

**EXPLANATORY MEMORANDUM TO**  
**THE CHILD TAX CREDIT (AMENDMENT) REGULATIONS 2017**

**2017 No. 387**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by HM Revenue & Customs (“HMRC”) on behalf of HM Treasury (HMT) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the instrument**

- 2.1 The main purpose of this instrument is to prescribe exceptions to the new general rule that an award of Child Tax Credit (“CTC”) must not include the individual element of that tax credit in respect of third or subsequent children or qualifying young persons born on or after 6 April 2017.
- 2.2 This instrument also technically gives effect to the new general rule itself, but in terms which have already been settled by primary legislation, namely amendments made to section 9 of the Tax Credits Act 2002 (c. 21) by section 13 of the Welfare Reform and Work Act 2016 (c 7) (“the 2016 Act”). Similarly, as required by that primary legislation, the instrument introduces a new disability element of CTC and restricts the family element so that it will not be payable where the only children or qualifying young persons included in the claim were born on or after 6 April 2017.
- 2.3 This instrument achieves those purposes by amending the Child Tax Credit Regulations 2002 (S.I. 2002 No. 2007), as amended (“the CTC Regulations”), and makes consequential amendments to the Tax Credits (Polygamous Marriages) Regulations 2003 (S.I. 2003 No. 731).

**3. Matters of special interest to Parliament**

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

- 3.1 This is the first exercise of the power conferred by paragraph (3B)(b) that was inserted into section 9 of the Tax Credits Act 2002 by section 13 (4) of the 2016 Act (see section 4 below).
- 3.2 The amendment which this instrument makes to regulation 7(4) of the CTC Regulations has been drafted in a particular way in view of section 12 of the 2016 Act. That section freezes the level of certain tax credit amounts for four years ending with the tax year ending on 5 April 2020, and relieves the Treasury of the obligation that would otherwise arise under section 41 of the Tax Credits Act 2002 to review those amounts in each preceding year. The amounts covered by that freeze are those described in paragraph 2 of Schedule 1 to the 2016 Act. Paragraph 2(b) of that Schedule describes some of those amounts as the amounts “specified in regulation 7(4)(c) and (f) of the CTC Regulations”. That is why a more radical approach has not been taken to redrafting the structure of regulation 7(4) to reflect the new simplicity that it now, in effect, prescribes that the individual element is £2,780 in all

cases. Instead, sub-paragraphs (c) and (f) have been left in place (with only minimal tweaking to reflect the fact that they are now the only categories provided for in regulation 7(4)).

- 3.3 Although this instrument amends regulation 7 of the CTC Regulations to introduce the new disability element of child tax credit (as required by the amendments which the 2016 Act has made to section 9(2) and (3) of the Tax Credits Act 2002), it does not insert into regulation 7 anything to prescribe the *amount* of the disability element. This is because such provision is required by section 66(2)(a) of the Tax Credits Act 2002 to be made by an affirmative instrument. Therefore, provision inserting a new paragraph (5) into regulation 7 of the CTC Regulations to prescribe the amount of the disability element will be included in a separate instrument to be made in accordance with that procedure.

