

*These notes refer to the Tax Credits Act 1999 (c.10)  
which received Royal Assent on 30 June 1999*

# **TAX CREDITS ACT 1999**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the Tax Credits Act 1999. They have been prepared by the Inland Revenue in order to assist the reader of the Act and to help inform debate on it. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. This Act provides for the introduction of:
  - Working Families' Tax Credit (replacing Family Credit); and
  - Disabled Person's Tax Credit (replacing Disability Working Allowance).

These new tax credits were announced by the Chancellor of the Exchequer in his Budget Statement on 17 March 1998.

#### ***The new tax credits***

4. Both the tax credits will be introduced from 5 October 1999. Initially they will be paid by the Inland Revenue direct to recipients. In the case of employees, however, from 6 April 2000 the credits will, where appropriate, be paid by employers in wage packets. The Act includes the necessary provision for this. The self-employed will continue to receive their tax credits direct from the Inland Revenue.
5. The level of the tax credits will be set by statutory instrument.
6. The Working Families' Tax Credit will go to around 1½ million families at a cost of around £4.9 billion.

#### ***Working Families' Tax Credit***

7. The award of Working Families' Tax Credit (WFTC) will be based on circumstances at the date of the claim and will run for 26 weeks. The main qualifications for entitlement will be that claimants must be working at least 16 hours a week and be responsible for children. It is available to both lone parents and those with a partner.
8. The WFTC will consist of:
  - (i) an adult tax credit;
  - (ii) child tax credits for each child in the family (varying depending on the age of the child);
  - (iii) a 30 hour tax credit (if more than 30 hours a week are worked);

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- (iv) a childcare tax credit, providing help towards childcare costs.
9. The childcare tax credit is new (replacing the childcare disregard currently within Family Credit). It will provide 70% of eligible childcare costs up to a maximum spent of £100 a week for one child, and £150 for two or more children.
10. The total amount of the tax credit award will be withdrawn at the rate of 55 pence for each additional £1 of net earnings over a threshold - income net of income tax and NIC, of £90 per week.

***Disabled Person's Tax Credit***

11. Disabled Person's Tax Credit (DPTC) is similar to WFTC but eligibility will be based on disability affecting the applicant's ability to work rather than responsibility for children - other eligibility rules will be the same. As with WFTC an award will be based on circumstances at the date of claim and run for 26 weeks. In addition to the tax credits making up the WFTC (including the new childcare tax credit) the DPTC will have:
- a couples tax credit, and
  - a disabled child's tax credit
12. The total of these is the maximum award but, where earnings calculated under the rules exceed a threshold, DPTC - like WFTC - will be withdrawn at 55 pence for every additional pound of net earnings. Unlike WFTC, the DPTC will have separate thresholds for single people on the one hand and couples and lone parents on the other.
13. Like WFTC, the legislation establishes that it will be introduced in October 1999 and from April 2000 it will be paid, where appropriate, by employers through the wage packet.

**THE ACT**

14. The Act:
- replaces Family Credit (FC), and Disability Working Allowance (DWA), benefits currently administered by the DSS with Working Families' Tax Credit (WFTC) and Disabled Person's Tax Credit (DPTC);
  - provides for the administration of the tax credits from October 1999 by the Inland Revenue;
  - provides that from April 2000 payment of the tax credits will be through the wage packet - the Act includes powers to make regulations requiring employers to administer payments of WFTC and DPTC;
  - provides for the protection of employees' rights not to suffer unfair dismissal or other detriment;
  - provides for appeals on WFTC and DPTC claims to be heard by the new unified appeal tribunals established under the Social Security Act 1998, as they have the necessary experience to deal with the cases which come before them;.
  - provides for necessary exchanges of information between Inland Revenue and Department of Social Security for the purposes of the new tax credits and the remaining social security benefits to enable the business to be carried on;
  - ensures the security of WFTC and DPTC and combats fraud, using compliance provisions drawn from both the current social security legislation and the wider tax system; and

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- provides for WFTC and DPTC to be excepted matters for Northern Ireland, and outside the legislative competence of the Northern Ireland Assembly. This is because the tax credits will be administered by the Inland Revenue as part of the tax system.
15. The greater part of the Act consists of amendments to existing legislation: principally the Social Security Contributions and Benefits Act 1992 and the Social Security Administration Act 1992 (and the corresponding Northern Ireland legislation) and the Taxes Management Act 1970.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Certain benefits to be known as tax credits***

*Section 1(1)* effectively converts the existing benefits into tax credits.

*Section 1(2)* gives effect to Schedule 1 which contains the detailed references to family credit and disability working allowance which need to be changed.

