EXPLANATORY MEMORANDUM TO

THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2010

2010 No. 751

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to make technical and consequential changes to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) ("the Income Regulations"), the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) ("the Claims Regulations"), the Tax Credits (Payments by the Commissioners) Regulations 2002 (S.I. 2002/2173) ("the Payments Regulations"), the Tax Credits (Official Error) Regulations 2003 (S.I. 2003/692), the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) ("the Entitlement Regulations"), the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 (S.I. 2002/2008) ("the Income Thresholds Regulations") and the Child Tax Credit Regulations 2002 (S.I. 2002/2007) ("the Child Tax Credit Regulations").

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

3.1 None.

4. Legislative Context

4.1 This instrument amends the Regulations described in paragraph 2.1, in exercise of powers afforded to the Treasury and to the Commissioners for Her Majesty's Revenue and Customs ("the Commissioners") by the Tax Credits Act 2002 (c. 21). The powers afforded by sections 7(2), (8) and (9), 8(2), 9(6), 11, 12(3) and (4), and 13(2) are exercisable by the Treasury. The powers afforded by sections 4(1), 17(10), 21 and 24(7) and (8) are exercisable by the Commissioners.

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 Income Regulations

7.1 The Saving Gateway Accounts Act 2009 (c. 8), the Saving Gateway Accounts Regulations 2009 (S.I. 2009/2997) and the Saving Gateway Accounts (No. 2) Regulations 2009 (S.I. 2009/2998) make provision for the Saving Gateway scheme. In summary, this is a Treasury initiative to encourage working age people on low incomes to save. The Saving Gateway is a two year cash saving account and, at maturity, the government will add 50 pence for every £1 saved into a Saving Gateway account, up to a maximum of £25 a month. Administered by HMRC, Saving Gateway accounts will be available from 2010. HMRC will send a letter of eligibility to people who are entitled to apply. They are for people who are in receipt of certain benefits and for those in receipt of tax credits if their household income is below £16,040. By virtue of regulation 3 of the Saving Gateway Accounts (No.2) Regulations 2009 (S.I. 2009/2998), income arising from such accounts is exempt from income tax and these regulations now similarly disregard such income for tax credit purposes.

7.2 To support the ‘Welfare to Work’ initiatives of the Department for Work & Pensions (DWP), in particular the Community Task Force, these regulations amend Tables 6 and 7 in regulation 19 (general disregards in the calculation of income) to provide specific disregards for payments under the Community Task Force and the Backing Young Britain programme.

7.3 As part of the “Young Person’s Guarantee” announced by the Government following the April 2009 Budget, the DWP has introduced under the Social Security (Community Task Force) Regulations 2009 (S.I. 2010/354) a new employment programme for the benefit of young people (18 – 24 year olds) before they reach long term unemployment. This is called the “Community Task Force” (CTF) and comprises the fourth option of the Young Persons Guarantee. The other three options place emphasis on getting young people into employment, through the “Future Jobs Fund”, or “Routes to Work” supported by work-focused training if necessary. Those for whom these options are either unsuitable or unavailable will be required to participate in the Community Task Force for up to 13 weeks (with the loss of benefit if they leave, refuse or lose a place without good cause). Those taking part in the CTF will move from Jobseeker's Allowance to a Training Allowance, which will also attract a “top-up” of £15.38 per week. The CTF is defined as an employment programme under Regulation 75(1)(a)(ii) of the Jobseeker's Allowance Regulations 1996 (SI 1996/207) (“JSA Regulations”), which makes provision for the elements of the New Deal for Young People (NDYP) . The CTF is now in JSA Regulation 75(1)(a)(ii)(dd).

7.4 The Regulations also provide a disregard in the calculation of income in respect of another DWP initiative, known as ‘Backing Young Britain’ internships. The DWP plans to pay a “training allowance” to young unemployed people aged 18-21 who are placed in so-called “internships” with employers for up to 13 weeks. The scheme was launched in January 2010 and is intended to help the participants to find work and improve their skills. The payments will be made by DWP with no contribution from the ‘employer’. Payments are to be made under section 2 of the Employment and Training Act 1973. The reference to such payments now made by in Table 6 in regulation 19 of the Income Regulations means that although these payments are taxable as ‘miscellaneous income’ within Part 5 of the Income Tax (Trading & Other Income) Act 2005, they are disregarded in the calculation of income for tax credits purposes.

Amendments to the Claims Regulations

7.5 The Regulations make minor changes to the Claims Regulations to improve the performance of the system for customers. The changes: -

- treat a response to a final notice under s17 of the Tax Credits Act 2002 from one member of a couple who split up during the renewal period as a claim from both;
- allow a respondent to a notice under section 17(2)(a), (4)(a) or (6)(a) of the Tax Credits Act 2002 to specify that such response is not to be treated as a new claim for the tax year beginning 6th April following the period to which the section 17 notice relates; and
- amend the circumstances in which a claim for tax credit is treated as made in circumstances where a declaration is or is not made in response to a notice under section 17 of the Tax Credits Act 2002.

