EXPLANATORY MEMORANDUM TO

THE TAX CREDITS, CHILD BENEFIT, GUARDIAN'S ALLOWANCE AND CHILDCARE PAYMENT SCHEME (MISCELLANEOUS AMENDMENTS) REGULATIONS 2020

2020 No. 297

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 is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes a number of amendments to tax credits, Child Benefit, Guardian's Allowance and Childcare Payments regulations. These include amendments to give effect to the Fiscal Framework Agreement with Scotland that any new benefits or discretionary payments do not result in United Kingdom benefits being reduced. Also included are provisions which provide for certain payments, for example payments made by the National Emergencies Trust, to be disregarded as income for tax credits purposes.

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 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 is the United Kingdom.

4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

5.1 As the instrument is subject to the 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 Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) ("the Income Regulations"); the Child Tax Credit Regulations 2002 (S.I. 2002/2007); the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) ("the Claims

Regulations"); the Child Benefit (General) Regulations 2006 (S.I. 2006/223) ("the Child Benefit Regulations"); the Guardian's Allowance (General) Regulations 2003 (S.I. 2003/495); the Childcare Payments Regulations 2015 (S.I. 2015/522) and the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448).

6.2 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 set out how a claimant's relevant income is to be calculated.

6.3 Section 12 of the Tax Credits Act 2002 (c.21) sets out that the maximum rate at which a person (a claimant) to Working Tax Credit may involve the inclusion in prescribed circumstances of the childcare element. Section 12(4) defines "child care" as being care provided for a child of a prescribed description

6.4 Section 9 of the Tax Credits Act 2002 (c.21) sets out that the maximum rate a person may be entitled to tax credits is determined in a prescribed manner. Regulation 8 of the Child Tax Credit Regulations 2002 defines where a child or a qualifying young person is disabled or severely disabled the prescribed manner of determination must include an element for that child.

6.5 Section 142(2)(b) of the Social Security Contributions and Benefits Act 1992 (c.4) and section 138(2)(b) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 (c.7) set out that a qualifying young person (QYP) means a person who is older than 16 and satisfies the prescribed conditions. Regulation 3 of the Child Benefit (General) Regulations 2006 prescribe when education and training conditions are met for a QYP.

6.6 Section 77 of the Social Security Contributions and Benefits Act 1992 (c.4) sets out the circumstances in which a person is entitled to Guardian's Allowance. Section 77(2) states that there is no entitlement to Guardian's Allowance in respect of a child unless (a) both of the child's parents are dead; or (b) one of the child's parents are dead and reasonable efforts to find the other parent are unsuccessful; or (c) one of the child's parents is dead and the other is in prison. Section 77(3) states that there is no entitlement to Guardian's Allowance in respect of a child unless at least one of the child's parents satisfies, or immediately before his death satisfied prescribed conditions such as nationality, residence, place of birth. Section 77(8)(b) gives the Treasury the power to prescribe the circumstances when a person is treated as being in prison.

6.7 Section 2(3)(a) of Childcare Payments Act 2014 (c.28) (CPA) allows for a detailed definition of what is to be considered as registered or approved childcare. Section 14(1) CPA requires regulations to be made specifying what is a qualifying child. Section 24(1) CPA allows regulations imposing restrictions on childcare accounts. Section 62(1) CPA allows regulations specifying circumstances in which persons deprived of the opportunity to receive top-up payments are entitled to compensatory payments.

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 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.

7.3 Under the Fiscal Framework Agreement between the Scottish Government and the United Kingdom (UK) Government we are disregarding a number of Scottish payments for tax credits. Disregarding payments made by the Scottish Government in the calculation of income for tax credits means that there is no reduction in the claimant's tax credits award.

7.4 The Scottish Government is introducing the Job Start Payment which supports individuals aged 16-24 (or 25 in some circumstances) to find work after a period of six months or more of unemployment.

7.5 The Scottish Government is introducing Disability Assistance for Children and Young People (DACYP). DACYP will replace the Child Disability Living Allowance and aims to support children, young people and families who are living with a disability. This instrument will also disregard proposed disability benefits the Scottish Government will introduce for working age and older people. In addition to disregarding these payments, this instrument makes consequential amendments to the definition of 'disabled' and 'severely disabled' in tax credits legislation so that claimants who receive disability assistance are entitled to the correct rate of the disability element of tax credits.

7.6 The Scottish Government is introducing a Scottish Child Payment which is payable to eligible parents at a rate of £10 per week per child.

7.7 The Young Carer's Grant is a one-off payment of £300 which can be applied for annually by young carers aged 16-18 and not in receipt of Carers Allowance.

7.8 Payments known as "Future Pathways Payments" although not covered by the Fiscal Framework Agreement, will be disregarded for tax credits. Future Pathways Payments provide support to adult survivors of child abuse whilst they were under the care or responsibility of a body, society or organisation such as a hospital, school or residential home. There is a discretionary element that enables Future Pathways Payments to address survivors' individual needs for example the purchase of a laptop for university.

7.9 Short Term Assistance (STA) will be made available to individuals in Scotland who seek to challenge a decision made by the Scottish Government to reduce or stop a continuing payment such as disability or carer's assistance. STA will be available to an individual until the First-tier tribunal has made a determination.