### ***Section 2: Transfer of functions relating to tax credits***

*Section 2(1)* and *Schedule 2 Parts I, II and III* provide for a transfer of functions relating to the tax credits. Much of the detail of the social security legislation for FC and DWA is in subordinate legislation. The primary legislation therefore contains a large number of regulation making powers. In order that WFTC and DPTC can be administered by the Inland Revenue these powers, insofar as they relate to WFTC and DPTC, need to be transferred. Section 2(1) transfers the purely administrative powers to the Board of Inland Revenue, and powers affecting the levels of WFTC and DPTC to the Treasury. Functions relating to the making of decisions go to Officers of the Board of Inland Revenue.

*Section 2(2)* provides that functions relating to periods of awards which begin before 5 October 1999 will not transfer. They will remain with the Secretary of State for Social Security, but may be exercised by the Inland Revenue on behalf of the Secretary of State. This is because awards run for a period of 26 weeks and therefore on the transfer there will be awards in payment which were authorised before the transfer. Payments authorised under rules prevailing before 5 October will be paid from the DSS vote.

*Section 2(3)* makes provision for Schedule 2 Part IV which modifies certain enactments for the purposes of WFTC and DPTC.

*Section 2(4)* gives effect to Part V of Schedule 2, which provides for the detailed consequential amendments needed to provisions in social security legislation which apply to benefits generally, so that they can be applied for the purposes of WFTC and DPTC.

### ***Section 3: Property, rights and liabilities***

*Section 3(1)* provides that the property, rights and liabilities relating to the functions being transferred to the Treasury will also be transferred. The primary purpose of this is to allow for the transfer of contracts.

*Section 3(2)* is the same provision as section 3(1), in relation to the functions being transferred to the Board.

*Section 3(3)* limits the transfer so that it does not apply to property, rights or liabilities which are subject to proceedings commenced before the transfer takes effect.

*Section 3(4)* provides for the transfer of staff currently employed in the Northern Ireland Civil Service to the Home Civil Service. This will be by Order in Council.

*Section 3(5)* provides that the statutory instrument containing the Order shall be made by negative resolution by both Houses of Parliament.

#### ***Section 4: Special provisions for certain contracts***

The Benefits Agency, who administer Family Credit, receives goods and services under a range of contracts, and section 3 provides that where the contracts relate wholly to the functions being transferred, they will become contracts with the Inland Revenue. However, they also receive goods and services under contracts which provide for the supply to other parts of the DSS. Section 4 provides for continuity in the transfer of these contracts.

*Section 4(1)* defines the contracts to which the section applies. They are contracts which are which relate partly to functions being transferred and partly to those being retained by the Secretary of State.

*Section 4(2)* disapplies section 3 for the contracts covered by this section.

*Section 4(3)* provides that the contracts involved shall be treated as also providing goods and services to the Inland Revenue. So when the functions are transferred, the Inland Revenue will be able to receive goods and services under these contracts, although they will be managed by the DSS.

*Section 4(4)* ensures that references to the Secretary of State also include those to the Department of Social Security.

#### ***Section 5: General functions of Board***

*Section 5(1)* provides that WFTC and DPTC shall be under the care and management of the Board.

*Section 5(2)* amends the Exchequer and Audit Departments Act 1866 to allow for payments of WFTC and DPTC to be made from tax receipts.

*Section 5(3)* provides that tax credit is included within the meaning of inland revenue for the purposes of the Inland Revenue Regulation Act 1890. That Act provides for the Board's powers and responsibilities.

*Section 5(4)* allows the Board to appoint collectors, officers and other persons for the purpose of paying and managing WFTC and DPTC.

*Section 5(5)* provides that the Board of Inland Revenue will have a duty to account for the tax credits, distinguishing between amounts of WFTC and DPTC.

*Section 5(6)* provides that the declaration of secrecy taken by members of staff and General and Special Commissioners will include tax credits.

*Section 5(7)* provides for the accounting arrangements provided for in section 5(2) to take precedence over the accounting arrangements provided for in s.163(2) of the Social Security Administration Act 1992.

#### ***Section 6: Payments of tax credits by employers***

*Section 6(1)* establishes the responsibility of employers to make payments of tax credits awarded to their employees in accordance with regulations to be made by the Board.

*Section 6(2)* provides for regulations to be made relating to the making of these payments. In particular the regulations may require employers to:

- make payments of tax credits as notified by the Board of Inland Revenue
- produce wage sheets and other documentation to verify payments of tax credits;

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- provide employees with information relating to the tax credits paid to them.

The regulations may also provide for:

- funding by the Board of employers, either before or after they pay the tax credit. The means by which this funding may be provided include set-off against income tax or national insurance 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 covered in the regulations.

*Section 6(3)* specifies that regulations made under this section may make provision for different cases and circumstances. The regulations will be made by statutory instrument which will be subject to the negative resolution procedure.

*Section 6(4)* provides that the section is to come into force on 6 April 2000. Although the WFTC and DPTC will be introduced in October 1999, payment by employers will not begin until April 2000. This will give employers time to make the necessary adjustments to their payroll systems.