***Other matters of interest to the House of Commons***

- 3.4 As this instrument is subject to negative resolution procedure and is not expected to be scheduled for debate, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 Section 9 of the Tax Credits Act 2002 provides for the maximum rate at which a person or persons may be entitled to child tax credit to be determined in the manner prescribed by regulations. Before the 2016 Act, section 9 went on to provide, in effect, that the manner prescribed by regulations must involve the inclusion of a ‘family element’ in all cases and an ‘individual element’ in respect of each child or qualifying young person for whom the claimant is responsible.
- 4.2 Section 13 of the 2016 Act has amended section 9 of the Tax Credits Act 2002 and those amendments come substantively into force on 6 April 2017 (by virtue of section 36(4) of the 2016 Act).
- 4.3 In particular, as regards the individual element, new subsections (3A) and (3B) inserted into section 9 require the regulations not to include the element in respect of a child or qualifying young person born on or after 6 April 2017 unless (a) the entitled person(s) are claiming that element for no more than one other child or qualifying young person or (b) an exception prescribed by the regulations applies.
- 4.4 As regards the family element, section 9(2)(a) as amended by the 2016 Act qualifies the requirement for regulations to provide for the inclusion of the family element, by limiting it to cases where the entitled person(s) are responsible for a child or qualifying young person who was born before 6 April 2017.
- 4.5 As regards the disability element, section 9(2)(c) as amended by the 2016 Act provides for a new element – the “disability element” – which must be included in the maximum rate of CTC in the case of a child or qualifying young person who is disabled or severely disabled. This disability element will ensure that an equivalent of the additional amount that has hitherto been included in the individual element of CTC for disabled or severely disabled children or qualifying young persons will continue to be available from 6 April 2017 to all such children, even where the individual element is not payable for them because of the new rule that normally restricts that element (as described above).

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is 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**

- 7.1 Section 8 (Child tax credit – Entitlement) of the Tax Credits Act 2002 sets out the entitlement conditions for CTC. Entitlement depends on the claimant or claimants (in the case of a joint claim by a couple) being responsible for one or more children or qualifying young persons. It also provides for regulations to be made by HMT to define how responsibility for a child or qualifying young person is determined for the purposes of CTC. The relevant regulations are the CTC Regulations, as amended. Broadly, a person is responsible for a child or qualifying young person who is normally living with them (the “normally living with test”). For CTC purposes, a “child” means someone under the age of 16 while a “qualifying young person” is generally a young person aged 16 or over who has enrolled, accepted or started in full-time, non-advanced education (e.g. A-levels) or approved training before the age of 19.
- 7.2 Section 9 of the Tax Credits Act 2002 sets out the maximum rate of CTC and, as originally enacted, provided that this must include an element available to everyone who is entitled to CTC (the “family element”) and an element in respect of each child or qualifying young person for whom the claimant is or the claimants are responsible (the “individual element”). As originally enacted, the individual element had to be a higher amount for a child or qualifying young person with a disability and a higher amount again for a child or qualifying young person with a severe disability.
- 7.3 It was announced in the Summer Budget on 8 July 2015 that, as part of the Government’s welfare savings, the maximum rate of entitlement to CTC would be restricted for those families who become responsible for a child or qualifying young person born on or after 6 April 2017. These restrictions were contained in section 13 (Changes to child tax credit) of the Welfare Reform and Work Act 2016. They will take effect from the tax year 2017-18.
- 7.4 Firstly, claimants will not be eligible for the family element (£545 in the current tax year, 2016-17) if they are responsible only for a child or qualifying young person who is born on or after 6 April 2017.
- 7.5 Secondly, the individual element of CTC (£2,780 in the current tax year 2016-17 in respect of a child or qualifying young person who is not disabled) will only be payable in respect of up to two children or qualifying young persons, unless the claimant or claimants are responsible for more than two children or qualifying young persons who were born before 6 April 2017 or a prescribed exception (explained below) applies. For example, a person is responsible for four children, the first three of whom were born before 6 April 2017 and the fourth child was born after that date. The claimant will continue to receive the individual element of CTC in respect of all three children born before 6 April 2017 in 2017-18 and subsequent years but will not receive the individual element in respect of the fourth child.