7.10 Winter Heating Assistance is a one-off payment of £200 to families of severely disabled children and is payable to those in receipt of the Department for Work and Pension's higher rate of Disability Living Allowance or DACYP.

7.11 This instrument legislates to disregard payments made under section 10 of the Northern Ireland (Executive Formation etc) Act 2019 (c.22) to or in respect of a person who has sustained an injury as a result of a Troubles-related incident.

7.12 The National Emergencies Trust was launched in November 2019 to provide financial gifts to people who apply for them following national emergencies or tragedies. These payments will be disregarded for tax credits.

7.13 This instrument makes consequential amendments to reflect changes to Child Tax Credit that were introduced by the Welfare Reform and Work Act 2016 (c.7). The changes meant that instead of paying two separate disability elements in respect of a disabled claimant, there would only be one element, but the amount of the element would vary dependent on the severity of the disability of the child or qualifying young person. These changes were not captured in the definition of disability contained in one set of tax credits regulations.

7.14 Child Benefit is a payment made to parents or people with responsibility for children under 16, or under 20 if they remain in full-time approved education or training, in recognition of the costs of raising children.

7.15 This instrument makes amendments to regulations in line with an Upper Tribunal decision. The change means that where a young person with a disability starts home education after the age of 16, and that young person meets certain conditions, the parents or guardian of the young person can continue to receive Child Benefit and Child Tax Credit.

7.16 Guardian's Allowance (GA) is a payment made in addition to Child Benefit to a person with responsibility for a child where both parents have died, or in some circumstances where only one parent has died and the other is in prison.

7.17 This instrument makes two changes to the Guardian's Allowance (General) Regulations 2003 as a result of litigation. The first is in regard to a residence condition that excludes any claimant from entitlement unless at least one of the parents of the child (or young person) being claimed for was either born in the UK; or had in any two-year period since the age of 16 spent at least 52 weeks of that period in the UK. These regulations amend this treatment so as not to exclude claimants who claim GA for children whose parents are deceased but were born in the European Economic Area. The second GA amendment makes clearer circumstances in which a person is treated as being in prison. While GA is usually paid to a person looking after someone else's child where both parents are dead, GA can also be paid to someone looking after someone else's child where one parent is dead and the other is serving a custodial sentence of no less than two years. This instrument clarifies that where a person is serving a custodial sentence of at least two years they will be treated as being in prison for the purposes of GA, regardless of whether they were sentenced to that term before or after the date of death of the deceased parent.

7.18 The Childcare Payments Scheme, commonly known as Tax-Free Childcare (TFC), is for working families in the UK with children under 12 years old (17 if they are disabled) who pay childcare costs. The government will top up the money a claimant pays into a TFC account at the rate of £2 to every £8 deposited to a maximum of £2,000 per child per year (£4,000 for a disabled child).

7.19 This instrument makes three changes to definitions used in TFC legislation. First, regulation 9 updates the definition of disabled child in the Childcare Payments (Eligibility) Regulations 2015 to take the new DACYP into account. Second, regulation 8(2)(a) and third, regulation 8(2)(b) update the definition of regulated or approved childcare in the Childcare Payments Regulations 2015 to reflect changes to regulatory schemes in Wales and Northern Ireland for nannies and other home childcare providers.

7.20 Regulation 8 of this instrument makes amendments to regulation 17 and regulation 18 of the Childcare Payments Regulations 2015. First, it adds a circumstance in which payment can be made to a person who is prevented from opening a childcare account due to an operational design flaw in the system. Second it also makes changes to how estranged parents who are unable to agree on access to Tax-Free Childcare will be treated. These changes are made alongside changes to the Childcare (Early Years Provision Free of Charge) (Extended Entitlement) Regulations 2016 (S.I. 2016/1257) which covers details of another government scheme – "30 hours free childcare". That scheme is run by the Department for Education but is administered by HMRC through the TFC online site. Together these instruments set out a process to identify which parent should have access to these government schemes. Amendments to regulation 17 and regulation 18 make these two further changes: the first of these allows for the other parent to get equivalent financial support in lieu of the suspended account; and the second means that where estranged ex-partners both want access to TFC or 30 hours, an account can be suspended to allow for the other parent to get support via the other scheme.

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 No separate consultation exercise was conducted as this instrument makes consequential changes required in relation to changes elsewhere. The Social Security Advisory Committee (an independent statutory body that provides impartial advice on social security and related matters) scrutinised the instrument in draft and no changes were required as a result of that scrutiny.

11. Guidance

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

11.2 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.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or 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, Child Benefit, Guardian's Allowance and Tax-Free Childcare.

12.4 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

13. Regulating small business

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

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that most changes made by this instrument are consequential changes rather than policy changes, and so will not be monitored further.

14.2 HMRC monitors awards of tax credits on an ongoing basis. This analysis is published at: www.gov.uk/government/collections/personal-tax-credits-statistics

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 Rebecca Manders at HMRC (telephone: 03000 595504 or email: Rebecca.Manders@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 Chief Secretary to the Treasury, the Rt Hon Steve Barclay MP, can confirm that this Explanatory Memorandum meets the required standard.