

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) (No. 2)
REGULATIONS 2010

2010 No. 2494

1. This explanatory memorandum has been prepared by Her Majesty's Treasury (HMT) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

This statutory instrument makes changes to The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“The Entitlement and Maximum Rate Regulations”) and The Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) (“The Income Regulations”) following the introduction of Additional Paternity Leave and Additional Statutory Paternity Pay. The Entitlement and Maximum Rate Regulations are amended to specify the circumstances in which a person will be entitled to Working Tax Credit whilst absent from work on Ordinary and Additional Paternity Leave. The Income Regulations are amended to specify the extent to which payments of Additional Statutory Paternity Pay will be treated as employment income and to disregard such payments in calculating social security income for the purposes of tax credits.

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

None

4. **Legislative Context**

4.1 The Work and Families Act 2006 (c.18) and the Work and Families (Northern Ireland) Order 2006 (SI 2006/1947 (N.I.16)) were introduced to make provision for statutory rights to leave and pay in connection with the birth or adoption of children.

4.2 Additional Paternity Leave was introduced in Great Britain by regulations made under Part 8 of the Employment Rights Act 1996 (c.18) as amended by the Work and Families Act 2006 and in Northern Ireland, by regulations made under Part 9 of the Employment Rights (Northern Ireland) Order 1996 (S.I.1996/1919 (N.I.16)) as amended by the Work and Families (Northern Ireland) Order 2006. These regulations also resulted in Paternity Leave being renamed as Ordinary Paternity Leave.

4.3 Additional Statutory Paternity Pay was introduced in Great Britain by regulations made under Part 12ZA of the Social Security Contributions and Benefits Act 1992 (c.4) as amended by the Work and Families Act 2006 and, in Northern Ireland, by regulations made under Part 12ZA of the Social

Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7) as amended by the Work and Families (Northern Ireland) Order 2006. These regulations also resulted in Statutory Paternity Pay being renamed as Ordinary Statutory Paternity Pay.

4.4 This statutory instrument amends the Entitlement and Maximum Rate Regulations to specify the circumstances in which a person will be treated as engaged in qualifying remunerative work whilst absent from work on Ordinary or Additional Paternity Leave, for the purposes of entitlement to Working Tax Credit. It also amends the definition of employment income in the Income Regulations to include the amount (if any) by which a payment of Additional Statutory Paternity Pay exceeds £100 per week, and adds Additional Statutory Paternity Pay to the list of payments disregarded in the calculation of social security income.

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

- *What is being done and why*

7.1 The aim of Additional Paternity Leave and Pay is to give families more choice about their caring arrangements during the first year of a child's life. The policy responsibility for Additional Paternity Leave and Pay lies with the Department of Business, Innovation and Skills (BIS).

7.2 This instrument makes changes to the existing regulations relating to Tax Credits which are required as a consequence of the legislation referred to in paragraph 4.2.

- *Consolidation*

7.3 HMRC publishes consolidated versions of regulations on their website. These will be made available as soon as possible after this instrument is published.

8. Consultation outcome

8.1 The changes introduced by this instrument are consequential to the introduction of Additional Paternity Leave and Additional Statutory Paternity Pay. As a result no consultation has taken place specifically in relation to this instrument.

8.2 BIS undertook consultations in March 2006 on the detail of the Additional Paternity Leave and Pay scheme and in May 2007 on the administration of Additional Paternity Leave and Pay. A further eight-week consultation on the draft regulations introducing Additional Paternity Leave and Pay closed on 20 November 2009 and is available to view at www.bis.gov.uk.

8.3 Similar consultations were carried out by the Department for Employment and Learning in Northern Ireland. The final consultation was during 2009 and is available to view at [www.delni.gov.uk/index/consultation - zone](http://www.delni.gov.uk/index/consultation-zone).

8.4 Responses to the 2009 consultation were generally positive.

8.5 These regulatory changes have been considered by the Social Security Advisory Committee (SSAC) under the joint memorandum of understanding between HMRC and SSAC.

9. Guidance

Guidance on Additional Paternity Leave and Pay will be available for employees via www.direct.gov.uk and for employers via www.businesslink.gov.uk and www.hmrc.gov.uk. Guidance will also be available on the Employers CD Rom and Employer Help Book produced by HMRC as well as on the HMRC employer helpline.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 This instrument has no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument. An Impact Assessment in respect of the introduction of Additional Paternity Leave and Pay has been prepared and is available from the Employment Relations Directorate, Department for Business, Innovation and Skills, 1 Victoria Street, London SW1H 0ET or at www.bis.gov.uk. Copies have also been placed in the libraries of both Houses of Parliament.

11. Regulating small business

The legislation does not apply to small business.

12. Monitoring & review

BIS regularly undertakes evaluations of maternity and paternity rights in conjunction with the Department of Work and Pensions.

13. Contact

Patrick Turner at HMRC Tel : 0207 270 5349 or e mail at Patrick.turner@hmtreasury.gsi.gov.uk can answer any queries regarding this instrument.