

2002/2005

# Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002

**Working Tax Credit (Entitlement & Max Rate)**

Made by the Treasury under TCA 2002 ss 10, 11, 12, 65(1), (7), 67

Made 30 July 2002

Coming into force in accordance with regulation 1

## Commentary—

*Simon's Taxes* E2.220, E2.221.

### [MAIN

## Part 1 General

### 1 Citation, commencement and effect

These Regulations may be cited as the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002 and shall come into force—

- (a) for the purpose of enabling claims to be made, on 1st August 2002;
- (b) for the purpose of enabling decisions on claims to be made, on 1st January 2003; and
- (c) for all other purposes, on 6th April 2003;

and shall have effect for the tax year beginning on 6th April 2003 and subsequent tax years.

### 2 Interpretation

(1) In these Regulations, except where the context otherwise requires—

“the Act” means the Tax Credits Act 2002, and a reference without more to a numbered section is a reference to the section of the Act bearing that number;

[“armed forces independence payment” means armed forces independence payment under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011;]10

“the Board” means the Commissioners of Inland Revenue;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“child” has the same meaning as it has in the Child Tax Credit Regulations 2002;

“claim” means a claim for working tax credit and “joint claim” and “single claim” have the meanings respectively assigned in [section 3(8)]1;

“claimant” means the person making a claim and, in the case of a joint claim, means either of the claimants;

[“contributory employment and support allowance” means a contributory allowance under Part 1 of the Welfare Reform Act [(“the 2007 Act”) as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance, and a contributory allowance under Part 1 of the 2007 Act

as that Part has effect apart from those provisions]<sup>11</sup>;<sup>6</sup>

[“couple” has the meaning given by section 3(5A) of the Act]<sup>3</sup>

“the determination of the maximum rate” means the determination of the maximum rate of working tax credit;

[“employed”, except in the expression “self-employed”, means employed under a contract of service or apprenticeship where the earnings under the contract are chargeable to income tax as employment income under Parts 2 to 7 of the Income Tax (Earnings and Pensions) Act 2003;<sup>1</sup> [otherwise than by reason of Chapter 8 of Part 2 of that Act (deemed employment in respect of arrangements made by intermediaries).]<sup>2</sup>

[“employment zone” means an area within Great Britain—

(a) subject to a designation for the purposes of the Employment Zones Regulations 2003 by the Secretary of State, or

[(b) listed in the Schedule to the Employment Zones (Allocation to Contractors) Pilot Regulations 2006]<sup>5</sup>

pursuant to section 60 of the Welfare Reform and Pensions Act 1999;]<sup>4</sup>

“employment zone programme” means a programme which is—

(a) established for one or more employment zones, and

(b) designed to assist claimants for a jobseeker's allowance to obtain sustainable employment;

[“initial claim” shall be construed in accordance with regulation 9A;]<sup>1</sup>

[“limited capability for work credit” refers to a credit under regulation 8B(1) of the Social Security (Credits) Regulations 1975 where paragraph (2)(a)(iv) or (2)(a)(v) of that regulation applies, and which follows the cessation of the entitlement period of contributory employment and support allowance;]<sup>8</sup>

“local authority” means—

(a) in relation to England, the council of a county or district, a metropolitan district, a London Borough, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, the council of a county or county borough; or,

(c) in relation to Scotland, a council constituted under section 2 of the Local Government, etc (Scotland) Act 1994;

[“partner” means a member of a ...<sup>3</sup> couple making a joint claim;]<sup>1</sup>

“patient” means a person (other than a person who is serving a sentence, imposed by a court, in a prison or youth custody institution or, in Scotland, a young offenders' institution) who is regarded as receiving free in-patient treatment within the meaning of the Social Security (Hospital In-Patients) Regulations [2005]<sup>8</sup>;

“period of award” shall be construed in accordance with [section 5]<sup>1</sup>;

[“personal independence payment” means personal independence payment under Part 4 of the Welfare Reform Act 2012;]<sup>9</sup>

