

**2009 No. 697**

**TAX CREDITS**

**The Tax Credits (Miscellaneous Amendments) Regulations 2009**

*Made - - - - 16th March 2009*

*Laid before Parliament 16th March 2009*

*Coming into force in accordance with regulation 1*

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs.

The powers exercised by the Treasury are those contained in sections 7(8), 8(2) and (3), 12(1) to (4), 65(1) and (7) and 67 of the Tax Credits Act 2002(a).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in sections 4(1), 65(2) and (7) and 67 of that Act(b).

**Citation and commencement**

1. These Regulations may be cited as the Tax Credits (Miscellaneous Amendments) Regulations 2009 and shall come into force—

- (a) for the purposes of regulation 5(2), (3)(c) and (d) on 18th July 2009;
- (b) for the purposes of regulation 8 on 5th October 2009; and
- (c) for all other purposes on 6th April 2009.

**Amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002**

2. The Working Tax Credit (Entitlement and Maximum) Rate Regulations 2002(c) are amended as follows.

3. In regulation 4(1) (qualifying remunerative work) at the end of the Fourth Condition add—

“A social security benefit is not payment for the purposes of satisfying this condition.”

4.—(1) For regulation 11(4) (second adult element) substitute—

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(a) 2002 c. 21. Section 67 is cited because of the meaning it ascribes to “prescribed”.  
(b) By virtue of section 65(2), the powers in section 4(1) were exercisable by the Board. The Board is defined in section 67 as the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as is appropriate in consequence of section 5, a reference to the Commissioners of Inland Revenue shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.  
(c) S.I. 2002/2005; relevant amending instruments are S.I. 2003/701 and 2815, S.I. 2004/762 and 1276, S.I. 2005/769 S.I. 2006/766 and S.I. 2007/824 and 2479 and S.I. 2008/604 and 2169.

“(4) The determination of the maximum rate shall also not include the second adult element if neither claimant has responsibility for a child or qualifying young person, and

- (a) one claimant is serving a custodial sentence of more than twelve months, or
- (b) one claimant is subject to immigration control within the meaning of section 115(9)(a) of the Immigration and Asylum Act 1999(a).”

5.—(1) Regulation 14 (child care charges) is amended as follows.

(2) In paragraph (1A)—

- (a) omit sub-paragraph (b);
- (b) at the end add—  
“(e) a foster parent in respect of a child whom that foster parent is fostering.”

(3) In paragraph (2)(a)—

- (a) omit sub-paragraph (i);
- (b) in sub-paragraph (iii) for “(subject to subsection 2(B))” substitute “(subject to paragraph (2B))”;
- (c) omit sub-paragraph (v);
- (d) omit sub-paragraph (vi).

(4) In paragraph (2B) for “registered or approved care” substitute “child care.”

#### **Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002**

6. The Tax Credits (Definition and Calculation of Income) Regulations 2002(b) are amended as follows.

7. In regulation 7 (social security income) in Table 3 at the end add—

“27. A payment by way of health in pregnancy grant made pursuant to Part 8A of the Contributions and Benefits Act(c).”

8. In regulation 19 (sums disregarded in the calculation of income) in Table 7 after item 2(d)—

- (a) in (ii) omit “or”;
- (b) after (iii) add—

“;or

(iv) the Flexible New Deal specified in regulation 75(1)(a)(v) of the Jobseeker’s Allowance Regulations 1996.(d)”.

#### **Amendment of the Child Tax Credit Regulations 2002**

9. The Child Tax Credit Regulations 2002(e) are amended as follows.

10. In regulation 3(1) (circumstances in which a person is or is not responsible for a child or qualifying young person) in Rule 4.1 in Case H for “This case does” substitute “Cases G and H do”.

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(a) 1999 c.33.

(b) S.I. 2002/2006, to which there are amendments not relevant to these regulations.

(c) 1992 c. 4.

(d) S.I. 1996/207. Paragraph (v) will be added by the Social Security (Flexible New Deal) Regulations 2009 (S.I. 2009/480) which come into force on 6th April 2009. The addition of paragraph (v) within those regulations has a coming into force date of 5th October 2009.

(e) S.I. 2002/2007, amended by S.I. 2008/2169; there are other amending instruments but none is relevant.