- 7.6 Nevertheless, where the first child drops out of entitlement to CTC, entitlement to the individual element will then become due in respect of a third or subsequent child (if any) on a “rolling basis”. For example, a claimant is responsible for three children, the first of whom was born in August 2000, the second in December 2002 and the third in May 2017. In May 2017, the claimant will only be entitled to the individual element of CTC in respect of the first and second children but not in respect of the third child. If, in August 2018, the claimant is no longer entitled to receive the individual element in respect of the eldest child, the claimant will continue to receive that element in respect of the second child and will be entitled to that element in respect of the third child.
- 7.7 For completeness, a separate disability element in CTC is created by section 9(2)(c) of the Tax Credits Act 2002, as inserted by section 13(2)(b) of the Welfare Reform and Work Act 2016, to enable the additional amounts that are currently payable in respect of a disabled or severely disabled child or qualifying young person (respectively £3,140 and £4,415 in the tax year 2016-17) to be made available from 6 April 2017, regardless of their date of birth and birth order.
- 7.8 These regulations make consequential changes to the CTC Regulations and the Tax Credits (Polygamous Marriages) Regulations 2003 arising from the above changes to section 9 of the Tax Credits Act 2002 and, by virtue of section 9(3B)(b) of that Act, prescribe exceptions to the new general rule that prevents the individual element of CTC being included for more than 2 children.
- 7.9 Regulation 3 of these amending regulations makes various changes and additions to the definitions that apply within the CTC Regulations. These are done for drafting purposes. The most significant change is the insertion of a definition of ‘step-parent’ (a concept not previously used in the CTC Regulations but one which plays a role in relation to various aspects of the exceptions to the new general limit on inclusion of the individual element of CTC).
- 7.10 Regulation 4 amends regulation 7 (Determination of the maximum rate at which a person or persons may be entitled to child tax credit) of the CTC Regulations to give effect to the changes required by the 2016 Act, as follows.
- 7.11 Regulation 4(a) inserts a reference to the new regulations 9 to 12 and 14 in regulation 7(1) of the CTC Regulations. The effect is to apply to those regulations the definitions of ‘claimant’ and ‘joint claimant’ set out in regulation 7(1).
- 7.12 Regulation 4(b) amends regulation 7(2)(a) of the CTC Regulations to reflect that, in line with the amended section 9(2)(a) of the Tax Credits Act 2002, and with effect from 6 April 2017, the family element will only be available where a person is or persons are responsible for a child or qualifying young person born before 6 April 2017.
- 7.13 Regulation 4(c) amends regulation 7(2)(b) of the CTC Regulations to make entitlement to the individual element subject to the new paragraph (2A) that is inserted in regulation 7.
- 7.14 Regulation 4(d) inserts a new sub-paragraph (c) in regulation 7(2) of the CTC Regulations to refer to the separate disability element, as provided for in section 9(2)(c) of the Tax Credits Act 2002.
- 7.15 Regulation 4(e) inserts a new paragraph (2A) in regulation 7 of the CTC Regulations.