### ***Section 7: Rights not to suffer unfair dismissal or other detriment***

*Section 7* gives effect to Schedule 3. This gives provision for the rights of employees not to suffer unfair dismissal or other detriment as a consequence of the obligations imposed on employers by section 6.

### ***Section 8: Powers to obtain information***

*Section 8(1)* provides that s.20 and s.20B of the Taxes Management Act 1970 (TMA) will apply in relation to employers' compliance with the regulations under section 6. These sections relate to the powers of the Inland Revenue to call for documents. Provision for penalties for non compliance in relation to tax credits are in section 9(3) (c) and (5)(c).

*Section 8(2)* provides for consequential changes to references in s.20 and s.20B for the purposes of applying those sections to the tax credit regulations for employers.

### ***Section 9: Penalties for fraud etc. and failures to comply***

*Section 9* contains the sanctions to deter fraud and support the Inland Revenue's powers of investigation. The provisions for imposing the penalties and appeals against them are contained in Schedule 4.

*Section 9(1)* provides that a person will be liable to a penalty if they fraudulently or negligently make a false statement or declaration in relation to a claim. The penalty will not exceed the amount specified in section 9(2).

*Section 9(2)* provides that the amount of the penalty will not exceed the difference between the amount of tax credit the claimant is actually entitled to and the amount he would have been entitled to if the claim had been correct. Section 9(1) and (2) reproduce the effect of s.95 of TMA, in relation to the tax credits. Appeals against these penalties will be to the unified appeal tribunals set up by the Social Security Act 1998.

*Section 9(3)* provides for a penalty for failure to provide information, or produce or deliver documents. It applies to:

- the information powers in the Social Security Administration Act 1992 and corresponding Northern Ireland provisions (section 9(3)(a));
- regulations relating to employers under section 6 (section 9(3)(b));

- the use of s.20 of TMA for employer compliance (section 9(3)(c)).

For (a) and (c), no penalty can be imposed after the offence is remedied. For (b), an initial penalty can be imposed, but no continuing penalty, after the offence has been remedied. This follows the approach of s.98 of TMA, which distinguishes obligations based on notices from other obligations. Appeals against these penalties under section 9(3)(a) will be to the unified appeal tribunals set up by the Social Security Act 1998 or the corresponding Northern Ireland legislation. Appeals against penalties under section 9(3) (b) or (c) will be to the tax commissioners.

*Section 9(4)* provides the amount of the penalty to be imposed under section 9(3). This will be a penalty not exceeding £300, and if the failure continues, further penalties not exceeding £60 a day for each day the failure continues. This mirrors the penalties in s.98(1) of TMA.

*Section 9(5)* provides that a person shall be liable to a penalty, not exceeding £3000, for fraudulently or negligently furnishing, producing or delivering incorrect information. Like section 9(3) it applies to:

- the information powers in the Social Security Administration Act 1992 or the corresponding Northern Ireland legislation (section 9(5)(a));
- regulations relating to employers under section 6 (section 9(5)(b));
- the use of s.20 of TMA for employer compliance (section 9(5)(c)).

This mirrors the provisions in s.98(2) of TMA. Appeals against these penalties under section 9(5)(a) will be to the unified appeal tribunals set up by the Social Security Act 1998. Appeals against the penalties under section 9(5)(b) or (c) will be to the tax commissioners.

*Section 9(6)* provides for a penalty to be imposed where an employer refuses or repeatedly fails to make payments of tax credits, so that the Inland Revenue has to take over direct payment. The penalty will be an amount not exceeding £3000. Appeals against these penalties will be to the tax commissioners.

*Section 9(7)* provides for a penalty to be imposed where an employer fraudulently or negligently makes or receives incorrect payments of tax credits; or delivers an incorrect return. The penalty will only be applicable once in respect of each employee, and will not cover matters already dealt with under section 9(6), where the Revenue has had to intervene. Appeals against these penalties will be to the tax commissioners.

### ***Section 10: Penalties: supplementary***

*Section 10(1)* provides that no penalty under section 9 in relation to failures (to furnish information, evidence or documents) under section 9(3)(a) or (c) shall be imposed after the failure has been remedied. This includes the penalty for initial failure, and the penalties for continuing failure. For failure under section 9(3)(b) the continuing penalty is prevented once the failure has been remedied, but the initial penalty may be imposed. The penalty under section 9(3)(b) is for failures in relation to employers regulations.

*Section 10(2)* provides that a penalty under section 9(7) shall not be imposed until the end of the tax year, and only one penalty in relation to any one employee can be imposed for any tax year.

*Section 10(3)* provides that s.118(2) of TMA shall apply for penalties under section 9(3) and (6). This allows for extra time to remedy a failure and for a reasonable excuse for failure to comply.

*Section 10(4)* gives effect to Schedule 4. This gives details of the procedure for imposing penalties and appeals against them.

