

**2020 No. 297**

**TAX CREDITS**

**SOCIAL SECURITY**

**CHILDCARE**

**PAYMENT SCHEME**

**The Tax Credits, Child Benefit, Guardian's Allowance and  
Childcare Payments (Miscellaneous Amendments) Regulations  
2020**

|                               |         |                        |
|-------------------------------|---------|------------------------|
| <i>Made</i>                   | - - - - | <i>12th March 2020</i> |
| <i>Laid before Parliament</i> |         | <i>16th March 2020</i> |
| <i>Coming into force</i>      | - -     | <i>6th April 2020</i>  |

The Treasury, in exercise of the powers conferred by sections 7(8), 8(4)(b), 9(6), 12(4)(a) and 65(1) and (7) of the Tax Credits Act 2002(a), sections 77(3) and (8)(b), 142(2)(b) and 175(1) and (3) of the Social Security Contributions and Benefits Act 1992(b) and sections 77(3) and (8)(b), 138(2)(b) and 171(1) and (3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(c), now exercisable by them(d), and sections 14 and 69(2) and (4) of the Childcare

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- (a) 2002 c. 21. Section 9 was amended by the Welfare Reform and Work Act 2016 (c. 7). Section 67 defines “prescribed” as meaning “prescribed by regulations”. Section 67 has been amended, but the amendment is not relevant for the purposes of this instrument. Part 1 (but not Schedule 1 or 3 to that Part) of the Tax Credits Act 2002 was repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) from a day to be appointed. Article 2 of S.I. 2019/167 appointed the day for the coming into force of section 33(1)(f) of the Welfare Reform Act 2012 and the repeal of Part 1 of the Tax Credits Act 2002 as 1st February 2019, save for the cases referred to in Article 3 of that instrument.
- (b) 1992 c. 4. Section 77 was amended by paragraph 4 of Schedule 1 to the Child Benefit Act 2005 (c. 6). Section 142 was substituted by section 1(2) of the Child Benefit Act 2005. Section 122 defines “prescribe” for the purposes of Parts 1 to 6 as meaning “prescribe by regulations”; section 147(1) defines “prescribed” for the purposes of Part 9 as meaning “prescribed by regulations”. Section 175 was amended by paragraph 29(2) of Schedule 3 to the Social Security Contributions (Transfer of Functions etc.) Act 1999 (c. 2).
- (c) 1992 c. 7. Section 77 was amended by paragraph 30 of Schedule 1 to the Child Benefit Act 2005. Section 138 was substituted by section 2(2) of the Child Benefit Act 2005. Section 121 defines “prescribe” for the purposes of Parts 1 to 6 as meaning “prescribe by regulations” and section 143(1) defines “prescribed” for the purposes of Part 9 as meaning “prescribed by regulations”. Section 171(1) was amended by paragraph 5 of Schedule 4 to the Tax Credits Act 2002.
- (d) The powers under the Social Security Contributions and Benefits Act 1992 and the Social Security Contributions and Benefits (Northern Ireland) Act 1992 for which the Secretary of State and the Northern Ireland Department were responsible were transferred to the Commissioners of Inland Revenue by section 50 of the Tax Credits Act 2002 (c. 21). These powers, and the payment and management of tax credits, were transferred from the Commissioners of Inland Revenue to the Commissioners for Revenue and Customs by section 5(1) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Paragraph 88 of Schedule 4 to the Commissioners for Revenue and Customs Act 2005 amends section 2 of the Tax Credits Act 2002 so that the Commissioners for Her Majesty’s Revenue and Customs have the power to make these Regulations. Section 50(1) of the Commissioners for Revenue and Customs Act 2005 provides that, in so far as appropriate in consequence of section 5, a reference, howsoever expressed to the Commissioners of Inland Revenue is to be taken as a reference to the Commissioners for Her Majesty’s Revenue and Customs.

