EXPLANATORY MEMORANDUM TO

THE TAX CREDITS AND CHILD BENEFIT (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 179

1. Introduction

1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) and His Majesty's Treasury and is laid before Parliament by Command of His Majesty.

2. Purpose of the instrument

2.1 This instrument makes changes to the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) to ensure that any additional transitional profits arisen due to the basis period reform are disregarded when calculating entitlement to tax credits.

2.2 This instrument makes changes to the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005) to reduce the remunerative work requirement to 16 hours for couples with a child or qualifying young person if one of the individuals is receiving a payment given in accordance with regulations made under section 28 of the social Security (Scotland) Act 2018 and will allow eligibility to the childcare element of Working Tax Credit (WTC) for a couple where one member is working not less than 16 hours a week and the other is not working but in receipt of this payment. Also included are provisions so that these payments will be treated as income in the calculation of tax credits. This is to ensure WTC claimants in receipt of these payments are treated in a comparable way to those in receipt of Carers Allowance (CA) in England, Wales and Northern Ireland.

2.3 This instrument amends the language used for requesting information related to a Child Benefit claim to more closely reflect the language used in the Universal Credit, Personal Independence Payment, Jobseeker's Allowance and Employment and Support Allowance (Claims and Payments) Regulations 2013. It will remove the requirement that an original birth certificate must be provided where one has been requested, where assurance to establish eligibility for a Child Benefit claim is attained via alternate means.

2.4 This instrument makes changes to Child Benefit regulations to allow Mandatory Reconsideration rights to begin from the date the change is notified until one month after the effective date of the change.

2.5 This instrument updates references to the definition of approved training in the Child Benefit (General) Regulations 2006 to insert a reference to the new "Jobs Growth+" scheme in Wales and removes an outdated and defunct reference to the fund known as "Employment Fund activity" in Scotland.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is the United Kingdom except for the provisions amending the Child Benefit (General) Regulations 2006 which apply to Wales and Scotland.

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) sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Tax Credits (Definition and Calculation of Income) Regulations 2002 provide for what is or is not to be counted, or treated, as relevant income.

6.2 This instrument makes an amendment to regulation 6 of the Tax Credits (Definition and Calculation of Income) Regulations 2002 to disregard transitional profits, calculated in accordance with paragraph 70(2), 72 and 73 of Schedule 1 to the Finance Act 2022, treated as arising and chargeable to tax under Chapter 2 of that Part.

6.3 Amendments are also being made to regulation 7 of the Tax Credits (Definition and Calculation of Income) Regulations 2002 so that a payment in accordance with regulations made under section 28 of the social Security (Scotland) Act 2018 is to be treated as income in the calculation of tax credits.

6.4 An amendment is being made to regulation 4 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 which set out what constitutes qualifying remunerative work for the purposes of Working Tax Credit. This amendment will reduce the remunerative work requirement to 16 hours for couples with a child or qualifying young person if one of the individuals is receiving a payment given in accordance with regulations made under section 28 of the social Security (Scotland) Act 2018.

6.5 An amendment is also being made to regulation 13 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 to allow eligibility to the childcare element of Working Tax Credit for a couple where one member is working not less than 16 hours a week and the other is not working but in receipt of a payment given in accordance with regulations made under section 28 of the social Security (Scotland) Act 2018.

6.6 This instrument amends regulation 7 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 (S.I. 2003/492) to remove the requirement for a birth certificate, when requested, to be an original, where assurance to establish eligibility for a Child Benefit claim is attained via alternate means.

6.7 Amendments are being made to regulation 5 and 6 of The Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003 so that where HMRC takes a superseding decision which will take effect from a future date, claimants can request a Mandatory Reconsideration of the anticipatory decision

during the period commencing with the date of notification and ending one month after the decision has taken effect.

6.8 The instrument amends the definition of approved training in regulation 1 of the Child Benefit (General) Regulations 2006 to remove reference to "Employment Fund activity" as this scheme has been superseded.

6.9 The instrument also inserts a reference in the definition of approved training in regulation 1 of the Child Benefit (General) Regulations 2006 to the "Jobs Growth+" scheme in Wales which will enable young persons under 20 undertaking the scheme to continue to be eligible for the payment of Child Benefit and Child Tax Credit.

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 based on 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 Child Benefit is a non-means tested social security benefit payable to parents or people with responsibility for children in recognition of the costs of bringing up children.

Basis Period Reform

7.4 The reform of the basis periods, which was introduced by paragraph 70 of Schedule 1 to the Finance Act 2022, seeks to simplify basis period rules for the self-employed, so that a business' profit or loss for a tax year is the profit or loss arising in the tax year itself, regardless of the business' accounting date.

