

**EXPLANATORY MEMORANDUM TO**  
**THE TAX CREDITS (CLAIMS AND NOTIFICATIONS) (AMENDMENT)**  
**REGULATIONS 2017**

**2017 No. 597**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs (HM Revenue and Customs) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 The purpose of the instrument is to make a consequential amendment to the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) as a consequence of the commencement of "tax free childcare" in April 2017.

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

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

- 3.1 None.

*Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, 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 The new scheme under the provisions of the Childcare Payments Act 2014, generally known as tax free childcare (TFC), has been introduced from 21st April 2017. TFC is designed to provide financial support to help working families with the costs of childcare. Claimants cannot claim tax credits at the same time as TFC and the opening of a TFC account automatically terminates any tax credit award per section 30 of the Childcare Payments Act 2014. If a claimant wishes to claim tax credits after opening a TFC account they have to make a new claim for tax credits and that claim is treated as having been made on the day specified in rules in the Tax Credits (Claims and Notifications) Regulations 2002 ("the Claims and Notification Regulations"), sometimes referred to as "backdating".
- 4.2 The general rule contained in Regulation 7 of the Claims and Notifications Regulations is that a claim for tax credits is treated as having been made up to 31 days before the claim is made if the claimant would have been entitled if they had made a claim. Regulation 7A makes different provision for those claimants who have had a TFC account reflecting the general rule against dual entitlement to tax credits and TFC. Generally speaking the claim for tax credits cannot be treated as having been made during the TFC eligibility period, which is three months from the date of the declaration of eligibility. This is modified in certain circumstances which are set out in Regulation 7A(3). The circumstances are 1) HM Revenue and Customs makes an

account restriction order, 2) the childcare account is closed, or 3) the child ceases to be a qualifying child. In these circumstances the claim for tax credits can be treated as having been made on the latest of either, the day following the event provided for in 7A(3) which may be in TFC the eligibility period or 31 days before the actual date of claim.

## **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**

### *What is being done and why*

- 7.1 This memorandum replaces the memorandum laid with the Regulations and contains a further explanation as to the policy background following a request by the House of Lords Secondary Legislation Scrutiny Committee. This section provides extra material additional to the material in section 4 above.
- 7.2 When TFC was being designed thought was given to the customer journey of those transitioning from in-work benefits to TFC. The journey for those leaving tax credits to join TFC, of the opening of a childcare account (which follows from HM Revenue and Customs finding that the person's declaration of eligibility for the scheme is valid) automatically stopping any current tax credits award, offers a good customer journey for customers that want to transition from one to the other as they can simply apply for TFC with no preliminary steps needed.
- 7.3 TFC allows parents whose circumstances have changed for the worse to freely apply for benefits without needing to wait for the end of their current entitlement period. In order to restrict dual entitlement regulation 7A was added to the Claims and Notifications Regulations in March 2015. This restricts the normal 31 day backdating of claims allowed in tax credits to prevent further dual entitlement. So parents applying for tax credits while in a live TFC entitlement period get their tax credits award effective from their date of claim.
- 7.4 After the 2015 election the government introduced what is commonly known as the 30 hours free childcare scheme in England. This is covered by the Childcare Act 2016 and the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016. This scheme is being delivered through a joint application portal with TFC. The eligibility criteria for the two schemes are largely aligned. But one place where this is not so is in relation to benefits. Parents can remain on tax credits or universal credit while receiving 30 hours. Parents that are on tax credits and want to stay there need to decline TFC during their application, as getting a TFC account will stop their tax credits.
- 7.5 HM Revenue and Customs are aware from its own research, from parent experience during the trial of TFC (which ran from 14th November 2016 to 15th May 2017) and from comments from stakeholders that if many thousands of parents use the joint

application portal to apply only for 30 hours and not TFC then some will make errors and apply for TFC by mistake, resulting in an unintended termination of their tax credits.

- 7.6 In order to limit any financial loss for these parents HM Revenue and Customs designed the change made by these regulations with the intention of making that change so as for it to be in place by the time the bulk of parents applied for 30 hours. This was expected to be between mid-May and early July 2017 so as to get childcare for September 2017 arranged and agreed before the summer holidays. As of the start of July around 110,000 parents had applied and been found eligible for 30 hours of which around 60,000 were seeking only 30 hours and not TFC.
- 7.7 The sudden and unexpected start of election purdah on 21 April, and the imminent prorogation of Parliament that was to follow it, caused HM Revenue and Customs to bring forward the making and laying of these Regulations slightly. However they were made and laid marginally within the “purdah” period.
- 7.8 This instrument modifies the backdating provisions in Regulation 7 of the Claims and Notifications Regulations to allow for backdating into the TFC entitlement period where the childcare account has not been used to pay for childcare. Where a person has opened a TFC account but not used it and claims tax credits they could potentially receive less in tax credits because Regulation 7A of the Claims and Notifications Regulations would only allow the claim to be treated as having made the day after the TFC account had been closed. This amendment allows people to benefit from the usual backdating of tax credits where they have not used TFC account to pay for childcare. As no payments can have been made from the account and the account is closed down (which returns any money added by the Exchequer to the Exchequer) then there is no dual entitlement to TFC and tax credits.

#### ***Consolidation***

- 7.9 There are no plans for consolidation.

### **8. Consultation outcome**

- 8.1 HMRC has not formally consulted before making these Regulations. A draft of these Regulations was made available to the Social Security Advisory Committee (SSAC) under the terms of its Memorandum of Understanding with HMT and HMRC on 21st March 2017. SSAC concluded that the changes met their objectives and welcomed them.

### **9. Guidance**

- 9.1 HM Revenue and Customs is working to continually monitor and improve guidance to parents while applying for TFC or 30 hours and, working with Government Digital Service (GDS), to update the guidance on the TFC scheme’s interactions with tax credits on the Gov.uk website. This includes guidance to parents on what to do if they find they have inadvertently applied for TFC and so terminated a tax credits claim.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 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 policy will be reviewed during the rollout of TFC to assess whether it is addressing the issue.

**13. Contact**

13.1 Phil Mattacks at HM Revenue and Customs, telephone: 03000 585 501 or email: [phil.mattacks@hmrc.gsi.gov.uk](mailto:phil.mattacks@hmrc.gsi.gov.uk), can answer any queries regarding the instrument.