Payments Act 2014(a), make regulations 1, 2, 3, 4, 6, 7 and 9 and the Commissioners for Her Majesty's Revenue and Customs, in exercise of the powers conferred by sections 6 and 65(2) and (7) of the Tax Credits Act 2002 and sections 2(3)(a), 24(1) and (4), 62 and 69(3) and (4) of the Childcare Payments Act 2014, make regulations 1, 5 and 8.

### **Citation and commencement**

1. These Regulations may be cited as the Tax Credits, Child Benefit, Guardian's Allowance and Childcare Payments (Miscellaneous Amendments) Regulations 2020 and come into force on 6th April 2020.

### **Amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002**

2.—(1) The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(b) are amended as follows.

(2) In regulation 14(4)(a) (child care element) after “is payable” insert “under section 71 of the Contributions and Benefits Act(c) or section 31 of the Social Security (Scotland) Act 2018(d)”.

### **Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002**

3.—(1) The Tax Credits (Definition and Calculation of Income) Regulations 2002(e) are amended as follows.

(2) In regulation 19 (general disregards in the calculation of income)—

(a) in paragraph (2) at the appropriate place insert—

““Scottish Ministers” has the meaning given by section 44(2) of the Scotland Act 1998(f);”, and

(b) in Table 6 (sums disregarded in the calculation of income)—

(i) in item 19(g) omit the text from “in this item” to the end of the item, and

(ii) after item 24(h) insert—

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“25. Any payment made, in accordance with arrangements made by the Scottish Ministers, to a person to whom an offer of employment has been made, in order to assist that person to retain employment, if—

(a) that person—

(i) was, at the date on which the offer of employment was made, at least 16 years of age but had not reached 25 years of age;

(ii) had not been in employment at any time in the period of 6 months before the date on which that offer was made; and

(iii) applies to the Scottish Ministers for assistance under arrangements made under section 2 of the Employment and Training Act 1973(i), within the period of one year beginning with the date on which that offer was made; or

(b) that person—

(i) was, at the date on which the offer of employment was made, aged at least 16 years of age but had not reached 26 years of age;

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(a) 2014 c. 28.

(b) S.I. 2002/2005 (“the principal Regulations”) to which there are amendments not relevant to these Regulations.

(c) “the Contributions and Benefits Act” is defined in regulation 2(1) of the principal Regulations.

(d) 2018 asp. 9.

(e) S.I. 2002/2006; relevant amending instruments are S.I. 2018/365 and 2019/364.

(f) 1998 c. 46. Section 44 has been amended by section 12 of the Scotland Act 2012 (c. 11).

(g) Item 19 was inserted by regulation 2 of S.I. 2018/365.

(h) Item 24 was inserted by regulation 3 of S.I. 2019/364.

(i) 1973 c. 50. Section 2 was substituted by section 25(1) of the Employment Act 1988 (c. 19). Subsection (3A) was subsequently inserted by section 47(1) of the Trade Union Reforms and Employment Rights Act 1993 (c. 19) and subsections (4) and (6) were substituted by section 25(1) of the Employment Act but repealed by the Employment Act 1989 (c. 38).

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(ii) had been looked after by a local authority on or after that person's 16th birthday but was at the date that the offer of employment was made no longer looked after by a local authority; and  
(iii) applies to the Scottish Ministers for assistance under arrangements made under section 2 of the Employment and Training Act 1973 within the period of one year beginning with the date on which that offer was made.

In this item "looked after by a local authority" has the same meaning as in regulation 2 (interpretation) of the Child Tax Credit Regulations 2002(a).

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26. Any payment of disability assistance under section 31 of the Social Security (Scotland) Act 2018.

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27. Any payment made in accordance with arrangements made by the Scottish Ministers for, or in connection with, the abuse or neglect of a person whilst that person was a child who was under the care or responsibility of a body, society or organisation in Scotland.