## **Amendment of the Tax Credits (Claims and Notifications) Regulations 2002**

11. The Tax Credits (Claims and Notifications) Regulations 2002(a) are amended as follows.
12. In regulation 2 (interpretation) for the definition of “appropriate office” substitute—  
““appropriate office” means Comben House, Farriers Way, Netherton, Merseyside or any other office specified in writing by the Board.”
13. In regulation 4(b) (interpretation of this Part) for “(b)” substitute “(d)”.
14. Regulation 5 (manner in which claims to be made) is amended as follows.
  - (1) In paragraph (4) for “paragraph (6)” substitute “paragraphs (6) and (8)”.
  - (2) At the end add—  
“(8) Paragraph (4) does not apply to any person who is subject to immigration control within the meaning set out in section 115(9)(a) of the Immigration and Asylum Act 1999 and to whom a national insurance number has not been allocated.”
- 15.—(1) For Regulation 8 (date of claims – disability element of working tax credit) substitute—

### **“Date of claims – disability element of working tax credit**

- 8.—(1) In the circumstances prescribed by paragraph (2), the claim referred to in paragraph (2)(a) shall be treated as having been made on the date prescribed by paragraph (3).
- (2) The circumstances prescribed by this paragraph are where—
  - (a) a claim for working tax credit including the disability element (“the tax credits claim”) is made by a person or persons (“the claimants”) which results in the Board making an award of working tax credit including the disability element;
  - (b) the claim is made within 3 months of the date that a claim for any of the benefits referred to in regulation 9(2) to (8) of the Working Tax Credit Regulations (“the benefits claim”) is determined in favour of the claimants (or one of them); and
  - (c) the claimants would (subject to making a claim) have been entitled to working tax credit if (and only if) they had satisfied the requirements of regulation 9(1)(c) of the Working Tax Credit Regulations, on any day in the period—
    - (i) beginning on the date of the benefits claim, and
    - (ii) ending on the date of the tax credits claim.
- (3) The date prescribed by this paragraph is—
  - (a) the first date in respect of which the benefit claimed is payable; or
  - (b) if later, the date falling 3 months before the claim for the benefit is made; or
  - (c) if later, the first day identified under paragraph (2)(c).”
- 16.—(1) In Regulation 11(3) (circumstances in which claims to be treated as made) is amended as follows.
  - (2) After sub-paragraph (a) insert—  
“(aa) in a case where the declaration is made by the date specified on the section 17 notice in the tax year following that to which the claim relates, on 6th April preceding that date.”
  - (3) In sub-paragraph (b) for “on 6th April preceding the date on which the declaration is made” substitute—

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(a) S.I. 2002/2014; relevant amending instruments are S.I. 2003/723 and 3240, S.I. 2004/762 and S.I. 2008/604.

“on 6th April next following the end of the tax year to which the claim relates”.

17. In Regulation 25(2) (date of notification – cases where change of circumstances which may increase the maximum rate)—

- (a) for “regulation” substitute “regulations”; and
- (b) at the end add “and 26A(2)”.

18. For Regulation 26 (date of notification – disability element and severe disability element for working tax credit) substitute—

**“Date of notification – disability element and severe disability element of working tax credit**

26.—(1) In the circumstances prescribed by paragraph (2), the notification of a change in circumstances is to be treated as having been given on the date prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are where—

- (a) a notification is given of a change of circumstances in respect of a claim to working tax credit, which results in the Board making an award of the disability element or the severe disability element of working tax credit (or both of them) in favour of a person or persons; and
- (b) the notification date is within 3 months of the date that a claim for any of the benefits referred to in regulation 9(2) to (8) or 17(2) of the Working Tax Credit Regulations is determined in favour of those persons (or one of them).

(3) The date prescribed by this paragraph is the latest of the following:

- (a) the first date in respect of which the benefit claimed was payable;
- (b) the date falling 3 months before the claim for the benefit was made;
- (c) the date the claim for working tax credit was made (or treated as made under regulation 7);
- (d) (for the purposes of the disability element only), the first date that the person or persons satisfied the conditions of entitlement for the disability element.”.

19. For Regulation 26A (date of notification – disability element and severe disability element for child tax credit) substitute—

**“Date of notification – disability element and severe disability element of child tax credit**

26A.—(1) In the circumstances prescribed by paragraph (2), the notification of a change in circumstances is to be treated as having been given on the date prescribed by paragraph (3).

(2) The circumstances prescribed by this paragraph are where—

- (a) a notification is given of a change of circumstances in respect of a claim to child tax credit which results in the Board making an award of the disability element or the severe disability element of child tax credit (or both of those elements) in favour of a person or persons, in respect of a child; and
- (b) the notification date is within 3 months of the date that a claim for a disability living allowance in respect of the child is determined in favour of those persons (or one of them).