Amendments to the Payments Regulations

7.6 The Payments Regulations are amended to allow for the postponement of payments where a customer has not responded to a notice under section 16(2) of the Tax Credits Act 2002 to provide evidence or information in support of a claim for tax credits or has failed to notify a bank account or other account to HMRC into which payment may be made. The circumstances in which a person ceases to be entitled to tax credit or an element of tax credit as a result of failing to notify a bank account or other account to which payment may be made are also amended.

Amendments to the Official Error Regulations

7.7 The Official Error Regulations are amended to provide an extension to the period when HMRC can amend a decision in favour of the customer.

Amendments to the Entitlement Regulations

7.8 Paragraph 9 of Part 1 of Schedule 1 of the Entitlement Regulations, which set out what constitutes having a disability that puts a person at a disadvantage in getting a job, is amended. Paragraph 9(b) is amended so that it refers to section 2 of the Local Government etc. (Scotland) Act 1994. Subparagraph (c) of Paragraph 9 (which applies to Northern Ireland) is amended to include a reference to those who are partially sighted as well as those who are blind.

Amendments to the Income Thresholds Regulations

7.9 Entitlement to working tax credit is, by virtue of section 10(1) of the Tax Credits Act 2002 dependent upon a person being engaged in qualifying remunerative work. In exercise of the power afforded by section 10(2) of the Tax Credits Act 2002, the Treasury have specified conditions to determine whether a person is engaged in qualifying remunerative work, in regulation 4 of the Entitlement Regulations. Whether a person satisfies the second condition contained in regulation 4 will, in some cases, depend upon whether that person undertakes work for not less than 16 hours per week and in other cases it will depend upon that person undertaking not less than 30 hours of work per week. Regulation 7D of the Entitlement Regulations provides that in certain cases where a person would otherwise be regarded as having ceased to be engaged in qualifying remunerative work because that person now works less than 16 hours per week or 30 hours per week as the case may be, that person will be treated as engaged in qualifying remunerative work for a period of four weeks after ceasing to work the required number of hours. This is intended to smooth the transition from “in work” support to “out of work” support.

7.10 Entitlement to working tax credit is also dependent upon the income test determined in accordance with section 7 of the Tax Credits Act 2002. Section 7(2) of the Tax Credits Act 2002 provides that the income test does not apply where the person concerned is entitled to a social security benefit prescribed for the purposes of that section. The social security benefits that the Treasury have prescribed for the purposes of section 7(2) are set out in regulation 4 of the Income Thresholds Regulations.

7.11 The non-application of the income test in respect of claimants of prescribed social security benefits ensures that the maximum rates of tax credit will be payable because the income test cannot have effect to reduce the amount payable. However, receipt of the maximum level of tax credit may cause a person’s income to exceed the relevant social security benefit thresholds, thereby disqualifying that person from receiving the prescribed social security benefit. Such disqualification would immediately render the person liable to the income test which, in turn, could have the effect of lowering the tax credit award sufficiently so that the person concerned would, once again, be entitled to a prescribed social security benefit. Becoming entitled to the social security benefit once again would prevent the tax credit income test from applying thereby ensuring that the person concerned would be entitled to the maximum rate of tax credit, thereby exceeding the relevant social security threshold and so on indefinitely.

7.12 To prevent this circular issue from applying to a person who is no longer working or working less than 16 hours a week, but still receiving working tax credit under regulation 7D of the Entitlement Regulations, an additional paragraph (2) is inserted into regulation 4 of the Income Thresholds Regulations, to provide that such customers continue to be subject to the income test under s7(1) of the Tax Credits Act 2002 during the four-week run-on period. Unless a person's circumstances change, the problems caused by the circularity explained above will not apply after the expiry of the four-week period because the person concerned will not be entitled to the tax credits described since that person will no longer be treated as "engaged in qualifying remunerative work".

7.13 There is also a technical amendment to alter the formula for calculating the child care element of working tax credit. Step 10 of the formula determining the rate working tax credit is amended to align the calculation of the maximum rate of the child care element with that in regulation 20(2) of the Entitlement Regulations, as amended by the Tax Credit Up-rating Regulations (S.I. 2006/963).

Amendments to the Child Tax Credit Regulations 2002

7.12 The Child Tax Credit Regulations are amended so that regulation 8(2)(b)(ii) refers to a person in Scotland who has been certified as blind and in consequence is registered as blind in a register maintained by or on behalf of a local government area as defined in section 2 of the Local Government etc. (Scotland) Act 1994 .

Consolidation

7.13 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 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 The provisions of these amending regulations will be reflected in the Tax Credits Technical Manual.. This is available on the HMRC website at www.hmrc.gov/taxcredits/manuals/tctmanual/index.htm.

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.