

EXPLANATORY MEMORANDUM TO
THE TAX CREDITS (CORONAVIRUS, MISCELLANEOUS AMENDMENTS)
(NO. 2) REGULATIONS 2020

2020 No. 941

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.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 This instrument is to ensure that payments under the various coronavirus schemes and grants to support self-employed people are counted as income only once in calculating entitlement to tax credits.
- 2.2 This instrument also provides for payments made under the new Department for Health and Social Care (DHSC) self-isolation payment scheme to be disregarded in calculating entitlement to tax credits.
- 2.3 This instrument also removes the disregard of the NHS and Social Care Life Assurance Scheme payments. The Tax Credit (Coronavirus, Miscellaneous Amendments) Regulations 2020 (SI 2020/534) provided that payments under the NHS and Social Care Life Assurance Scheme were not counted as income for the purposes of entitlement to tax credits. This was unnecessary as the payments would not count as income in any event because they are capital payments. This instrument removes references to the payments to avoid confusion. It does not affect a person's entitlement to tax credits.
- 2.4 This instrument also accounts for changes to flexible-furloughing, as in the Direction from the Chancellor on 25 June 2020 in relation to Coronavirus Job Retention Scheme (CJRS) eligibility. Currently the definition of "furloughed" in the tax credits regulations does not give cover to employees who are flexibly-furloughed and this change will ensure they remain covered and eligible to Working Tax Credit.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument corrects an anomaly in the Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 which came into force on 23 May 2020. As a consequence of that instrument coronavirus support payments, including the Self-Employed Income Support Scheme, were brought into account as income for tax credits. The Finance Act 2020, which received Royal Assent on 22 July 2020, also treats the payments as income. Therefore, as a consequence of the interaction between the tax credits legislation and that Act the payments would be counted twice. This instrument removes that anomaly by counting the payments only once.

- 3.2 Regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002 (SI 2002/2006) (the Income Regulations) disregarded the payments under the National Health Service (NHS) and Social Care Payment Scheme (England and Wales) as income for the purposes of tax credits. However, since that amendment was made it has become evident that these payments would not have been included as income for the purposes of the Income Regulations in any event. This instrument corrects the anomaly by removing the unnecessary entry to avoid confusion.
- 3.3 As this instrument is correcting anomalies in the Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020, this instrument is being issued free of charge to all known recipients of that instrument.

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)

- 3.4 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 negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 7 of the Tax Credits Act 2002 (c.21) provides that entitlement to tax credits is dependent on relevant income.
- 6.2 This instrument substitutes a new definition of “trading income” in regulation 6 of the Income Regulations, to align with the taxes treatment and policy intent, to include coronavirus taxable grants and schemes as income for the purposes of tax credits.
- 6.3 The Income Regulations prescribe what is or is not to be treated as income.
- 6.4 The Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 amended the Income Regulations so that payments made under the coronavirus support schemes (defined in regulation 2) came within the definition of taxable profits.
- 6.5 Under section 106 of, and Schedule 16 to, the Finance Act 2020, payments under the coronavirus schemes and grants are treated for income tax as taxable profits and therefore they were trading income for the purposes of tax credits.
- 6.6 This means that in calculating income for tax credit purposes payments under the coronavirus schemes and grants would be counted twice as trading income, as those sums would be included both as a taxable profit and also as a coronavirus support scheme payment.
- 6.7 This instrument substitutes a new definition of trading income in regulation 6 of the Income Regulations so that the payments are only counted once for the purposes of tax credits, as intended.