“qualifying young person” means a person who satisfies regulation 5 of the Child Tax Credit Regulations 2002;

“relevant child care charges” has the meaning given by regulation 14;

...1

[“self-employed” means engaged in carrying on a trade, profession or vocation on a commercial basis and with a view to the realisation of profits, either on one’s own account or as a member of a business partnership and the trade, profession or vocation is organised and regular;]12

“sports award” means an award made by one of the Sports Councils named in section 23(2) of the National Lottery etc Act 1993 out of sums allocated to it for distribution under that section;

“surrogate child” means a child in respect of whom an order has been made under section 30 of the Human Fertilisation and Embryology Act 1990 [(parental orders) or section 54 of the Human Fertilisation and Embryology Act 2008 (parental orders)]7;

...1

“training allowance” means an allowance (whether by way of periodical grants or otherwise) payable—

- (a) out of public funds by a Government department or by or on behalf of the Secretary of State, Scottish Enterprise or Highlands and Islands Enterprise or the Department for Employment and Learning (“the relevant paying authority”);
- (b) to a person in respect of his maintenance or in respect of a member of his family; and
- (c) for the period, or part of the period, during which he is following a course of training or instruction—
  - (i) provided by, or in pursuance of arrangements made with, the relevant paying authority, or
  - (ii) approved by the relevant paying authority in relation to him,

but does not include an allowance, paid by a Government department, Northern Ireland department or the Scottish Executive to or in respect of a person by reason of the fact that he is training as a teacher, or is following a course of full-time education, other than under arrangements made under section 2 of the Employment and Training Act 1973, section 2 or 3 of the Disabled Persons (Employment) Act (Northern Ireland) 1945, or section 1(1) of the Employment and Training Act (Northern Ireland) 1950;

[“training for work” shall be construed in accordance with regulation 9B;]1

“week” means a period of seven days beginning with midnight between Saturday and Sunday;

[“the Welfare Reform Act” means the Welfare Reform Act 2007.]6

(2) For the purposes of these Regulations a person is responsible for a child or qualifying young person if he is treated as being responsible for that child or qualifying young person in accordance with the rules contained in regulation 3 of the Child Tax Credit Regulations 2002.

(3) A reference in these Regulations to an enactment applying to Great Britain but not to Northern Ireland shall, unless the context otherwise requires, include a reference to the corresponding enactment applying in Northern Ireland.

[(4) In these Regulations as they apply to an office a reference to being employed includes a reference to being the holder of an office.]1

[(5) For the purpose of these Regulations—

- (a) two or more periods of entitlement to employment and support allowance are linked together if they satisfy the conditions in regulation 145 of the Employment and Support Allowance Regulations 2008 [or regulation 86 of the Employment and Support Allowance Regulations 2013]<sup>11</sup>; and
- (b) a period of entitlement to employment and support allowance is linked together with a period of entitlement to statutory sick pay if it follows that period within 12 weeks.<sup>16</sup>

## **Modifications—**

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 27 (modification of this regulation for the purposes of polygamous marriages).

