These notes refer to the Tax Credits Act 2002
(c.21) which received Royal Assent on 8 July 2002

TAX CREDITS ACT 2002

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Tax Credits

Section 1: Introductory

40. This is an introductory section, which creates two new tax credits known as child tax credit and working tax credit (*subsection (1)*). It also sets out those elements of existing systems of support which are to be abolished and replaced by the new tax credits (*subsection (3)*). They are:

- the children's tax credit;
- WFTC and DPTC;
- the child-related elements of income support and income-based jobseeker's allowance;
- CDIs paid in certain non-means-tested benefits; and
- the New Deal 50plus employment credit.

Section 2: Functions of Board

41. *Subsection (1)* of section 2 brings the new tax credits under the care and management of the Commissioners of Inland Revenue ("the Board"), which confers the same management discretion on the Board in relation to tax credits as they have in relation to the other matters for which they are responsible. *Subsection (2)* provides that tax credits are to be paid from tax receipts, as is the case under the Tax Credits Act 1999. *Subsections (3) to (5)* amplify the provisions of the Inland Revenue Regulation Act 1890 to bring tax credits within the scope of that Act, allowing the Board to appoint persons to pay and manage tax credits, and requiring the Board to account separately for tax credits. Under the Inland Revenue Regulation Act 1890, most functions of the Board may, in practice, be exercised by Inland Revenue staff. Section 6 of the Taxes Management Act 1970 requires members of Inland Revenue staff and the General and Special Commissioners to make a declaration of secrecy. The declaration of secrecy imposes a general duty of non-disclosure. However, information may be disclosed for certain purposes, including for the purposes of any prosecution of an offence relating to "inland revenue". *Subsection (6)* provides that such offences include offences relating to tax credits.

Section 3: Claims

42. Section 3 contains the main provisions about claims to tax credits. Entitlement to a tax credit will depend on making a claim for it, and where the Board decide not to make an award or to terminate an award any entitlement or subsequent entitlement for the same year is dependent on the making of a new claim (*subsections (1) and (2)*). Claimants must be aged at least 16 and be in the United Kingdom (*subsection (3)*).

Regulations may set out the circumstances in which someone is to be treated as being, or not being, in the United Kingdom, for example, to allow for temporary absences on holiday (*subsection (7)*).

43. Claims may be made jointly by married or unmarried couples, or by individuals who would not be entitled to make a claim as part of a couple (*subsection (3)*). Entitlement to a tax credit comes to an end if a couple who have made a joint claim stop being entitled to make such a claim (that is, they separate) or an individual who has made a single claim becomes part of a couple and stops being entitled to make a single claim (*subsection (4)*). For the purposes of this Part, the definition of "married couple" follows that used for income tax and means any married couple in which the partners are neither formally separated nor separated and likely to remain so permanently (*subsection (5)*). An "unmarried couple" is defined as a man and a woman living together as husband and wife (*subsection (6)*). Individual claimants make a "single claim", and couples make a "joint claim" for tax credits.

Section 4: Claims: supplementary

44. Section 4 allows for the detailed rules about claims to be set out in regulations. These regulations may:

- specify the manner in which a claim must be made and the time limits for claims (*subsection (1)(a)*);
- in certain circumstances, allow a claim to be treated as made on a date different from the date on which it is actually made (*subsection (1)(b)*). For example, regulations may allow a claim for working tax credit to be treated as made on the date of an earlier claim if the reason the earlier claim failed was because the person was awaiting a decision from DWP on their claim for a disability benefit which was later successful;
- allow claims to be made covering a period wholly or partly after the date of the claim (*subsection (1)(c)*);
- allow tax credit awards to be made conditional on the requirements for entitlement to the award being met when the award actually becomes payable (*subsection (1)(d)*);
- allow the executors or administrators of a deceased person's estate to make or continue with a claim on behalf of the estate (*subsection (1)(e)*);
- in certain circumstances, enable one person to act on behalf of another in making a claim or one member of a couple to be taken as acting for the other in the case of a joint claim (*subsection (1)(f) and (g)*). For example, a person who is mentally or physically incapable of making a claim may be able to have his claim made on his behalf by a representative; and
- allow claimants to be treated as having made a claim to tax credits (*subsection (1)(h)*). This will, for example, allow certain awards to be renewed each year, without a new claim being required, as may happen now for claims to the children's tax credit.

45. This section also enables the Board to disclose to a claimant (whether or not a joint claimant) information in relation to his claim or an award of tax credit on the claim or to any change of circumstances relevant to his claim or award and any other information which is or appears to be relevant to his entitlement to a tax credit. For example, where a couple have made a joint claim and one member of that couple notifies the Board of a change of circumstances, the Board can explain to the other member of the couple why they have amended the award.

Section 5: Period of awards

46. Section 5 sets out how long tax credit awards last and what brings an award to an end. A claim made before a tax year starts gives rise to an award for the full tax year (*subsection (1)*). Otherwise, the tax credit award starts on the date of claim and runs to the end of the tax year (*subsection (2)*). *Subsection (3)* makes clear that these provisions are subject to any decision by the Board under section 16 to terminate an award.

Section 6: Notifications of changes of circumstances

47. Section 6 sets out the arrangements for the notification to the Board of changes of circumstances affecting people's entitlement to tax credits.

48. Regulations may provide that a change that increases the maximum rate of entitlement to a tax credit takes effect only once the Board has been told about it (*subsection (1)*). *Subsection (2)* provides that regulations may allow for the notification of a change to be treated as having been made earlier or later than it actually was and for notification to be made for a period after it is given. Regulations may also allow for a change in the tax credit award to be made contingent on the requirements for entitlement to the amended award being met when the amendment takes effect. This follows the approach taken to claims in section 4.