- 6.8 This instrument also amends the Income Regulations to remove the entry disregarding payments under the NHS and Social Care Coronavirus Life Assurance Scheme 2020 as income for the purposes of tax credits. The entry disregarding that payment was made by the Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020. The entry disregarding the payments was unnecessary as those payments would not be income for the purposes of tax credits.
- 6.9 This instrument amends the Income Regulations to disregard the payments made under the Test and Trace Self-Isolation Payment scheme established by DHSC. As a consequence, these payments are not taken into account as income for the purposes of tax credits.
- 6.10 This instrument also amends the definition of “furloughed employee” in the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (SI 2002/2005) to reflect the introduction of the concept of flexibly-furloughed employees in relation to the Coronavirus Job Retention Scheme established under Directions given by the Chancellor of the Exchequer under sections 71 and 76 of the Coronavirus Act 2020 (c. 7).

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. Working Tax Credit (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. These regulations mean that claimants will include coronavirus payments as trading income for WTC and they do not have to carry out a separate calculation of their income for tax credits purposes.
- 7.3 The United Kingdom (UK) government (including through HMRC) and the devolved administrations have launched various schemes and grants for the self-employed. These schemes are taxable and so are taken into account as income for tax credit purposes. Legislation was introduced in the Tax Credits (Coronavirus Miscellaneous Amendments) Regulations 2020 to include these payments as trading income. However, following Royal Assent of the Finance Act 2020 the interaction of that Act with the amendments made by the Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 results in the income under the Schemes being taken into account as income twice in one year (or as income in two separate years). As a consequence, the tax credit award would be reduced.
- 7.4 In preceding the Finance Act 2020 previous amendments to the Tax Credits (Definition and Calculation of Income) Regulations 2002 are now inaccurate in their description of the treatment of income from coronavirus related schemes and grants for the purposes of calculating tax credits entitlement for self-employed claimants.
- 7.5 As this was not the policy intent, this instrument legislates to ensure that the income is only taken into account once and in the year in which it forms part of the claimant’s taxable profits.

- 7.6 These regulations mean that claimants will include these coronavirus payments as trading income for WTC and they do not have to carry out a separate calculation of their income for tax credits purposes.
- 7.7 This instrument also removes the disregard of the NHS and Social Care Coronavirus Life Assurance Scheme 2020 payments from the Income Regulations. Removing these payments will prevent confusion. Any income from the capital these payments represent will continue to be treated as income in the calculations for entitlement to tax credits (as before), whereas these payments themselves (and any similar payments from schemes implemented by the devolved administrations) will continue to follow the treatment in tax and be disregarded as income.
- 7.8 This instrument also provides for the disregard in tax credits entitlement calculations of payments made under the DHSC self-isolation payment scheme. The DHSC is piloting a scheme which will make payments to eligible people – initially in Blackburn with Darwen, Oldham and Pendle, areas of significant Covid-19 infection rates – of £13 per day for up to 14 days. This incentive is to support people who have tested positive for Covid-19, or been in contact or live with someone who has tested positive for Covid-19, and have been contacted by NHS test and trace and are required to self-isolate but cannot work from home. The policy intent is that these payments should not impact the welfare benefits and so they are being disregarded.
- 7.9 On 25 June 2020 the Chancellor issued a further Treasury Direction under sections 71 and 76 of the Coronavirus Act 2020 in relation to the Coronavirus Job Retention Scheme which allowed for employees who had been furloughed under that Scheme to return to work for some, but not all, of their usual hours whilst remaining under that Scheme. This instrument amends the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 to reflect this change and ensure that those who are returning to work for some of their hours continue to be treated as furloughed employees for the purposes of retaining entitlement to WTC.

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 changes that are consequential upon other changes. This instrument corrects a couple of errors and introducing a new disregard.

10. Consultation outcome

- 10.1 No separate consultation exercise was conducted as this instrument makes consequential changes required in relation to changes elsewhere.

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.

- 11.3 Guidance for Self Employed Income Support Scheme (SEISS) is available at: <https://www.gov.uk/guidance/claim-a-grant-through-the-coronavirus-covid-19-self-employment-income-support-scheme>.

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.
- 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: <https://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 Wendy Ratchford at HMRC (telephone: 07823374606 or email: Wendy.Ratchford@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.