EXPLANATORY MEMORANDUM TO

THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2009

2009 No. 697

1. This explanatory memorandum has been prepared by HM Revenue and Customs (HMRC) and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The purpose of this statutory instrument is to make mainly technical and consequential changes to The Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (S.I. 2002/2005), The Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006), The Child Tax Credit Regulations 2002 (S.I. 2002/2007) and The Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014).

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

3.1 Regulation 5 (3) (b) in this instrument corrects an error in S.I.2008/2169. A copy of our report dated 4 November 2008 is attached as an annex.

4. Legislative Context

4.1 This instrument encompasses various miscellaneous amendments to the Tax Credits Regulations which are of a consequential or technical nature.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

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***

Amendments to the Working Tax Credit (Entitlement and Maximum Rate) Regulations

7.1 To be eligible for Working Tax Credit (WTC) a person must be in 'qualifying remunerative work'. This means they must be in work for a specified number of hours a week and that the work must be done for payment or in expectation of payment. This forms part of the wider tax credit policy objective of supporting customers into work and helping make work pay.

7.2 It is not the policy intention that receipt of a social security benefit should be regarded as 'payment' to satisfy the necessary conditions for entitlement to WTC. However, in late 2005, an Appeal Tribunal concluded that Carers Allowance, a social security benefit paid to certain carers by DWP, could be regarded as payment for WTC purposes. The tribunal was persuaded that the person in question was undertaking work in expectation of payment and, as such, was engaged in 'qualifying remunerative work'.

7.3 This change makes clear that receipt of a social security benefit is not to be regarded as 'payment' for the purposes of fulfilling the 'qualifying remunerative work' requirement.

7.4 The regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations to remove entitlement to the second adult element of WTC in joint claims where one member of the couple is in the UK illegally and the couple has no responsibility for a child or qualifying young person. This change is intended to ensure that those in the UK illegally do not benefit from tax credits.

7.5 The regulations also amend the list of eligible childcare in regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations to reflect changes introduced by the Childcare Act 2006 in England. They delete from the list of eligible childcare in England:

- providers registered under Part 10A of the Children Act 1989, as the provisions in this Act have been superseded by provisions in the Childcare Act 2006;
- providers approved under the Childcare Approval Scheme, with effect from 18 July 2009, because the Scheme will cease to exist from that date;

- foster parents, because the Department for Children, Schools and Families' policy under the Childcare Act 2006 requires a foster parent in England who provides childcare to a child (other than to a child they foster) to register under Part 3 of the Childcare Act 2006 (if they are to be eligible childcare providers for WTC purposes). The amendment will come into effect on 18 July 2009

7.6 The regulations also provide that childcare charges do not include charges in respect of care provided by a foster parent for a child whom he/she is fostering. The amendment is in line with section 18 of the Childcare Act 2006, and ensures that foster parents cannot claim the childcare element for looking after a child that they foster, just as a parent cannot claim the childcare element for looking after their own child.

Amendments to the Tax Credits (Definition and Calculation of Income) Regulations

7.7 A change to the Definition and Calculation of Income regulations provides that receipt of the Health in Pregnancy Grant should not be taken into account for tax credits purposes. The grant is a lump sum payment of £190 payable from the 25th week of pregnancy.

7.8 At the request of DWP, HMRC is making a minor amendment to regulation 19 of the Definition and Calculation of Income regulations to disregard childcare expenses reimbursed to participants of their Flexible New Deal (FND). The FND will be launched in April 2009.

Amendments to the Child Tax Credit Regulations 2002

7.9 The Child Tax Credit Regulations were amended in September 2008 to clarify that an individual or a couple will not be entitled to child tax credit for a qualifying young person who marries, forms a civil partnership or begins living with a partner as a couple, on the grounds that the individual or couple is no longer responsible for that young person. Subsequently, a drafting error was discovered and this change simply puts this right.

Amendments to the Tax Credits (Claims and Notifications) Regulations

7.10 We want to clarity the definition of 'appropriate office' where customers can notify changes in their circumstances. Currently, the definition is very broad and can cause confusion for customers and HMRC. We want to amend the definition of 'appropriate office' to 'Comben House, Farriers Way, Netherton, Merseyside or any other office specified in writing by the Board'. This change mirrors the approach we have taken with the Health in Pregnancy Grant (Administration) Regulations 2008 and is intended to be clearer for customers as well as providing more flexibility for the future.