- 7.16 In line with section 9(3A) and (3B) of the Tax Credits Act 2002, the new paragraph (2A) provides that where the claimant (or either or both of the claimants if it is a joint claim) is/are responsible for a child or qualifying young person (called “A”) born on or after 6 April 2017, the maximum rate of CTC shall not include the individual element unless (a) the claimant is or claimants are claiming that element for no more than one other child or qualifying young person or (b) one of the exceptions set out below applies.
- 7.17 Regulation 4(f) amends regulation 7(4) of the CTC Regulations so that the latter refers only to the individual element and reflects the fact that, from 6 April 2017, there will be a separate disability element payable in respect of disabled and severely disabled children and qualifying young persons, distinct from the individual element.
- 7.18 Regulation 5 inserts the exceptions for entitlement to the individual element of CTC. These will be contained in new regulations 9 to 14 inclusive of those Regulations. The exceptions relate mainly to situations in which the parents or carers are not fully able to make a choice about the number of children in their family, unlike most other households.
- 7.19 In the new regulation 9, paragraph (1)(a) provides that an exception will apply to child/qualifying young person “A” if he or she is the third or subsequent child for whom the claimant is, or claimants are, responsible and any of regulations 10 to 14 apply to “A”.
- 7.20 Paragraphs (1)(b) and (2) in the new regulation 9 ensure that a first or second child or qualifying young person born to a claimant or claimants on or after 6 April 2017 is not displaced by another child or qualifying young person born before that date but who is taken into that household after the birth of the first or second child as a result of adoption (as referred to in new regulation 11) or a non-parental caring arrangement (as referred to in new regulation 12).
- 7.21 Paragraph (3) in the new regulation 9 provides that where a substantive exception applies in respect of “A” under paragraph (1), an exception shall also apply to any other child or qualifying young person born on or after 6 April 2017 if (a) the new paragraph (2A) in regulation 7 of the CTC Regulations prevents the inclusion of an individual element but would not do so if “A” were disregarded; and (b) the claimant, or either or both of the joint claimants, was or were already responsible for that other child or qualifying young person before they became responsible for “A”. The purpose of paragraph (3) is to enable an individual element of CTC to be paid in respect of the first two children (if they were born on or after 6 April 2017) as well as in respect of “A”. The need for paragraph (3) arises from the way in which the 2016 Act (as reflected in the new regulation 7(2A)(a)) articulates the restriction on the availability of the individual element. For example, if the claimant is already responsible for two children (‘child 1’ and ‘child 2’), both of whom were born on or after 6 April 2017, and the claimant subsequently gives birth to twins, or gives birth to a child as a result of non-consensual conception, that new child is excepted from the restriction by regulation 9(1). But in such a situation, the wording of section 9(3B)(a), as reflected in regulation 7(2A)(a), would prevent the individual element being included in respect of child 1 or child 2 unless they were also excepted by the Regulations. This is because it could not be said of child 1 that “the claimant is claiming the individual element of child tax credit for no more than one other child or qualifying young person” (because the claimant would be claiming for child 2 and child 3), and it could similarly not be said of child 2 (because the claimant would be

claiming for child 1 and child 3). Therefore, in order to produce the intended overall effect (that the first two children are always eligible for the individual element), it is necessary for the first two children to be excepted whenever the reason why the requirement in section 9(3B)(a) and regulation 7(2A)(a) is not met in relation to *them* is because there is a third child (or indeed more than one additional child) who is also included in the claim because one of the substantive exceptions conferred by regulation 9(1) applies to that third or subsequent child.

- 7.22 Paragraph (4) in the new regulation 9 provides that where an exception in new regulations 10 to 14 applies to more than one child or qualifying young person or different exceptions apply to different children or qualifying young persons, the reference to “A” in paragraph (3) above is a reference to all those children or qualifying young persons in respect of whom an exception applies and clarifies how the requirement in paragraph (3)(b) applies in such cases.
- 7.23 Paragraph (5) in the new regulation 9 is an ordering provision for the purposes of paragraphs (1) and (2) of the regulation (i.e. it sets out how to calculate whether “A” is the ‘first’, ‘second’ or ‘third or subsequent’ child or qualifying young person as referred to in those paragraphs). Where a claimant or at least one of the joint claimants is the parent or step-parent of the child or qualifying young person (other than by adoption), ordering is based on the date of birth of the child or qualifying young person. Where the claimant is not (or neither of the joint claimants is) a parent or step-parent of the child or qualifying young person, ordering is based on the date on which the claimant or either or both of the joint claimants became responsible for the child or qualifying young person.
- 7.24 Paragraph (6) in the new regulation 9 provides a tie-breaker provision at sub-paragraph (a), so that where the dates of birth or responsibility determined under paragraph (5) of the regulation are the same for two or more children or qualifying young persons, the order may be determined by HMRC in such a way as to ensure the maximum entitlement to the individual element of CTC. Sub-paragraph (b) ensures that a claimant who is pregnant with her second child and who, while pregnant, takes on a non-parental caring arrangement for another child or qualifying young person, remains entitled to the individual element of CTC in respect of her own second child after its birth.
- 7.25 Paragraphs (7) and (8) contain technical provisions about the interpretation of regulation 9.
- 7.26 New regulation 10 provides for an exception to the two child limit in the case of a multiple birth, provided (a) that the claimant, or at least one of the joint claimants, is a parent (other than an adoptive parent) of “A”; (b) that “A” was one of two or more children born as a result of the same pregnancy; (c) that the claimant, or either or both of the joint claimants, is or are responsible for at least two children or qualifying young persons born as a result of that pregnancy; and (d) that “A” is not the first-born in that multiple birth (on the basis that the claimant or joint claimants would always have expected the pregnancy to result in at least one child).
- 7.27 New regulation 11 provides for an exception if “A” has been adopted by, or placed for adoption with, the claimant or either or both of the joint claimants. However, the exception will not apply in certain situations. First, it will not apply if the claimant or at least one of the joint claimants was a step-parent of “A” immediately before the adoption. Secondly, it will not apply if the claimant or at least one of the joint