49. Section 6 also allows regulations to be made requiring claimants to notify the Board where there is a change of circumstances of a prescribed description which may reduce the rate of entitlement to a tax credit or bring entitlement to an end (*subsection (3)*).

50. The section also allows for regulations to make provision about how and when a notification of a change should be given and about who may be entitled, or required, to notify a change. The regulations may also set out the circumstances in which one person can act for another in relation to a notification (*subsection (4)*).

Section 7: Income test

51. *Subsection (1)* of section 7 provides that entitlement to a tax credit is dependent on the income of the claimant or the combined income of persons making a joint claim. The starting point is that an income threshold will be determined in the matter set out in regulations. If the income of the claimant or claimants falls below the threshold, their entitlement is to the maximum rate of the tax credit appropriate to their circumstances. But if their income exceeds the threshold, all or part of that entitlement may be withdrawn (see section 13).

52. The income test introduced by this section is not to apply in the case of claimants entitled to prescribed social security benefits. Such claimants automatically receive tax credits at the maximum rate for as long as they stay on those benefits (*subsection (2)*).

53. The income to be taken into account in determining entitlement to tax credits will be income for a tax year. The basic proposition is that awards are based on the current year income. But the section allows regulations to be made to enable previous year income or an adjusted measure of current year income to be used in certain circumstances. The regulations may set monetary thresholds related to changes in income between the current and previous years. A change in income smaller than the threshold(s) prescribed in regulations would mean claimants received tax credits based on their previous year income. If income moved between one year and the next by more than the threshold(s), the amount of tax credit due would depend either on the current year income, or, if regulations so provided, on current year income adjusted by the threshold (*subsection (3)*).

54. The effect of this is to provide flexibility for entitlement to tax credits not always to be based on actual income in the current year. So it would be possible for claimants with relatively small changes in income to have awards based on their known previous year income. The regulation-making powers would also make it possible for changes

in income below prescribed amounts to be ignored and for the first slice of a change in income to be left out of account in determining entitlement.

55. This section provides that, for joint claims, the income for a tax year is the aggregate income of each of the partners for that year (*subsections (4) and (5)*). Regulations may allow income to be treated as belonging, or not, to a particular tax year (*subsection (6)*). In particular, they may allow income of particular types for the last tax year but one to be treated as the previous year income of that type, instead of the actual amount for that year (*subsection (7)*).

56. Regulations may also make provision as to what is, or is not, income for the purposes of tax credits and as to the calculation of income (*subsection (8)*). A person may be treated in certain circumstances as not having income which he does have or as having income which he does not (*subsection (9)*).

57. The section also enables the Board to make an estimate of the income of an individual claimant, or the aggregate income of joint claimants, in order to make, amend or terminate an award. Such an estimate does not change the actual entitlement of the claimant or claimants to tax credits for the year (*subsection (10)*).

Section 8: Entitlement

58. This section sets out the conditions of entitlement for the child tax credit.

59. Entitlement hinges on the claimant or claimants being responsible for one or more children or qualifying young persons (*subsection (1)*). Regulations may be made setting out how responsibility for a child or young person is to be determined for the purposes of the child tax credit (*subsection (2)*).

60. The section also sets out what is meant by a child or young person for the purposes of the child tax credit. “Child” means someone under 16 or, in prescribed circumstances, someone aged 16. The intention is to continue child tax credit entitlement in respect of a child until 1st September following the child’s 16th birthday, so as to cover those children remaining in compulsory full-time education (*subsection (3)*). A “qualifying young person” is someone aged 16 or more who is no longer a child for tax credits purposes, meets conditions to be set out in regulations and is below an age limit to be set out in regulations (*subsection (4)*). This will enable support through child tax credit to be available in respect of young people who continue in full-time, non-advanced education.

61. The section allows regulations to be made to enable child tax credit to continue for a period after a child or young person has died (*subsection (5)*).

Section 9: Maximum rate

62. Section 9 provides for regulations to be made setting out the elements making up the child tax credit. The section provides that child tax credit must include an element available to everyone entitled to child tax credit and an element for each child or young person that the claimant is or claimants are responsible for. The first of these elements is known as the “family element” and the latter as the “individual element”. The individual element must be a higher amount for a child or young person with a disability and higher again for a child or young person with a severe disability. Regulations may set out the criteria for deciding whether a child or young person is disabled or severely disabled.

63. The section allows for regulations to set out other elements of child tax credit. Regulations may also provide for the family element to differ according to the age of children in the family, or other factors, or for the amount of the individual element to vary according to the age of the child or young person, or other factors.

64. If regulations under section 8(2) about the circumstances in which a person is, or is not, responsible for a child or qualifying young person, mean that more than one claimant

(other than the partners in a couple) is entitled to child tax credit in respect of the same child or young person, regulations under this section may provide, in effect, for entitlement to child tax credit to be divided between them.

Section 10: Entitlement

65. Section 10 sets out the conditions of entitlement relating to the working tax credit. It provides that a person, or either or both persons in the case of a couple, must be engaged in qualifying remunerative work.

66. The section allows regulations to be made setting out what is meant by qualifying remunerative work and the circumstances in which a person is to be treated as engaged, or not engaged, in such work. For example, a person will have to work at least a certain number of hours to be regarded as being in qualifying remunerative work. The regulations may make different provisions according to the age of the claimant or claimants, whether he or she has a disability, whether he or she is responsible for a child or qualifying young person, or any other factors. Regulations may also be made setting out how responsibility for a child or a young person is to be determined for the purposes of the working tax credit.