## **Amendments—**

- 1 In para (1), words in definitions of “claim” and “period of award” substituted, definitions of “employed” and “initial claim” substituted, definitions of “partner” and “training for work” inserted, definitions of “Schedule E” and “the Taxes Act” revoked; and para (4) inserted; by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 3 with effect from 6 April 2003.
- 2 Words in definition of “employed” inserted by the Tax Credits (Miscellaneous Amendments No 2) Regulations, SI 2003/2815 regs 12, 13 with effect from 26 November 2003.
- 3 In para (1), definition of “couple” substituted, and words in definition of “partner” revoked, by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 2(1), (2) with effect from 5 December 2005.
- 4 Definition of “employment zone” substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2006/766 reg 20(1), (2) with effect from 6 April 2006.
- 5 Words in definition of “employment zone” substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2007/824 regs 2, 3 with effect from 6 April 2007.
- 6 In para (1), definitions of “contributory employment and support allowance” and “the Welfare Reform Act”, and whole of para (5), inserted, by the Employment and Support Allowance (Consequential Provisions) (No 3) Regulations, SI 2008/1879, reg 20(1), (2)(a), (b) with effect from 27 October 2008.
- 7 In para (1), in definition of “surrogate child” words inserted by the Human Fertilisation and Embryology (Parental Orders) (Consequential, Transitional and Saving Provisions) Order, SI 2010/986 art 2, Schedule para 7 with effect from 6 April 2010.
- 8 In para (1), the entry for “limited capability for work credit” inserted with effect from 1 May 2012, and in the entry for “patient” words substituted with effect from 6 April 2012, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), (4), 2(1), (2).
- 9 In para (1), definition of “personal independence payment” inserted by the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations, SI 2013/388 reg 28(1), (2) with effect from 8 April 2013.
- 10 In para (1), definition of “armed forces independence payment” inserted by the Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order, SI 2013/591 art 7, Schedule para 24(1), (2) with effect from 8 April 2013.
- 11 In paras (1), (5)(a), words inserted by the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations, SI 2013/630 reg 77(1), (2) with effect from 29 April 2013.
- 12 In para (1), definition of “self-employed” substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2015/605 regs 2, 3 with effect from 6 April 2015.

### **3 Other elements of working tax credit**

(1) For the purposes of determining the maximum rate of working tax credit, in addition to the basic element and the disability element, the following elements are prescribed—

- (a) a 30 hour element;
- (b) a second adult element;
- (c) a lone parent element;
- (d) a child care element; [and]<sup>1</sup>

(e) a severe disability element; ...1

(f) ...1

(2) It is a condition of entitlement to the other elements of working tax credit that the person making the claim for working tax credit is entitled to the basic element.

(3) If the claim for working tax credit is a joint claim, and both members of the couple satisfy the conditions of entitlement for—

(a) the disability element, [or]1

(b) the severe disability element, ...1

(c) ...1

the award must include two such elements.

### **Commentary—**

*Simon's Taxes* **E2.221, E2.228.**

### **Modifications—**

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 28 (modification of para (3) above for the purposes of polygamous marriages).

### **Amendments –**

- 1 In para (1), in sub-para (d) word inserted and sub-para (f) and preceding word revoked, and in para (3) in sub-para (a) word inserted and sub-para (c) and preceding word revoked, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 reg 1(2). 2(1), (3) with effect from 6 April 2012.

## **Part 2 Conditions of Entitlement**

### **Basic element**

#### **Part 2: Conditions of Entitlement (Basic)**

#### **4 Entitlement to basic element of Working Tax Credit: qualifying remunerative work**

(1) Subject to the qualification in paragraph (2), a person shall be treated as engaged in qualifying remunerative work if, and only if, he satisfies all of the following conditions [(and in the case of the Second condition, one of the variations in that condition)]7.

##### *First condition*

The person [is employed or self-employed and]9

- (a) is working at the date of the claim; or
- (b) has an offer of work which he has accepted at the date of the claim and the work is expected to commence within 7 days of the making of the claim.

In relation to a case falling within sub-paragraph (b) of this condition, references in the second third and fourth conditions below to work which the person undertakes are to be construed as references to the work which the person will undertake when it commences.

In such a case the person is only to be treated as being in qualifying remunerative work when he begins the work referred to in that sub-paragraph.

##### *Second condition*

[First variation: In the case of a single claim, the person—]7

- [(a) is aged at least 16 and—

- (i) undertakes work for not less than 16 hours per week,
- (ii) ...7 is responsible for a child or qualifying young person, or he has a physical or mental disability which puts him at a disadvantage in getting a job and satisfies regulation 9(1)(c),<sup>1</sup>
- (b) ...7
- (c) is aged at least 25 and undertakes not less than 30 hours work per week ...6], or
- (d) is aged at least 60 and undertakes not less than 16 hours work per week]<sup>6</sup>.