claimants has been treated as a parent of A (other than by adoption) at any time. This will stop a child's biological parent from benefiting from this exception, for example where a biological parent gave the child up to be adopted by someone else (at which point he or she would have ceased in law to be regarded as the child's parent) but later adopted the child after the death of the original adopter. Thirdly, it will not apply if "A" was adopted from abroad since the exception is intended to help relieve pressure on children's services within the UK only.

7.28 New regulation 12(1) provides for an exception if the claimant or at least one of the joint claimants is a "friend or family carer" in respect of "A" or is responsible for a child or qualifying young person who is a parent of "A". The exception will not apply if the claimant or at least one of the joint claimants is a parent or step-parent of "A" (paragraph (2)).

7.29 Paragraph (3) in the new regulation 12 defines the term "friend or family carer" as follows:

- someone who is named, in a child arrangements order in England and Wales or a residence order in Northern Ireland, as a person with whom "A" is to live;
- someone who has been appointed a guardian of "A" ;
- a special guardian of "A" appointed in England and Wales ;
- someone who is entitled to Guardian's Allowance in respect of "A";
- someone in whose favour there is a kinship care order under section 72 of the Children and Young People (Scotland) Act 2014 in respect of "A";
- a person in whom parental responsibilities or rights are vested by a permanence order in respect of "A" under section 80 of the Adoption and Children (Scotland) Act 2007;
- a person falling within any of the above categories immediately before "A"'s 16<sup>th</sup> birthday and who continues to be responsible for "A"; or
- someone who has undertaken the care of "A" in circumstances in which it is likely that "A" would otherwise be looked after by a local authority (such as where "A" has no parents or adoptive parents or has parents or adoptive parents who are unable to care for him/her, and there are no other suitable arrangements).

7.30 New regulation 13 provides for an exception if "A" is a third or subsequent child born as a result of non-consensual conception.

7.31 By virtue of paragraph (1), the exception will apply if the claimant (or a joint claimant) is "A"'s parent and HMRC determines that "A" is likely to have been conceived as a result of sexual intercourse to which the claimant did not agree by choice or did not have the freedom or capacity to agree by choice. In addition, the claimant must not be living at the same address as the other party ("B") to that intercourse. The Government recognises that victims' circumstances differ and its intention is to minimise the risk of harm to the victim, whilst acknowledging that not all victims will feel able to leave the perpetrator, and that some victims may return to the perpetrator later in time. However paying the individual element of CTC to claimants for third and subsequent children or qualifying young persons born in these circumstances, where they have not left the alleged perpetrator could allow the alleged perpetrator to financially benefit from the abuse. Paragraph (12) provides that

HMRC may decide that the claimant is not living with the alleged perpetrator if the claimant confirms that that is the case.