### ***Section 11: Liability of company directors etc.***

*Section 11(1)* provides for ss.121C and 121D of the Social Security Administration Act 1992 (and corresponding Northern Ireland provisions) to apply in relation to the tax credits. This will relate to liability of directors for tax credits and allows for transfer of responsibility for unpaid tax credit debt to directors where they are considered to have acted in a fraudulent or negligent way. It provides for a notice to be served requiring payment of a proportion of the outstanding tax credits, and for appeals against a notice served under s.121C. The section applies the provision to prevent use of tax credits by directors for their own use.

*Section 11(2)* provides for amendments to apply the sections to the tax credits, so that the references are to officers of the Board of Inland Revenue, and powers under the sections are transferred to the Board in relation to the tax credits.

*Section 11(3)* provides that regulations made under section 11(2) shall be by negative procedure by both Houses of Parliament.

### ***Section 12: Disclosure of information***

*Section 12(1)* provides that the Inland Revenue's general restrictions on disclosure of information apply to the Inland Revenue's tax credit functions. The rest of the section gives the detailed amendments needed to the disclosure provisions.

*Section 12(2)* amends subsection (1) of s.182 of the Finance Act 1989 ("FA 1989"), to provide for it to be an offence to disclose information in respect of any identifiable person which is held or has been held in the exercise of functions relating to WFTC/DPTC, in addition to the current provision referring to tax functions.

*Section 12(3)* adds a new subsection (2AA) to s.182 of FA 1989 to specify that tax credit functions refers to the functions of working families' tax credit and disabled person's tax credit.

*Section 12(4)* amends s.182(4) of FA 1989 to provide that it is also an offence to disclose information relating to the tax credits held by the National Audit Office and the Parliamentary Commissioner for Administration in the exercise of their functions.

*Section 12(5)* amends s.182(5) of FA 1989 to provide that it is not an offence to disclose WFTC/DPTC information with the consent of the person to whom the information refers.

*Section 12(6)* provides for Schedule 5 to have effect. This deals with the use and exchange of information

### ***Section 13: Documents and forms***

This allows documents and forms which refer to Family Credit and Disability Working Allowance to be used after the transfer in relation to payment periods beginning before 5 October 1999. This is to allow for the situation where work is continuing on outstanding awards of FC/DWA after the transfer of functions.

### ***Section 14: Persons qualifying for disabled person's tax credit***

This section extends the qualifying conditions for the disabled person's tax credit. It gives disabled people a longer time (182 days instead of 56) in which to find a job (and thus qualify for DPTC) after other benefits have been withdrawn because of an improvement in their condition. It also provides for a new fast-track gateway into DPTC for people who become long-term sick or disabled while in work.

*Section 14(1)* provides for amendment of the legislation relating to the qualifying conditions.

*Section 14(2)* updates a reference in the existing legislation.

*Section 14(3)* provides that an application for DPTC may be made up to 182 days after ceasing to receive a qualifying benefit. The current limit for DWA is 56 days.

*Section 14(4)* provides the conditions for the fast-track gateway. These are that:

- a person has received statutory sick pay, short term incapacity benefit paid at the lower rate, income support paid on the grounds of incapacity, national insurance credits only or occupational sick pay;
- that person has a condition which puts him or her at a disadvantage in getting a job;
- a medical practitioner certifies that the illness or disability will last for at least 6 months; and
- on returning to work the applicant will receive earnings at least 20% less than would have been the case if there had been no disability.

*Section 14(5) and (6)* make consequential changes to references in the existing legislation.

*Section 14(7) and (8)* ensure that the existing provisions allowing repeat claims will apply for people whose initial claims are via the fast-track gateway.

*Section 14(9)* provides that this section will come into effect from October 2000.

### ***Section 15: New category of childcare providers for tax credit purposes***

*Section 15* extends the range of childcare costs that can qualify for help through the childcare tax credit within the Working Families' Tax Credit and Disabled Person's Tax Credit.

*Section 15(1)* sets out the general principle, purpose and limits of the section. It enables the Secretary of State to make regulations for a scheme to establish a new category of childcare provider, the costs of which would be taken into account in calculating the maximum Working Families' Tax Credit and Disabled Person's Tax Credit.

*Section 15(2)* states that the scheme will enable "accredited organisations" to approve the new type of childcare provider, and enable grants or loans to be made to the "accredited organisations", for them to charge reasonable fees to prospective providers, and for the Secretary of State to make such other provisions as are necessary.

*Section 15(3)* confirms that the "accredited organisations" are organisations accredited by the Secretary of State under rules set out in the scheme.

*Section 15(4)* makes provision about the powers to make the rules for the scheme in regulations and states that other than when they are made for the first time, they are to be made by statutory instruments under the negative procedure where either House can resolve to annul them.