[Second variation: In the case of a joint claim where neither person is responsible for a child or qualifying young person, the person— :

- (a) is aged at least 16 and undertakes work for not less than 16 hours per week and has a physical or mental disability which puts that person at a disadvantage in getting a job and satisfies regulation 9(1)(c);
- (b) is aged at least 25 and undertakes work for not less than 30 hours per week; or
- (c) is aged at least 60 and undertakes work for not less than 16 hours per week.

Third variation: In the case of a joint claim where a person or that person's partner is responsible for a child or qualifying young person, the person—

- (a) is aged at least 16 and is a member of a couple where at least one partner undertakes work for not less than 16 hours per week and the aggregate number of hours for which the couple undertake work is not less than 24 hours per week;
- (b) is aged at least 16 and undertakes work for not less than 16 hours per week and has a physical or mental disability which puts that person at a disadvantage in getting a job and satisfies regulation 9(1)(c);
- (c) is aged at least 16 and undertakes work for not less than 16 hours per week and that person's partner is—
  - (i) incapacitated and satisfies any of the circumstances in [regulation 13(4) to (12)]<sup>8</sup>; or
  - (ii) an in-patient in hospital; or
  - (iii) in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence); or
  - (iv) entitled to carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992;
- (d) is aged at least 60 and undertakes work for not less than 16 hours per week.<sup>7</sup>

*Third condition*

The work which the person undertakes is expected to continue for at least 4 weeks after the making of the claim or, in a case falling within sub-paragraph (b) of the first condition, after the work starts.

*Fourth condition*

The work is done for payment or in expectation of payment.

...7

[A social security benefit is not payment for the purposes of satisfying this condition.]<sup>5</sup>

[(1A) For the purposes of interpretation of paragraph (1)—

- (a) paragraphs (3) and (4) provide the method of determining the number of hours of qualifying remunerative work that a person undertakes;
- (b) regulations 5, 5A, 6 and 7A and 7B apply in relation to periods of absence from work connected with childbirth or adoption, sickness, strike periods or suspension from work;
- (c) regulations 7 and 7C apply to term time and seasonal workers and where pay is received in lieu of notice;
- (d) regulation 7D applies where a person or, in the case of a joint claim, one or both persons cease to work or reduce their hours to the extent that they no longer satisfy the Second condition in paragraph (1);
- (e) regulation 8 applies where there is a gap between jobs;
- (f) regulation 9 prescribes the conditions which must be satisfied by, or exist in relation to, a person so that he is to be treated as having a physical or mental disability which puts him at a disadvantage in getting a job.]<sup>7</sup>

(2) A person who would otherwise satisfy the conditions in paragraph (1) shall not be regarded as engaged in qualifying remunerative work to the extent that he is—

- (a) engaged by a charitable or voluntary organisation, or is a volunteer, if the only payment received by him or due to be paid to him is a payment by way of expenses which falls to be disregarded under item 1 in Table 7 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002;
- (b) engaged in caring for a person who is not a member of his household but is temporarily residing with him if the only payment made to him for providing that care is disregarded income by virtue of item 3 or 4 in Table 8 in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002;
- (c) engaged on a scheme for which a training allowance is being paid;
- (d) participating in the Intensive Activity Period specified in regulation 75(1)(a)(iv) of the Jobseeker's Allowance Regulations 1996 or the Preparation for Employment Programme specified in regulation 75(1)(a)(v) of the Jobseeker's Allowance Regulations (Northern Ireland) 1996;
- (e) engaged in an activity in respect of which—
  - (i) a sports award has been made, or is to be made, to him, and
  - (ii) no other payment is made, or is expected to be made, to him; or
- (f) participating in an employment zone programme, that is to say a programme established for one or more areas designated pursuant to section 60 of the Welfare Reform and Pensions Act 1999, and subject to [the Employment Zones Regulations 2003 and the Employment Zones (Allocation to Contractors) Pilot Regulations 2005]<sup>3</sup> if he receives no payments under that programme other than—
  - (i) discretionary payments disregarded in the calculation of a claimant's income under item 6(b) in [Table 6]<sup>1</sup> in regulation 19 of the Tax Credits (Definition and Calculation of Income) Regulations 2002; or
  - (ii) training premiums.
- [(g) a person who—
  - (i) is serving a custodial sentence or has been remanded in custody awaiting trial or sentence, and

