couple making a joint claim who satisfies regulation 17; and
  - (g) the 50 plus element in respect of a person who satisfies regulation 18(2) at whichever of the rates specified in column 2 of the Table in Schedule 2 at paragraph 7 applies in his case.
- (2) The maximum rate of the child care element of a working tax credit is 70 per cent. of the maxima specified in paragraph (3).
- (3) The maxima are—
- (a) £135.00 per week, where the claimant's family includes only one child in respect of whom relevant child care charges are paid; and
  - (b) £200.00 per week where the claimant's family includes more than one child in respect of whom relevant child care charges are paid.

30th July 2002

*Jim Fitzpatrick*  
*John Heppell*  
Two of the Lords Commissioners of Her  
Majesty's Treasury

SCHEDULE 1

Regulation 9(1)

DISABILITY WHICH PUTS A PERSON AT A DISADVANTAGE IN GETTING A JOB

PART 1

1. When standing he cannot keep his balance unless he continually holds onto something.
2. Using any crutches, walking frame, walking stick, prosthesis or similar walking aid which he habitually uses, he cannot walk a continuous distance of 100 metres along level ground without stopping or without suffering severe pain.
3. He can use neither of his hands behind his back as in the process of putting on a jacket or of tucking a shirt into trousers.
4. He can extend neither of his arms in front of him so as to shake hands with another person without difficulty.
5. He can put neither of his hands up to his head without difficulty so as to put on a hat.
6. Due to lack of manual dexterity he cannot, with one hand, pick up a coin which is not more than 2½ centimetres in diameter.
7. He is not able to use his hands or arms to pick up a full jug of 1 litre capacity and pour from it into a cup, without difficulty.
8. He can turn neither of his hands sideways through 180 degrees.
9. He—
  - (a) is registered as blind or registered as partially sighted in a register compiled by a local authority under section 24(9)(g) of the National Assistance Act 1948;
  - (b) has been certified as blind or as partially sighted and, in consequence, registered as blind or partially sighted in a register maintained by or on behalf of a council constituted under the Local Government (Scotland) Act 1994(50); or
  - (c) 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 in Northern Ireland.
10. He cannot see to read 16 point print at a distance greater than 20 centimetres, if appropriate, wearing the glasses he normally uses.
11. He cannot hear a telephone ring when he is in the same room as the telephone, if appropriate, using a hearing aid he normally uses.
12. In a quiet room he has difficulty in hearing what someone talking in a loud voice at a distance of 2 metres says, if appropriate, using a hearing aid he normally uses.
13. People who know him well have difficulty in understanding what he says.
14. When a person he knows well speaks to him, he has difficulty in understanding what that person says.
15. At least once a year during waking hours he is in a coma or has a fit in which he loses consciousness.
16. He has a mental illness for which he receives regular treatment under the supervision of a medically qualified person.

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(50) 1994 c. 39.

- 17. Due to mental disability he is often confused or forgetful.
- 18. He cannot do the simplest addition and subtraction.
- 19. Due to mental disability he strikes people or damages property or is unable to form normal social relationships.
- 20. He cannot normally sustain an 8 hour working day or a 5 day working week due to a medical condition or intermittent or continuous severe pain.

## PART 2

- 21. As a result of an illness or accident he is undergoing a period of habilitation or rehabilitation.

### SCHEDULE 2

Regulation 20(1)

#### MAXIMUM RATES OF THE ELEMENTS OF A WORKING TAX CREDIT

<i>Relevant element of Working Tax Credit</i>	<i>Maximum annual rate</i>
1. Basic element	£1,525
2. Disability element	£2,040
3. 30 hour element	£620
4. Second adult element	£1,500
5. Lone parent element	£1,500
6. Severe disability element	£865
7. 50 plus element—	
(a) (a) in the case of a person who normally undertakes qualifying remunerative work for at least 16 hours but less than 30 hours per week; and	£1,045
(b) (b) in the case of a person who normally undertakes qualifying remunerative work for at least 30 hours per week	£1,565

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations prescribe the conditions of entitlement for the elements of working tax credit introduced by the Tax Credits Act 2002 (c. 21) (“the Act”).

Regulation 1 provides for the citation, commencement and effect of the Regulations and regulation 2 for interpretation.

Working tax credit must, by virtue of section 11 of the Act, include a basic element and a disability element. Other elements may be prescribed in accordance with that section. Regulation 3 prescribes six additional elements: a 30 hour element, a second adult element, a lone parent element, a child care element, a severe disability element and a 50 plus element. Regulation 3(2) imposes a requirement that, in order to be entitled to the other elements, a claimant must first be entitled to the basic element.

Regulation 4 specifies the normal conditions of entitlement to the basic element. The principal requirements are that the claimant is working at the date of claim (or expects to do so within 7 days of the claim), satisfies the second condition imposed by regulation 4(1) as to the number of hours worked per week, the work is expected to last for at least 4 weeks from the date of claim, or the starting date if later and the work is done for payment or in the expectation of payment.

Regulation 5 provides a modification of the requirement as to the number of hours of qualifying remunerative work in the case of a woman to whom statutory maternity pay or maternity allowance is payable.

Regulation 6 provides a modification of the requirement as to the number of hours of qualifying remunerative work in relation to periods when statutory sick pay is payable or, in the case of a self-employed worker, would have been payable if his earnings and hours of work would have qualified him for statutory sick pay in the week before the claim for working tax credit was made if he had been engaged under a contract of service and his earnings had been derived under that contract.

Regulation 7 provides for the disregard of periods of customary holiday in reckoning whether the hours of work requirements are met in the case of people working at schools or other educational establishments with a recognisable cycle of work.

Regulation 8 provides a special rule in respect of those with short gaps between jobs so as to allow them to claim during the gap.

Regulation 9 prescribes the conditions of entitlement to the disability element and introduces Schedule 1, Part 1 of which prescribes the disabilities from which a claimant must be suffering in order to be entitled. Part 2 of the Schedule prescribes a condition which may be satisfied instead in the case of a person making an initial claim.

Regulation 10 prescribes the conditions of entitlement to the 30 hour element.

Regulation 11 prescribes the conditions of entitlement to the second adult element.

Regulation 12 prescribes the conditions of entitlement to the lone parent element.

Regulations 13 and 14 prescribe the conditions of entitlement to the child care element. Regulation 15 prescribes the method of calculating the amount of relevant child care charges and regulation 16 the situations in which a change of circumstances give rise to a recalculation of the child care element.

Regulation 17 prescribes the conditions of entitlement to the severe disability element and regulation 18 those relating to the 50 plus element.

Regulation 19 prescribes a special rule in relation to working tax credit payable by reference to responsibility for a child or qualifying young person where the child or qualifying young person dies. Working tax credit continues to be payable for the period for which child tax credit is payable under regulation 6 of the Child Tax Credit Regulations 2002.

Regulation 20(1) and Schedule 2 prescribe the maximum rate for the various elements of working tax credit, other than the child care element. Regulation 20(2) and (3) prescribe the maximum rate for the child care element.

A regulatory impact assessment in respect of the effects of the Act has been prepared and placed in the Library of both Houses of Parliament and is available on the Inland Revenue website ([www.inlandrevenue.gov.uk](http://www.inlandrevenue.gov.uk)).