

**EXPLANATORY MEMORANDUM TO**  
**THE TAXATION OF BENEFITS UNDER GOVERNMENT PILOT SCHEMES**  
**(BETTER OFF IN WORK CREDIT) ORDER 2008**

**2008 No. 2603**

1. This explanatory memorandum has been prepared by Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. **Description**

This Order provides that any amount of benefit payable by virtue of the Government pilot scheme known as the Better off in Work Credit made on or after 27th October 2008 is not charged to income tax.

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

The explanatory note to this Instrument explains that:

“A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.”

This is because the accepted Government practice is that no IA will be published for HMRC and HMT tax measures for which:

- the total effect of the changes across all UK business is less than £100,000 of administrative burden costs/savings and/or £3m of compliance cost in total; and
- the Department's Better Regulation and Policy team has confirmed that
  - there are no disproportionate impacts on any business or sector; and
  - there are no other issues which might make publication of an IA advisable.

This is such a measure.

HMRC are working with BERR to ensure that the next edition of the Statutory Instrument Practice reflects these changes.

4. **Legislative Background**

4.1 The Income Tax (Earnings and Pensions) Act 2003 (ITEPA) contains the tax legislation relating to employment income, including social security

income and pensions. Part 2 of ITEPA imposes the charge to tax on employment income and sets out how the amount charged to tax for a tax year is to be calculated and who is liable for the tax.

- 4.2 Section 6 of ITEPA provides that the charge to tax on employment income is a charge to tax on “general earnings” and “specific employment income”.
- 4.3 Section 7 of ITEPA provides the meanings for “employment income”, “general earnings” and “specific employment income”. “Employment income” means earnings as defined by section 62 ITEPA, any amount treated as earnings and any amount which counts as employment income (specified separately in ITEPA). “General earnings” means earnings as defined by section 62 ITEPA and any amount treated as earnings. “Specific employment income” relates to free-standing charges set out elsewhere in ITEPA.
- 4.4 Section 62 of ITEPA defines “earnings” for the purposes of employment. Earnings are any salary wage or fee; any gratuity or other profit or incidental benefit of any kind obtained by the employee if it is money or money’s worth; anything else that is an emolument of the employment.
- 4.5 Section 9 of ITEPA provides that in the case of general earnings the amount charged to tax for a particular tax year is the net taxable income from an employment in that year.
- 4.6 Better off in Work Credit payments are directly linked to the recipient taking up and remaining in employment. Accordingly, without this order, Better off in Work Credit payments may be subject to tax on employment income as earnings from an employment.
- 4.7 This Order provides that payments made by virtue of the Government pilot scheme known as the Better off in Work Credit are wholly exempt from income tax.
- 4.8 The power to introduce regulations dealing with the tax treatment of payments made under Government pilot schemes is contained in section 151 of the Finance Act 1996. It allows Her Majesty’s Treasury to make an order to exempt from income tax payments made by the secretary of State or the Northern Ireland authorities made for a temporary period for the purposes of evaluating whether it is desirable for a provision to be made permanent.

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

This instrument applies to all of the United Kingdom.

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

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

- 7.1 Some individuals, particularly those who face the greatest challenges to finding work, are concerned taking up employment may mean that income from work will be less than their out of work benefits. In the majority of cases, the design of the benefit and tax system ensures that an individual is better off in work. But there are some cases where differences in the structure of support for individuals in work and out of work mean that for some people income from benefits can be higher than their income from employment.
- 7.2 From 27 October 2008, the Department for Work and Pensions (DWP) will launch the Better off in Work Credit scheme as a pilot, running in the Yorkshire and Humber Jobcentre Plus Districts. The scheme is being introduced to help encourage customers at the most disadvantage in the labour market to move into and remain in work. The Better off in Work Credit aims to ensure that eligible people returning to work will receive a greater income from employment than from the benefits they are entitled to whilst out of work. The pilot will be evaluated to determine whether it is desirable to introduce a permanent national scheme.
- 7.3 To be eligible for Better off in Work Credit, an individual must have been entitled to Employment Support Allowance (which is being introduced on 27 October 2008), Incapacity Benefit, Income Support, Jobseeker's Allowance or Severe Disablement Allowance for 26 weeks or more. The individual must take up employment of at least 16 hours a week, or in the case of Income Support, Employment and Support Allowance and Jobseeker's Allowance recipients, at least 24 hours a week if it is the recipient's partner who moves into work. If on returning to work the income a person receives is not greater than £25 a week more than the benefits they are entitled to whilst out of work they can apply for a top-up payment that will take them up to this level. The payment will be calculated on a weekly basis. The level of payment will depend on the difference in the amount an individual is entitled to from out of work benefits and the income he receives in work. Payments will be made for up to 26 weeks directly to the recipient's bank account or Post Office® card account.
- 7.4 Exempting payments made under the Better off in Work Credit pilot scheme from income tax will help enable DWP to provide a clear assurance that eligible people will receive a greater income when moving into employment than they do from benefits whilst out of work.

**8. Impact**

A full and final Impact Assessment has not been produced for this instrument as a negligible impact on the private or voluntary sectors is foreseen.

**9. Contact**

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