- (ii) is engaged in work (whether inside or outside a prison) while he is serving the sentence or remanded in custody.]4

[This is subject to the following qualification.]2

[(2A) Neither sub-paragraph (c) nor sub-paragraph (d) of paragraph (2) applies if—

- (a) in a case falling within sub-paragraph (c), the training allowance, or
- (b) in a case falling within sub-paragraph (d), any payment made by the Secretary of State, or, in Northern Ireland, by the Department for Social Development, in connection with the Intensive Activity Period,

is chargeable to income tax as the profits of a trade, profession or vocation.]2

(3) The number of hours for which a person undertakes qualifying remunerative work is—

- (a) in the case of an apprentice, employee or office-holder the number of hours of such work which he normally performs—
  - (i) under the contract of service or of apprenticeship under which he is employed; or
  - (ii) in the office in which he is employed;
- (b) in the case of an agency worker, the number of hours in respect of which remuneration is normally paid to him by an employment agency with whom he has a contract of employment; or
- (c) in the case of a person who is self-employed, the number of hours he normally performs for payment or in expectation of payment.

This is subject to the following qualification.

(4) In reckoning the number of hours of qualifying remunerative work which a person normally undertakes—

- (a) any period of customary or paid holiday, and
- (b) any time allowed for meals or refreshment, unless the person is, or expects to be paid earnings in respect of that time,

shall be disregarded.

[(5) In reckoning the number of hours of qualifying remunerative work which a person normally undertakes, any time allowed for visits to a hospital, clinic or other establishment for the purpose only of treating or monitoring the person's disability shall be included; but only if the person is, or expects to be, paid in respect of that time.]1

[(6) In this regulation “work” shall be construed as a reference to any work that the person undertakes whether as a person who is employed or self-employed or both.]9

## **Commentary—**

*Simon's Taxes* E2.222.

## **HMRC Manuals—**

Tax Credit Technical Manual TCTM2401 (normal conditions for treatment as being in qualifying remunerative work, with example).

TCTM2403 (guidance on students, student nurses, carers, trainees, intensive activity periods, sports awards and employment zone programmes).

TCTM2404 (guidance on working at home, foster parents, employment schemes and deciding whether a scheme provides employment).

TCTM2405 (guidance on calculating the hours worked, with examples).



New Tax Credits Claimant Compliance Manual CCM 6600–6820 (Revenue's approach to questions surrounding remunerative work and hours).

## **Modifications—**

See SI 2002/2005 reg 10(3) (modification of para (1) above for the purposes of determining whether the condition in SI 2002/2005 reg 10(2)(c) is met).

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 29 (modification of para (1) Second Condition for the purposes of polygamous marriages).

## **Amendments—**

- 1 Words in paras (1), (2)(f)(i) substituted, and para (5) inserted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 4 with effect from 6 April 2003.
- 2 Words in para (2) inserted, and para (2A) inserted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 5 with effect from 6 April 2004.
- 3 Words in para (2)(f) substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2006/766 reg 20(1), (3) with effect from 6 April 2006.
- 4 Para (2)(g) inserted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2007/824 regs 2, 4 with effect from 6 April 2007.
- 5 In para (1), fourth condition, words inserted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2009/697 regs 2, 3 with effect from 6 April 2009.
- 6 In para (1), in second condition, at end of sub-para (b) word revoked, in sub-para (c) words revoked, and sub-para (d) and preceding word inserted, by the Tax Credits (Miscellaneous Amendments) (No 3) Regulations, SI 2010/2914 regs 10, 11 with effect from 6 April 2011.
- 7 In para (1), words inserted, in the "Second condition", words substituted, words in para (a)(ii) and whole of para (b) revoked, "Second variation" and "Third variation" inserted, words in Fourth Condition revoked, and para (1A) inserted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (4), (5) with effect from 6 April 2012.
- 8 In para (1), in Second condition, Third variation, sub-para (c)(i), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2013/1736 reg 2 with effect from 5 August 2013.
- 9 Words inserted in para (1), First Condition, and para (6) inserted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2015/605 regs 2, 4, 5 with effect from 6 April 2015.

