

2008 No. 2169

TAX CREDITS

**The Tax Credits (Miscellaneous Amendments) (No. 2)
Regulations 2008**

<i>Made</i>	- - - -	<i>13th August 2008</i>
<i>Laid before Parliament</i>		<i>14th August 2008</i>
<i>Coming into force</i>	- -	<i>1st September 2008</i>

These Regulations are made by the Treasury and the Commissioners for Her Majesty's Revenue and Customs.

The powers exercised by the Treasury are those contained in sections 7(8), 8(2) and (3), 12(1) to (4), 65(1) and (7) and 67 of the Tax Credits Act 2002(a).

The powers exercised by the Commissioners for Her Majesty's Revenue and Customs are those contained in sections 4(1), 65(2) and (7) and 67 of that Act(b).

Citation and commencement

1. These Regulations may be cited as the Tax Credits (Miscellaneous Amendments) (No. 2) Regulations 2008 and shall come into force on 1st September 2008.

Amendment of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

2.—(1) Regulation 14 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002(c) (child care charges) is amended as follows.

(2) In paragraph (2)(a)—

(a) omit paragraph (ii);

(b) after that paragraph insert—

“(iia) by a person registered under Part 3 of the Childcare Act 2006(d);”;

(c) for paragraph (iii) substitute—

(a) 2002 c. 21. Section 67 is cited because of the meaning it ascribes to “prescribed”.

(b) By virtue of section 65(2), the powers in section 4(1) were exercisable by the Board. The Board is defined in section 67 as the Commissioners of Inland Revenue. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as is appropriate in consequence of section 5, a reference to the Commissioners of Inland Revenue shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(c) S.I. 2002/2005. Regulation 14 was relevantly amended by S.I. 2003/2815, S.I. 2004/1276, S.I. 2007/2479 and S.I. 2008/604.

(d) 2006 c. 21.

- “(iii) in respect of any period on or before the last day the child is treated as a child for the purpose of this regulation by or under the direction of the proprietor of a school on the school premises (subject to subsection 2(B));”;
 - (d) insert “or” at the end of paragraph (vi);
 - (e) omit paragraph (viii) and the “or” before it.
- (3) After paragraph (2) insert—
- “(2A) In paragraph (2)(a)(iii)—
- “proprietor”, in relation to a school, means –
 - (a) the governing body incorporated under section 19 of the Education Act 2002(a), or
 - (b) if there is no such body, the person or body of persons responsible for the management of the school;
- “school” means a school that Her Majesty’s Chief Inspector of Education, Children’s Services and Skills (the “Chief Inspector”) is or may be required to inspect;
- “school premises” means premises that may be inspected as part of an inspection of the school by the Chief Inspector.
- (2B) Care provided for a child in England is not registered or approved care under paragraph (2)(a)(iii) if—
- (a) it is provided during school hours for a child who has reached compulsory school age, or
 - (b) it is provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.”

Amendment of the Tax Credits (Definition and Calculation of Income) Regulations 2002

3. The Tax Credits (Definition and Calculation of Income) Regulations 2002(b) are amended as follows.

4. In regulation 4(4) (employment income)(c) in Table 1—
- (a) in item 16—
 - (i) in paragraph (a) after “In-Work Credit” insert “, Better Off In-Work Credit” and omit “or” at the end;
 - (ii) after paragraph (b) insert—
 - “(c) under the City Strategy Pathfinder Pilots,
 - (d) by way of an In-Work Emergency Discretion Fund payment pursuant to arrangements made by the Secretary of State, or
 - (e) by way of an Up-front Childcare Fund payment pursuant to arrangements made by the Secretary of State.”;
 - (b) after item 16A insert—
 - “**16B.** Any In-Work Emergency Fund payment made to a person pursuant to arrangements made by the Department of Economic Development under section 1 of the Employment and Training Act (Northern Ireland) 1950(d).”;
 - (c) after item 19 insert—

(a) 2002 (c. 32).
 (b) S.I. 2002/2006, relevantly amended by S.I. 2003/732 and 2815, S.I. 2004/762 and 2663, S.I. 2006/766 and S.I. 2007/824 and 1305.
 (c) Regulation 4(4) was relevantly amended by S.I. 2003/732, S.I. 2004/762 and 2663 and S.I. 2006/766.
 (d) 1950 c. 29 (N.I.).

