



Tax Credits Act 2002

2002 CHAPTER 21

[^{F1}PART 1

TAX CREDITS

[^{F1}Appeals

Textual Amendments

- F1** Pt. 1 repealed (1.2.2019 with savings in relation to specified cases in [art. 3](#) of the commencing S.I.) by [Welfare Reform Act 2012 \(c. 5\), s. 150\(3\), Sch. 14 Pt. 1](#); S.I. 2019/167, arts. 2, 3

38 Appeals

- (1) An appeal may be brought against—
- (a) a decision under section 14(1), 15(1), 16(1), 19(3) or 20(1) or (4) or regulations under section 21,
 - (b) the relevant section 18 decision in relation to a person or persons and a tax credit for a tax year and any revision of that decision under that section,
 - (c) a determination of a penalty under paragraph 1 of Schedule 2, ^{F2}...
 - [^{F3}(ca) a decision under section 36A or 36C that working tax credit is not payable (or is not payable for a particular period), and]
 - (d) a decision under section 37(1).

[^{F4}(1B) If in any case the conclusion of a review under section 21A [^{F5}or 21C] is to uphold the decision reviewed, an appeal by virtue of subsection (1) in that case may be brought only against the original decision.

(1C) If in any case the conclusion of a review under section 21A [^{F6}or 21C] is to vary the decision reviewed, an appeal by virtue of subsection (1) in that case may be brought only against the decision as varied.]

- (2) “ The relevant section 18 decision ” means—

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- (a) in a case in which a decision must be made under subsection (6) of section 18 in relation to the person or persons and the tax credit for the tax year, that decision, and
- (b) in any other case, the decision under subsection (1) of that section in relation to the person or persons and the tax credit for the tax year.

Textual Amendments

- F2** Word in s. 38(1) repealed (6.4.2013) by [Welfare Reform Act 2012 \(c. 5\)](#), **ss. 120(3)(a)**, 150(3); S.I. 2013/178, art. 2
- F3** S. 38(1)(ca) inserted (6.4.2013) by [Welfare Reform Act 2012 \(c. 5\)](#), **ss. 120(3)(b)**, 150(3); S.I. 2013/178, art. 2
- F4** S. 38(1B)(1C) inserted (6.4.2014) by [The Tax Credits, Child Benefit and Guardian’s Allowance Reviews and Appeals Order 2014 \(S.I. 2014/886\)](#), arts. 1(1), **2(11)** (with art. 1(5)) [Editorial note: S. 38(1A) (and the cross-reference to it in s. 38(1)) struck out as ultra vires. See Court of Appeal judgment dated 19.1.2024 in the case of [HMRC v Arrbab \[2024\] EWCA Civ 16](#)]
- F5** Words in s. 38(1B) inserted (15.1.2021) by [The Tax Credits Reviews and Appeals \(Amendment\) Order 2021 \(S.I. 2021/44\)](#), arts. 1, **2(8)(b)**
- F6** Words in s. 38(1C) inserted (15.1.2021) by [The Tax Credits Reviews and Appeals \(Amendment\) Order 2021 \(S.I. 2021/44\)](#), arts. 1, **2(8)(b)**

Modifications etc. (not altering text)

- C1** S. 38 modified (E.W.S.) (29.4.2013) by [The Universal Credit \(Transitional Provisions\) Regulations 2013 \(S.I. 2013/386\)](#), reg. 1(2), **Sch. para. 12**

Commencement Information

- I1** S. 38 wholly in force at 6.4.2003; s. 38 not in force at Royal Assent, see s. 61; s. 38 in force for certain purposes at 1.9.2002 and 1.1.2003 and otherwise in force at 6.4.2003 by [S.I.2002/1727](#), **art. 2**

39 Exercise of right of appeal

[^{F7}(1) Notice of an appeal under section 38 against a decision must be given ^{F8}... in the prescribed manner within the period of thirty days after the date on which [^{F9} notice under section 21A(3) [^{F10} or 21C(6)] was given of the conclusion on the review of the decision].]

[^{F7}(2) Notice of such an appeal must specify the grounds of appeal.]

^{F11}(3)

^{F11}(4)

^{F11}(5)

(6) Part 5 of the Taxes Management Act 1970 [^{F12}(appeals and other proceedings)] applies in relation to appeals under section 38 (as in relation to appeals under the Taxes Acts, within the meaning of that Act), but subject to such modifications as are prescribed.

