

EXPLANATORY MEMORANDUM TO

THE NATIONAL INSURANCE CONTRIBUTION CREDITS (TRANSFER OF FUNCTIONS) ORDER 2009

2009 No. 1377

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument provides for the function of the Secretary of State in making certain decisions as to whether a person is entitled to be credited with National Insurance contributions under section 23A of the Social Security Contributions and Benefits Act 1992 to be transferred to the Commissioners of Revenue and Customs.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 The Pensions Act 2007 introduced a scheme to credit parents and certain other types of carers with National Insurance contributions. The legislation is now in Section 23A of the Social Security Contributions and Benefits Act 1992. These credits will count towards future State Pension, Bereavement Allowance and Widowed Parent's Allowance and replace Home Responsibilities Protection for contributors who reach pensionable age on or after 6 April 2010 or who die on or after 6 April 2010 without reaching pensionable age before that date.
 - 4.2 The legislation provides for credits to be given to people awarded Child Benefit for a child under 12, approved foster parents and people who are 'engaged in caring'. Regulations will be made shortly which set out who is to be treated as 'engaged in caring'.
 - 4.3 It is the policy intention that decisions relating to the credit entitlement of Child Benefit recipients or their partners and approved foster carers will be made by Her Majesty's Revenue & Customs (HMRC) officials, who have previously made decisions in respect of these people in relation to Home Responsibilities Protection. HMRC officials make these decisions by virtue of arrangements under section 17 of the Social Security Contributions (Transfer of Functions, etc) Act 1999. However, there is no analogous provision under that act in respect of the new credits.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales and to Scotland.

6. European Convention on Human Rights

6.1 The Secretary of State for Work and Pensions has made the following statement regarding Human Rights:

In my view the provisions of the National Insurance Contribution Credits (Transfer of Functions) Order 2009 are compatible with the Convention rights

7. Policy background

- *What is being done and why*

7.1 Section 23A of the Social Security Contributions and Benefits Act 1992 introduces weekly National Insurance credits for parents and carers in respect of their caring activities. These credits replace Home Responsibilities Protection.

7.2 HMRC have the relevant powers to administer the current system of Home Responsibilities Protection and National Insurance credits on behalf of the Secretary of State. However the way in which the legislation is currently drafted means that they do not have the power to administer the new system of credits being introduced (which will replace and build upon Home Responsibilities Protection arrangements). What this order does is transfer the relevant powers so that HMRC is able to administer the new system of credits being introduced by the Pensions Act 2007.

7.3 The policy intention is that HMRC should make decisions concerning credits for foster carers and Child Benefit recipients and their partners as they do now in respect of Home Responsibilities Protection. The National Insurance Contribution Credits (Transfer of Functions) Order 2009 will allow this to happen.

7.4 The Order also allows appeals from these decisions to be made to the First-tier Tribunal rather than to the tax commissioners.

8. Consultation outcome

8.1 There has been extensive consultation with interest groups on the development of the new system of credits. We have not consulted on this Transfers of Functions Order beyond obtaining HMRC agreement because it is simply a technical instrument which ensures that the new system of credits can be administered by HMRC. It does not change any of the original policy intent as set out in the Pensions Act 2007.

9. Guidance

9.1 The Department has adopted a two phased strategy (short-term and long-term) for communicating the changes which stem from the 2007 and 2008 Pensions Acts.

9.2 Central to the strategy will be the segmentation of the audience according to how they are impacted by reform. Communication planning will be based on maximising the reach and impact of messages specific to the appropriate segments.

9.3 The strategy is covered in detail in the Explanatory Memorandum for The Social Security (Contribution Credits for Parents and Carers) Regulations 2009.

10. Impact

10.1 This instrument does not impact upon business, charities or voluntary bodies.

10.2 The impact on the public sector of administering the new credits is negligible. The scheme is designed to be as simple as possible. People receiving Child Benefit for a child under 12 will receive their credits automatically and HMRC officials will be responsible for identifying these cases and recording the credits on the National Insurance account. People receiving Income Support who have already been determined as regularly and substantially engaged in caring will also not be required to complete an application. Local Jobcentre Plus offices will advise HMRC of these people as they currently do for Home Responsibilities Protection purposes. HMRC will also administer applications from foster carers who will apply for the credits in the same way as they currently apply for Home Responsibilities Protection – they will complete an application form and enclose confirmation from the local authority or private or voluntary agency which employs them stating that they are an approved foster carer. People caring for someone receiving a benefit related to attendance needs will complete an application form for the attention of the Pension, Disability and Carers Service (PDCS). PDCS officials will verify that the relevant benefit is in payment and award the credit. A similar application will be completed where no benefit is in payment and a certificate will be provided that the disabled person has appropriate care needs. A broad range of people will be able to certify – including health and social care professionals. We anticipate that few problems will arise although staff may have to exercise judgement on occasions or contact the certifier if there is doubt whether the person is an appropriate certifier. It is expected that large numbers of Carer's Allowance recipients may have recourse to the credits when they are temporarily unable to satisfy the conditions for Carer's Allowance. As part of the 'light touch' approach, provision has been made for these to be awarded automatically for periods of up to 12 week to enable the administrative burden on both carers and officials to be reduced.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department for Work and Pensions will continue to monitor State Pension awards and accrual, the level and distribution of pensioners' total incomes and levels of understanding of the State Pension system through analysis of administrative data, surveys and other sources. It will continue to report on progress against its Public Service agreements in its annual and departmental reports.

13. Contact

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