

EXPLANATORY MEMORANDUM TO
THE LOSS OF TAX CREDITS (SPECIFIED DAY) ORDER 2013

2013 No. 524

1. This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of HM Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order specifies 6th April 2013 as the day for the purposes of sections 36A to 36D of the Tax Credits Act 2002 ("the 2002 Act"). Where an offence is: a) of the type mentioned in section 36A(10) or 36C(7) of the 2002 Act, which includes offences in connection with "disqualifying benefits" as defined in section 6A of the Social Security Fraud Act 2001, and b) committed on or after the day specified by Order made by the Treasury under those subsections, it is a "benefit offence" for the purposes of sections 36A to 36D of the 2002 Act.

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

3.1 None.

4. Legislative Context

4.1 Sections 36A to 36D of the 2002 Act were inserted by section 120 of the Welfare Reform Act 2012 ("the 2012 Act"). These provisions were brought into force, in so far as is relevant to the making of this Order, on 1st February 2013 by S.I. 2013/178 (C. 10).

4.2 Sections 36A and 36C of the 2002 Act provide that where a person is cautioned, accepts an administrative penalty for, or is convicted of, a benefit offence their award of working tax credits will cease for a period known as "the disqualification period". Regulations are being made under sections 36A(5) and (6) and 36C(4) and (5) of the 2002 Act which specify when the disqualification period begins in relation to an offender (i.e. the period within which their award of working tax credit ceases).

4.3 Sections 36A(10) and 36C(7) of the 2002 Act provide that a "benefit offence", for the purposes of sections 36A to 36D of the 2002 Act, is an offence committed on or after a day specified by the Treasury by Order. This instrument specifies 6th April 2013 as that day. The benefit offences are: a) an offence in connection with a claim for a disqualifying benefit; b) an offence in connection with the receipt or payment of any amount by way of such a benefit; c) an offence committed for the purpose of facilitating the commission (whether or not by the same person) of a benefit offence; and d) an offence consisting in an attempt or conspiracy to commit a benefit offence.

4.4 “Disqualifying benefits” are specified in section 6A of the Social Security Fraud Act 2001. The amendments made by section 117(2) of the 2012 Act to section 6A of the Social Security Fraud Act 2001 (adding child tax credit and working tax credit to the list of disqualifying benefits) come into force on 1st April 2013 by virtue of S.I. 2013/358 (C. 16).

5. Territorial Extent and Application

5.1 This instrument applies to 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 joint DWP/HMRC strategy ‘Tackling fraud and error in the benefit and tax credits systems’ (October 2010) sets out a range of measures to deliver a £1.4 billion reduction in fraud and error by 2014/15: <http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf>

7.2 As part of this strategy the scope of the ‘loss of benefits sanctions’ regime is being extended to provide for longer disqualifying periods, and to include additional benefits/credits, such as tax credits, for the first time.

7.3 Following the October 2010 announcement, a White Paper entitled ‘Universal Credit: Welfare that Works’ was published by the Government on 11 November 2010. Chapter 5 outlined a plan for the Government to introduce a tougher penalty regime and longer loss of benefit periods and to tackle the high cost of fraud within the benefit system.

7.4 The provisions inserted by section 120 of the 2012 Act introduce loss of benefit provisions into tax credits. Offences which result in a DWP or administrative penalty or caution will result in a 4 week loss or reduction of tax credits and 13 weeks’ loss of tax credits for a first conviction. Where there are two offences committed within a set time period, with the second resulting in a conviction, tax credits payments will be stopped or reduced for a period of 26 weeks. A 3 year loss of benefit will apply where there are three offences within a set time period, the third resulting in a conviction. The duration of the loss of benefit following a conviction will escalate based on the number of previous offences.

7.5 Section 117(2) of the 2012 Act adds child tax credit and working tax credit to the list of disqualifying benefits in the Social Security Fraud Act 2001 (“the 2001 Act”) i.e. benefits offences which will result in a loss of benefit. Section 120 of the 2012 Act amends the 2002 Act to allow for a loss of benefit to be imposed on working tax credit where there is a conviction, acceptance of an administrative penalty or caution for a

benefit offence. Child tax credit will not be sanctioned, which means that even in the event of a conviction, etc for a benefit offence this benefit payment will not be stopped or reduced. The amendments made to section 6 of the 2001 Act by section 117 of the 2012 Act were brought into force as set out in paragraph 3.2.

7.6 The imposition of the loss of tax credits begins 30 days after the Commissioners of Her Majesty's Revenue and Customs ("HMRC") are notified of a disqualifying offence. Where the tax credit claim is made by a couple and only one of the couple is subject to a disqualifying offence the reduction in working tax credit will be limited to 50% of the entitlement. Where both partners are guilty of a disqualifying offence then all the working tax credit is lost. Notification of the conviction or administrative penalty will be given to HMRC in line with guidance to be drafted shortly.

7.7 The day specified by this Order is 6 April 2013, as tax credits awards are geared to the tax year cycle. Offences of the relevant type which are committed on or after 6th April 2013 are "benefit offences" for the purposes of sections 36A to 36D of the 2002 Act.

Consolidation

7.8 None.

8. Consultation outcome

8.1 This Order is directly related to new legislation as enacted by the 2012 Act. Since then there has been no change to or any intention to amend the stated toughening of the loss of benefit provisions, formal consultation is not necessary.

8.2 The strategy announced by the Government on 18 October 2010, <http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf> to tackle fraud and error in the benefits and tax credits systems also announced that DWP would introduce tougher loss of benefit provisions. The strategy document invited comments; no comments were received about the intention to toughen the loss of benefit provisions.

8.3 The Government's policy intention to extended loss of benefit periods for offences which result in a conviction was also re-affirmed in the strategy refresh document published February 2012. <http://www.cabinetoffice.gov.uk/sites/default/files/resources/HMG-Fraud-and-Error-Report-Feb-2011-v35.pdf>

8.4 The White paper 'Universal Credit Welfare that Works' <http://dwp.gov.uk/docs/universal-credit-full-document.pdf> was published by the Government on 11 November 2010.

9. Guidance

9.1 Information relating to the loss of benefit penalties will be incorporated into leaflets and forms where appropriate on an ongoing basis. Internal guidance and standard operating procedures will also be updated.

10. Impact

10.1 There is no impact on businesses. Tax credits customers may seek additional advice from voluntary organisations, but any addition is expected to be negligible.

10.2 There is no impact on the public sector.

10.3 A full Impact Assessment has not been prepared for this instrument as a sanction and penalty assessment was produced for the 2012 Act: <http://services.parliament.uk/bills/2010-11/welfarereform.html>. A copy of the Equality Impact Assessment is attached.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The new loss of benefit regime will be monitored to ensure both the effectiveness of the measure and equality of treatment.

13. Contact

Anna Rogerson at Her Majesty's Revenue and Customs (email: anna.rogerson@hmrc.gsi.gov.uk, tel: 0207 147 0541) can answer any queries regarding the instrument on behalf of HM Treasury.