Section 11: Maximum rate

67. Section 11 provides for the elements making up the working tax credit to be set out in regulations.

68. The working tax credit must include an element available to any person entitled to working tax credit. This is to be known as the "basic element" of working tax credit. A person entitled to working tax credit must also be entitled to an extra element, to be known as the “disability element”, if they have a disability that puts them at a disadvantage in getting a job and they satisfy such other conditions as are set out in regulations.

69. The section then enables regulations to be made setting out the other elements of working tax credit available. These may include:

- an element for being engaged in remunerative work to a certain extent, for example, working a certain number of hours;
- an element for couples, or for lone parents;
- an element for adults who are disabled or severely disabled;
- an element for adults over a prescribed age, meeting prescribed criteria and returning to work after a prescribed period.

Section 12: Child care element

70. Section 12 provides that one element of the working tax credit may be an element in respect of child care costs, to be known as the "child care element". The section provides for regulations to be made setting out the child care charges which may be taken into account, and the proportion of them which is to be taken into account, up to a prescribed maximum.

71. The regulations may set out the types of qualifying child care whose costs may be taken into account by reference to the children for whom, and the persons by whom, the care is provided. The section allows for the appropriate national authority (in England, the Secretary of State, in Scotland, Scottish Ministers, in Wales, the National Assembly for Wales, and in Northern Ireland, the Department of Health, Social Services and Public Safety) to make schemes under which child care providers can be approved for the purposes of the child care element (*subsection (3)*).

Section 13: Rate

72. Section 13 provides that claimants whose income (or aggregate income) does not exceed the income threshold are entitled to the maximum rate of tax credit for which they are eligible according to their circumstances. Similarly, a claimant entitled to certain social security benefits (to be prescribed under section 7(2)) is entitled to tax credits at the maximum rate.

73. For other cases, the section allows for regulations to be made setting out how the rate of entitlement is to be calculated. This provides the scope to set out the rate or rates at which tax credits are to be withdrawn depending on the income of the claimant or claimants, and allows for rounding.

74. The section also allows for regulations to specify circumstances where minimal entitlement may be reduced to nil.

Section 14: Initial decisions

75. *Subsection (1)* of section 14 provides that, when a claim is made, the Board must decide whether an award of tax credit should be made and, if so, the amount of that award. *Subsection (3)* makes clear that the Board may make an award at a nil rate. This ensures that awards may be made to people whose relevant income is expected to be too high for there to be any rate of entitlement in accordance with regulations under section 13, so that they may nevertheless have their entitlement finally determined at the end of the year in accordance with sections 18 to 21 when the actual level of their relevant income can be established.

76. *Subsection (2)* provides that, before making a decision under *subsection (1)*, the Board can require the person or persons making the claim to provide, within a specified time, information or evidence that the Board consider they need to make their decision. The Board may also require, in accordance with regulations, information or evidence to be provided by third parties in order to reach a decision.

Section 15: Revised decisions after notifications

77. Section 15 requires the Board to make a decision whether to amend a tax credit award after notification of a change of circumstances which may increase the maximum rate of tax credit has been given in accordance with regulations under section 6. It provides the same information powers in respect of notified changes as apply to claims.

Section 16: Other revised decisions

78. This section gives the Board the power to amend or terminate an award of a tax credit during a tax year if they have reasonable grounds for believing the claimant is or claimants are entitled to the tax credit at a different rate to the rate at which it has been awarded or that they are no longer, or never were, entitled to the tax credit.

79. If the Board believe that claimants are entitled to the tax credit at a different rate to that awarded or that they are no longer, or never were, entitled to the tax credit, they may require information or evidence to be provided. The information powers are similar to those under sections 14 and 15.

Section 17: Final notice

80. Section 17 provides that the Board must give a notice to a person or persons to whom a tax credit has been awarded for the whole or part of a tax year.

81. The notice must require the claimant(s) to declare that the circumstances affecting their entitlement are as stated by the Board or, if they are not, to state how they differ. This must be done by a time specified in the notice. Alternatively, the notice must inform the claimant(s) that, if they do not declare any respects in which their circumstances differ

from the information in the notice, they will be treated as having accepted as accurate the circumstances set out by the Board (*subsection (2)*).

82. The circumstances to be referred to in the notice are the circumstances affecting entitlement to tax credits for the tax year and the amount of tax credits to which the claimant(s) were entitled for the tax year (*subsection (3)*).

83. Section 7 makes clear that entitlement to a tax credit for a tax year is dependent on relevant income for that year. Section 17 therefore makes similar provision in relation to income as it does about relevant circumstances. "Relevant income", which is defined in section 7(3), depends on a comparison of the income for the tax year to which the award (or awards) relate ("the current year income) and the income for the preceding tax year ("the previous year income"). A final notice under section 17 must either require the claimant(s) to confirm that their current year income is as set out in the notice (or, if not, to state the correct level of that income) or inform them that, unless they correct the information about current year income set out in the notice by a specified date, they will be treated as having declared their current year income was as set out in the notice (*subsections (4) and (5)*). The notice may specify a range of income and require people to report changes only outside that range. Section 17 allows people to provide an estimate of their current year income. Any such estimate must be corrected within a specified time if it turns out not to be correct (*subsection (8)*).

84. In most cases, the Board will already hold details of previous year income at the time they issue a final notice under this section, but that may not always be the case. The section therefore provides that, at the Board's discretion, the notice may also require claimants to provide confirmation or details of their previous year income (*subsections (6) and (7)*).