- 7.32 Paragraphs (2) to (5) define lack of freedom or capacity to agree by choice to include situations in which the claimant was, at around the time “A” was conceived, subject to ongoing coercive or controlling behaviour of a kind that is in principle covered by the criminal offence of coercion and control in an intimate or family relationship. The Government believes that it is important to take account of those who have been the victim of a controlling or coercive relationship and have, therefore, decided to include a third or subsequent child conceived in such circumstances within the scope of the exception.
- 7.33 Paragraph (6) provides that HMRC may make a determination under paragraph (1)(b)(i) if, and only if, one of two conditions are met. One of them (paragraph (6)(a)) is that the claimant provides supporting evidence from an “approved person” to the effect that the claimant’s circumstances are consistent with those of a person who has had intercourse without consenting to it, resulting in the conception of “A”. In such cases, the claimant will not be placed in the position of having to give details of the alleged offence to HMRC nor will HMRC officials have to determine whether the alleged incident actually took place. Indeed, the “approved person” will not have to determine whether the incident actually occurred - the focus will be on whether the claimant’s circumstances are consistent with the veracity of the claim. (So, nobody will be reaching a view about whether a criminal offence has actually been committed. In that regard, it may also be noted that the perpetrator’s own state of mind, which is relevant to whether an offence has been committed, will be wholly irrelevant to this exception which is victim-focussed on lack of consent, or freedom and capacity to consent). In developing this requirement, the Government has sought to strike a balance between the need to treat such cases with sensitivity and the need to ensure that CTC is paid only to persons who are genuinely entitled to it. Paragraph (8) provides that an “approved person” means a person of a description listed by HMRC for the purpose, thus providing flexibility for the list of third parties to be amended quickly, as and when necessary. It is envisaged that the listed categories will include healthcare professionals, registered social workers or counsellors, workers at specialist rape charities etc).
- 7.34 Alternatively, paragraph (6)(b) enables the determination to be made if there has been a relevant conviction for an offence of rape or controlling or coercive behaviour or if there has been a relevant award under the Criminal Injuries Compensation Scheme in favour of the claimant. Paragraph (7) is a technical provision designed to ensure that the determination may be made even if, for example, the claimant was raped by more than one person but only one of them was caught and convicted, or if the convictions related to specimen instances from among many that occurred over a period of time. Paragraphs (9) and (10) define terms used in paragraph (6)(b).
- 7.35 Paragraphs (13) to (15) contain definitional provisions relevant to single or joint tax credit claims. Paragraph (14) provides that the exception will apply to a joint claim if one of those joint claimants meets the criteria in paragraph (1)(b)(i), and that references in the rest of regulation 13 to “the claimant” should be read as references to that joint claimant.
- 7.36 New regulation 14 provides for a continuation of the exceptions relating to multiple births, adoption and non-consensual conception in certain circumstances. For example, the continuation provision could apply in the case of non-consensual



conception if the mother has been raped by a stranger, gives birth to a third child as a result, receives the exception under regulation 13 as part of a joint claim with her spouse or partner, and subsequently dies leaving the child to be cared for by the bereaved spouse or partner. In those circumstances, regulation 13 will no longer apply, because that exception is only available where the current claimant or one of the current joint claimants is actually a parent of “A” and had been subjected to the non-consensual intercourse leading to the birth of “A” (see regulation 13(1)(a) and (b)(i) and (14)). Alternatively, if the multiple birth exception applied prior to the death of a joint claimant who was a parent of “A”, the widower (for example) would lose the exception under regulation 10 if he was “A”’s step-parent rather than “A”’s other biological parent (because he would not meet the requirement in regulation 10(a)). If the adoption exception had applied because “A” had been adopted by one (but not both) of joint claimants, and the adopter subsequently dies, the survivor would lose the adoption exception because he himself had not adopted the child (and, even if he subsequently adopts the child, he will be denied the exception by regulation 11(2)(a)(i) because he will have been “A”’s step-parent immediately prior to the adoption).