(3) The date prescribed by this paragraph is the latest of the following:

- (a) the first date in respect of which the disability living allowance was payable;
- (b) the date falling 3 months before the claim for the disability living allowance was made;



## EXPLANATORY NOTE

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

These Regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (“the Entitlement Regulations”), the Tax Credits (Definition and Calculation of Income) Regulations 2002 (“the Income Regulations”), the Child Tax Credit Regulations 2002 (“the Child Regulations”), and the Tax Credits (Claims and Notifications) Regulations 2002 (“the Claims Regulations”).

Regulation 2 introduces the amendments to the Entitlement Regulations.

Regulation 3 amends regulation 4(1) of the Entitlement Regulations. The new paragraph means that the fourth condition of entitlement to Working Tax Credit is not satisfied if a person is in receipt of a social security benefit payment.

Regulation 4 amends Regulation 11(4) of the Entitlement Regulations. New (b) means that the second adult element of working tax credit is denied in joint claims made by a couple who are not responsible for a child or qualifying young person and in which one claimant is in the United Kingdom illegally.

Regulation 5 amends Regulation 14 of the Entitlement Regulations. Paragraphs (1A)(b) and 2(a)(vi) are revoked because the Tax Credits (Approval of Child Care Providers) Scheme 2005 (S.I. 2005/93) was revoked with transitional protection on 1st October 2007 by the Tax Credits (Child Care Providers) (Miscellaneous Revocation and Transitional Provisions) (England) Scheme 2007 (S.I. 2007/2481). New (1A)(e) means that relevant childcare charges do not include charges in respect of care provided by a foster parent in respect of a child whom that foster parent is fostering. Paragraph 2(a)(i) is revoked because there is no longer any child care provided for a child by persons registered under Part 10A of the Children Act 1989 (c. 41). In paragraph 2(a)(iii) the words “(subject to subsection 2(B))” are replaced with “(subject to paragraph (2B))” as the previous reference to “subsection” was incorrect. Paragraph 2(a)(v) is revoked because, for the purposes of tax credits, a foster parent who provides child care (other than a child whom he or she fosters) must register under Part 3 of the Childcare Act 2006 (c. 21). In paragraph (2B) the words “registered or approved” are omitted and the word “child care” inserted because the previous words are not required for the purposes of Regulation 14(2).

Regulation 6 introduces the amendments to the Income Regulations.

Regulation 7 amends Table 3 in regulation 7 of the Income Regulations. The Table contains a list of payments which are disregarded in the calculation of social security income. A new item 27 is added to the list so that a payment by way of health in pregnancy grant made pursuant to Part 8A of the Social Security Contributions and Benefits Act 1992 is disregarded.

Regulation 8 amends Table 7 in regulation 19 of the Income Regulations. The Table contains a list of payments which are disregarded in calculating income if conditions are satisfied. A new item 2(d)(iv) is added to the list to disregard childcare expenses reimbursed to a participant in the Flexible New Deal specified in regulation 75(1)(a)(v) of the Jobseeker’s Allowance Regulations 1996. Paragraph (v) will be added by the Social Security (Flexible New Deal) Regulations 2009 which come into force on 6th April 2009. The addition of paragraph (v) within those regulations has a coming into force date of 5th October 2009.

Regulation 9 introduces the amendments to the Child Regulations.

Regulation 10 amends Rule 4.1 in regulation 3(1) to clarify the circumstances in which a person is or is not responsible for a child or qualifying young person.

Regulation 11 introduces the amendments to the Claims Regulations.

Regulation 12 amends regulation 2 of the Claims Regulations by amending the definition of “appropriate office”.

Regulation 13 amends regulation 4(b) of the Claims Regulations by making a consequential amendment to that regulation because of amendments made to regulation 11(3) of the Claims Regulations by regulation 4 to the Tax Credits (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/604).

Regulation 14 amends regulation 5 of the Claims Regulations by adding a new paragraph 5(8) to provide an exception to the requirement to state a national insurance number in a tax credit claim in respect of any person who falls within the meaning set out in section 115(9)(a) of the Immigration and Asylum Act 1999 and to whom a national insurance number has not been allocated. A consequential amendment to that Regulation is also made because of the addition of the new paragraph.

Regulation 15 amends regulation 8 of the Claims Regulations by simplifying the rules as to the date of claims for the disability element of working tax credit.

Regulation 16 amends regulation 11(3) of the Claims Regulations to change the circumstances in which claims are treated as made.

Regulation 17 amends regulation 25 of the Claims Regulations by adding a reference to another relevant section of the Claims Regulations.

Regulation 18 amends regulation 26 of the Claims Regulations by simplifying the rules as to the date of notification for the disability element and severe disability element of working tax credit.

Regulation 19 amends regulation 26A of the Claims Regulations by simplifying the rules as to the date of notification for the disability element and severe disability element of child tax credit.

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