85. The section enables regulations to be made setting out the circumstances in which one person may act for another in responding to a notice under this section or in which one partner in a couple is to be taken as acting also for the other (*subsection (10)*).

Section 18: Decisions after final notice

86. *Subsections (1) to (4)* of section 18 provide that, after giving a notice under section 17, the Board must make a decision about the entitlement of a person or persons to a tax credit for the tax year. The Board may not make a decision before the deadline for responding to that notice, unless the claimant has, or claimants have, already responded to all the relevant provisions of the notice.

87. Section 17 allows for estimates of income to be used in notices issued by the Board and in claimants' responses to those notices. Where an estimate is included in the response made, or treated as made, to the final notice, the Board will make an interim decision about entitlement under *subsection (1)* of section 18 pending final figures. Once those final figures are provided, or the time allowed for correcting the estimate has expired, the Board will make a final decision about entitlement in accordance with *subsections (6) to (8)* of that section.

88. In some cases, a claimant or claimants may respond to a final notice before the deadline for making such a response has been reached. In those cases, if the Board make a decision but, subsequently, the claimant makes, or the claimants make, a further declaration or statement within the original deadline, *subsections (5) and (9)* allow the Board to revise its decision accordingly.

89. *Subsection (10)* enables the Board to obtain any further information from claimants that it needs in order to be able to make a final decision about their entitlement. *Subsection (11)* provides that a final decision taken under this section is conclusive as to the entitlement of the person or persons to whom it relates, subject to any revision of that decision under *subsections (5) or (9)*, and to the provisions on enquiries, discoveries and official error, and to any appeal.

Section 19: Power to enquire

90. Section 19 gives the Board the power to make enquiries into the entitlement of a person or persons to a tax credit for a tax year, so long as they give notice to that person or those persons within the time limit allowed. The Board may require information or evidence from the claimant(s), or from a third party, for the purposes of an enquiry. The nature of the information or evidence that may be required from a third party, and the type of third party from whom it may be required, must be set out in regulations *(subsection (2)(b))*. Following an enquiry, the Board must reach a decision about the entitlement of the person or persons to the tax credit for the tax year *(subsection (3))*.

91. *Subsection (4)* sets out the period allowed for beginning an enquiry. The period begins with the date on which a decision under section 18 is made. Where an estimate of income is given, this means the decision taken under section 18(6); otherwise, it means the decision under section 18(1) (*subsection (5)*). In the case of an enquiry relating to a person or persons, either of whom is required to make a self assessment tax return under section 8 of the Taxes Management Act 1970, the period ends on the day that tax return becomes final (or, if both persons make self assessment returns, the later of those two days) (*subsection (4)(a)*). A return becomes final when an enquiry into that return is completed or, otherwise, on the last day of the period during which an enquiry may be made into that return, as set out in section 9A(2) of the Taxes Management Act 1970 (*subsection (7)*). In any other cases, the period ends one year after the date by which a response to a notice issued by the Board must be made or, where an estimate of income is relied on initially, one year after the date the estimate must be corrected if it is incorrect (*subsections (4)(b) and (6)*).

92. *Subsection (8)* provides that an enquiry is completed when the Board gives notice of their decision about the entitlement of the person or persons to whom the enquiry relates. *Subsection (9)* provides that a person to whom an enquiry relates has the right to apply for an enquiry to be closed. This application must be heard in the same way as an appeal against a decision made following an enquiry (*subsection (10)*).

93. The entitlement of a person, or the joint entitlement of a couple, to a tax credit for a tax year cannot be enquired into more than once *(subsection (11))*.

94. A decision on an enquiry is conclusive as to entitlement to a tax credit, subject to the provisions on appeals, discovery or official error (*subsection (12)*).

Section 20: Decisions on discovery

95. This section provides for two circumstances in which the Board can revise a conclusive decision about entitlement to a tax credit where they discover that the decision was not correct.

96. The first part of section 20 allows the Board to revise a conclusive decision where they discover, as a result of a revision of a claimant's income tax liability, that the original decision was incorrect. This must be done within a year of the revision to the claimant's income tax liability.

97. The later part of section 20 allows the Board to revise a conclusive decision where they discover that the decision was incorrect because of fraud or neglect on the part of the claimant or claimants. This must be done within five years of the end of the year to which the decision relates.

Section 21: Decisions subject to official error

98. Under section 21, the Board may provide by regulations for the revision of decisions to correct official error when the revised decision would be in the favour of the person or persons concerned.

Section 22: Information etc. requirements: supplementary

99. This section enables regulations to be made detailing the manner and form in which information or evidence must be provided when required under the provisions of the preceding sections. Regulations may also make provision as to the time limits that may be specified for providing such information or evidence.

Section 23: Notice of decisions

100. This section provides that the Board are obliged to give notice of a decision to any person to whom the decision relates. The section also provides that the notice must state the date of the decision and details of any right of appeal against it (under section 38)

101. However, *subsection (3)* provides that the Board need not give notice, or further notice, of a decision made under section 14(1) or 18(1) or (6) on the basis of a declaration made or treated as made under section 17, provided that the claimant has, or claimants have, already been given proper notice of what the decision would be and when it would be made. Where the Board issue a notice under section 17(1) informing the claimant(s) that, in accordance with section 17(2)(b), (4)(b) and (where relevant) (6)(b), they will be treated as having confirmed the information in the notice unless they correct that information by a certain date, it will be possible for the Board to tell the claimant(s), at the time they issue the notice, what their decision about final entitlement will be, and when it will be taken, in the absence of such a correction being made. The Board will also be able to tell the claimant(s), at that time, what their decision under section 14 in respect of the award for the coming year will be in the absence of such a correction. Similarly, the Board may be able to tell the claimant, either at the time the notice is issued under section 17(1) or at the time they make their initial decision about final entitlement under section 18(1), what their decision under section 18(6) will be, and when it will be made, in the event that any estimates are not corrected by the specified date.

