

**EXPLANATORY MEMORANDUM TO
THE WORKING TAX CREDIT (ENTITLEMENT AND MAXIMUM RATE)
(AMENDMENT) REGULATIONS 2013**

2013 No. 1736

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs 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 This instrument amends the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) ("the 2002 Regulations") to provide that where council tax benefit was payable to a person or their partner on 31st March 2013 and the applicable amount included a disability premium on account of the other member's (i.e. the non-working partner's) incapacity, the other member is defined as "incapacitated" for the purposes of regulations 4 and 13 of the 2002 Regulations and, therefore, that working tax credit (including, where applicable, a child care element) is payable to the couple, provided that the other requirements of the 2002 Regulations are met.

2.2 The amendments made by these Regulations only apply where council tax benefit which included the disability premium in the applicable amount was being received on 31 March 2013; and if the couple ceases to be entitled to working tax credit on or after 1 April 2013, the member who was incapacitated by virtue of the amended regulations cannot claim to be incapacitated on that basis in relation to any future claim for working tax credit. That person may, of course, meet one of the other conditions in the 2002 Regulations for being treated as incapacitated in relation to any future claim.

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

3.1 None.

4. **Legislative Context**

4.1 Council tax benefit was abolished with effect from 1 April 2013 by the Welfare Reform Act 2012. There are no transitional provisions. It has been replaced, in England, by locally-administered schemes and in Scotland and Wales, by schemes provided for by the respective devolved administrations. Entitlement to working tax credit depends on the claimant (or the claimant's partner) being engaged in "qualifying remunerative work" (s.10(1) Tax Credits Act 2002, "the 2002 Act"), and regulations may prescribe whether a person is or is not to be regarded as so engaged. Provision may also be made as to the inclusion of a child care element in an award of working tax credit in such circumstances as may be prescribed (s.12 of the 2002 Act).

4.2 The 2002 Regulations provide that a person is to be regarded as engaging in “qualifying remunerative work” (by regulation 4, second condition, paragraph (c)(i) of the third variation of that condition) if, along with meeting other requirements, the person’s partner is incapacitated by virtue of satisfying any of the requirements in regulation 13(4) to (8).

4.3 Regulation 13(5) of the 2002 Regulations provides that a person is incapacitated if council tax benefit or housing benefit is payable and the applicable amount of that benefit includes a disability premium or a higher pensioner premium on account of the other member of the couple’s incapacity, a higher pensioner premium or regulation 18(1)(c) of the Council Tax Benefit Regulations 2006 (S.I. 2006/215) or regulation 28(1)(c) of the Housing Benefit Regulations 2006 (S.I. 2006/213) applies. Regulations 18(1)(c) and 28(1)(c) make provision as to the treatment of child care charges for the purposes of calculating a couple’s income in the calculation of council tax benefit or housing benefit, respectively, where one of the couple is incapacitated.

4.4 As explained at paragraphs 2.1 and 2.2, these Regulations amend the 2002 Regulations to ensure that people who relied on receipt of council tax benefit with a disability premium to qualify for working tax credit, or for a child care element of working tax credit (believed to number less than 50), continue to be so entitled. They do this by adding new paragraphs (9) to (12) to regulation 13 of the 2002 Regulations.

4.5 These Regulations also amend paragraph (5) of regulation 13 of the 2002 Regulations to reflect that the higher pensioner premium was abolished (and references to this premium in the Council Tax Benefit Regulations 2006 and the Housing Benefit Regulations 2006 were revoked by S.I. 2008/1042).

4.6 These Regulations also amend regulation 4 of the 2002 Regulations so that a person who, or whose partner, was in receipt of council tax benefit containing the relevant kind of applicable amount on 31st March 2013 will be regarded as engaged in qualifying remunerative work by virtue of meeting paragraph (1)(c)(i) of the third variation of the second condition specified in paragraph (1) of that regulation.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Economic Secretary to the Treasury has made the following statement regarding 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 These amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 provide protection for those tax credits claimants who may lose some or all of their existing entitlement to Working Tax Credit (WTC) on the basis that receipt of Council Tax Benefit which included a disability premium was the only reason they qualified for elements of WTC.

7.2 The majority of those affected are people who got Council Tax Benefit, which included a disability premium on the basis that they are registered or certified as blind, and are not, for whatever reason, getting another passport to WTC.

7.3 This protection for what is likely to be a very small number of tax credit claimants is being provided to prevent the loss of their WTC entitlement because the loss is an unintended consequence of the abolition of Council Tax Benefit.

- ***Consolidation***

7.4 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, the Social Security Advisory Committee (SSAC) has considered these regulatory changes 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 The impact on business, charities or voluntary bodies is none.

10.2 The impact on the public sector is none.

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

13. Contact

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