

EXPLANATORY MEMORANDUM TO

THE TAX CREDITS, CHILDCARE PAYMENTS AND CHILDCARE (EXTENDED ENTITLEMENT) (CORONAVIRUS AND MISCELLANEOUS AMENDMENTS) REGULATIONS 2020

2020 No. 1515

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 and the Secretary of State for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes changes to tax credits, Tax-Free Childcare (TFC) and 30 hours free childcare (30 hours) regulations. These include provisions to protect a claimant's entitlement to receive Working Tax Credit (WTC) and to allow workers to continue to receive WTC if they would otherwise have been engaged in remunerative work were it not for the impact of Covid-19.
- 2.2 Also included are provisions which provide for certain payments – for example, NHS Test and Trace Support Payments for England and any similar schemes introduced by Devolved Administrations (DA) – to be disregarded as income for tax credits purposes.
- 2.3 This instrument also ensures that parents whose income has been impacted by coronavirus and who are receiving payments from a coronavirus job support scheme implemented by Government remain eligible to both TFC and to 30 hours free childcare (30 hours) for three to four-year-old children of working parents.
- 2.4 This instrument ensures any payments made under the NHS Test and Trace Support Payment scheme; Best Start Foods and Mesh Complication payments introduced by the Scottish Government; as well as Covid Winter Grant payments and similar DA schemes are disregarded when calculating entitlement to tax credits.
- 2.5 This instrument ensures WTC claimants continue to satisfy entitlement conditions during periods of self-isolation.
- 2.6 This instrument also ensures furloughed and coronavirus-impacted workers have access to WTC during periods of absence from work due to childbirth, parental bereavement and adoption; and periods of time off work in connection with illness, incapacity or limited capability.
- 2.7 This instrument refines the definition of a coronavirus-impacted worker to provide when a person no longer is treated as a coronavirus-impacted worker. This is to ensure they have the same treatment, already in regulations for a furloughed worker, when the Coronavirus Job Retention Scheme (CJRS) ends or they have a permanent change.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument in relation to all amendments except those to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257) is the United Kingdom. The territorial extent of this instrument in relation to amendments to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 is England and Wales.

4.2 The territorial application of this instrument in relation to all amendments except those to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 is the United Kingdom. The territorial application of this instrument in relation to amendments to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 is England only.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 This instrument makes a number of changes to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) (“the Entitlement Regulations”); the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) (“the Income Regulations”); the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) (“the Childcare Regulations”); and the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (“the Early Years Regulations”).

6.2 Section 7 of the Tax Credits Act 2002 provides that entitlement to tax credits is dependent on relevant income.

6.3 Section 10 of the Tax Credits Act 2002 sets out that the entitlement of a person (a claimant) to WTC is dependent on them being engaged in qualifying remunerative work. Section 10(2) makes provision into what is, or is not, qualifying remunerative work.

6.4 The CJRS is established under Directions given by the Chancellor of the Exchequer under section 76 of the Coronavirus Act 2020.

6.5 Section 9 of the Childcare Payments Act 2014 sets out that being in qualifying paid work is an eligibility criterion of Tax-Free Childcare. Section 9(2) makes provision into what is, or is not, qualifying paid work.

- 6.6 Section 1(1) of the Childcare Act 2016 requires the Secretary of State for Education to make free childcare available to qualifying children of working parents in England. Section 1(2) defines qualifying children of working parents. Section 1(2)(d) allows conditions to be applied to the parents of those children. Section 1(3) allows that the conditions may relate to the paid work the parents undertake. Section 1(4)(d)(ii) makes provision into the conditions placed on parents.

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. WTC 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 credits awards are calculated based on claimants' income. The rules for calculating income for tax credits generally mirror those for income tax.
- 7.3 This instrument includes changes to disregard the following payments: Test and Trace Support Payment scheme in England and equivalent DA scheme payments; Scottish Best Start Foods payments; Scottish Government Mesh Fund payments; and Covid Winter Grant Payments scheme in England and any DA equivalent schemes.
- 7.4 To be eligible for WTC a claimant needs to meet the hours eligibility rules for their circumstances. HMRC establishes 'normal' hours worked by checking the claimant's hours over a representative period. This instrument provides that if a person is self-isolating then that period of time is to be disregarded for the representative period when establishing normal working hours. This will ensure claimants who are required to self-isolate and not able to work their required hours are treated as though they are working their normal hours.
- 7.5 In response to the coronavirus pandemic the government legislated that, for the period of the CJRS and a further eight weeks, WTC claimants would continue to be treated as being in qualifying remunerative work despite not working their normal hours due to the effects of the pandemic.
- 7.6 These regulations further extend the definition of a coronavirus-impacted worker to ensure that claimants who are absent from work, due to childbirth; parental bereavement and adoption; and periods of time off work in connection with illness can continue to be treated as working their normal hours for the purposes of WTC.
- 7.7 These regulations further extend the definition of a coronavirus-impacted worker to ensure that those who have been absent from work due to childbirth, parental bereavement and adoption; and periods of time off work in connection with illness, and are available to return to work but cannot work any or all of their normal hours due to the coronavirus pandemic, can continue to be treated as working their normal hours for the purposes of WTC.
- 7.8 Regulation changes have been made to extend the definition of a coronavirus-impacted worker to ensure that claimants have access to the WTC hours easements in instances where furloughed claimants have ceased to be furloughed because they have lost or ended their furloughed job; or have found a new job but immediately prior to starting their new job their new working hours are temporarily reduced due to the coronavirus pandemic.