“**20.** Pay As You Earn (PAYE) settlement agreements made under Part 6 of the Income Tax (PAYE) Regulations (“the PAYE Regulations”) 2003**(a)**.”

For the purposes of this item the special arrangements under regulation 141 of the PAYE Regulations also apply.”

5.—(1) Regulation 8 (student income)**(b)** is amended as follows.

(2) For paragraph (a) substitute—

“(a) in England, any adult dependant’s grant payable—

- (i) under regulation 41 of the Education (Student Support) Regulations 2006**(c)** in relation to an academic year which begins on or after 1st September 2006 but before 1st September 2007;
- (ii) under regulation 43 of the Education (Student Support) Regulations 2007**(d)** in relation to an academic year which begins on or after 1st September 2007 but before 1st September 2008;
- (iii) under regulation 42 of the Education (Student Support) Regulations 2008**(e)** in relation to an academic year which begins on or after 1st September 2008 but before 1st September 2009; or
- (iv) under regulation 44 of the Education (Student Support) (No. 2) Regulations 2008**(f)** in relation to an academic year which begins on or after 1st September 2009;”.

(3) For paragraph (d) substitute—

“(d) in Wales, any adult dependant’s grant payable—

- (i) under regulation 22 of the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2006**(g)** in relation to an academic year which begins on or after 1st September 2006 but before 1st September 2007;
- (ii) under regulation 26 of the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2007**(h)** in relation to an academic year which begins on or after 1st September 2007 but before 1st September 2008; or
- (iii) under regulation 26 of the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008**(i)** in relation to an academic year which begins on or after 1st September 2008.”

Amendment of the Child Tax Credit Regulations 2002

6. The Child Tax Credit Regulations 2002**(j)** are amended as follows.

7.—(1) Regulation 2(1) (interpretation) is amended as follows.

(2) In the definition of “child” omit “or who falls within the terms of regulation 4”.

(3) After the definition of “the family element of child tax credit” and “the individual element of child tax credit” insert—

““full-time education” means education received by a person attending a course of education where, in pursuit of that course, the time spent receiving instruction or

(a) S.I. 2003/2682.

(b) Regulation 8 was amended by S.I. 2003/2815, S.I. 2006/766 and S.I. 2007/824 and 1305.

(c) S.I. 2006/119.

(d) S.I. 2007/176.

(e) S.I. 2008/529.

(f) S.I. 2008/1582.

(g) S.I. 2006/126 (W.19).

(h) S.I. 2007/1045 (W.104).

(i) S.I. 2008/1273 (W.130).

(j) S.I. 2002/2007, relevantly amended by S.I. 2003/738, S.I. 2004/762, S.I. 2006/222 and 1163 and S.I. 2007/2151.

tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course, exceeds or exceeds on average 12 hours a week in normal term-time, and shall include gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;”.

(4) After the definition of “placing for adoption” insert—

““qualifying body” means—

- (a) the Careers Service or Connexions Service;
- (b) the Ministry of Defence;
- (c) in Northern Ireland, the Department for Employment and Learning or an Education and Library Board established under Article 3 of the Education and Libraries (Northern Ireland) Order 1986(a); or
- (d) for the purposes of applying Council Regulation (EEC) No. 1408/71(b), any corresponding body in another member state;”.

(5) Omit the definition of “recognised educational establishment”.

