

**EXPLANATORY MEMORANDUM TO**  
**THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) (No. 2)**  
**REGULATIONS 2008**

**2008 No. 2169**

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

- 2. Description**

This statutory instrument amends the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002 No. 2005), Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002 No. 2006), the Child Tax Credit Regulations 2002 (S.I. 2002 No. 2007) and the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002 No. 2014).

Firstly, the regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations to bring the definition of qualifying childcare in England into line with changes introduced by the Childcare Act 2006.

Secondly, the regulations amend the Tax Credits (Definition and Calculation of Income) Regulations to disregard as employment income various welfare to work pilot schemes which have been or are being introduced by the Secretary of State for Work and Pensions. In addition, this disregard is widened to cover any 'In-Work' Emergency Fund payment made by the Department of Economic Development in Northern Ireland.

Thirdly, the regulations further amend the Tax Credits (Definition and Calculation of Income) Regulations to disregard benefits and expenses included in Pay As You Earn (PAYE) settlement agreements concluded by HMRC and employers. The disregard also applies to other payments within "special arrangements" agreed between HMRC and employers.

Fourthly, the regulations amend the Tax Credits (Definition and Calculation of Income) Regulations to up-date regulation 8 (Student Income) in line with changes made to any 'adult dependant's grant' payable in England and Wales.

Fifthly, the regulations amend the Child Tax Credit Regulations 2002 to more closely align the Child Tax Credit entitlement conditions for 16 to 19 year olds with the changes made to Child Benefit Regulations in 2006.

Finally, the regulations amend the Tax Credits (Claims and Notifications) Regulations so that a tax credit claim made by one member of a couple is to be treated as also made by the other member of a couple.

### **3. Matters of special interest to the Joint Committee on Statutory Instruments**

These regulations must come into force on 1 September 2008 to coincide with the implementation of Part 3 of the Childcare Act 2006. The late implementation of these regulations is due to lengthy consultation with the Department for Children, Schools and Families (DCSF) policy and legal advisers on a number of issues including the status of childcare provided by local authorities. This means that HMRC has, regrettably on this occasion, breached the 21 day rule.

### **4. Legislative background**

Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (as amended) sets out the various categories of qualifying childcare. This statutory instrument amends regulation 14(2)(a) of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 to reflect the changes that DCSF are implementing through regulations under the Childcare Act 2006.

Section 7(8) of the Tax Credits Act 2002 provides that regulations may make provision to define what is, or is not, income for the purposes of claims to the child and/or working tax credits. The definition of “income” for tax credits purposes is found in the Tax Credits (Definition & Calculation of Income) Regulations 2002, as subsequently amended. The latest amendments to these regulations introduce a disregard for certain ‘In-Work’ payments made under various pilot schemes introduced by the Secretary of State for Work and Pensions under section 2 of the Employment & Training Act 1973. A similar disregard is introduced in respect of payments made by Northern Ireland’s Department of Economic Development from the In-Work Emergency Fund under section 1 of the Employment & Training Act (Northern Ireland) 1950. The amendments also align the tax credit treatment of PAYE settlement agreements made under Part 6 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003 No. 2682) so that they more closely reflect their treatment for income tax and NICs purposes. This item also includes the special arrangements under regulation 141 of the PAYE Regulations. Finally, these amendments up-date Regulation 8 (Student Income) to reflect changes in the Education (Student Support) Regulations 2008 (S.I. 2008 No. 529) and the Education (Student Support) (No. 2) Regulations (S.I. 2008 No. 1582) for England and the Assembly Learning Grants & Loans (Higher Education) (Wales) Regulations 2008 (S.I. 2008 No. 1273 (W.130)) for Wales.

This statutory instrument amends Regulations 2, 3, 4 and 5 of The Child Tax Credit Regulations 2002 to bring the conditions of entitlement for 16–19 year olds within these regulations further in-line with the qualifying conditions contained in the Child Benefit (General) Regulations 2006 (S.I. 2006 No. 223).

Finally, the Tax Credits (Claims and Notifications) Regulations 2002 are amended in regulation 5 and 13 to provide that claims can be made ‘in such manner and in such circumstances as the Board may decide’ to permit a claim by one member of a couple to be treated as also made by the other member of the couple.

## **5. Territorial Extent and Application**

This instrument applies to all of the United Kingdom.

## **6. European Convention of Human Rights**

These regulations are subject to annulment and do not amend primary legislation. Accordingly, a certificate that the instrument is compatible with the Convention rights is not required.

## **7. Policy background**

### **Amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations**

(1) The childcare element of Working Tax Credit is available only in respect of qualifying childcare. For tax credit purposes 'qualifying childcare' includes childcare that is provided by:

- a provider who is registered or approved by the appropriate body in England, Wales, Scotland or Northern Ireland;
- a school, out of school hours on school premises;
- a local authority;
- an approved foster carer; or
- a domiciliary care worker.

Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (as amended) sets out the various categories of qualifying childcare.