Section 24: Payments

102. This section provides that payments of a tax credit, or of an element of a tax credit, must be made to the person to whom the award is made (*subsection (1)*). In the case of a couple, or where one person acts on another's behalf, regulations are to prescribe the person to whom payments are to be made (*subsections (2) and (3)*). For example, regulations may provide that payments of an award made to a person who is incapacitated may be made to the person acting on their behalf.

103. Regulations under *subsection (4)* may prescribe circumstances in which payments may be continued after the end of a tax year for which a tax credit award was made. These payments are to be treated as payments of the tax credit for the next tax year (*subsection (2)*). This will enable tax credit payments to continue to be made, without interruption, at the start of each tax year when claims are being renewed.

104. Payments of a tax credit must be made by the Board, except where regulations under section 25 require payments of working tax credit to be made by employers (*subsection (6)*). Regulations may be made about when and how tax credit payments are to be made by the Board (*subsection (7)*). In particular, regulations may make entitlement to a tax credit, or to an element of a tax credit, dependent on the claimant(s) providing details of a suitable account into which payments can be made (*subsection (8)*).

Section 25: Payments of working tax credit by employers

105. Section 25 gives the Board power to make regulations requiring employers to pay working tax credit, or prescribed elements of working tax credit, to their employees.

106. The regulations may, in particular, require employers to:

- make payments of working tax credit as notified by the Board;
- produce information or evidence to verify payments of working tax credit; and
- provide employees with information (for example, on their pay statements) relating to the tax credit paid to them.

107. The regulations may also provide for:

- the payment of working tax credit to employees by the Board in certain circumstances;
- the funding by the Board of employers who are notified that they have to pay working tax credit. This funding may be provided direct or through set-off against income tax, national insurance contributions and student loan deductions for which the employer is accountable to the Board;
- recovery of overpayments of funding to employers;
- calculation and payment of interest on amounts due to or from the Board;
- appeals relating to matters which are covered in the regulations.

108. This section also allows the Board to exercise its information powers under section 20 of the Taxes Management Act in relation to employers' compliance with regulations made under this section. Section 20 of the Taxes Management Act 1970 allows an inspector to require the production of documents. Those powers are applied with appropriate modifications, to treat references to employers and to tax liabilities as though they were references to employers and payments of working tax credit. Section 20B, which places restrictions on this power, and section 20BB, which makes it an offence to falsify or destroy documents required, are also applied.

Section 26: Liability of officers for sums paid to employers

109. The purpose of this section is to prevent officers of bodies corporate from using for some other purpose funding provided by the Board to enable them to pay tax credits to their employees. In particular, it deals with the situation where officers deliberately set out to exploit limited liability through "phoenixism" (the practice of carrying on what is effectively the same business successively through a series of companies, each of which in turn becomes insolvent with substantial debts to the Government).

110. This section allows for regulations to be made to deal with cases where a body corporate has received funding from the Board for the purposes of paying the working tax credit. If that body corporate fails to repay the funds to the Board and the provision of the funding or the failure to repay appears to the Board to be attributable to the fraud or neglect of one or more of the officers of that body corporate, regulations may provide for the culpable officers to be made personally responsible for that debt.

Section 27: Rights of employees

111. Section 27 gives effect to Schedule 1. This provides for the rights of employees not to suffer unfair dismissal or other detriment as a result of the obligations imposed on employers by regulations made under section 25.

Schedule 1: Rights of employees

112. *Paragraph 1* amends the Employment Rights Act 1996 (ERA).

113. *Paragraph 1(2)* inserts a new section 47D into ERA. It provides an employee with the right not to suffer detriment as a result of any act, or failure to act, by his employer done on the ground that:

- the employee had taken action to enforce the rights conferred on him by regulations under section 25 of the Tax Credits Act 2002 (payments of working tax credit to be made by employers);
- the employer had incurred a penalty or penalty proceedings had been brought against the employer under the Tax Credits Act 2002; or
- the employee was entitled, or will or may in future be entitled, to working tax credit.

114. New section 47D(2) protects the employee from detrimental action whether or not he has the right which he is claiming and whether or not his right has been infringed, as long as his claim to the right and its infringement is made in good faith. New section 47D(3) brings within the scope of subsections (1) and (2) those who are employees for the purposes of the Tax Credits Act 2002 but not for the purposes of ERA. The purpose of subsection (4) is to preclude those who are employees for the purposes of ERA from claiming under section 47D when the detriment they suffer is termination of their employment contract. Such a termination will always be a dismissal within the meaning of Part 10 of ERA.

115. *Paragraph 1(3)* amends section 48 of ERA to give an employee the right to complain to an employment tribunal if he has been subjected to detriment in contravention of new section 47D of ERA.

116. *Paragraph 1(4)* amends section 49 of ERA to ensure that, where a complaint is made under section 48, any compensation must not exceed the amount that would have been payable if the employee had been dismissed for the reasons specified in section 104B of ERA (inserted by *paragraph 3* of the Schedule).

117. *Paragraph 1(5)* extends the right under section 47D to members of the armed forces and *paragraph 1(6)* extends it to staff of the House of Lords and House of Commons.