*Section 15(5)* states that when the regulations are made for the first time, they are to be made under the affirmative procedure where both Houses must resolve to approve them.

### ***Section 16: Northern Ireland***

*Section 16(1)* provides for WFTC and DPTC to be excepted matters under the Northern Ireland Act 1998 and outside the legislative competence of the Northern Ireland Assembly. Tax matters in general are excepted from the authority of the Northern Ireland Assembly and administered on a UK wide basis by the Inland Revenue. As WFTC/DPTC will be administered by the Inland Revenue, it has been agreed that they should be excepted matters.



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*Section 16(2) and (3)* provide that the Northern Ireland Assembly may amend or repeal the Employment Rights (Northern Ireland) Order 1996, as amended or applied by Schedule 3 to the Bill, provided that the amendment or repeal affects employment rights generally. The fact that WFTC/DPTC are excepted matters would otherwise prevent this.

### ***Section 17: Financial provisions***

*Section 17* is to allow for expenditure, by the Board or Secretary of State, arising from the provisions of the Act to be paid out of money provided by Parliament. It also allows for payments into the Consolidated Fund of any increase as a result of the Act.

### ***Section 18: Interpretation***

*Section 18* defines certain terms used in the Act.

### ***Section 19: Transitional Provisions, savings and repeals***

This section provides powers to make regulations for transitional purposes.

*Section 19(1)* provides that the Board or Treasury may make regulations under the powers transferred in section 2(1) at any time after the Act is passed, if the regulations only come into force after the commencement date. This allows the regulations to be in place, ready to operate from the commencement date.

*Section 19(2)* ensures the validity of things done on behalf of the Secretary of State, or by the Department of Health and Social Services for Northern Ireland, before the transfer date in relation to the tax credits, and enables the actions to be continued by the Board, or by an officer of the Board, after transfer.

*Section 19(3)* provides that things done before transfer on behalf of the Secretary of State, or by the Department of Health and Social Services for Northern Ireland, should be treated as if they were performed by the Treasury, Board or by an officer of the Board in order to allow administration to continue.

*Section 19(4)* provides for Schedule 6, with the details of the necessary repeals, to have effect.

### ***Section 20: Short title, commencement and extent.***

*Section 20(2)* provides for the Act to come into force on 5 October 1999 except for the transitional provision in section 19(1), which comes into force on the passing of the Act; the provisions relating to the requirement for employers to pay the tax credits which come into force on 6 April 2000; and the provisions relating to the fast-track gateway to DPTC, which come into force on 1 October 2000.

*Section 20(3)* provides for the Act to extend to Northern Ireland.

## **Schedules**

The Schedules provide the details of the amendments to the social security legislation which are needed to effect the renaming and the transfer of functions.

### ***Schedule 1: Provisions consequential on renaming of benefits***

This Schedule provides for the substitution of Working Families' Tax Credit for Family Credit, and Disabled Person's Tax Credit for Disability Working Allowance, and lists the references where this substitution needs to take place.

## **Schedule 2: Transfer of functions**

*Part I: Provisions conferring functions transferred to the Treasury* lists the references to the functions which are transferring to the Treasury. These functions are those relating to the entitlement and level of the tax credits.

*Part II: Provisions conferring functions transferred to officers of the Board* lists the references to the functions which are being transferred to an officer of the Board of Inland Revenue. These functions are those of, and related to, making and revising decisions on claims for WFTC/DPTC.

*Part III: Provision conferring functions transferred to the Board* provides for the transfer to the Board of the remainder of the functions which are to be transferred, which are not referred to in Part I or II. Paragraph 9 in Part III transfers to the Board functions contained in existing subordinate legislation made under the provisions listed in Part I or Part III.

### **Part IV: Modification of enactments**

*Paragraph 10* amends s.71 of the Social Security Administration Act 1992, and corresponding provision for Northern Ireland. This section relates to recovery of overpayments of benefits and the amendment provides that amounts of tax credits which are recoverable (as a result of a misrepresentation or failure to disclose) shall be recoverable as if they were tax charged in an assessment. The provisions of Part VI of TMA will apply to them in relation to collection and recovery. They will be recoverable through PAYE codes. They will bear interest, where a penalty has also been charged under section 8(1).

*Paragraph 11* provides that s.110 of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These relate to the appointment and powers of inspectors for duties in relation to benefits.

*Paragraph 12* provides that s.111 of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These relate to obstruction of an inspector in carrying out duties in relation to benefits.

*Paragraph 13* provides that ss.111A and 112 of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These relate to offences for dishonest and fraudulent representations.

*Paragraph 14* provides that s.113 of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These relate to offences in relation to breach of the regulations under the Acts.

*Paragraph 15* provides that s.115A of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These provide for penalties to be imposed as an alternative to prosecution.

*Paragraph 16* provides that ss.182A and 182B of the Social Security Administration Act 1992 and corresponding Northern Ireland provisions shall not apply. These relate to the redirection of Social Security post and allow the Secretary of State to require the Post Office to provide information about redirection.

