EXPLANATORY MEMORANDUM TO

THE TAX CREDITS REVIEWS AND APPEALS (AMENDMENT) ORDER 2021

2021 No. 44

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and is laid before the House of Commons by Command of Her Majesty.

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

2. Purpose of the instrument

2.1 This instrument inserts a new section into the Tax Credit Act 2002 (TCA) which enables HMRC to review tax credits (TC) awards and apply disability elements to tax years which have been finalised (that is, tax years for which HMRC has made a final decision on a TC claimant's annual entitlement) in the case of claimants who notify HMRC of their entitlement to qualifying disability benefits within the period set out in the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014).

3. Matters of special interest to Parliament

Matters of special interest to the Select Committee on Statutory Instruments

3.1 It has been concluded that the free issue procedure applies to this instrument, which means that this instrument will be issued free of charge to all known recipients of the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 (S.I. 2014/886). The free issue procedure applies because this instrument corrects an erroneous cross reference in section 20(6)(c) of TCA (which was inserted by the Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014). Section 20(6)(c) refers to a decision varied under section 21A(5)(b), but that section covers the situation where information requested has not been supplied. Section 20(6)(c) should refer to section 21A(4)(b).

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 The territorial application of this instrument includes Scotland and Northern Ireland.

3.3 The powers under which this instrument is made cover the entire United Kingdom (see the Finance Act 2008) and the territorial application of this instrument is not limited either by the Act or by the instrument.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the United Kingdom.

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

5. European Convention on Human Rights

5.1 The Rt Hon Steve Barclay MP, Chief Secretary to the Treasury, has made the following statement regarding Human Rights:

"In my view the provisions of the Tax Credits Reviews and Appeals (Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 This instrument amends TCA to insert a new section 21C to provide for a review of a decision outside of the time limits in section 21A of TCA, as extended by section 21B of that Act, in certain circumstances. It also makes consequential amendments to sections 18-20 and 28, 30, 38 and 39 of TCA to reflect the insertion of section 21C.

6.2 New section 21C provides for a review of a relevant decision where a claimant is awarded a qualifying disability benefit providing that the claimant notifies HMRC of the award within one month of the decision by the Department for Work and Pensions (DWP) for Great Britain or the Department for Communities (DfC) for Northern Ireland.

6.3 The measure will affect claimants with a finalised TC award reporting the award of a qualifying disability benefit within the specified time limits.

7. Policy background

What is being done and why?

7.1 This instrument makes changes to TCA. Under TC legislation a claimant who receives qualifying disability benefits administered by DWP or DfC is eligible for TC disability elements, but claimants must tell HMRC a disability benefit has been awarded to receive these elements.

7.2 TC disability elements can be backdated to the start date of the disability benefit award where there is an ongoing TC award, provided claimants report receipt of the disability benefit within one month of that benefit award decision date. This is to ensure claimants receive full payment of TC disability elements irrespective of the length of time it takes DWP or DfC to determine the disability benefit claim: on average this takes 12-16 weeks and can extend into years if the decision is challenged through legal proceedings.

7.3 The policy intent is to pay claimants the TC disability elements in line with the disability benefit award where they fulfil the reporting requirements within set time limits, even where this crosses tax years or where the claimant is no longer in receipt of TC. Qualifying disability benefits include Disability Living Allowance, Personal Independence Payment and Attendance Allowance.

7.4 However, HMRC has identified a gap in TC decision-making powers that inhibits the ability to give full effect to the backdating of TC disability elements. HMRC has limited powers to review TC decisions to take account of changes that occur after an award has been finalised. This legislative change will allow HMRC to review final TC decisions to determine whether there is retrospective entitlement to disability elements where claimants provide an in-time notification of an award of a qualifying disability benefit.

7.5 This measure is effective from 6 April 2020 and being legislated for in early 2021. As a temporary measure, the Commissioners for Revenue and Customs have agreed to use their discretionary powers of payment and management[1] to pay any cases where a claimant notifies HMRC within the statutory period between the start of the 2020-21 tax year and the coming into force of the legislation.

Timescales for reporting changes of circumstances in tax credits

7.6 Tax credits awards are responsive to changes in a claimant's personal circumstances. Regulation 20 of The Tax Credits (Claims and Notifications) Regulations 2002 specifies that changes that would increase a claimant's tax credits award must be reported to HMRC for the claimant to benefit from the change. Regulation 25 provides that where HMRC is notified of a change which would increase a claimant's award the increase can be backdated up to one month prior to the notification date. Regulations 26 and 26A provide that where changes that would qualify for the disability elements of tax credits are reported within one month of a change in circumstance, the increase to a claimant's award can be backdated to the later of:

- the start date of the qualifying disability benefit;
- one month before the claim for the qualifying disability benefit was made;
- in the case of a child, the date the Child Tax Credit claim was made or was treated as made; or
- in the case of an adult, the first date the entitlement conditions for the disability element of Working Tax Credit were met.

Decisions and reviews

7.7 There are decision-making and review powers in TCA which allow HMRC to make backdated payments in certain circumstances. However, there are strict time limits associated with the existing powers and HMRC is therefore unable to review some of the older decisions. Given the annual nature of TC awards, even where a claimant reports the award of a qualifying disability benefit in time, HMRC has limited powers to review finalised awards.

7.8 A claimant can challenge a final decision by applying for a review. This must be done in writing and within 30 days of the original decision. In certain circumstances claimants have longer to request the review (up to 13 months) but must show that special circumstances prevented them from completing a timely request.

7.9 The purpose of this legislative change is to enable HMRC to review awards where HMRC has taken a final decision and subsequently the claimant is awarded a qualifying disability benefit that will increase the amount of the TC award. This right of review only applies where a claimant has provided a timely notification either verbally or in writing of the award of a qualifying disability benefit.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

[1] Section 5(1)(c) of the Commissioners for Revenue and Customs Act 2005

9. Consolidation

9.1 As this instrument amends primary legislation, this is not applicable.

10. Consultation outcome

10.1 No consultation was carried out as this is a technical change to enable HMRC to review decisions and pay disability elements from an earlier date where notice is given of an award of a qualifying disability benefit within the time limit set out in secondary legislation. However, the changes have been subject to informal scrutiny by the Social Security Advisory Committee (SSAC). SSAC is an independent statutory body that provides impartial advice on social security and related matters. It scrutinises most of the complex secondary legislation that underpins the social security system.

11. Guidance

11.1 These amendments will be reflected in the Tax Credits Technical Manual https://intranet.prod.dop.corp.hmrc.gov.uk/manual/tax-credits-manual and in guidance for claimants. The GOV.UK website will also be updated to reflect the new rules once the instrument comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies as the instrument only affects individuals claiming tax credits.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because no, or no significant, impact on the private or voluntary sectors 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 A statutory review clause is not required as this order does not make regulatory provision in relation to a qualifying activity, as defined in section 29 of the Small Business, Enterprise and Employment Act 2015.

15. Contact

15.1 Laura Richardson at HMRC, on Telephone 03000 581023 or email Laura.richardson2@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 James Dunstan, Deputy Director for tax credits and Child Benefit at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

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