7.5 In the 2023/24 transition year those impacted by the reform will have a longer than usual basis period as they move over to align with the tax year. As tax credits legislation follows income tax legislation, there is a possibility that for the proposed transition period, taxable profits for the year will be higher than they otherwise might have been because the basis period will be for a period longer than 12 months.

7.6 An amendment is being made to account for the basis period reform so that additional transitional profits are disregarded for tax credits purposes to ensure that benefit claimants are not disadvantaged by the reform, as people would not have earned more real profits during the transition year, they would only have had more profits chargeable to income tax due to a timing change.

Payment given in accordance with regulations made under section 28 of the Social Security (Scotland) Act 2018

7.7 During the tax year 2023-24, the Scottish Government intend to introduce a benefit payable to persons who provides care for another individual who has a disability. This benefit will be the replacement for Carer's Allowance (CA) which is payable by the

Department for Work and Pensions. Consequential amendments to Working Tax Credit legislation are being made to ensure consistency for claimants who will receive the carer's assistance in Scotland with the policy and operation of CA in England, Wales, and Northern Ireland.

Removing an existing barrier which can inhibit award decision being taken

7.8 An amendment is being made to regulation 7 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 to remove the requirement that an original birth certificate must be provided when a birth certificate is requested.

7.9 The change is to amend the provision so that, where a birth certificate is requested, a claimant is no longer required to produce the original certificate.

7.10 Removing the requirement for any birth certificate requested to be the original allows HMRC to ask for original birth certificates but without the constraint of insisting an original birth certificate is provided where assurance is attained via alternate means (such as a passport).

Change to allow Mandatory Reconsideration rights to begin from the date the change is notified until one month after the effective date of the change

7.11 An amendment is being made to regulation 5 of The Child Benefit and Guardian's Allowance (Decisions and Appeals) Regulations 2003, so that where HMRC takes a superseding decision which will take effect from a future date, a claimant will be able to request a Mandatory Reconsideration of that anticipatory decision during the period commencing with the date of notification and ending one month after the decision has taken effect.

Two Minor amendments to the definition of approved training in the Child Benefit Regulations

7.12 Entitlement to Child Benefit and Child Tax Credit in respect of a young person under the age of 20 is dependent (amongst other things) on the qualifying young person being in "approved training". The list of approved training is provided in regulation 1(3) of the Child Benefit (General) Regulations 2006 (S.I. 2006/223).

7.13 The Welsh Government introduced an Approved Training scheme, "Jobs Growth Wales+" in March 2022 for young people living in Wales who are not undergoing any other full-time education, employment or training. This new scheme replaces existing Approved Training schemes (Jobs Growth Wales, and Traineeships) and provides bespoke support to young people to train and gain recognised qualifications to enhance their career options and gives direct links to local employers for work placements and voluntary work.

7.14 A minor amendment is being made to the definition of approved training in regulation 1(3) of the Child Benefit (General) Regulations 2006 to insert a reference to the new "Jobs Growth+" scheme in Wales which will enable young persons under 20 undertaking the scheme to continue to be eligible for the payment of Child Benefit and Child Tax Credit.

7.15 A further amendment is also being made in relation to approved training in Scotland to remove an outdated and defunct reference to the fund known as "Employment Fund activity". That fund closed and all applicants have either finished their course or moved over to the "No-One Left Behind" strategy which was included as approved training by S.I. 2021/1286.

8. European Union Withdrawal and Future Relationship

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 The Social Security Advisory Committee (SSAC) has been consulted on this instrument. SSAC is an independent statutory body sponsored by the Department for Work and Pensions that provides impartial advice on social security and tax credits-related matters. Under a memorandum of understanding with HMRC, it scrutinises secondary legislation that underpins the tax credits scheme.

11. Guidance

11.1 Guidance for tax credits is available through the tax credits helpline 0345 300 3900 and via https://www.gov.uk/topic/benefits-credits/tax-credits.

11.2 Guidance for Child Benefit claimants is available through the Child Benefit helpline 0300 200 3100 and via https://www.gov.uk/topic/benefits-credits/child-benefit.

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 A full Impact Assessment has not been prepared for this instrument because no significant impact 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 Child Benefit claim and termination numbers are routinely monitored as part of HMRC's standard business practices. The approach to monitoring of other aspects of this legislation is minimal as these are minor consequential changes.

14.2 The instrument does not include a statutory review clause as it does not make regulatory provision in respect of a business.

15. Contact

15.1 Saheed Dawood, Policy Lead for Welfare Policy in HMRC (saheed.dawood@hmrc.gov.uk), can be contacted with any queries regarding the instrument.

15.2 James Knipe, Deputy Director for Welfare Policy in HMRC, can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt Hon John Glen MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.