*Paragraph 17* amends s.6 of the Child Support Act 1991 (and the corresponding provision for Northern Ireland) to remove the obligation to co-operate in seeking maintenance from an absent parent, and the consequential penalty for refusal in relation to claimants to WFTC.

*Paragraph 18* amends the Social Security (Recovery of Benefits) Act 1997 (and the corresponding provision for Northern Ireland) to remove Disability Working Allowance from the list of prescribed benefits. Where compensation is paid for an accident injury or disease and the person receiving the compensation has also received benefits in respect

of that same injury accident or disease, the compensator must repay the amount of the relevant benefit. This obligation is removed for DPTC. Paragraph 18(2) provides that where the payments relate to periods beginning before 5 October 1999, the 1997 Act and corresponding Northern Ireland legislation still apply. This allows for old payments of DWA to be recovered.

*Paragraph 19* provides that s.27 of the Social Security Act 1998 and the corresponding Northern Ireland legislation do not apply to WFTC/DPTC. This provides for restrictions to be made on the arrears which would fall to be paid where the outcome of an appeal overturns an understanding of the law.

*Part V: Consequential provisions* - this Part gives details of consequential provisions.

*Paragraph 20 -23* - certain references in social security legislation to the Secretary of State or the Department of Health and Social Services for Northern Ireland need to be converted in relation to the tax credits to references to the Treasury, the Board, or officers of the Board because the function in question has been transferred by Section 2(1). The references are converted by paragraphs 20-23.

*Paragraph 24* replaces references in s.123(2) of the Social Security Contributions and Benefits Act 1992 to the local offices of the Department of Social Security with references to offices of the Inland Revenue in relation to the obligation to provide copies of the WFTC scheme in local offices. As the scheme will be an Inland Revenue responsibility the responsibility for providing this should be with IR offices.

*Paragraph 25* provides that s.175(7) of the Social Security Contributions and Benefits Act 1992 no longer applies to regulations made by the Treasury under Section 2(1). This provides for certain regulations to be made in conjunction with the Treasury, and this is no longer necessary in the case of regulations which are themselves made by the Treasury.

*Paragraph 26* states that the provision for adjustment between the National Insurance Fund and the Consolidated Fund shall no longer apply. This is not necessary as WFTC/DPTC will be paid for from tax receipts.

*Paragraph 27* provides that the provision requiring Treasury consent for certain instruments does not apply for the orders to be made by the Treasury under Section 2 of the Act.

### ***Paragraphs 28-38 relate to Northern Ireland provisions***

*Paragraph 28* replaces references to social security offices of the Department of Health and Social Services for Northern Ireland with references to offices of the Board. This is the equivalent provision in Northern Ireland to that in paragraph 24.

*Paragraph 29* provides that power to make regulations under the Social Security Contributions and Benefits (Northern Ireland) Act 1992 in relation to WFTC/DPTC is exercisable by statutory instrument rather than by statutory rule, which is the normal procedure for NI orders, but would involve the Assembly. As WFTC/DPTC are excepted matters this is not appropriate.

*Paragraph 30* allows that the Treasury may direct that a power transferred to the Board relating to tax credits must be exercised in conjunction with them.

*Paragraph 31* makes provision in relation to the Social Security Administration (Northern Ireland) Act 1992 similar to that made for the Social Security Contributions and Benefits (Northern Ireland) Act 1992 by paragraph 29.

*Paragraph 32* provides that statutory instruments made under the Administration Act will be subject to negative procedure before both Houses, unless it is specifically subject to affirmative procedure.

*Paragraph 33* provides for statutory instruments relating to the up-rating of working families' tax credit or disabled person's tax credit to be by affirmative procedure.

*Paragraph 34* is the same provision in relation to Northern Ireland as that in paragraph 26.

*Paragraph 35* is the same as paragraph 30 in relation to Northern Ireland.

*Paragraph 36* gives the same provisions in relation to making regulations under the Social Security (Northern Ireland) Order 1998 as is provided in paragraph 30.

*Paragraph 37* makes the same provision in relation to the Social Security (Northern Ireland) Order 1998 as is provided in paragraph 33. It also provides that the Assembly have no authority for these statutory instruments.

*Paragraph 38* is similar to paragraph 32, but applies to statutory instruments under the Social Security (Northern Ireland) Order 1998.

### ***Schedule 3: Rights not to suffer unfair dismissal or other detriment***

*Paragraph 1(1)* 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 (a) the employee has taken action to enforce the rights conferred on him by regulations under section 6(2)(a) or (c) of the Bill; or (b) the employer has incurred a penalty under section 9 or penalty proceedings have been brought against the employer; or (c) the employee is entitled, or will or may in future be entitled, to a tax credit.