## **5 [Time off in connection with [childbirth]**

### **Amendments—**

Words in Heading substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 6 with effect from 6 April 2004.

- (1) This regulation applies for any period during which a person—
- (a) is paid maternity allowance,
  - (b) is paid statutory maternity pay,
  - (c) is absent from work during an ordinary maternity leave period under section 71 of the Employment Rights Act 1996 or Article 103 of the Employment Rights (Northern Ireland) Order 1996,
  - [(ca) is absent from work during the first 13 weeks of an additional maternity leave period under section 73 of the Employment Rights Act 1996 or article 105 of the Employment Rights (Northern Ireland) Order 1996,]<sup>2</sup>
  - (d) is paid [...6 statutory paternity pay]<sup>4</sup>,
  - (da) ...6
  - [(e) is absent from work during [a]6 paternity leave period under ...6 Articles 112A or 112B of the Employment Rights (Northern Ireland) Order 1996,]<sup>4</sup>
  - [(ea) is absent from work during an additional paternity leave period under sections 80AA or

80BB of the Employment Rights Act 1996 or Articles 112AA or 112BB of the Employment Rights (Northern Ireland) Order 1996,]<sup>4</sup>

- (f) is paid statutory adoption pay, ...<sup>2</sup>
- (g) is absent from work during an ordinary adoption leave period under section 75A of the Employment Rights Act 1996 or Article 107A of the Employment Rights (Northern Ireland) Order 1996[, or]
- [(ga) is absent from work during the first 13 weeks of an additional adoption leave period under section 75B of the Employment Rights Act 1996 or article 107B of the Employment Rights (Northern Ireland) Order 1996,]<sup>2</sup>
- [(h) is paid statutory shared parental pay,]<sup>6</sup>
- [(l) is absent from work during a period of shared parental leave under section 75E or 75G of the Employment Rights Act 1996]<sup>6</sup>.

(2) For the purposes of the [conditions of entitlement in this Part]<sup>3</sup>, the person is treated as being engaged in qualifying remunerative work during the period. This is subject to [paragraphs (3), (3A) and regulation 7D]<sup>5</sup>.

(3) The person must have been engaged in qualifying remunerative work immediately before the beginning of the period.

[(3A) A person shall only be treated as being engaged in qualifying remunerative work by virtue of paragraph (1)(ea) for such period as that person would have been paid additional statutory paternity pay had the conditions of entitlement in ...<sup>6</sup> Parts 2 or 3 of the Additional Statutory Paternity Pay (General) Regulations (Northern Ireland) 2010 been satisfied.]<sup>4</sup>

[(3B) A person shall only be treated as being engaged in qualifying remunerative work by virtue of paragraph (1)(i) for such period as that person would have been paid statutory shared parental pay had the conditions of entitlement in Parts 2 or 3 of the Statutory Shared Parental Pay (General) Regulations 2014 been satisfied.]<sup>6</sup>

(4) A person who is self-employed is treated as engaged in qualifying remunerative work for the requisite number of hours during any period for which paragraph (1) would have applied in his case but for the fact that the work he performed in the week immediately before the period began, although done for payment or in the expectation of payment, was not performed under a contract of service or apprenticeship.<sup>1</sup>

## Commentary—

*Simon's Taxes* E2.222.

## HMRC Manuals—

Tax Credit Technical Manual TCTM2402 (lists time off in connection with childbirth).