118. *Paragraph 2* makes equivalent amendments to the Employment Rights (Northern Ireland) Order 1996.

119. *Paragraph 3* amends the provisions of ERA relating to unfair dismissal.

120. *Paragraph 3(2)* inserts a new section 104B into ERA so as to provide that an employee will be regarded as having been unfairly dismissed if the dismissal arises because:

- the employee has taken action to enforce the rights conferred on him by regulations under section 25 of the Tax Credits Act 2002;
- the employer has incurred a penalty or penalty proceedings have been brought against the employer under the Tax Credits Act 2002; or
- the employee is entitled, or will or may in future be entitled, to working tax credit.

121. *Paragraph 3(3)* inserts a new subsection (7B) into section 105 of ERA, which provides that selecting an employee for redundancy on certain grounds amounts to unfair dismissal. The new subsection ensures that selecting an employee for redundancy because he has enforced or attempted to enforce any of the rights referred to in the new section 104B(1) of ERA amounts to unfair dismissal.

122. *Paragraph 3(4)* inserts a new paragraph (gh) into section 108(3) and section 109(2) of ERA. This means that the right not to be dismissed for enforcing a right to payment of tax credits under the Tax Credits Act 2002 will be one of the rights which apply from the day an employee starts work and without any age limit. Without these amendments, section 108(1) would mean that the right would not apply until an employee had been continuously employed for two years and section 109(1) would mean that the right would not apply to those over their normal age of retirement.

123. *Paragraph 4* serves exactly the same function in relation to employment rights in Northern Ireland as *paragraph 3* serves in relation to Great Britain.

Section 28: Overpayments

124. *Subsection (1)* of section 28 establishes that an overpayment arises when the amount paid out in tax credits to a claimant or claimants in a tax year exceeds their entitlement to tax credits for that year and gives the Board the power to decide whether to recover the overpayment.

125. *Subsections (3) and (4)* give the Board the power to decide who should repay the overpayment in particular circumstances. In particular, it enables the Board to decide from which partner in a couple it should seek to recover the overpayment or how much to seek to recover from each partner.

126. The powers of the Board under *subsections (1) to (4)* are only available once entitlement, and thus the amount of any overpayment, has been determined in accordance with sections 18 to 21. This section also gives the Board certain powers in relation to overpayments, or expected overpayments, before entitlement has been finally established in this way. *Subsection (5)* deals with cases where it appears likely that an overpayment on an award will arise. It enables the Board to amend that award or any other award of any tax credit with a view to reducing or eliminating that overpayment. *Subsection (6)* allows the Board to treat as an overpayment an amount paid under an award that is subsequently terminated on the ground that the claimant or claimants never satisfied the essential requirement under section 8(1) or 10(1) for there to be any entitlement to the tax credit.

Section 29: Recovery of overpayments

127. This section sets out the framework for recovering overpayments of tax credits. It provides that a notice must be given to the person who is liable to repay the overpayment, setting out the amount to be repaid and the manner in which it is to be repaid. The section provides for the Board to decide whether an overpayment is to be repaid by:

- direct payment within 30 days (*subsection (3)*);
- reducing subsequent awards of tax credits made to the person who is liable to repay (*subsection (4)*); or
- for PAYE taxpayers, treating the overpayment as an amount of tax due and payable which is to be recovered through PAYE as if it were an underpayment of tax for the previous tax year (*subsection (5)*).

Section 30: Underpayments

128. This section makes clear that, where the amount paid out in respect of a tax credit for a tax year is less than the entitlement of a person or persons to that tax credit as determined in accordance with sections 18 to 21, the difference is to be paid to them, or to whichever of them is prescribed. Where the claim for the tax credit was made by one person on behalf of another, regulations are to set out the person to whom the amount of the underpayment is to be paid.

Section 31: Incorrect statements etc

129. Section 31 provides for a penalty of up to £3,000 to be imposed on any person (including an employer in relation to his responsibilities under section 25) who fraudulently or negligently provides a false or incorrect statement or incorrect information or evidence in respect of a claim and any associated notifications, notices and requirements.

130. For couples, such a penalty may be imposed on either partner, but the total of the penalties imposed on both partners must not exceed £3,000 *(subsections (2) and (4*)). No penalty can be imposed on a partner who could not reasonably have been expected to have been aware of the fraud or neglect giving rise to the penalty *(subsection (3)*).

131. Penalties may also be imposed on a person who has acted for another in relation to a claim, notification or notice, where they have acted fraudulently or negligently *(subsection (5)*).

Section 32: Failure to comply with requirements

132. This section provides that penalties may be imposed on a person (including an employer) who fails to comply with a requirement to supply information or evidence. An initial penalty of up to £300 may be imposed by the relevant appellate body after the Board have commenced proceedings for it (*subsection (2)(a) and paragraph 3 of Schedule 2*). Thereafter, the Board may impose daily penalties of up to £60 (*subsection (2)(b)*). Such penalties cannot be imposed after the information or evidence has been supplied (*subsection (4)*). This section also provides that a penalty of up to £300 may be imposed on a person who fails to notify a change of circumstances which may decrease the rate at which he is entitled to a tax credit in accordance with regulations under section 6 (*subsection (3)*). A person is not to be regarded as failing to supply information or evidence or giving the notification if it was provided within a time limit set or revised by the Board or the person had a reasonable excuse for the failure and provided the information or evidence without delay once the excuse no longer applied (*subsection (5)*).

