

**EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) (No. 2)
REGULATIONS 2009**

S. I. 2009 No. 2887

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. **Purpose of the instrument**

2.1 The purpose of this statutory instrument is to make technical and consequential changes to The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“the Entitlement Regulations”), The Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) (“the Income Regulations”) and The Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) (“the Claims Regulations”).

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

3.1 None.

4. **Legislative Context**

4.1 This instrument encompasses various miscellaneous amendments to the Tax Credits Regulations which are of a consequential or technical nature.

5. **Territorial Extent and Application**

5.1 This instrument applies to all of the United Kingdom.

6. **European Convention on Human Rights**

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

7. **Policy background**

- *What is being done and why*

Amendments to the Entitlement Regulations

7.1 In April 2009, the Working Tax Credit (Entitlement and Maximum Rate) Regulations were amended to remove entitlement to the second adult

element of Working Tax Credit (“WTC”) in joint claims where one member of the couple is in the UK illegally and the couple has no responsibility for a child or qualifying young person.

7.2 From 6 April 2010, this restriction is to be extended to include any childless couple in respect of which one partner is subject to immigration control, whether in the UK legally or illegally. The restriction does not affect entitlement to WTC for nationals of those countries which are covered by the European Convention on Social and Medical Assistance 1953 or the Council of Europe Charter 1961 as referred to in Case 4 of regulation 3(1) of the Tax Credits (Immigration) Regulations 2003. This change is being applied to bring the entitlement conditions for WTC more closely in line with the Government’s general policy in respect of access to public funds for persons who are subject to immigration control.

7.3 The Regulations make a technical correction to regulation 14(1A)(d) of the Entitlement Regulations.

7.4 The Regulations also amend the childcare entitlement provisions in regulation 14 of the Entitlement Regulations to reflect the replacement of the Looked After Children (Scotland) Regulations 1996 by the Looked After Children (Scotland) Regulations 2009. They also clarify that relevant childcare charges do not include charges for care provided by a foster parent in respect of a child whom the foster parent is fostering, nor will they include charges in respect of care provided by a foster carer or a kinship carer.

Amendments to the Income Regulations

7.5 In support of the Department for Work and Pensions’ Future Capital pilot scheme, Table 1 in regulation 4 (Employment Income) of the Tax Credits (Definition and Calculation of Income) Regulations is amended to provide a specific disregard for the payments under this pilot.

7.6 To support the Department for Employment and Learning in Northern Ireland with their new ‘Steps to Work’ programme, regulation 19 (General disregards in the calculation of income) of the Tax Credits (Definition and Calculation of Income) Regulations is amended to provide a specific disregard in item 3 of Table 6 for mandatory top-up payments and a further disregard in item 2 of Table 7 covering the payment of child care expenses.

Amendments to the Claims Regulations

7.7 These amendments make changes to the Claims Regulations to substitute “93 days” for either “three months” or “3 months”, in respect of certain cases where tax credit claims may be backdated.

- ***Consolidation***

7.8 HMRC publishes consolidated Regulations on their web site. These will be made available as soon as possible after the Statutory Instrument is published.

8. Consultation outcome

8.1 There is no statutory requirement to consult on these Regulations. However, HMRC has worked closely with DWP and the Department for Learning in Northern Ireland as many of the changes are consequential to changes made by those departments. These regulatory changes have also been considered by the Social Security Advisory Committee (SSAC) under its Memorandum of Understanding with HMRC.

9. Guidance

9.1 To the extent that these changes refer to HMRC Regulations, HMRC will publish guidance in the Tax Credits renewals packs, the Tax Credits claims pack and in associated articles on their web site.

10. Impact

10.1 An Impact Assessment has not been produced for this instrument as it has no impact on business, charities or voluntary bodies.

10.2 The changes to Tax Credits pursuant to these Regulations will have a negligible impact on the Exchequer.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 These changes are mainly consequential and technical and do not require further review.

13. Contact

Trevor Sanders at HMRC Tel: 020 7147 2272 or email:
Trevor.sanders@hmrc.gsi.gov.uk can answer any queries regarding the instrument