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28. Any payment made by the Scottish Ministers in accordance with regulations made under section 79 of the Social Security (Scotland) Act 2018 to a person in respect of a child for whom that person is responsible.

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29. Any payment of young carer grant made under the Carer's Assistance (Young Carers Grant) (Scotland) Regulations 2019(b).

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30. Any payment in respect of short-term assistance given in accordance with section 36 of the Social Security (Scotland) Act 2018.

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31. Any payment of winter heating assistance given in accordance with section 30 of the Social Security (Scotland) Act 2018.

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32. Any payment made by the National Emergencies Trust (a registered charity established on 28th March 2019 with registered charity number: 1182809).

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33. Any payment made under a scheme established by the Secretary of State in accordance with section 10 of the Northern Ireland (Executive Formation etc) Act 2019(c)."

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#### **Amendment of the Child Tax Credit Regulations 2002**

4.—(1) The Child Tax Credit Regulations 2002(d) are amended as follows.

(2) In regulation 5 (maximum age and prescribed conditions for a qualifying young person)(e)—

(a) in paragraph (5)(b) after "the Board(f)," insert—

"or,

(c) where that person begins to receive that education after attaining the age of 16, elsewhere, if approved by the Board, provided that—

(i) that person has received a statement of special educational needs, and

(ii) that programme of education has been assessed by a local authority as being suitable for that person's special needs," and

(b) after paragraph (7) insert—

"(8) In this regulation "a statement of special educational needs" means a statement, plan or assessment made by a local authority, which identifies and assesses the special educational needs of a person and specifies the special educational provision required by that person."

(3) In regulation 8 (prescribed conditions for a disabled or severely disabled child or

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(a) 2002/2007. The definition of "looked after by a local authority" has been amended by regulation 4 of S.I. 2016/360.

(b) S.S.I. 2019/324.

(c) 2019 c. 22.

(d) S.I. 2002/2007, relevant amending instruments are S.I. 2003/738, 2006/222, 2007/2151, 2008/2169, 2013/388, 2013/591 and 2014/2924.

(e) Regulation 5(5) has been amended by regulation 5 of S.I. 2003/738, regulation 4 of S.I. 2007/2151, regulation 10 of S.I. 2008/2169 and regulation 3 of S.I. 2014/2924.

(f) "The Board" is defined in regulation 2 as being "the Commissioners for Her Majesty's Revenue and Customs". This definition was inserted by regulation 3 of S.I. 2003/738 and amended by regulation 3 of S.I. 2006/222.

qualifying young person)(a)—

- (a) in paragraph (1)(b) for “paragraph (3), (4) or (5)” substitute “paragraph (3), (4), (5) or (6)”;
- (b) in paragraph (2)—
  - (i) at the end of sub-paragraph (d) for the full stop substitute “, or”, and
  - (ii) after sub-paragraph (d) insert—

“(e) a payment of disability assistance is payable by the Scottish Ministers under section 31 of the Social Security (Scotland) Act 2018(b).”, and
- (c) after paragraph (5) insert—

“(6) A person satisfies the requirements of this paragraph if disability assistance under section 31 of the Social Security (Scotland) Act 2018 is payable at the higher rate in respect of that person.

(7) In this regulation “Scottish Ministers” has the meaning given by section 44(2) of the Scotland Act 1998.”.

### **Amendment of the Tax Credits (Claims and Notifications) Regulations 2002**

**5.**—(1) The Tax Credits (Claims and Notifications) Regulations 2002(c) are amended as follows.

(2) In regulation 26A (date of notification – disability element and severe disability element of child tax credit)(d)—

- (a) in paragraph (2)
  - (i) in sub-paragraph (a) for “or the severe disability element of child tax credit (or both of those elements)” to the end of the sub-paragraph substitute “of that tax credit in favour of a person or persons, in respect of a child where that child is disabled or severely disabled.”, and
  - (ii) in sub-paragraph (b) for “disability living allowance” substitute “disability benefit”,
- (b) in paragraph (3) for “disability living allowance” in both places that it occurs substitute “disability benefit”,
- (c) after paragraph (3) insert—

“(4) In this regulation “disability benefit” means a disability living allowance under section 71 of the Social Security Contributions and Benefits Act 1992(e) or disability assistance under section 31 of the Social Security (Scotland) Act 2018.”, and
- (d) as a consequence, for the title of the regulation substitute “Date of notification - disability element where child is disabled or severely disabled”.