Section 33: Failure by employers to make correct payments

133. This section sets out the penalties that may be imposed on employers if they fail to comply with their obligations to make payments under regulations made under section 25. Where the employer refuses or repeatedly fails to pay tax credits to employers in accordance with regulations and the Board therefore have to make the payments, the employer is liable to a penalty of up to £3,000. Similarly, a penalty of up to £3,000 may be imposed where, by reason of his fraud or neglect, the employer pays the wrong amount of tax credit to an employee for a tax year. Only one of these penalties can be imposed on an employer in respect of an employee.

Section 34: Supplementary

134. This section gives effect to Schedule 2, which contains various supplementary provisions relating to penalties.

Schedule 2: Supplementary

135. This Schedule deals with the procedural and supplemental provisions relating to penalties.

136. *Paragraph 1* provides the framework for the Board to make determinations of penalties. It provides that the Board may make a determination of a penalty under section 31, 32(2)(b) or (3) and 33 at such level within the statutory maximum as they consider appropriate. It provides for a notice of the determination to be given to a person on whom a penalty is imposed, stating the date of issue and details of their right to appeal. The amount of a penalty can only be altered on appeal. A penalty is due and payable 30 days after the date on which the notice of it is given.

137. *Paragraph 2* covers appeals against penalty determinations under *paragraph 1*. On appeal, the Commissioners may reduce, confirm, increase or set aside the penalty. There is a right of appeal to the High Court or the Court of Session against the Commissioners' decision.

138. *Paragraph 3* concerns penalty proceedings before the Commissioners. It provides that the Board may take penalty proceedings before the Commissioners for a penalty under section 32(2)(a). The proceedings must be initiated by notice in writing to the Commissioners.

139. *Paragraph 4* provides that an appeal against the determination of a penalty in proceedings under *paragraph 3* must be made to the appropriate civil court and that the court may set aside, confirm, reduce or increase the penalty.

140. *Paragraph 5* gives the Board the power to mitigate or entirely remit any penalty under Part 1 of the Act.

141. *Paragraph 6* sets out the time limits for imposing penalties under sections 31, 32 and 33. It provides that, for a penalty under section 31, a determination of the penalty must be made within one year of the latest of:

- the expiry of the time for starting an enquiry under section 19;
- the date on which an enquiry under section 19 is completed; and
- the date on which a decision on discovery is made under section 20(1) or (4).

142. The time limit for imposing penalties under section 32 is one year after the latest of:

- the expiry of the time for starting an enquiry; and
- the date on which an enquiry is completed.

143. For penalties under sections 31 and 32 in relation to the obligations on employers under section 25, and penalties under section 33, the penalty determination must be made, or proceedings started, within 6 years after the penalty was incurred or began to be incurred.

144. *Paragraph 7* sets out the provisions relating to the recovery of penalties. *Sub-paragraph (1)* allows for penalties to be recovered directly under the relevant provisions of the Taxes Management Act 1970. *Sub-paragraph (2)* allows for penalties to be recovered through tax codes

145. Until the day appointed by order under section 63(1), the effect of that section is that, except in relation to penalties imposed on employers, appeals about penalties are to an appeal tribunal or to the Social Security Commissioner as appropriate, rather than to the General Commissioners or Special Commissioners or the High Court or Court of Session. Except in relation to penalties imposed on employers for failure to provide information, proceedings under paragraph 3 of this Schedule are to an appeal tribunal rather than to the General Commissioners or Special Commissioners.

Section 35: Offence of fraud

146. This section establishes that knowingly being concerned in fraudulent activity in connection with obtaining payments of tax credit is a criminal offence. The offence is punishable by six months imprisonment and/or the statutory maximum fine on summary conviction, or by seven years imprisonment and/or a fine on conviction on indictment.

Section 36: Powers in relation to documents

147. Section 36 gives the Board powers to obtain evidence in cases of suspected tax credit fraud and serious fraud. It does this by making available powers already conferred on the Board in relation to suspected serious tax fraud by sections 20BA, 20BB, 20C and 20CC of and Schedule 1AA to the Taxes Management Act 1970.

148. Section 20BA of the Taxes Management Act 1970 allows the Board to apply to a circuit judge (in Scotland, a sheriff, and in Northern Ireland, a county court judge) for an order

requiring the production of documents if there are reasonable grounds for suspecting that:

- an offence involving serious fraud in connection with, or in relation to, tax has been, or is about to be, committed; and
- documents which may be required as evidence for the purposes of any proceedings in respect of that offence are, or may be, in the power or possession of any person.

149. *Subsection (1)* makes this power available in cases of suspected tax credit fraud. Section 20BB of the Taxes Management Act 1970, which makes it an offence to falsify documents required by order under section 20BA, and Schedule 1AA, which makes supplemental provision, are also applied.

150. Section 20C of the Taxes Management Act 1970 gives the Board a power to apply to a circuit judge (or a sheriff or a county court judge) for a warrant authorising an officer of the Board to enter, search and remove information from premises if there are reasonable grounds for suspecting that an offence involving serious fraud in connection with, or in relation to, tax is being, has been or is about to be committed and that evidence is to be found on those premises. *Subsection (2)* makes this power available in cases where serious fraud in connection with tax credits is suspected. Section 20CC of the Taxes Management Act 1970 makes provision about procedural issues.

Section 37: Interest

151. *Subsection (1)* of this section provides that interest may be charged on any overpayment of tax credits which arises from the fraud or neglect of a person to whom the award was made. The interest normally runs from 30 days after the end of the period allowed to confirm details of income in response to a notice under section 17(4). However, where an award has been terminated and an amount paid under that award is treated as an overpayment under section 28(6), the interest runs from the date of the decision under section 16(1) to terminate the award.

