

EXPLANATORY MEMORANDUM TO

THE TAX CREDITS AND CHILDCARE (MISCELLANEOUS AMENDMENTS) REGULATIONS

2018 No. 365

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury (HMT) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 These regulations make changes to tax credits and Tax-Free Childcare. They make consequential changes following changes elsewhere to ensure that claimants maintain their entitlement. They further remove a reference to an incorrect office address.

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 This instrument makes a number of 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 Notification) Regulations 2002 (2002/2014), ("the Claims Regulations"), the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (2002/2005) (the "Entitlement Regulations") and the Childcare Payments Regulations 2015 (2015/522) (the Childcare Regulations").
- 4.2 Section 7 of the Tax Credits Act 2002 (c. 21) sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Income Regulations 2002 set out how a claimant's relevant income is to be calculated. Regulation 2 of this instrument makes a number of amendments to the Income Regulations so that the payments identified in paragraphs (3) to (6) are not brought into account as income for tax credit purposes. Regulation 2 also removes references to the Savings Gateway Account, which has not been implemented.
- 4.3 Section 4(1) of the Tax Credits Act 2002 provides that Regulations may require a claim for a tax credit to be made in a prescribed manner. The Claims Regulations 2002 set out the rules for making a claim and for notifying HMRC of changes. Regulation 3 of this instrument amends the definition of "appropriate office".
- 4.4 Regulations 4(3) and 5 amend the Entitlement Regulations and the Childcare Payments Regulations 2015 to take account of the changes in relation to the

regulation of social care in Wales introduced by the Regulation and Inspection of Social Care (Wales) Act 2016 (2016 anaw 2).

- 4.5 Regulation 4(2) amends the definition of “incapacity” in regulation 13 of the Entitlement Regulations to include a benefit or credit of another EEA state or Switzerland which is substantially similar in character to the benefits, allowances and credits referred to in regulation 13(6) of the Entitlement Regulations.

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 Tax credits are a means-tested form of support which provides help to millions of families with a wide variety of differing circumstances. Child Tax Credit supports families with children. Working Tax Credit provides support for working people on a low income. It tops up the earnings of workers on low to moderate incomes, targeting support to those in work at the lowest income levels.
- 7.2 Tax-Free Childcare is a scheme to help working parents with the cost of childcare needed for work. Parents open a childcare account for each of their children, deposit funds into it and the Government tops them up by £2 for every £8 deposited. The balance can then be spent on qualifying childcare. Qualifying childcare is childcare that is registered or approved by the relevant regulator.
- 7.3 Tax credits awards are calculated on the basis of claimants’ income. The rules for calculating income for tax credits generally mirror those for income tax, which means that claimants do not have to carry out a separate calculation of their income but can use figures calculated for tax purposes.
- 7.4 The Government announced at Autumn Budget 2017 that an income tax and NICs exemption will be introduced for certain allowances paid to armed forces personnel for renting or maintaining accommodation in the UK private market. Tax credits income rules generally follow those for income tax, and already take the same approach as income tax for a number of other armed forces payments. This instrument therefore excludes payments of armed forces accommodation allowance from the calculation of claimants’ income for tax credits purposes. As a result, claimants will not have to follow different rules for income tax and tax credits.
- 7.5 Under the Savings (Government Contributions) Act 2017 (c. 2), Help to Save account Government bonuses are exempt from income tax. Tax credits follow the same approach as income tax for payments of interest or bonuses into an Individual Savings Account, disregarding them as income. The policy aim is to maintain this consistency for the Help to Save Government bonus. This instrument therefore excludes the whole amount of the Government bonus paid in respect of a Help to Save Account for tax credits purposes. As a result, claimants will not have to follow different rules for

income tax and tax credits. Further, claimants will not be discouraged from using Help to Save accounts by the potential impact on their tax credits.

- 7.6 This instrument takes the opportunity to remove from tax credits legislation references to “Saving Gateway”. It was announced at Summer Budget 2010 that this would not be introduced, as it was not affordable given the need to reduce the deficit.
- 7.7 At Summer Budget 2015, it was announced that the Government will restrict the amount of income tax relief landlords receive on residential property finance costs to the basic rate of tax. The change has been introduced gradually from April 2017 over 4 years. This was legislated for in the Finance (No. 2) Act 2015 (c. 33), with further legislation in the Finance Act 2016 (c. 24).
- 7.8 Tax credits would normally follow the same approach as income tax when calculating property income. It does this by reference to Part 3 of the Income Tax (Trading and Other Income) Act 2005 (ITTOIA) (c. 5), which sets out how property income is calculated for income tax purposes. As a result, the changes to tax legislation that disallow deduction of property finance costs from income would also apply to all tax credits claimants when calculating their tax credits award, regardless of the rate of income tax they pay.
- 7.9 Previously the Government has legislated to prevent the restrictions from applying for the purposes of tax credits income calculation, through the Tax Credits (Definition and Calculation of Income) (Amendment) Regulations 2017 (2017/396). This ensured that tax credits claimants will not receive a lower award of tax credits as a result of how Part 3 of ITTOIA and Part 8 of the Income Tax Act 2007 (c. 3) now calculate taxable profits from property rental.
- 7.10 This instrument makes a further amendment to clarify that this is also the case where tax credits claimants receive property income through an estate rather than directly. This is where income is treated as arising under section 654, 655 or 656 of ITTOIA. This is to ensure consistency of treatment with those receiving such income directly.
- 7.11 The Scottish Government intends to introduce new Scottish welfare payments under the powers in the Scotland Act 2016. The fiscal framework agreement between the UK and Scottish Governments is that these payments will not result in a reduction in benefits paid by the UK Government, even if the payments are taxable¹. This instrument makes this the case for payments which may be introduced in the 2018-19 tax year: Carer’s Allowance Supplement, Best Start Grant, Funeral Expense Assistance and Discretionary Housing Payments.
- 7.12 The Claims Regulations 2002 include a reference to an office address which is no longer correct. This instrument removes that reference. HMRC’s guidance and forms make clear the correct address to which to send claims and notifications to HMRC².
- 7.13 This instrument makes changes to the Entitlement Regulations 2002 to reflect a recent Upper Tribunal decision³. This change extends the benefits used to determine whether someone is incapacitated for any of the elements of Working Tax Credit to those paid by European Economic Area (EEA) countries and Switzerland, which are