- 7.9 A WTC claimant who no longer meets the eligibility criteria for WTC hours rules is treated as being engaged in qualifying remunerative work for a period of 4 weeks.
- 7.10 This instrument ensures furloughed and coronavirus-impacted workers who have a permanent change which means they no longer meet the eligibility criteria for WTC hours rules have access to a period of 4 weeks.
- 7.11 This instrument puts beyond doubt when furloughed and coronavirus-impacted workers should have an additional 8 weeks to re-establish their normal working hours once the CJRS ends.
- 7.12 Where a claimant remains a furloughed worker or a coronavirus-impacted worker until the cessation of the CJRS, claimants will have a period of time (8 weeks after the cessation of the CJRS) to return to working sufficient hours to satisfy the eligibility criteria. Furloughed and coronavirus-impacted workers who have a permanent change before the CJRS ends do not have access to the additional 8 weeks.
- 7.13 Coronavirus-impacted workers and furloughed workers are defined separately in regulations but have the same benefits of the WTC easements, the only difference being those who were coronavirus-impacted workers are permitted to continue as such until the end of CJRS. This instrument refines the definition of a coronavirus-impacted worker to ensure that both furloughed and coronavirus-impacted workers who have a permanent change in their hours are treated the same.
- 7.14 This instrument ensures any coronavirus payments or schemes which continue to be paid beyond or are established after 2020-2021 are appropriately accounted for, and any coronavirus support payments made in 2021-2022 are included as income for the purposes of calculating tax credits entitlement where the government has not legislated for them to be disregarded.
- 7.15 TFC and 30 hours are work incentive schemes aimed at allowing parents to work or work more by helping with the associated childcare needs. At the start of the coronavirus crisis the government decided to give affected parents certainty and the ability to return to work as soon as possible by allowing them to remain eligible when their work income had dropped below the standard limits due to the crisis. This was by concession rather than legislation and was agreed by the Commissioners for HMRC and the Secretary of State for Education. That concession was extended to the end of October 2020.
- 7.16 On 26 October 2020 the Secretary of State for Education and the Chief Secretary to the Treasury announced that parents who would normally be considered to be in qualifying paid work, but were not earning the required income due to coronavirus, and are benefiting from any government coronavirus job support scheme would be treated as meeting the ‘in work’ eligibility criterion for TFC and 30 hours. This instrument amends the Childcare Regulations and the Early Years Regulations to this end. This will allow those parents to remain eligible to TFC and 30 hours.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

- 9.1 There are no plans to consolidate any of the regulations which are amended by this instrument.

10. Consultation outcome

- 10.1 The Social Security Advisory Committee (SSAC) has been consulted on this instrument. Other than seeking clarity on some technical points, it expressed no concerns about any of the provisions that are included in it. SSAC is an independent statutory body sponsored by the Department for Work and Pensions that provides impartial advice on social security and tax credits-related matters. Under a memorandum of understanding with HMRC, it scrutinises secondary legislation that underpins the tax credits scheme.

11. Guidance

- 11.1 Information relating to these changes to legislation will be incorporated into leaflets, forms and manuals where appropriate and regular review will take place. Internal guidance and standard operating procedures will also be updated.
- 11.2 Guidance is provided for tax credits claimants on 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.
- 11.3 Guidance for parents applying for TFC or 30 hours via the Childcare Service online portal is also provided on the GOV.UK website and further help is available on helplines.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies.
- 12.2 There is no significant impact on the public sector.
- 12.3 All changes made by this instrument relate to individuals and the majority of the changes are to maintain the current state of tax credits.
- 12.4 An Impact Assessment has not been prepared for this instrument as no significant impact on the private or voluntary sectors is foreseen.

13. Regulating small business

- 13.1 The legislation does not apply to the regulating of activities that are undertaken by small businesses.

14. Monitoring & review

- 14.1 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>.
- 14.2 The changes to TFC and 30 hours are linked to coronavirus job support schemes and will fall away when they end. HMRC will monitor the number of parents relying on the changes as the crisis continues.
- 14.3 The regulation does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Mick Ney at HMRC (telephone: 03000572124 or email: Mick.Ney@hmrc.gov.uk) can answer any queries regarding the instrument.
- 15.2 James Dunstan, Deputy Director for Tax Credits and Child Benefit Policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Steve Barclay MP, the Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.