^{F13}(7)

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Textual Amendments

- F7** S. 39(1)(2) repealed (E.W.S.) (6.4.2014) by [The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 \(S.I. 2014/886\)](#), arts. 1(1), **2(12)** (with art. 1(5))
- F8** Words in s. 39(1) omitted (N.I.) (3.11.2014) by virtue of [The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 \(S.I. 2014/886\)](#), arts. 1(2), **2(13)(a)** (with art. 1(5)); S.I. 2014/2881, art. 2(a)
- F9** Words in s. 39(1) substituted (N.I.) (3.11.2014) by [The Tax Credits, Child Benefit and Guardian's Allowance Reviews and Appeals Order 2014 \(S.I. 2014/886\)](#), arts. 1(2), **2(13)(b)** (with art. 1(5)); S.I. 2014/2881, art. 2(a)
- F10** Words in s. 39 inserted (N.I.) (15.1.2021) by [The Tax Credits Reviews and Appeals \(Amendment\) Order 2021 \(S.I. 2021/44\)](#), arts. 1, **2(9)**
- F11** S. 39(3)(4)(5) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 314(2)**
- F12** Words in s. 39(6) substituted (1.4.2009) by [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 314(3)**
- F13** S. 39(7) omitted (1.4.2009) by virtue of [The Transfer of Tribunal Functions and Revenue and Customs Appeals Order 2009 \(S.I. 2009/56\)](#), art. 1(2), **Sch. 1 para. 314(4)**

Modifications etc. (not altering text)

- C2** S. 39(1) modified (temp. from 1.1.2003) by [The Tax Credits \(Appeals\) \(No. 2\) Regulations 2002 \(S.I. 2002/3196\)](#), regs. 1(2), **4, 5**
- C3** S. 39(1) modified (temp. from 1.1.2003) by [The Tax Credits \(Appeals\) Regulations \(Northern Ireland\) 2002 \(S.R. 2002/403\)](#), regs. 1(2), **4, 5**

Commencement Information

- I2** S. 39 wholly in force at 6.4.2003; s. 39 not in force at Royal Assent, see s. 61; s. 39 in force for certain purposes at 1.9.2002 and 1.1.2003 and otherwise in force at 6.4.2003 by [S.I.2002/1727](#), **art. 2**

[^{F14}39A.Late appeals

- (1) The Commissioners for Her Majesty's Revenue and Customs may treat a late appeal under section 38 as made in time where the conditions specified in subsections (2) to (6) are satisfied, except that the Commissioners may not do so in the case of an appeal made more than one year after the expiration of the time (original or extended) for appealing.
- (2) An appeal may be treated as made in time if the Commissioners are satisfied that it is in the interests of justice to do so.
- (3) For the purposes of subsection (2) it is not in the interests of justice to treat an appeal as made in time unless—
 - (a) the special circumstances specified in subsection (4) are relevant; or
 - (b) some other special circumstances exist which are wholly exceptional and relevant,and as a result of those special circumstances it was not practicable for the appeal to be made in time.
- (4) The special circumstances mentioned in subsection (3)(a) are—
 - (a) the appellant or a partner or dependant of the appellant has died or suffered serious illness;

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- (b) the appellant is not resident in the United Kingdom; or
 - (c) normal postal services were disrupted.
- (5) In determining whether it is in the interests of justice to treat an appeal as made in time, regard shall be had to the principle that the greater the amount of time that has elapsed between the expiration of the time for appealing and the submission of the notice of appeal, the more compelling should be the special circumstances.
- (6) In determining whether it is in the interests of justice to treat an appeal as made in time, no account shall be taken of the following—
- (a) that the appellant or any other person acting for the appellant was unaware of or misunderstood the law applicable to the appellant’s case (including ignorance or misunderstanding of any time limit); or
 - (b) that the Upper Tribunal or a court has taken a different view of the law from that previously understood and applied.
- (7) If in accordance with the preceding provisions of this section the Commissioners for Her Majesty’s Revenue and Customs treat a late appeal under section 38 as made in time, it is to be treated as having been brought within any applicable time limit.]]

Textual Amendments

F14 S. 39A inserted (E.W.S.) (2.4.2014) by [The Tax Credits \(Late Appeals\) Order 2014 \(S.I. 2014/885\)](#), arts. 1(1), 2(2)

Changes to legislation:

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/962 by [S.I. 2008/3151 art. 3\(2\)](#) (art. 3(2) revoked (14. 7.2014) by S.I. 2014/1848)
- specified provision(s) amendment to earlier commencing SI 2003/962 art. 2(5) by [S.I. 2011/2910 art. 2](#) (Order revoked (14. 7.2014) by S.I. 2014/1848)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 35(2)-(12) substituted for s. 35(2) by [2012 c. 5 s. 124](#)
- s. 35(9) words substituted by [2020 c. 17 Sch. 24 para. 443\(1\)](#) (This amendment not applied to legislation.gov.uk. The substitution of s. 35(2)-(12) for s. 35(2) by 2021 c. 5, s. 124 is not yet in force)
- s. 36(10) words repealed by [2012 c. 5 Sch. 14 Pt. 12](#)