¹ <https://www.gov.uk/government/publications/the-agreement-between-the-scottish-government-and-the-united-kingdom-government-on-the-scottish-governments-fiscal-framework>

² For example <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/tax-credits-enquiries>

³ AS v Commissioners for Her Majesty's Revenue and Customs (TC) [2017] UKUT 361 (AAC)

substantially similar in character to a UK sickness or invalidity benefit. This is limited to families who are resident in the UK.

- 7.14 The Welsh Government, through the Regulation and Inspection of Social Care (Wales) Act 2016 (2016 anaw 2), has made some changes to the ways in which social care including domiciliary care is regulated in Wales. Domiciliary care is care provided in an individual's home. This instrument amends the Entitlement Regulations and the Childcare Regulations to reflect these changes. This ensures that the definition of childcare will include childcare provided by a person who is employed, or engaged under a contract for services, to provide care and support by the provider of a domiciliary care support service in Wales.

Consolidation

- 7.15 There are no plans to consolidate any of the Regulations which are amended by these Regulations.

8. Consultation outcome

- 8.1 No separate consultation exercise was conducted as this instrument makes consequential changes required in relation to changes elsewhere.
- 8.2 The Government consulted from 26 May 2016 to 21 July 2016 on Help to Save accounts, and received 31 written responses⁴. HMRC received a total of 7 written responses to the Help to Save technical consultation from 15 September to 27 October 2017, many of which addressed the policy itself⁵. Four responses were from representative bodies and three from members of the public. These did not raise the treatment of Government bonus payments for tax credits purposes.
- 8.3 The draft legislation on residential landlords' relief was published in July 2015 as part of the Summer Finance Bill. None of the responses received regarding that legislation related to tax credits.
- 8.4 The decision on the treatment of Scottish supplementary welfare payments for tax credits income purposes follows the agreement between the Scottish Government and the United Kingdom Government on the Scottish Government's fiscal framework. This followed from the cross-party Smith Commission which sought views from the public in October 2014, receiving 407 submissions from civic institutions, organisations and groups, and 18,381 from members of the public⁶.
- 8.5 The Welsh Government consulted on domiciliary care regulations from 18 January to 15 April 2016. The consultation received 108 responses from a range of stakeholder and interested parties⁷. Further consultation took place from 12 June to 7 July 2017, with 69 responses⁸. Responses did not raise tax credits or Tax-Free Childcare issues.

9. Guidance

- 9.1 Information relating to these changes to legislation will be incorporated into online guidance, leaflets, forms and manuals where appropriate on an ongoing basis. Internal guidance and standard operating procedures will also be updated.

⁴ <https://www.gov.uk/government/consultations/help-to-save-consultation-on-implementation>

⁵ <https://www.gov.uk/government/consultations/draft-legislation-help-to-save-accounts>

⁶ webarchive.nationalarchives.gov.uk/20150128165717/https://www.smith-commission.scot/resources/

⁷ beta.gov.wales/domiciliary-care-workforce

⁸ beta.gov.wales/phase-2-implementation-regulation-and-inspection-social-care-wales-act-2016

- 9.2 Guidance is provided for tax credits claimants online through the gov.uk website and through the tax credits helpline. Where claimants need more detail on how to calculate their income for tax credits purposes, they are referred to income tax guidance, which is also available on the gov.uk website.
- 9.3 HMRC will work with the Scottish Government to provide guidance to those receiving Scottish supplementary welfare payments and with the Ministry of Defence on armed forces accommodation allowance on how these are treated for tax credits purposes as these are introduced.

10. Impact

- 10.1 The provisions relating to Welsh domiciliary care will ensure that those claiming the childcare element of Working Tax Credit can continue to receive that element to pay for childcare provided by appropriate businesses, charities and voluntary organisations.
- 10.2 There is no impact on business, charities or voluntary bodies from the other measures.
- 10.3 There is no impact on the public sector.
- 10.4 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 The provisions relating to Welsh domiciliary care will ensure that those claiming the childcare element of Working Tax Credit can continue to receive that element to pay for childcare provided by appropriate small businesses.
- 11.3 There is no impact on small business from the remaining measures.

12. Monitoring & review

- 12.1 The changes made by this instrument are consequential changes rather than policy changes, and so will not be monitored further.
- 12.2 HMRC will monitor its provisions relating to armed forces accommodation allowance through information collected from the Ministry of Defence and kept under review through regular communication with affected groups.
- 12.3 HMRC will monitor the impact of the Help to Save scheme on an ongoing basis using the information provided by National Savings and Investments as the account provider.
- 12.4 HMRC monitors awards of tax credits on an ongoing basis. This analysis is published at: <https://www.gov.uk/government/collections/personal-tax-credits-statistics>.

13. Contact

- 13.1 Martin Stribblehill at HMRC (telephone: 03000 526626 or email: benefitsandcreditspolicyinbox@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.