EXPLANATORY MEMORANDUM TO

THE TAX CREDITS (CLAIMS AND NOTIFICATIONS) (AMENDMENT) REGULATIONS 2017

2017 No. 597

1. Introduction

1.1 This explanatory memorandum has been prepared by the Commissioners for Her Majesty's Revenue and Customs (HM Revenue and Customs) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The purpose of the instrument is to make a consequential amendment to the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) as a consequence of the commencement of "tax free childcare" in April 2017.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 The new scheme under the provisions of the Childcare Payments Act 2014, generally known as tax free childcare (TFC), has been introduced from 21st April 2017. TFC is designed to provide financial support to help working families with the costs of childcare. Claimants cannot claim tax credits at the same time as TFC and the opening of a TFC account automatically terminates any tax credit award per section 30 of the Childcare Payments Act 2014. If a claimant wishes to claim tax credits after opening a TFC account they have to make a new claim for tax credits and that claim is treated as having been made on the day specified in rules the Tax Credits (Claims and Notifications) Regulations 2002 ("the Claims and Notification Regulations"), sometimes referred to as "backdating".

4.2 The general rule contained in Regulation 7 of the Claims and Notifications Regulations is that a claim for tax credits is treated as having been made up to 31 days before the claim is made if the claimant would have been entitled if they had made a claim. Regulation 7A makes different provision for those claimants who have had a TFC account reflecting the general rule against dual entitlement to tax credits and TFC. Generally speaking the claim for tax credits cannot be treated as having been made during the TFC eligibility period, which is three months from the date of the declaration of eligibility. This is modified in certain circumstances which are set out in Regulation 7A(3). The circumstances are 1) HM Revenue and Customs makes an account restriction order, 2) the childcare account is closed, or 3) the child ceases to

be a qualifying child. In these circumstances the claim for tax credits can be treated as having been made on the latest of either, the day following the event provided for in 7A(3) which may be in TFC the eligibility period or 31 days before the actual date of claim.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

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

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why

7.1 This instrument modifies the backdating provisions in Regulation 7 of the Claims and Notifications Regulations to allow for backdating into the TFC entitlement period where the childcare account has not been used to pay for childcare. Where a person has opened a TFC account but not used it and claims tax credits they could potentially receive less in tax credits because Regulation 7A of the Claims and Notifications Regulations would only allow the claim to be treated as having made the day after the TFC account had been closed. This amendment allows claimants who have opened a TFC account but not used it to pay for childcare and closed down the account to benefit from the usual backdating, i.e. up to 31 days, which may be in the period before the TFC account is closed down. As no payments will have been made from the account and the account is closed down (which returns any money added by the Exchequer to the Exchequer) then there is no dual entitlement to TFC and TC. As TFC rolls out from April, and the new 30 hours childcare scheme (which provides parents of 3 and 4 year olds 30 hours of free childcare) commences in September, there may be people who mistakenly apply for TFC or it may not be the best scheme for them. This amendment allows people to benefit from the usual backdating of tax credits where they have not used TFC account to pay for childcare.

Consolidation

7.2 There are no plans for consolidation.

8. Consultation outcome

8.1 HMRC has not formally consulted before making these Regulations however, the Social Security Advisory Committee (SSAC) has considered these changes under its Memorandum of Understanding with HMT and HMRC.

9. Guidance

9.1 HM Revenue and Customs is working with Government Digital Service (GDS) to update the guidance on the TFC scheme's interactions with tax credits on the Gov.uk website.

10. Impact

10.1 There is 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 small business

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

12. Monitoring & review

12.1 The policy will be reviewed during the rollout of TFC to assess whether it is addressing the issue.

13. Contact

13.1 Phil Mattacks at HM Revenue and Customs, telephone: 03000 585 501 or email: phil.mattacks@hmrc.gsi.gov.uk, can answer any queries regarding the instrument.