## Amendments—

- 1 This regulation substituted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 5 with effect from 6 April 2003.
- 2 Paras (1)(ca), (ga) and preceding word "or" inserted, and in para (1)(f) word "or" revoked, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2007/824 regs 2, 5 with effect from 6 April 2007.
- 3 In para (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 3 with effect from 31 July 2009.
- 4 In para (1)(d), words substituted , para (1)(e) substituted, paras (1)(da), (ea), (3A) inserted, and former words in para (2) substituted by the Tax Credits (Miscellaneous Amendments) (No 2) Regulations, SI 2010/2494, regs 2, 3, with effect from 14 November 2010.
- 5 In para (2) words substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (6) with effect from 6 April 2012.
- 6 The following amendments made by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2014/3255 reg 11 with effect from 5 April 2015—

- in sub-para (1)(d), word revoked;
- sub-para (1)(da), revoked;
- in sub-para (1)(e), word substituted;
- in sub-paras (1)(ea), (3A) words revoked; and
- sub-paras (1)(h), (l), (3B) inserted.

## **5A [Time off in connection with childbirth and placement for adoption: further provisions**

(1) This regulation applies to a person for any period—

- (a) which falls within a period to which regulation 5 applies; and
- (b) which follows the birth or the placement for adoption of the child in connection with whose birth or placement entitlement to the allowance, pay or leave mentioned in regulation 5(1) arises.

(2) [A person who would have been treated as being engaged in qualifying remunerative work if they or, in the case of a joint claim, they or their partner had been responsible for a child or qualifying young person]<sup>3</sup>, immediately before the beginning of a period to which regulation 5 applies, shall be treated as [being engaged in qualifying remunerative work for the purposes of the conditions of entitlement in this Part]<sup>2</sup> during the period mentioned in paragraph (1) above.

(3) Paragraph (4) of regulation 5 applies for the purpose of this regulation as it applies for the purpose of that regulation.<sup>1</sup>

[(4) This regulation is subject to regulation 7D.]<sup>3</sup>

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM2402 (lists time off in connection with childbirth).

### **Amendments—**

- 1 This regulation inserted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 7 with effect from 6 April 2004.
- 2 In para (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 4 with effect from 31 July 2009.
- 3 In para (2), words substituted, and para (4) inserted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (7) with effect from 6 April 2012.

## **6 [Periods of illness[, incapacity for work or limited capability for work]**

(1) This regulation applies for any period during which a person—

- (a) is paid statutory sick pay,
- (b) is paid short-term incapacity benefit at the lower rate under sections 30A to 30E of the Contributions and Benefits Act,
- (c) is paid income support on the grounds of incapacity for work under paragraphs 7 and 14 of Schedule 1B to the Income Support (General) Regulations 1987,
- [(cc) is paid an employment and support allowance under Part 1 of the Welfare Reform Act, or]<sup>2</sup>
- (d) receives national insurance credits on the grounds of incapacity for work [or limited capability for work]<sup>2</sup> under regulation 8B of the Social Security (Credits) Regulations 1975.

(2) For the purposes of the [conditions of entitlement in this Part]<sup>2</sup>, the person is treated as being engaged in qualifying remunerative work during the period. This is subject to [paragraphs (3), (4) and regulation 7D]<sup>3</sup>.

(3) The person must have been engaged in qualifying remunerative work immediately before the beginning of the period.

(4) If the person is paid income support as specified in paragraph (1)(c) [or employment and support allowance as specified in paragraph (1)(cc)]<sup>2</sup> or receives national insurance credits as specified in paragraph (1)(d) he is treated as being engaged in qualifying remunerative work for a period of 28 weeks only, beginning with the day on which he is first paid income support [or employment and support allowance]<sup>2</sup> or receives national insurance credits (as the case may be).