152. *Subsection (5)* provides that any penalty imposed in relation to tax credits carries interest from the date the penalty is due and payable, although the Board have the discretion to mitigate such interest.

Section 38: Appeals

153. Section 38 provides for a right of appeal against a decision made by the Board under the provisions of Part 1, the determination of a penalty under paragraph 1 of Schedule 2 or a decision under section 37(1) that interest should be charged on an overpayment of tax credit.

Section 39: Exercise of right of appeal

154. This section sets out the framework for appeals. In particular, notice of an appeal against a decision must be given to the Board in a prescribed manner within 30 days after the date on which notice of the decision was given or, in the case of a decision to which section 23(3) (which provides that notice need not be given of certain decisions) applies, within 30 days of the date of the decision. The appeal must specify the grounds for appealing. This section provides for appeals to be heard by the General Commissioners or, if the appellant chooses, the Special Commissioners, like income tax appeals, and the relevant provisions of the Taxes Management Act 1970 are therefore applied. Regulations may modify Part 5 of that Act, as appropriate to tax credits. The Commissioners may allow the appellant to introduce new reasons for his appeal if they believe it was not wilful or unreasonable not to have advanced them before.

155. Until the date appointed by order under section 63(1), the provision of this section are modified by section 63.

Section 40: Annual reports

156. This section requires the Board to make an annual report to the Treasury about certain matters in relation to tax credits. The report must cover the Board's accounts insofar as they relate to tax credits, the number of awards made of child tax credit and of working tax credit, the number of enquiries conducted under section 19, the number of penalties imposed under Part 1, and the number of prosecutions and convictions for offences connected with tax credits. The Treasury must publish a copy of each report and lay a copy before each House of Parliament

Section 41: Annual review

157. This section requires the Treasury to review, each tax year, certain monetary amounts that are to be prescribed in regulations to see whether they have retained their value in relation to prices. The Treasury must prepare and lay before each House of Parliament a report of that review, stating what each amount would have been had it retained its value against prices.

158. The requirement applies to any monetary amount prescribed under the provisions listed in *subsection (2)*. The income thresholds at which each tax credit will start to be withdrawn will be prescribed under section 7(1)(a). The income threshold at which the family element of the child tax credit will start to be withdrawn will be prescribed under section 13(2). Any thresholds relating to changes in income between the current year and the previous year will be prescribed under section 7(3). The amounts for the various elements for child tax credit will be prescribed under section 9, and those for working tax credit under section 11. The requirement does not apply to the childcare element of the working tax credit.

Section 42: Persons subject to immigration control

159. This section provides for regulations to be made about the access people subject to immigration control are to have to tax credits.

Section 43: Polygamous marriages

160. Exceptionally, those claiming tax credits may be parties to polygamous marriages. Section 39 allows appropriate modifications to tax credit rules to be made by regulations to accommodate these cases.

Section 44: Crown employment

161. This section ensures, for the avoidance of doubt, that the provisions of Part 1 apply to persons employed by or under the Crown.

Section 45: Inalienability

162. This section provides that the right to a tax credit cannot be assigned to any other person. This means that payments of tax credit are always directed to the person who is entitled to them and cannot be diverted, for example, to pay his or her creditors.

Section 46: Giving of notices by Board

163. This section gives the Board flexibility to issue notices in the most appropriate manner in any given case.

Section 47: Consequential amendments

164. This section gives effect to Schedule 3 which contains a number of amendments resulting from the introduction of child tax credit and working tax credit and the abolition of the credits and benefits specified in section 1(3).

Schedule 3: Tax credits: consequential amendments

Attachment of earnings

165. *Paragraph 1* provides that working tax credit and child tax credit are not to be considered as earnings for the purposes of the Attachment of Earnings Act 1971. *Paragraph 3* has the same effect for the purposes of the Judgements Enforcement (Northern Ireland) Order 1981. *Paragraph 8* has the same effect for the purposes of the Magistrates' Courts (Northern Ireland) Order 1981 and *paragraph 13* has the same effect for the purposes of the Debtors (Scotland) Act 1987.

Income and Corporation Taxes Act 1988

166. *Paragraph 14* provides that working tax credit and child tax credit are not to be treated as income for the purposes of the Income Tax Acts.

Children Act 1989

167. *Paragraphs 15 to 20* provide that where local authorities provide services for children in need, they will not be able to recover the cost of such services from persons in receipt of working tax credit or child tax credit other than the family element. *Paragraph 16(3)* enables regulations to be made by the Treasury providing that certain persons can be treated as being in receipt of working tax credit or any element of child tax credit other than the family element for the purposes of Part 3 of the Children Act 1989. This might cover, for example, persons who would receive tax credits but for the provision of free childcare to that person under Part 3 of that Act. *Paragraphs 51* to *56* make equivalent amendments to the Children (Northern Ireland) Order 1995.

Social Security Contributions and Benefits Act 1992

168. *Paragraph 25* ensures that the existing rules linking entitlement to incapacity benefit across an intervening period of receipt of disabled person's tax credit will continue to have the same application for people entitled to the disability element of working tax credit who receive working tax credit or any element of the child tax credit other than the family element. *Paragraph 30* has the same effect as *paragraph 25* for the purposes of long-term incapacity benefit.

169. *Paragraphs 31 and 32* make consequential amendments reflecting the fact that the State Earnings-Related Pension Scheme is to be replaced by the State Second Pension.

170. *Paragraphs 36 to 44* make equivalent amendments to the Social Security Contributions and Benefits (Northern Ireland) Act 1992.