7.11 These regulations make a minor change to include a consequential amendment omitted from S.I. 2008/604 and extend the circumstances in which new claims are treated as made on the 6 April at the beginning of the tax year to remove inconsistencies.

7.12 Tax Credit claimants are required to state their national insurance number or evidence enabling that number to be ascertained when completing their claims. A change to the Tax Credits (Claims and Notifications) Regulations provides an exception to that requirement in respect of any person who is subject to immigration control within section 115(9)(a) of the Immigration and Asylum Act 1999 that is a person who requires leave to enter or remain in the UK but does not have it, and to whom a national insurance number has not been allocated. This reflects a change currently being made by DWP in the benefit system in respect of the partner of a legitimate benefit claimant if the partner has no right to be or remain in the UK (for example, if that partner has entered the UK illegally or has overstayed their visa). This is intended to stop the issue of national insurance numbers to individuals who are in the UK illegally.

7.13 These regulations also simplify the rules for the date of claims for the disability element of WTC and the date of notification for the disability element and severe disability element of CTC and WTC. These rules are known as the "longer backdating rules". The amended regulations will provide claimants with the opportunity to receive the same period of backdating that is currently provided but without the current requirements for "the original claim" and "the original notification".

- ***Consolidation***

7.14 HMRC publishes consolidated regulations on their web site. These will be made available as soon as possible after the Statutory Instrument is published.

8. Consultation outcome

8.1 There is no statutory requirement to consult on these regulations. However, HMRC has worked closely with the DCSF and DWP over several months as many of the changes are consequential to changes made by those departments. These regulatory changes have also been considered by the Social Security Advisory Committee (SSAC) under our joint Memorandum of Understanding. SSAC has confirmed that they will not be carrying out a formal review of these regulatory changes.

9. Guidance

9.1 We will publish these changes in the Tax Credits renewals packs, the Tax Credits claims packs and in associated articles on our web site. In addition, specifically in relation to the change requiring foster carers to be registered with Ofsted, DCSF has, in January 2009, written to all Local Authorities in England advising them of this change and the Local Authorities have, in turn, written to their registered foster carers.

10. Impact

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

10.2 This instrument has 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 small business.

12. Monitoring & review

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

13. Contact

Trevor Sanders at HMRC Tel: 0207 147 2272 or email: Trevor.sanders@hmrc.gsi.gov.uk can answer any queries regarding the instrument.

ANNEX

JOINT COMMITTEE ON STATUTORY INSTRUMENTS

THE TAX CREDITS (MISCELLANEOUS AMENDMENTS) (NO. 2) REGULATIONS 2008

SI 2008 No. 2169

The Committee has requested a memorandum on the following points:

1. What factors, if any, apart from discussions within Government, contributed to the failure to observe the 21-day convention?

2. Explain the significance of the words "registered or approved" in new paragraph (2B) of regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (inserted by regulation 2(3) of these Regulations and perhaps inadvertently referred to as "subsection 2(B)" in regulation 2(2)(c) of these Regulations).

1. Strictly the answer is "none" but some further background may be helpful, particularly given the fact that the S.I. was laid during the Parliamentary recess. The draft S.I. was agreed with the Department for Children, Schools and Families ("DCSF") before mid-July, and was then submitted to Treasury Ministers for approval, and SSAC, on 14th July 2008. An accompanying S.I. (2008/2170) also needed to be approved by Parliamentary Counsel. SSAC were to consider the draft at their meeting on 6th August 2008. It had been anticipated when submitting the draft to Ministers that a breach of the 21 day rule might occur, and special permission was sought and obtained to lay the S.I. during recess. DCSF raised late points on the draft (which entailed redrafting the provision referred to in question 2). As a result of this, it was not possible to complete the drafting and make the S.I. before 13th August.

2. The original drafter of the S.I. is on leave, but it appears that the words ""registered or approved" in new paragraph (2B) of regulation 14 are not appropriate. The same wording appears in S.I. 2008/2170, in an amendment to section 318C of the Income Tax (Earnings and Pensions) Act 2003, where the drafting context relates to various categories of registered or approved child care. In S.I. 2008/2169, the reference is to a single category of child care in schools, falling within new regulation 14(2)(a)(iii). Such provision only needs to be registered under Part 3 of the Childcare Act 2006 if children are under the age of 3. "Approval" is not appropriate to that category of childcare. Although the extra words "registered or approved" could be argued not to alter the effect of the provision, their inclusion is regretted and will be omitted by an amending instrument.

HMRC (4th November 2008)