EXPLANATORY MEMORANDUM TO THE

TAX CREDITS NOTIFICATION OF CHANGES OF CIRCUMSTANCES (CIVIL PARTNERSHIP) (TRANSITIONAL PROVISIONS) ORDER 2005

2005 No. 828

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

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

2. **Description**

   The order makes a transitory modification of section 6 of the Tax Credits Act 2002 (Notifications of changes of circumstances) for the tax year 2005-06. It provides that on the coming into force of the amendments to the Tax Credits Act 2002 contained in Part 14 of Schedule 24 to the Civil Partnership Act 2004, a change of circumstances is treated as having occurred for tax credit purposes. This will require members of same-sex couples who are living together and have claimed tax credits individually to notify the Inland Revenue that they are part of a couple.

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

   The order is made in exercise of the powers conferred on the Treasury by section 259 (1) and (11) of the Civil Partnership Act 2004. Subsection (1) provides that a Minister of the Crown may make a supplementary, transitory or transitional provision for the purposes or in consequence of that Act or for giving full effect to that Act. Subsection (11) is relevant because it contains the definition of a "Minister of the Crown", which enables the Treasury to make the order. As this is a transitory modification of, rather than a substantive amendment to, the primary legislation, the power conferred by section 259 (1) has been exercised rather than the power conferred by section 259 (3). Accordingly, the instrument is subject to annulment in accordance with section 259 (9) rather than the affirmative procedure in accordance with section 259 (8).

4. **Legislative background**

   This provision is a result of changes to the Tax Credit Act 2002 made by section 254 of, and Part 14 of Schedule 24 to, the Civil Partnership Act 2004. In particular, it arises from the insertion of the term "couple", as defined in paragraph 144 (3) of the Schedule, in section 3 (Claims) of the Tax Credits Act 2002 in place of the existing terms "married couple" and "unmarried couple". The term "couple", contained in the new subsection (5A) of section 3 of the Tax Credits Act 2002, includes married and unmarried opposite-sex couples and same-sex couples, both those who have formed a civil partnership and those who are not civil partners but are living together as if they were.

5. Extent

This order applies to all of the United Kingdom.

6. European Convention on Human Rights

This order is subject to annulment and, as a transitory modification, does not amend primary legislation. Accordingly, a certificate that the order is compatible with the Convention rights is not required.

7. Policy background

7.1 Section 3 (Claims) of the Tax Credits Act 2002 provides that entitlement to the Child and Working Tax Credits depends on the making of a claim. Married and unmarried couples make a joint claim for tax credits. This means that their joint circumstances (e.g. hours worked each week, the number of children etc) and their combined income will be taken into account when deciding the level of their tax credit award. The definitions of a married and unmarried couple refer to a man and a woman and thus exclude same-sex couples from making a joint claim. Currently, if members of a same-sex couple claim tax credits, they have to do so as individuals, based on their own circumstances and income, not their partner's.

7.2 The Civil Partnership Act 2004 provides a new legal framework that will enable recognition of same-sex relationships through the new status of civil partner and the new legal relationship of civil partnership. The Government's policy is that civil partners should in general be subject to the same legal rights and responsibilities as spouses. In keeping with this, the intention is that for the purposes of child support, social security benefits and tax credits, civil partners are to be treated in the same way as married couples and same-sex couples who have not formed a civil partnership but are living together as if they were civil partners are to be treated in the same way as unmarried opposite-sex couples living together as husband and wife.

7.3 Section 6 (notifications of changes of circumstances) of the Tax Credits Act 2002 sets out the arrangements for claimants to notify the Inland Revenue of changes of circumstances which affect their entitlement to tax credits. Regulations provide that a change of circumstances which may increase or decrease the rate of a tax credit award, or bring that award to an end, must be notified to the Inland Revenue. These regulations are to be found in the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002 No. 2014). In particular, regulation 21 (2) (a) provides that claimants who have claimed tax credits as a couple but stop living together or separate permanently or who have claimed tax credits as a single person but then marry or live with someone as if they were married must notify the Inland Revenue. In such cases, new tax credit claims must be made on the basis of the claimants' altered circumstances.

7.4 As noted above, members of same-sex couples currently claim tax credits as separate individuals. On the coming into force of the Civil Partnership Act 2004, they should make a joint tax credit claim. However, in the view of the Inland Revenue a change in circumstances within section 6 of the Tax Credits Act 2002 and the Tax Credits (Claims and Notifications) Regulations 2002 is a reference to a change in factual circumstances rather than a change in the way people are treated. For the tax year 2005-06, when the Civil Partnership Act 2004 takes effect, this order will therefore treat a change of circumstances as having taken place. Consequently, members of a same-sex couple who are living together and have already claimed tax credits individually will be required to notify the Inland Revenue that they are part of a couple. The Inland Revenue intends to use its regular tax credit claimants' newsletter to inform such couples of their obligation to provide notification. As a result, these same-sex couples will have to make a joint claim on the same basis as married and unmarried opposite-sex couples. For subsequent tax years, the provisions of section 3 of the Tax Credits Act 2002, as amended by the Civil Partnership Act 2004, will have effect throughout the period of any tax credit claim and award.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for the order because it will not have an impact on businesses, charities or voluntary bodies.

8.2 There is no reliable estimate of the number of tax credit claimants who may be affected by the introduction of the civil partnership scheme, although it is expected to be a tiny minority of the claimant population. The impact on the Exchequer is therefore likely to be negligible.

9. Contact

David Woodhouse at Inland Revenue Personal Tax, Tax Credits & Child Benefit Policy Team (tel: 020-7147-2477 or e-mail David.Woodhouse@ir.gsi.gov.uk) can answer any queries about the order.