- 7.37 In situations such as those, the policy is not to deprive the claimant (or joint claimants if the survivor subsequently forms a couple with someone else) of the additional individual element that had already been payable prior to the death (or other departure) of the previous joint claimant. Because the main policy purpose of this provision is to prevent existing payments in respect of the child being reduced as a result of the death (or other departure) of a joint claimant, the exception under regulation 14 will cease if there is any interruption lasting 6 months or more in entitlement (paragraph (7)).
- 7.38 Paragraphs (4) and (5) ensure that the exception under regulation 14 will apply if the relevant earlier history had occurred in the context of the corresponding exceptions applicable to Universal Credit or the legacy benefits of Income Support or ‘old style’ Jobseeker’s Allowance. This may arise where a family migrates from Universal Credit or a legacy benefit back to tax credits, for instance in Universal Credit “Live Service” areas where it is possible for a claimant to come back to tax credits if he/she relinquishes or loses their entitlement to Universal Credit.
- 7.39 Regulations 6 to 11 amend various provisions in the Tax Credits (Polygamous Marriages) Regulations 2003 (“the Polygamy Regulations”) to ensure that the changes made to section 9 of the Tax Credits Act 2002 by the 2016 Act and the changes made to the CTC Regulations by this instrument, apply appropriately in cases of polygamous marriage. Broadly, together with section 43 of the Tax Credits Act 2002, the Polygamy Regulations provide for the tax credit system to recognise the parties to a polygamous marriage as a single unit of claim provided that the marriage in question occurred in a country where the law allows such a marriage. As a result, all parties to a polygamous marriage are required to make a joint tax credit claim and the income and circumstances of all those joint claimants are taken into account when HMRC determines the level of their award. Currently, there are no such awards in payment. The amendments which this instrument makes to the Polygamy Regulations will modify the new wording in section 9 of the Tax Credits Act 2002 and the new wording in the CTC Regulations in line with how the Polygamy Regulations already modify comparable wording elsewhere in the Tax Credits Act 2002 and the Polygamy Regulations. For example, references to ‘either’ (or ‘either or both’) members of a ‘couple’ are modified to refer to ‘any’ (or ‘any or all’) members of a ‘polygamous

unit' (a term which is already defined in the Polygamy Regulations). In effect, no new policy decisions have been made here: we are merely applying the existing approach to polygamous modifications, where relevant, to the new passages that have been added to the Act and CTC Regulations. In addition, a reference to the new disability element is inserted into a provision of the Polygamy Regulations which modifies regulation 50(3) of the Tax Credits (Payment by the Commissioners) Regulations 2002 (S.I. 2002/2173). This will treat the new disability element in the same way as the individual element for the purpose of determining which member of the polygamous unit the element should actually be paid to. It will be paid to the main carer of the child or qualifying young person concerned.

### ***Consolidation***

- 7.40 There is no current plan to consolidate the CTC Regulations or the Tax Credits (Polygamous Marriages) Regulations 2003.

## **8. Consultation outcome**

- 8.1 On 21 October 2016, HMT, HMRC and the Department for Work and Pensions jointly issued a consultation paper about various aspects of the proposed exceptions. The paper was entitled "Exceptions to the limiting of the individual Child Element of Child Tax Credit and Universal Credit to a maximum of two children". The consultation ran until 27 November 2016.
- 8.2 In total, there were 82 responses to the consultation, with around 50 from organisations. A summary of the responses to the questions in the consultation can be found in the Government's response, entitled "Consultation Response – Exceptions to the limiting of the individual Child Element of Child Tax Credit and the Child Element of Universal Credit to a maximum of two children", which was published on 20 January 2017 at <https://www.gov.uk/government/consultations/universal-credit-and-child-tax-credit-exceptions-to-the-2-child-limit>.
- 8.3 The Government has considered the responses and made several changes to the implementation of the policy which are reflected in the regulations
- 8.4 Firstly, the multiple birth exception has been expanded so that the individual element is awarded for all third or subsequent children or qualifying young persons in a family born as part of a multiple birth, other than one child or qualifying young person in that birth. Where the first or second child in the household is born in a multiple birth, the individual element will also be awarded for the additional children in that birth who are third or subsequent in the household. This change was supported by the consultation responses.
- 8.5 Secondly, a number of respondents to the consultation noted that some of the relevant court orders, to be accepted as evidence of a formal non-parental caring arrangement, expire when a child reaches age 16. Consequently, where this happens, the regulations have been drafted to allow that that child (now a qualifying young person) is, or remains, exempt, if the responsible adult has been continuously responsible for them since that time.
- 8.6 Thirdly, in respect of the exception for children and qualifying young persons likely to have been born as a result of non-consensual conception, in light of stakeholder concerns, there will be no time limit placed on when the report needs to be made to the third party professional after the alleged incident that resulted in the pregnancy.