8.—(1) In regulation 3(1) (circumstances in which a person is or is not responsible for a child or qualifying young person)(c) in Rule 4.1—

- (a) in Case D omit “child (having attained the age of sixteen) or”;
- (b) in Case E omit “The child (having attained the age of sixteen) or”;
- (c) in Case F omit “The child (having attained the age of sixteen) or” and the second paragraph;
- (d) after Case F insert—

“Case G The qualifying young person has a spouse, civil partner or partner with whom they are living and the spouse, civil partner or partner is not in full-time education or approved training as provided for under regulation 5(3).

Case H The responsible person is the spouse, civil partner or partner of a qualifying young person with whom they are living.

This Case does not apply to persons in receipt of child tax credit for a qualifying young person who is living with a partner on the day before 1st September 2008.”

9.—(1) For regulation 4 (period for which a person who attains the age of sixteen remains a child) substitute—

“Period for which a person who attains the age of sixteen is a qualifying young person

4.—(1) A person who attains the age of sixteen is a qualifying young person from the date on which that person attained that age until 31st August which next follows that date.

(2) Paragraph (1) is subject to regulation 5 but as if there were no requirement to satisfy the first condition specified in paragraph (3) of that regulation.”

10.—(1) Regulation 5 (maximum age and prescribed conditions for a qualifying young person)(d) is amended as follows.

(2) In paragraph (3)—

- (a) in sub-paragraph (ab) for “to him by virtue of his employment or any office held by him” substitute “by means of a contract of employment”;

(a) S.I. 1986/594 (N.I.3). Article 3 was amended by Schedule 9 to S.I. 1989/2406 (N.I.20).
(b) OJ No. L149, 5.7.1971.
(c) Regulation 3(1) was relevantly amended by S.I. 2004/762 and S.I. 2006/1163.
(d) Regulation 5 was relevantly amended by S.I. 2003/738, S.I. 2006/222 and S.I. 2007/2151.

(b) in sub-paragraph (b)(ii) for “the Careers Service, the Connexions Service or the Department for Employment and Learning” substitute “a qualifying body”.

(3) In paragraph (5) for the words from the beginning of the paragraph to the end of sub-paragraph (b) substitute—

“(5) For the purposes of paragraphs (3) and (4) a person shall be treated as being in full-time education if full-time education is received by that person by undertaking a course—

(a) at a school or college, or

(b) where that person has been receiving that education prior to attaining the age of sixteen, elsewhere, if approved by the Board, ”.

Amendment of the Tax Credits (Claims and Notifications) Regulations 2002

11. The Tax Credits (Claims and Notifications) Regulations 2002(a) are amended as follows.

12. In regulation 5(2) (manner in which claims to be made)(b) for sub-paragraph (b) substitute—

“(b) in such other manner as the Board may decide having regard to all the circumstances.”

13.—(1) Regulation 13 (circumstances in which claims made by one member of a couple to be treated as also made by the other member of the couple)(c) is amended as follows.

(2) In paragraph (1) after “(2)” insert “or (3)”.

(3) After paragraph (2) insert—

“(3) A claim for a tax credit made by one member of a couple is to be treated as also made by the other member of the couple in such manner and in such circumstances as the Board may decide.”

Alan Campbell

Dave Watts

13th August 2008

Two of the Lords Commissioners of Her Majesty’s Treasury

Mike Eland

Bernadette Kenny

12th August 2008

Two of the Commissioners for Her Majesty’s Revenue and Customs

(a) S.I. 2002/2014.

(b) Regulation 5(2) was amended by S.I. 2003/723.

(c) Regulation 13 was amended by S.I. 2005/2919.

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 (“the Entitlement Regulations”), the Tax Credits (Definition and Calculation of Income) Regulations 2002 (“the Income Regulations”), the Child Tax Credit Regulations 2002 (“the Child Regulations”) and the Tax Credits (Claims and Notifications) Regulations 2002 (“the Claims Regulations”).