(2) The Childcare Act 2006 introduced new, simplified arrangements for the regulation and inspection of childcare and early education in England. From 1 September 2008 there will be two Ofsted registers for childcare providers in England, the Early Years Register (EYR) (in respect of children aged 0-5 years) and the Ofsted Childcare Register (OCR) (comprising a compulsory part in respect of children aged 6-7 years and a voluntary part in respect of children aged 8 and over). The position for tax credits is that any childcare that is registered with Ofsted, whether on the EYR or the OCR (including both the compulsory part (Part A) and the voluntary part (Part B)) needs to be treated as qualifying childcare, so that parents who use such childcare are eligible for the childcare element of Working Tax Credit. The Working Tax Credit (Entitlement & Maximum Rate) Regulations are, therefore, being amended to ensure this. The amendments also ensure that childcare provided in respect of any period on or before the last day the child is treated as a child (for the purpose of entitlement to the childcare element of working tax credit) by or under the direction of the proprietor of a school on the school premises is eligible childcare for working tax credit, however, care provided for a child in England is not registered or approved care if it is provided during school hours for a child who has reached compulsory school age, or it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.

## **Amendments to the Tax Credits (Definition and Calculation of Income) Regulations**

(1) The Department for Work & Pensions (DWP) has introduced, or is introducing, four new pilot schemes in Great Britain to encourage people off benefits and into work. There is also a new pilot in Northern Ireland with a similar aim. They are:

- City Strategy Pathfinder pilots;
- Better off In-Work Credit;
- In-Work Emergency Discretion Fund (Great Britain) & the In-Work Emergency Fund (Northern Ireland); and
- Up-Front Child Care Fund

(2) As payments under all of these pilots are associated with employment, they would normally be subject to income tax and National Insurance and thus taken into account as “employment income” for tax credit purposes. As the payments are to be disregarded for both income tax and National Insurance purposes, the changes introduced here mirror that approach for tax credits.

(3) Negotiated PAYE settlements with employers, which are intended primarily to cover minor and irregular benefits and expenses, have been a long-standing and mutually convenient way to recover tax and National Insurance Contributions in circumstances where employers wish to pay the liabilities on behalf of their workers. Similarly, the ‘special arrangements’ which allow HMRC to disapply normal PAYE procedures and to make special arrangements with employers for cases where operating the tax tables / coding system is impractical, provide a cost-effective and administratively convenient way to settle tax and contributions liabilities. These facilities are even more convenient where there are significant numbers of workers involved and where they involve the use of a composite or average rate to quantify the amount of tax and National Insurance due. Whilst this approach makes good the tax and contributions due to the Exchequer, the downside for tax credit customers is that they are generally not made aware of the gross value of their payment and cannot then report their gross income for tax credits purposes.

(4) As most PAYE settlements bring conclusion to a previously identified under-declaration of taxable income, it is very likely that this one-off calculation will fall well within the £25,000 current year income disregard for tax credit purposes so would not impact on a current year award. To bring clarity and consistency for tax credit customers, the regulations are amended to disregard these PAYE settlement agreements.

(5) This new disregard does not include PAYE settlements negotiated under contract law (i.e. a compliance settlement). In a contract settlement, HMRC gives up its right to proceed formally for the tax, interest and penalties in exchange for a negotiated settlement. These procedures are used where HMRC have identified a PAYE failure involving fraudulent or negligent activity and where the settlement specifically identifies the gross amount attributable to the individual. It is clearly

right that, in these circumstances, the individual should not benefit where some deliberate attempt to understate income has been uncovered or where there has been negligence. Any tax credit entitlement will continue to take this income into account as part of an individual's employment income.

(6) The final amendment to the Tax Credits (Definition and Calculation of Income) Regulations up-dates the definition of "student income" for tax credit purposes by reference to the recent Education (Student Support) Regulations in England and the Assembly Learning Grants & Loans Regulations in Wales in relation to an 'Adult Dependant's Grant'.

### **Amendments to the Child Tax Credit Regulations 2002**

(1) These minor amendments to the Child Tax Credit Regulations bring further alignment between child tax credit and child benefit qualifying conditions for young people aged 16 to 19, for example in the definitions of "qualifying young person", "full-time education", "approved training", "recognised educational establishment", and a "recognised body" for the purposes of the 20 week extension for 16 and 17 year olds who are registering for work or training.

(2) The changes also bring the child tax credit into line with child benefit by providing that an individual or a couple will not be entitled to child tax credit for a qualifying young person who marries, forms a civil partnership or begins living with a partner as a couple, on the grounds that the individual or couple is no longer responsible for that young person. These changes will not affect those people receiving CTC for a young person where that young person was living with a partner on the day before the date of these regulations coming into force.

### **Amendments to the Tax Credits (Claims and Notifications) Regulations**

HMRC is introducing, from 1 September 2008, changes to these regulations to permit a tax credit claim made by one member of a couple to be treated as also made by the other member of a couple. It is intended that this will initially cover claims made over the telephone or by other electronic communication but could in future be widened in such circumstances as the Board may decide.

## **8. Impact**

A Regulatory Impact Assessment has not been prepared for this instrument because it has no impact on business, charities or the voluntary sector.

The changes to the Working Tax Credits (Entitlement & Maximum Rate) Regulations and Tax Credits (Definition and Calculation of Income) Regulations will have negligible impact on the Exchequer.

### **Consultation**

There is no statutory requirement to consult on these regulations. However, HMRC has worked closely with the DCSF in the development of the changes to the Working Tax Credit (Entitlement and Maximum Rate) Regulations and with

DWP in respect of the disregard for the pilot schemes covered by the amendments to the Tax Credits (Definition & Calculation of Income) Regulations. These regulatory changes have also been subject to review by the Social Security Advisory Committee (SSAC).

## **9. Contact**

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