EXPLANATORY MEMORANDUM TO

THE TAX CREDITS (LATE APPEALS) ORDER 2014

2014 No. 885

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

2. Purpose of the instrument

2.1 This order amends the Tax Credits Act 2002 (c. 21) ("the 2002 Act") to restore the ability of HMRC to accept late tax credit appeals, in exceptional circumstances, for up to 12 months following the normal 30-day time limit.

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

3.1 None.

4. Legislative Context

4.1 Sections 38 and 39 of the 2002 Act make provision in respect of tax credit appeals as modified by section 63. Section 39(1) provides for a 30-day time-limit in which to exercise the right of appeal.

4.2 Article 2 makes provision which mirrors that provided by regulation 5 (late appeals) of the Tax Credits (Appeals) (No. 2) Regulations 2002 (S.I. 2002/3196). Regulation 5 of S.I. 2002/3196 was made under powers contained in section 12(7) (appeal to First-tier Tribunal) of the Social Security Act 1998 (c. 14) which applied (as modified) to tax credit appeals by virtue of regulation 4 of the Tax Credits (Appeals) Regulations 2002 (S.I. 2002/2926). S.I. 2002/2926, made under the power in section 63(8) of the 2002 Act (tax credits appeals etc: temporary modifications), lapsed in respect of its application in Great Britain, as a result of amendments to section 63 by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 (S.I. 2009/56) ("the 2009 Order") following the transfer of the functions of the tax tribunals to the new tribunals established under the Tribunals, Courts and Enforcement Act 2007 (c. 15). Tax credits appeals in Great Britain were transferred from the Social Security and Child Support Appeals Tribunal to the Social Entitlement Chamber of the First-tier Tribunal and amendments were made to section 63 by S.I. 2009/56 to reflect these changes. Article 3 of, and paragraph 316 of Schedule 1 to, the 2009 Order amended section 63 by substituting references to the "appeal tribunal", defined by reference to Northern Ireland legislation, which did not include the First-tier Tribunal in Great Britain. As a result of those amendments to the regulation-making power in section 63 was that S.I. 2002/2926, and therefore S.I. 2002/3196 (which applied only in respect of appeals in Great Britain),

no longer applied in respect of appeals in Great Britain (but continued to apply in respect of appeals in Northern Ireland). The Revenue and Customs Appeals Order 2012 (S.I. 2012/533) amended sections 63(5) and (8) by inserting a reference to the First-tier Tribunal to correct this defect.

4.3 Article 2(3) of the Order deals with cases that are in the pipeline, and sometimes have been pending and in uncertainty for a very long time. HMRC have not opposed late appeals of late, relying on their management function in section 2 of the Tax Credits Act 2002 to forward them to the tribunal. So article 2(3) simply validates, going forward, HMRC decisions to allow such late appeals.

5. Territorial Extent and Application

5.1 Article 2 applies to Great Britain.

6. European Convention on Human Rights

The Economic Secretary to the Treasury, Nicky Morgan MP, has made the following statement regarding Human Rights:

In my view the provisions of the Tax Credits (Late Appeals) Order 2014 are compatible with the Convention rights.

7. Policy background

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

7.1 This instrument rectifies the consequences of the inadvertent error caused by S.I. 2009/56, when amending section 63 of the 2002 Act, following the transfer of the functions of the Social Security and Child Support Appeals Tribunal in respect of tax credits appeals in Great Britain, to the new Social Entitlement Chamber of the First-tier Tribunal with the result that the existing legislation ceased to apply to appeals in Great Britain. The instrument, made under the powers contained in section 124 of the Finance Act 2008, ensures that HMRC continues to have the ability to accept late tax credit appeals made in Great Britain.

- **Consolidation**

7.2 Not applicable.

8. Consultation outcome

8.1 No formal consultation has taken place.

9. Guidance

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

10. Impact

10.1 The 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 in respect of this order. An Impact Assessment covering the changes made by S.I. 2009/56 was published with that order. A copy is attached to the explanatory memorandum to that order which is available alongside the instrument published on www.legislation.gov.uk.

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 HM Treasury.