*Paragraph 1(2)* protects the employee from detrimental action whether or not he has the right which he is claiming and whether or not this right has been infringed, as long as his claim to the right is made in good faith.

*Paragraph 1(3)* disapplies the paragraph in cases where the detrimental action taken against an employee amounts to dismissal because dismissal is dealt with separately in paragraph 3. There is an exception where an employee is dismissed in circumstances where he is employed under a fixed term contract and he has agreed in advance to exclude his right to claim unfair dismissal. In those circumstances the employee can rely upon this paragraph.

*Paragraph 2* provides an employee with the right to complain to an Employment Tribunal (or in Northern Ireland to an Industrial Tribunal) to enforce the right not to suffer detriment contained in paragraph 1. A complaint is to be made in the same way as a complaint under section 48 of the Employment Rights Act 1996 (ERA) or Article 71 of the Employment Rights (Northern Ireland) Order 1996. This means that a complaint must be made within three months of the alleged detrimental act (or deliberate failure to act) unless the tribunal considers that it was not reasonably practicable to do so.

*Paragraph 3(1)* 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 (a) the employee has taken action to enforce the rights conferred on him by regulations under section 6(2)(a) or (c) of the Act; or (b) the employer has incurred a penalty under section 9 or penalty proceedings have been brought against the employer; or (c) the employee is entitled, or will or may in future be entitled, to a tax credit.

*Paragraph 3(2)* 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.

*Paragraph 3(3)* inserts a new subsection (3)(gh) into section 108 of ERA. This means that the right not to be dismissed for enforcing a right under the Bill will be one of the rights set out in section 108(3) which apply from the day the employee starts

work. Without this amendment, section 108(1) would mean that the right would not apply until an employee had been continuously employed for two years.

*Paragraph 3(4)* inserts a new subsection (2)(gh) into section 109 of ERA. This means that the right not to be dismissed for enforcing a right under the Bill will be one of the rights set out in section 109(2) which apply without any age limit. Without this amendment, section 109(1) would mean that the right would not apply to those over their normal age of retirement.

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

*Paragraph 5* inserts a new paragraph (fg) into section 21(1) of the Employment Tribunals Act 1996 to enable appeals from the Employment Tribunal to the Employment Appeal Tribunal on question of law in relation to the provisions of the Bill.

#### ***Schedule 4: Penalties: Procedure and Appeals***

This Schedule deals with procedures for penalties for non-compliance with obligations.

*Paragraph 1* provides for the determination of penalties by an officer of the Board except where proceedings have begun in the courts, under paragraph 5. It provides for the officer to make a determination imposing any penalty under section 9. The exceptions are initial penalties for failure to provide information, under section 9(4)(a), which have been imposed by section 9(3)(b) or (c). The latter penalties will be determined by the tax commissioners under paragraph 4. Under paragraph 1 the officer must serve a notice on the person liable, and may exceptionally increase the amount of the penalty if a discovery is made which shows that the amount of the penalty is insufficient. This reproduces the effect of s.100 of TMA for penalties relating to tax credits.

*Paragraph 2* provides for a penalty determined under paragraph 1 to be due from the estate of a person who has died; and for a penalty determined under paragraph 1 to be due 30 days from the issue of the notice of the determination. Paragraph 2 also provides for the collection and recovery provisions in TMA (Part VI) to apply to penalties under paragraph 1. Paragraph 2 reproduces the effect of s.100A of TMA.

*Paragraph 3* provides for appeals against penalty determinations, reproducing the effect of s.100B of TMA.

*Paragraph 3(2)* provides that appeals in relation to penalties imposed under the provisions of s.5(1)(h) and (hh) of the Social Security Administration Act 1992 or the corresponding Northern Ireland legislation, or relating to a fraudulent or negligent claim, shall be heard by the unified appeal tribunals set up by the Social Security Act 1998 or the corresponding Northern Ireland legislation.

*Paragraph 3(3)* provides that for other appeals the provisions of TMA shall apply as if they were appeals against an assessment to tax.

*Paragraph 3(4)* allows the Commissioners to set aside the determination, confirm it, reduce it, or increase it.

*Paragraph 3(5)* provides that an appeal from a decision of the Commissioners shall go to the High Court (or Court of Session in Scotland).

*Paragraph 4* provides for penalty proceedings before the Commissioners, reproducing the effect of s.100C of TMA.

*Paragraph 4(1)* provides for an officer of the Board to begin proceedings for an initial penalty under section 9(4)(a) which is imposed by section 9(3)(b) or (c). This is a penalty relating to employers' compliance.

*Paragraph 4(2)* provides that the proceedings will be before the tax commissioners after information is put to them in writing.

*Paragraph 4(3)* provides that the collection and recovery provisions in TMA (Part VI) apply for the tax credits. These provisions deal with the collection mechanisms and court proceedings.

