EXPLANATORY MEMORANDUM TO

THE TAX CREDITS, CHILD BENEFIT AND GUARDIAN'S ALLOWANCE REVIEWS AND APPEALS ORDER 2014

2014 No.

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 the instrument

2.1 This instrument amends legislation so that a person will need to ask HMRC to reconsider its decisions on tax credits, child benefit or guardian's allowance awards before making an appeal to the tribunal, similar to the process for universal credit. It also repeals and revokes legislation setting time limits for making an appeal, and requiring notices starting an appeal to be sent to HMRC.

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

3.1 None.

4. Legislative Context

4.1 This instrument amends the Tax Credits Act 2002, the Social Security Act 1998, the Social Security (Northern Ireland) Order 1998 (S.I. 1998/1506 (N.I. 10)), the Tax Credits (Notice of Appeal) Regulations 2002 (S.I. 2002/3119) and the Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003 (S.I. 2003/916).

4.2 For tax credits, article 2 inserts new sections 21A and 21B which provide for a compulsory review on application before an appeal. Paragraph (12) repeals for Great Britain existing sections that provide the time limit and process for starting an appeal, and paragraph (13) repeals for Northern Ireland the rule requiring a notice of appeal to be lodged with HMRC. Article 3 makes consequential changes to S.I. 2002/3119.

4.3 For child benefit and guardian's allowance, article 4 inserts a new section 12(3D) and article 13(2A) respectively into the Social Security Act 1998 and corresponding Northern Ireland Order (S.I. 1998/1506 (N.I. 10)). The effect is that the existing right of appeal now always follows on from HMRC considering on application whether or not to revise the decision under that Act or Order. Article 5 amends S.I. 2003/916, removing provisions for the time limit and process for starting an appeal to the First-tier Tribunal in Great Britain, while providing for direct lodgement of appeal notices with the relevant Northern Ireland Department.

4.4 The amendments relating to direct lodgement of appeal notices in Northern Ireland will be brought into force on a day appointed by the Treasury by an order under article 1(2).

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

5.2 As explained earlier, there are some differences between the respective positions for Great Britain and Northern Ireland.

6. European Convention on Human Rights

The Exchequer Secretary to the Treasury, David Gauke MP has made the following statement regarding Human Rights:

In my view the provisions of the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The changes being made are primarily the introduction of a new stage in the decision making process called Mandatory Reconsideration before Appeal. This new process will apply to child benefit and guardian's allowance decisions, and align the tax credits process to that already introduced by the Department for Work and Pensions (DWP) for universal credit.

7.2 The changes made in this Order introduce a reconsideration process which requires a person to first ask HMRC to reconsider its decision before making an appeal directly to the First-tier Tribunal.

7.3 This change aims to give a person a more independent opinion of the original decision with a different officer taking a fresh look at the decision, as well as a clear justification for the original decision. Also, that having followed the reconsideration process, a person will either decide that their disagreement has been satisfactorily resolved, or if not, that it will be for them to make a positive choice to appeal directly to the tribunal. This new system improves the decision making process, limits the number of appeals going forward to the tribunal and brings consistency in the handling of appeals across HMRC and DWP.

7.4 Associated changes remove the rules in Great Britain about time limits and the process for starting an appeal with the First-tier Tribunal. These rules will be replaced by Tribunal Procedure Rules.

- ***Consolidation***

7.5 Not applicable.

8. Consultation outcome

8.1 A public consultation on the policy change was held between 3 July and 2 October 2012. There were three responses to the formal consultation.

8.2 Feedback from respondees was mainly positive but there was one area of concern. This was that the process was being introduced at a time when HMRC had a backlog of appeals. These concerns were accepted and introduction of mandatory reconsideration was postponed from 6 April 2013 to 6 April 2014. A more detailed analysis of the formal responses to the consultation process can be found in the summary of responses document which can be found on the Direct.gov website under consultations.

9. Guidance

9.1 Guidance on the appeals process can be found on Her Majesty's Revenue and Customs website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 A detailed impact assessment on the introduction of this new policy was prepared by DWP and can be found at http://www.dwp.gov.uk/docs/consideration-of-revision-wr2011-ia.pdf. Since then it has been decided to include Child Benefit and Guardian's Allowance in the regulatory changes. No further impact assessment has been prepared as the changes have no impact on business and the third sector nor do they have an equality impact. Any impact on the public sector is minimal and HMRC is absorbing any costs involved. Consideration of the wider impacts of this change has been made and no other impacts have been identified.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

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

13. Contact

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