### **Amendment of the Child Benefit (General) Regulations 2006**

**6.**—(1) The Child Benefit (General) Regulations 2006(f) are amended as follows.

(2) In regulation 3 (education and training condition)(g)—

- (a) for paragraph (3) substitute—

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(a) Regulation 8 has been amended by regulation 30 of S.I. 2013/388 and paragraph 26 of the Schedule to S.I. 2013/591 which inserted paragraph (5).

(b) 2018 asp. 9.

(c) S.I. 2002/2014, relevant amending instruments are S.I. 2004/762, 2009/697, 2012/848, 2013/388, 2013/591 and 2015/669.

(d) Regulation 26A was inserted by regulation 3 of S.I. 2004/762 and subsequently substituted by regulation 11 of S.I. 2009/697. It has been subsequently amended by regulation 5 of S.I. 2012/848, paragraph 27 of the Schedule to S.I. 2013/591, paragraph 31 of the Schedule to S.I. 2013/388 and regulation 4 of S.I. 2015/669.

(e) 1992 c. 4.

(f) S.I. 2006/223, relevant amending instruments are S.I. 2007/2150, 2014/1231 and 2014/2924.

(g) Regulation 3 has been amended by regulation 4 of S.I. 2007/2150, regulation 2 of S.I. 2014/1231 and regulation 2 of S.I. 2014/2924.

“(3) A person (P) is not a qualifying young person by virtue of paragraph (2)(a)(ii) unless either—

- (a) P was receiving the education referred to in that paragraph as a child, or
- (b) P begins to receive that education after attaining the age of sixteen where—
  - (i) P has received a statement of special educational needs; and
  - (ii) the local authority has assessed the programme of home education as being suitable for P’s special needs.”, and

(b) after paragraph (4) insert—

“(5) In this regulation “a statement of special educational needs” means a statement, plan or assessment made by a local authority, which identifies and assesses the special educational needs of a person and specifies the special educational provision required by that person.”.

### **Amendment of the Guardian’s Allowance (General) Regulations 2003**

7.—(1) The Guardian’s Allowance (General) Regulations 2003(a) are amended as follows.

(2) In regulation 7(1)(a) (circumstances in which a person is treated as being in prison)(b) for “with not less than 2 years remaining from the death of the other parent” substitute “of at least 2 years and the other parent is deceased”.

(3) In regulation 9(1)(a) (residence condition) after “United Kingdom” insert “an EEA state or Switzerland”(c).

### **Amendment of the Childcare Payments Regulations 2015**

8.—(1) The Childcare Payments Regulations 2015(d) are amended as follows.

(2) In regulation 3 (qualifying childcare: registered or approved childcare)(e)—

(a) in paragraph (3)(f) for “section 12(5) of the Tax Credit Act 2002” substitute—  
“either—

- (i) section 12(5) of the Tax Credit Act 2002(f); or
- (ii) section 60 of the Government of Wales Act 2006(g)”, and

(b) in paragraph (5)—

- (i) at the end of sub-paragraph (c) but before the full stop insert “; or”, and
- (ii) after sub-paragraph (c) insert—

“(d) by a childcare provider approved by a Health and Social Care Trust in Northern Ireland for the purposes of providing approved home childcare.”.

