EXPLANATORY MEMORANDUM TO

THE LOSS OF TAX CREDITS REGULATIONS 2013

2013 No. 715

1. This Explanatory Memorandum has been prepared by Her Majesty's Revenue and Customs ("the Commissioners") and is laid before Parliament by Command of Her Majesty.

This Memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 These Regulations provide for the loss of working tax credit where a recipient receives a caution or an administrative penalty in relation to, or is convicted of, a benefit offence. They are made using powers in sections 36A and 36C of the Tax Credits Act 2002 ("the 2002 Act"), which were inserted by section 120 of the Welfare Reform Act 2012 ("the 2012 Act"). A "benefit offence" (ss.36A(10) and 36C(7) of the 2012 Act) is an offence relating to a "disqualifying benefit" which is committed on or after a day to be specified by Order of the Treasury. Disqualifying benefits are listed in s.6A of the Social Security Fraud Act 2001, and include working tax credits and child tax credits.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 The enabling powers for these Regulations are sections 36A(5) and (6), 36C(4) and (5), 65(2) and 67 of the Tax Credits Act 2002. They are laid in draft before both Houses of Parliament in accordance with sections 66(1) and (2)(zb) of that Act. Sections 36A, 36C and 66(2)(zb) were inserted by section 120 of the Welfare Reform Act 2012, these provisions being brought into force on 1 February 2013 by S.I. 2013/178 (C. 10).

4. Legislative Context

4.1 Sections 36A to 36D of the 2002 Act provide that where a person is cautioned, accepts an administrative penalty (in exchange for not being prosecuted) for, or is convicted of, a benefit offence their award of working tax credits will cease for a specified period (the "disqualification period"). A benefit offence is an offence in connection with a disqualifying benefit, which is any of the benefits specified in section 6A(1) of the Social Security Fraud Act 2001. These Regulations specify the "prescribed date", which is the date on which the disqualification period begins (the disqualification period itself is stipulated in ss.36A and 36C of the 2002 Act).

4.2 They also specify that working tax credit shall continue to be paid (at the rate of 50% of the award), despite there being a caution, penalty or conviction for a benefit offence, where the person so cautioned, etc is a member of a couple to whom an award is made and the other member of the couple has not been cautioned, etc for such an offence.

4.3 Regulation 2 specifies that the prescribed date is to be 30 days after the day on which the Commissioners are notified of the conviction, caution or administrative penalty imposed for a benefit offence.

4.4 Regulation 3 ensures that where an award of working tax credits is made to a couple, payment shall continue to be made a rate of 50% of the full award for the duration of the disqualification period (unless both members of the couple are "benefit offenders", in which case no award is payable for the period for which both are disqualified).

5. Territorial Extent and Application

5.1 This instrument applies to the United Kingdom.

6. European Convention on Human Rights

6.1 The Economic Secretary to the Treasury, Sajid Javid, has made the following statement regarding Human Rights:

In my, view the provisions of the Loss of Tax Credits Regulations 2013 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The joint DWP/HMRC strategy 'Tackling fraud and error in the benefit and tax credits systems' (October 2010) sets out a range of measures to deliver a £1.4 billion reduction in fraud and error by 2014/15: http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf

7.2 As part of this strategy the scope of the 'loss of benefits sanctions' regime is being extended to provide for longer disqualifying periods, and to include additional benefits/credits, such as tax credits, for the first time.

7.3 Following the October 2010 announcement, a White Paper entitled 'Universal Credit: Welfare that Works' was published by the Government on 11 November 2010. Chapter 5 outlined a plan for the Government to introduce a tougher penalty regime and longer loss of benefit periods and to tackle the high cost of fraud within the benefit system.

7.4 The provisions inserted by section 120 of the 2012 Act introduce loss of benefit provisions into Tax Credits. Offences which result in a DWP or administrative penalty or caution will result in a 4 week loss or reduction of tax credits and 13 weeks' loss of tax credits for a first conviction. Where there are two offences committed within a set time period, with the second resulting in a conviction, tax credits payments will be stopped or reduced for a period of 26 weeks. A 3 year period of loss of benefit will apply where there are three offences within a set time period, the third resulting in a conviction. The duration of the loss of benefit period following a conviction will escalate based on the number of previous offences.

7.5 Section 117(2) of the 2012 Act adds child tax credit and working tax credit to the list of disqualifying benefits in section 6A(1) of the Social Security Fraud Act 2001 i.e. benefits offences which will result in a loss of benefit. Section 117 is planned to be brought into force by the Department for Work and Pensions on 6th April 2013. Section 120 of the 2012 Act amends the Tax Credits Act 2002 to allow for a loss of benefit to be imposed on working tax credit where there is a conviction, acceptance of an administrative penalty or caution, for a benefit offence.

7.6 The imposition of the loss of tax credits begins 30 days after the Commissioners are notified of a disqualifying offence. Where the tax credit claim is made by a couple and only one of the couple is subject to a disqualifying offence the reduction in working tax credit will be limited to 50% of the award. Where both partners are guilty of a disqualifying offence then all the working tax credit is lost. Notification of the conviction, caution or administrative penalty will be given to the Commissioners by either the authority responsible for imposing the penalty, in the case of an administrative penalty or caution, or the prosecuting authority, in the case of a conviction.

7.7 It is intended that these Regulations will come into force on 6 April 2013 as tax credits awards are geared to the tax year cycle.

- ***Consolidation***

7.8 None.

8. Consultation outcome

8.1 The regulations are directly related to new legislation as enacted by the Welfare Reform Act 2012. Since then there has been no change to or any intention to amend the stated toughening of the loss of benefit provisions, formal consultation is not necessary.

8.2 The strategy announced by the Government on 18 October 2010, http://www.dwp.gov.uk/docs/tackling-fraud-and-error.pdf to tackle fraud and error in the benefits and tax credits systems also announced that DWP would introduce tougher loss of benefit provisions. The strategy document invited comments; no comments were received about the intention to toughen the loss of benefit provisions.

8.3 The Government's policy intention to extended loss of benefit periods for offences which result in a conviction was also re-affirmed in the strategy refresh document published February 2012.
http://www.cabinetoffice.gov.uk/sites/default/files/resources/HMG-Fraud-and-Error-Report-Feb-2011-v35.pdf

8.4 The White paper 'Universal Credit Welfare that Works' http://dwp.gov.uk/docs/universal-credit-full-document.pdf was published by the Government on 11 November 2010.

8.5 In view of the above, there was no formal consultation on these Regulations. They were however referred on an informal basis to the Social Security Advisory Committee on 7 November 2012.

9. Guidance

9.1 Information relating to the loss of benefit penalties will be incorporated into leaflets and forms where appropriate on an ongoing basis. Internal guidance and standard operating procedures will also be updated.

10. Impact

10.1 There is no impact on businesses. Tax credits customers may seek additional advice from voluntary organisations, but any addition is expected to be negligible.

10.2 There is no impact on the public sector.

10.3 A full Impact Assessment has not been prepared for this instrument as a sanction and penalty assessment was produced for the 2012 Act: http://services.parliament.uk/bills/2010-11/welfarereform.html. A copy of the Equality Impact Assessment is attached.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The new loss of benefit regime will be monitored to ensure both the effectiveness of the measure and equality of treatment.

13. Contact

Anna Rogerson at Her Majesty's Revenue and Customs (email: anna.rogerson@hmrc.gsi.gov.uk / tel: 0207 147 0541) can answer any queries regarding the instrument.