*Paragraph 4(4)* provides that appeal from determination of a penalty under this paragraph will be to the High Court (or Court of Session in Scotland).

*Paragraph 4(5)* provides that the court may set the determination aside, confirm it, reduce it, or increase it.

*Paragraph 5* allows the Board to take proceedings for a penalty in the High Court, where the liability arise from a fraud. This reproduces the effect of s.100D of TMA for the tax credits.

*Paragraph 6* allows the Board to mitigate penalties at their discretion. This reproduces the effect of s.102 of TMA for the tax credits.

*Paragraph 7* sets time limits for determining a penalty, and reproduces the effect of s.103 of TMA. Where the penalty is for fraudulently or negligently making an incorrect statement, the limit is either six years from the date the penalty was incurred; or three years after the final determination of the entitlement to the tax credit. For any other penalty the limit is six years after the penalty was incurred or began to be incurred.

*Paragraph 8* provides for interest to be charged on a penalty, from the date it becomes due and payable. It reproduces the effect of s.103A of TMA for the tax credits.

### ***Schedule 5: Information***

*Paragraph 1* allows the Board of Inland Revenue to pool the information they hold for the purposes of their functions relating to tax credits, tax, national insurance contributions, statutory sick pay, statutory maternity pay and certain functions under Part III of the Pensions Schemes Act 1993 (and the corresponding Northern Ireland legislation).

*Paragraphs 2 and 3* provides for the mandatory exchange of information between the Inland Revenue and the Department of Social Security (and the Department of Health and Social Services for Northern Ireland). The information is that relating to WFTC/DPTC, and social security benefits, child support and war pensions.

*Paragraph 4* provides for the supply (one way route) of information by or under the authority of the Board of Inland Revenue to local authorities administering housing benefit or council tax benefit. The information is that relating to WFTC/DPTC and is for use in administering the benefits. Paragraph 4 also restricts the onward transmission of the information supplied by the Inland Revenue unless it is supplied to another authority or person authorised to exercise a function relating to the administration of the benefits or for the purposes of legal proceedings relating to Social Security Acts, or it is supplied back to the Inland Revenue under paragraph 5.

*Paragraph 5* provides for the mandatory provision of information by local authorities to the Board of Inland Revenue for their WFTC/DPTC functions. The information concerned is that which is relevant to functions relating to housing benefit or council tax benefit.

*Paragraph 6* inserts a reference to the Tax Credits Act into s.122 of the Social Security Administration Act 1992 (and corresponding provision for Northern Ireland in s.116 of the Social Security Administration (Northern Ireland) Act 1992). These provisions have been amended by the Social Security Contributions (Transfer of Functions) Act 1999. This makes it clear that the provisions in ss.122 and 116, which relate to the supply

*These notes refer to the Tax Credits Act 1999 (c.10)  
which received Royal Assent on 30 June 1999*

of tax information, are distinct from the provisions described above for the supply of information in relation to tax credits.

*Paragraph 7* amends s.110 of the Finance Act 1997 as amended by the Social Security Contributions (Transfer of Functions) Act 1999. Section 110 is a general provision concerning the supply of information to the Board of Inland Revenue and Customs by the Department of Social Security. The amendment is to make it clear that s.110 does not apply to information relating to tax credits or affect the provisions governing the supply of information by the Department of Social Security to the Inland Revenue for functions relating to WFTC/DPTC.

## **COMMENCEMENT**

16. The Act will come into force on 5 October 1999, except for the transitional provisions in section 17(1) (which come into force at Royal Assent), the provisions relating to the requirement for employers to pay the tax credits (which come into force on 6 April 2000), and the provisions relating to the fast-track gateway to DPTC (which come into force on 1 October 2000).

## **PASSAGE THROUGH PARLIAMENT**

The details of the Act's passage through Parliament are as follows:

### ***House of Commons***

10 December 1998: First Reading (Bill 9)

26 January 1999: Second Reading. Hansard Cols 149-246.

2, 4, 9 and 11 February 1999: Committee Stage. Hansard (Standing Committee D) Cols 1-198.

7 March 1999: Report and Third Reading. Hansard Cols 1141-1230.

### ***House of Lords***

18 March 1999: First Reading (HL Bill 39). Hansard Col 830.

12 April 1999: Second Reading. Hansard Cols 506-570.

14 April 1999: Select Committee on Delegated Powers and Deregulation 12<sup>th</sup> Report (HL Paper 51).

26 April, and 4 May: Committee Stage. Hansard Cols 11-28; 53-81; 550-617; 633-672.

18 May, and 24 May: Report. Hansard Cols 237-290; 713-768.

8 June: Third Reading. Hansard Cols 1303-1323; 1348-1367.

### ***House of Commons***

22 June: Consideration of Lords Amendments. Hansard Cols 933-980.

### ***House of Lords***

28 June: Consideration of Commons reasons. Hansard Cols 79-97.

30 June: Royal Assent.