(3) In regulation 17 (compensatory payments)—

- (a) in paragraph (1) after “(3)” for “and (3A)(h)” substitute “, (3A) and (3B)”,
- (b) in paragraph (3A) after “failure” insert “or a design flaw”,
- (c) after paragraph (3A) insert—

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(a) S.I. 2003/495, to which there are amendments not relevant to these Regulations.  
(b) Regulation 7 has been amended by paragraph 42 of the Schedule to S.I. 2005/445 and paragraph 24 of Schedule 2 to S.I. 2005/2078.  
(c) Schedule 1 to the Interpretation Act 1978 (c. 30) defines “EEA state”.  
(d) S.I. 2015/522, relevant amending instruments are S.I. 2016/796, 2017/1096, 2018/365 and 2019/364.  
(e) Regulation 3 has been amended by regulation 5 of S.I. 2018/365 and regulation 12 of S.I. 2019/364.  
(f) 2002 c. 21.  
(g) 2006 c. 32.  
(h) Paragraph (3A) of regulation 17 was inserted by regulation 7 of S.I. 2016/796 and subsequently substituted by regulation 4 of S.I. 2017/1096.

“(3B) The circumstances specified in this paragraph are that a person’s childcare account for a child (“C”) is made subject to an account restriction order where—

- (a) another person (B) wants to apply for, or make a declaration of eligibility for, 30 hours free childcare in respect of C under section 1 of the Childcare Act 2016(a); and
- (b) B does not want to hold a childcare account for C in circumstances where holding that childcare account would prevent B from receiving tax credits in respect of C.”, and

(d) in paragraph (4)(a) after “(3)” for “or (3A)” substitute “, (3A) or (3B)”.

(4) In regulation 18 (account restriction orders)(b)—

- (a) in paragraph (1)(a) after “(3)” insert “, (3A)”, and
- (b) after paragraph (3) insert—

“(3A) The condition specified in this paragraph is that—

- (a) a person (P) wants to apply for, or to make a declaration for, 30 hours free childcare in respect of a child (“C”) under section 1 of the Childcare Act 2016; and
- (b) P is prevented from receiving 30 hours free childcare because another person holds an active childcare account in respect of C.”.

#### **Amendment of the Childcare Payments (Eligibility) Regulations 2015**

9.—(1) The Childcare Payments (Eligibility) Regulations 2015(c) are amended as follows.

(2) In regulation 2 (interpretation) for the definition of “disability living allowance” substitute—

““disability living allowance” means either—

- (a) disability living allowance under sections 71 to 76 of the Social Security Contributions and Benefits Act 1992 or sections 71 to 76 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(d); or
- (b) disability assistance under section 31 of the Social Security (Scotland) Act 2018.”.

*David Rutley*  
*Rebecca Harris*  
*Penny Ciniewicz*  
*Melissa Tatton*

12th March 2020

Two of the Lords Commissioners of Her Majesty’s Treasury

12th March 2020

Two of the Commissioners for Her Majesty’s Revenue and Customs

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend a number of statutory instruments in relation to the social security benefits administered by Her Majesty’s Commissioners for Revenue and Customs (tax credits, child benefit and guardian’s allowance) and childcare payments which are also administered by Her Majesty’s Commissioners for Revenue and Customs.

Regulation 1 provides for citation and commencement.

Regulation 2 makes a consequential amendment to regulation 14 of the Working Tax Credits (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) to reflect the introduction of disability assistance in Scotland by the Social Security (Scotland) Act 2018 (2018 asp. 9).

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(a) 2016 c. 5.

(b) Regulation 18 has been amended by regulation 8 of S.I. 2016/796.

(c) S.I. 2015/448 to which there are amendments not relevant to this instrument.

(d) 1992 c. 7.

Regulation 3 amends Table 6 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006). This Table specifies sums that are to be disregarded in the calculation of income for the purposes of tax credits. Regulation 3 inserts a number of new items into the Table, including new benefits or payments paid by the Scottish Government.