Regulation 2 amends regulation 14 of the Entitlement Regulations. Paragraph (2)(a)(ii) is revoked because Schedule 9A to the Children Act 1989 was amended by paragraph 18 of Schedule 2 to the Childcare Act 2006 so that it no longer applies to England. This means that care provided in an appropriate children’s home, a care home, as a patient in a hospital and in a residential family centre will no longer be eligible childcare for working tax credit. A new paragraph (2)(a)(ia) is added so that parents who use child care provided in England by a person registered under Part 3 of the Childcare Act 2006 are eligible for the child care element of working tax credit. Paragraph (2)(a)(iii) replaces the previous paragraph (2)(a)(iii) with a reference to care provided by or under the direction of the proprietor of a school on the school premises, subject to the limitations in new paragraph (2B). This is intended to clarify the care provided by schools that is eligible childcare for working tax credit. The reference to the proprietor of a school reflects the terms of the exemptions for schools from the registration requirements under Part 3 of the Childcare Act 2006. Paragraph (2)(a)(viii) is revoked in consequence of the revocation of the Childcare (Voluntary Registration) Regulations 2007 (S.I. 2007/730) by regulation 3 of the Childcare (General Childcare Register) Regulations 2008 (S.I. 2008/975).

Regulation 2 also inserts new paragraphs (2A) and (2B) in regulation 14. New paragraph (2A) defines “proprietor”, “school” and “school premises” for the purpose of the new paragraph (2)(a)(iii). New paragraph (2B) limits the care that is eligible for working tax credit under paragraph (2)(a)(iii). It excludes care during school hours for a child who has reached compulsory school age. This reflects the definition of “childcare” in section 18(3) of the Childcare Act 2006. The new paragraph (2B) also excludes care provided in breach of a requirement to register under Part 3 of the Childcare Act 2006.

Regulation 3 introduces the amendments to the Income Regulations.

Regulation 4 amends Table 1 in regulation 4(4) of the Income Regulations. The Table contains a list of payments and benefits which are disregarded in the calculation of employment income. Six items are added to the list: a payment made under the City Strategy Pathfinder Pilots; a payment made by way of the Better Off In-Work Credit; any In-Work Emergency Discretion Fund payment made to a person pursuant to arrangements made by the Secretary of State; any Up-front Childcare Fund payment made to a person pursuant to arrangements made by the Secretary of State; any In-Work Emergency Fund payment made to a person pursuant to arrangements made by the Department of Economic Development under section 1 of the Employment and Training Act (Northern Ireland) 1950; and PAYE settlement agreements made under Part 6 of the Income Tax (PAYE) Regulations 2003 (S.I. 2003/2682).

Regulation 5 amends regulation of 8 of the Income Regulations to reflect the introduction of regulation 42 of the Education (Student Support) Regulations 2008 (S.I. 2008/529), regulation 44 of the Education (Student Support) (No. 2) Regulations 2008 (S.I. 2008/1582) and regulation 26 of the Assembly Learning Grant and Loans (Higher Education) (Wales) Regulations 2008 (S.I. 2008/1273 (W.130)).

Regulation 6 introduces the amendments to the Child Regulations.

Regulation 7 amends regulation 2 by changing existing defined terms and adding new defined terms. In order to align child tax credit with child benefit the definition of “recognised educational establishment” is revoked.

Regulation 8 amends regulation 3 to change the circumstances in which a person is or is not responsible for a child or qualifying young person.

Regulation 9 amends regulation 4 to provide for a period during which a person who attains the age of sixteen is a qualifying young person.

Regulation 10 amends regulation 5 to change the maximum age and prescribed conditions for a qualifying young person.

Regulation 11 introduces the amendments to the Claims Regulations.

Regulation 12 amends regulation 5 to change the manner in which a claim for a tax credit is to be made.

Regulation 13 amends regulation 13 to change the circumstances in which claims made by one member of a couple are to be treated as also made by the other member of the couple.

An Impact Assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

STATUTORY INSTRUMENTS

2008 No. 2169

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