- 8.7 The list of third parties from whom HMRC will accept evidence in the case of the exception for non-consensual conception is not listed in these Regulations, but will instead be set out in guidance, so as to retain flexibility to adjust the list in the future.
- 8.8 The exemption for non-consensual conception has been extended to also include claimants who were subject to coercion and control, at or around the time of the conception, by the other party to the sexual intercourse.
- 8.9 In addition, the Social Security Advisory Committee (SSAC) has considered these regulatory changes under its Memorandum of Understanding with HMT and HMRC. The Chairman of SSAC wrote to the Minister for Employment on 31 January 2017 to note the Committee's observations. These were primarily concerned with the challenges for both the Department for Work & Pensions and HMRC arising from implementing the exception for non-consensual conception in a sensitive manner. More generally, the Chairman also sought clarification of the responsibilities of the claimant when claiming an exception, particularly in respect of CTC.
- 8.10 In his response of 1 March 2017, the Minister for Employment acknowledged the sensitive nature of the exception for non-consensual conception and assured SSAC that the two departments are setting up procedures that are mindful of the sensitivities involved. The Minister also assured SSAC that claimants would be made aware of the exceptions in a clear and timely way and that claims for the exceptions in relation to CTC would be handled by a dedicated operational team within HMRC.
- 8.11 HMRC has also held discussions about the administration and communication of the exceptions with members of its Benefits & Credits Consultative Group. The group consists of representatives from a wide range of organisations, including SSAC, the Low Incomes Tax Reform Group, the Child Poverty Action Group, Gingerbread, the Children's Society, Working Families, Citizens Advice and the Local Government Association. The discussions have centred around HMRC's strategy for communicating the exceptions to claimants, clarification of the process for claiming the exceptions and clarification of the application of exceptions when considering complex household formations and breakdowns. The group also provided feedback on communications products such as the flyer listing the exceptions, which will be in all new claims packs and renewals packs during 2017-18.

## **9. Guidance**

- 9.1 These amendments will be reflected in the Tax Credits Technical Manual and in guidance for claimants. The GOV.UK website will also be updated to reflect the changes made.

## **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies. Certain charities or voluntary bodies which provide support to women in cases of alleged rape may become eligible to provide evidence in support of a claim to the relevant exception (see paragraph 7.33 above), but no particular body or charity is placed under an obligation to do so. Charities and voluntary bodies may also wish to update their guidance to advisers and claimants to reflect the exceptions set out in these amending regulations.
- 10.2 The impact on the public sector is that certain public sector agencies (in particular, local authority social services) are envisaged to play a role in providing evidence in

support of a claim to an exception relating to some non-parental care cases and (in the case of health professionals) where a third or subsequent child has been born on or after 6 April 2017 allegedly as a result of non-consensual conception.

10.3 An Impact Assessment has not been prepared for this instrument.

**11. Regulating small business**

11.1 The legislation does not apply to activities that are undertaken by small businesses.

**12. Monitoring & review**

12.1 The practical application of these provisions will be kept under review and amended as and when necessary by the Government by means of further statutory instruments subject to the negative procedure.

**13. Contact**

13.1 David Woodhouse at HM Revenue & Customs, telephone: 03000-586-840 or email: [david.woodhouse@hmrc.gsi.gov.uk](mailto:david.woodhouse@hmrc.gsi.gov.uk) , can answer any queries regarding the instrument.