Regulation 4 makes two amendments to the Child Tax Credit Regulations 2002 (S.I. 2002/2007). It amends the definition of “qualifying young person” in regulation 5 of those Regulations to include a young person who commences home education over the age of 16, providing that that person has received a statement of special education needs and the local authority has assessed a programme of home education as being suitable for that person’s needs. Regulation 6 makes an identical amendment to regulation 3 of the Child Benefit (General) Regulations 2006 (S.I. 2006/223).

Regulation 4 also amends regulation 8 to reflect the introduction of disability assistance in Scotland. Regulation 8 prescribes the conditions as to when a child or qualifying young person will be treated as disabled or severely disabled for the purposes of section 9 of the Tax Credits Act 2002 (c. 21).

Regulation 5 makes two consequential amendments to regulation 26A of the Tax Credits (Claims and Notification) Regulations 2002 (S.I. 2002/2014). The first amendment reflects changes to child tax credit that were introduced by the Welfare Reform and Work Act 2016 (c. 7). As a consequence of the Welfare Reform and Work Act 2016 only one disability element is payable with the amount of the element varying due to the severity of the disability. The second amendment reflects the introduction of disability assistance in Scotland.

Regulation 7 makes two amendments to the Guardian’s Allowance (General) Regulations 2003 (the principal Regulations) (S.I. 2003/495). Regulation 7(2) amends regulation 7 of the principal Regulations so that where a parent is serving a custodial sentence of at least two years and the other parent of the child is deceased, the parent who is serving a prison term will be treated as “being in prison” for the purposes of guardian’s allowance irrespective of whether the sentence was handed down before or after the death of the deceased parent. Regulation 7(3) amends regulation 9 of the principal Regulations so that a person is not prohibited from claiming guardian’s allowance in respect of children whose deceased parents were born in the European Economic Area or in Switzerland.

Regulation 8 amends the Childcare Payments Regulations 2015 (“the principal Regulations”) (S.I. 2015/522). Regulation 8(2) updates the definition of “regulated or approved childcare” in regulation 3 to reflect changes to regulatory schemes in Wales and Northern Ireland for nannies and other home childcare providers.

Regulation 8(3) amends regulation 17 of the principal Regulations to extend the circumstances in which a compensatory payment under section 62 of the Childcare Payments Act 2014 (c. 28) can be made to a person who cannot receive a top-up payment.

Regulation 8(4) amends regulation 18 of the principal Regulations by inserting new paragraph (3A) which sets out a new condition which, if met, permits the Commissioners for Her Majesty’s Revenue and Customs to make an account restriction order. The condition is that a person (P) wishes to apply for a code for 30 hours free childcare but cannot do so as another person (A) already holds a childcare account for that child. Regulation 11 of the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257) provides that where there is an active childcare account under section 17(3) of the Childcare Payments Act 2014, a code for 30 hours free childcare can only be held by the person who holds the childcare account.

Regulation 9 amends the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448) to update the definition of “disability living allowance” to reflect the introduction of disability assistance in Scotland.

A full impact statement has not been produced for regulations 2 to 7 because no impact on the private or voluntary sectors is foreseen. In relation to regulations 8 and 9 a full impact assessment

of the effect that the childcare payments scheme will have on the costs of business and the voluntary sector was published on 10 June 2014 alongside the draft Childcare Payments Bill and was updated on 20th November 2014 and again on 30 March 2017. These are available from the gov.uk website at <https://www.gov.uk/government/publications/tax-free-childcare-impact-assessment-march-2017>.

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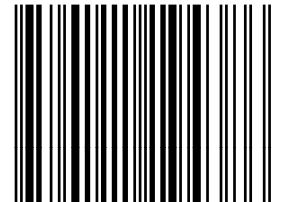
Printed and published in the UK by The Stationery Office Limited under the authority and superintendence of Jeff James, Controller of Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.

£6.90

UK202003131022 03/2020 19585

<http://www.legislation.gov.uk/id/uksi/2020/297>

ISBN 978-0-11-119438-6



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