EXPLANATORY MEMORANDUM TO

THE TAX CREDITS (APPEALS) REGULATIONS (NORTHERN IRELAND) (AMENDMENT) ORDER 2015

2015 No. [xxxx]

1. This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

2. **Purpose of this instrument**

2.1 The purpose of this instrument is to make consequential amendments to the Tax Credits (Appeals) Regulations (Northern Ireland) 2002 (S.R. (NI) 2002 No 403) ("the NI Appeals Regulations 2002") as a result of the changes to the lodgement of tax credit appeals in Northern Ireland.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 None.

4. Legislative content

4.1 The Tax Credits Act 2002 provides for a right of appeal against decisions on tax credits. The NI Appeals Regulations 2002 contain general administrative provisions relating to tax credits appeals in Northern Ireland. Mandatory reconsideration was introduced for tax credits appeals for the United Kingdom on 6 April 2014 (sections 21A and 21B of the Tax Credits Act 2002). In addition, on 3 November 2014 changes were made requiring a claimant to make any tax credits appeal directly to the appropriate office (being any office specified in writing for the purpose by the Department for Social Development in Northern Ireland – see regulation 2 of the Tax Credits (Notice of Appeal) Regulations 2002 (S.I. 2002/3119)). Regulation 6 of the NI Appeals Regulations 2002, which provides for the making of an application for an extension of time for making an appeal in Northern Ireland to the appeal tribunal, currently requires the application to be made to the Board, this being a reference to the Commissioners for HMRC. This Order amends regulation 6 to change the reference to the "Board" to the "appropriate office".

4.2 Regulation 5 of the NI Appeals Regulations 2002 deals with late appeals and provides the power to treat an appeal as made in time, according to the conditions set out in that regulation. Regulation 5(8)(b) of those Regulations provides that when HMRC or a legally qualified panel member is determining whether it is in the interests of justice to allow a late appeal, no account is to be taken of the fact that a Commissioner (being a Social Security Commissioner in Northern Ireland) or a court has taken a different view of the law from that previously understood and applied. The term "court", as defined in regulation 1(3) of the NI Appeals Regulations 2002, does not include the Upper Tribunal and so a consequential amendment needs to be made to regulation 5(8)(b) so as to include a reference to the Upper Tribunal.

4.3 Regulation 22 of the NI Appeals Regulations 2002 deals with late applications for a statement of reasons for an appeal tribunal's decision. Regulation 22(8)(b) provides that when HMRC or a legally qualified panel member is determining whether it is in the interests of justice to extend the time limit for making an application for a statement of reasons, no account shall be taken of the fact that a "Commissioner or court has taken a different view of the law from

that previously understood and applied". Consistent with the changes being made to regulation 5(8)(b), regulation 22(8)(b) similarly needs to be amended so as to include the Upper Tribunal.

5. **Territorial extent and application**

This instrument applies to Northern Ireland only.

6. **European Convention on Human Rights**

The Financial Secretary to the Treasury, David Gauke, has made the following statement:

In my view the provisions of the Tax Credits (Appeals) Regulations (Northern Ireland) (Amendment) Order 2015 are compatible with the Convention Rights.

7. **Policy background**

- What is being done and why

7.1 The NI Appeals Regulations 2002 contain general administrative provisions relating to tax credits appeals in Northern Ireland. Currently, regulation 6 of the NI Appeals Regulations 2002 specifies that when applying for an extension of time for making an appeal, the application should be made to the "Board" (HMRC). HMRC no longer accepts appeals, so this reference needs to be replaced with a reference to an "appropriate office" being any office specified in writing by the Department of Social Development (DSD) in Northern Ireland for that purpose.

7.2 Regulation 5 of the NI Appeals Regulations 2002 deals with late appeals and provides the power to treat an appeal as made in time, according to the conditions set out in that regulation. Regulation 5(8)(b) provides that when HMRC or a legally qualified panel member is determining whether it is in the interests of justice to extend the time limit for making an appeal, no account shall be taken of the fact that a Commissioner or a court has taken a different view of the law from that previously understood and applied. Currently there is no reference to the Upper Tribunal so Regulation 5(8)(b) needs to be amended so as to also include a reference to the Upper Tribunal following the establishment of an Upper Tribunal pursuant to section 3 of the Tribunals, Courts and Enforcement Act 2007.

7.3 Regulation 22 of the NI Appeals Regulations 2002 deals with late applications for a statement of reasons for the tribunal's decision. Regulation 22(8)(b) provides that when HMRC or a legally qualified panel member is determining whether it is in the interests of justice to extend the time limit for making an application for a statement of reasons, no account shall be taken of the fact that a Commissioner or a court has taken a different view of the law from that previously understood and applied. Consistent with the change being made to regulation 5(8)(b), regulation 22(8)(b) similarly needs to be amended so as to also include a reference to the Upper Tribunal following the establishment of an Upper Tribunal pursuant to section 3 of the Tribunals, Courts and Enforcement Act 2007.

- Consolidation

7.4 No consolidation is planned for the amended instrument.

8. Consultation outcome

8.1 No formal consultation has taken place.

9. Guidance

Guidance on the tax credits appeals process can be found on the GOV.UK website which can be accessed through the following link: https://www.gov.uk/tax-credits-appeals-complaints.

10. Impact

10.1 This instrument has no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating and business

The legislation does not apply to small businesses.

12. Monitoring and review

These changes are considered consequential or technical and do not require further review.

13. Contact

Jacqueline Latter at HM Revenue and Customs: Tel 03000 586748 or email: jacqueline.latter@hmrc.gsi.gov.uk can answer any queries regarding the instrument on behalf of the Treasury.