(5) A person who is self-employed is treated as engaged in qualifying remunerative work for the requisite number of hours during any period for which paragraph (1) would have applied in his case but for the fact that the work he performed in the week immediately before the period began, although done for payment or in the expectation of payment, was not performed under a contract of service or apprenticeship.<sup>1</sup>

### **Commentary—**

*Simon's Taxes E2.222.*

### **Amendments—**

- 1 This regulation substituted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 6 with effect from 6 April 2003.
- 2 Words in heading substituted, para (1)(cc) substituted, in para (1)(d), words inserted, and in para (4), words inserted, by the Employment and Support Allowance (Consequential Provisions) (No 3) Regulations, SI 2008/1879 reg 20(1), (3) with effect from 27 October 2008.
- 3 In para (2) words substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (8) with effect from 6 April 2012.

## **7 Term time and other seasonal workers**

(1) For the purposes of the [conditions of entitlement in this Part]<sup>1</sup>, paragraph (2) applies if a person—

- (a) works at a school, other educational establishment or other place of employment,
- (b) there is a recognisable cycle to his employment there; and
- (c) the length of that recognisable cycle is one year and includes periods of school holidays or similar vacations during which he does not work.

(2) If this paragraph applies, the periods mentioned in paragraph (1)(c) are disregarded in determining whether the [conditions of entitlement in this Part]<sup>1</sup> are satisfied.

### **Commentary—**

*Simon's Taxes E2.222.*

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM2405 (examples of term time workers).

### **Amendments—**

- 1 In paras (1), (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 6 with effect from 31 July 2009.

## **7A [Strike periods**

(1) This regulation applies for any period during which a person is on strike.

(2) For the purposes of the [conditions of entitlement in this Part]<sup>2</sup>, the person is treated as being engaged in qualifying remunerative work during the period.

This is subject to [paragraph (3) and regulation 7D]<sup>3</sup>.

(3) The person—

- (a) must have been engaged in qualifying remunerative work immediately before the

beginning of the period, and

- (b) must not be on strike for longer than a period of ten consecutive days on which he should have been working.]<sup>1</sup>

### **Commentary—**

*Simon's Taxes E2.222.*

### **Amendments—**

- 1 Regulations 7A, 7B, 7C inserted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 7 with effect from 6 April 2003.
- 2 In para (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 7 with effect from 31 July 2009.
- 3 In para (2), words substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (9) with effect from 6 April 2012.

### **7B [Persons suspended from work**

(1) This regulation applies for any period during which a person is suspended from work while complaints or allegations against him are investigated.

(2) For the purposes of the [conditions of entitlement in this Part]<sup>2</sup>, the person is treated as being engaged in qualifying remunerative work during the period.

This is subject to [paragraph (3) and regulation 7D]<sup>3</sup>

(3) The person must have been engaged in qualifying remunerative work immediately before the beginning of the period.]<sup>1</sup>

### **Commentary—**

*Simon's Taxes E2.222.*

### **Amendments—**

- 1 Regulations 7A, 7B, 7C inserted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 7 with effect from 6 April 2003.
- 2 In para (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 7 with effect from 31 July 2009.
- 3 In para (2), words substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (9) with effect from 6 April 2012.

### **7C [Pay in lieu of notice**

(1) This regulation applies if a person stops work and receives pay in lieu of notice.

(2) For the purposes of the [conditions of entitlement in this Part]<sup>3</sup>, the person shall not be treated as being engaged in qualifying remunerative work during the period for which he receives the pay.]<sup>1</sup>

[(3) This regulation is subject to regulation 7D.]<sup>2</sup>

### **Commentary—**

*Simon's Taxes E2.222.*

### **Amendments—**

- 1 Regulations 7A, 7B, 7C inserted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 7 with effect from 6 April 2003.
- 2 Para (3) inserted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2007/968 reg 2(1), (2) with effect from 6 April 2007.
- 3 In para (2), words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 7 with effect from 31 July 2009.

### **7D [Ceasing to undertake work or working for less than 16[, 24] or 30 hours per week**

(1) This regulation applies for the four-week period immediately after—

- (a) a person, not being a member of a couple, who is engaged in qualifying remunerative work for not less than 16 hours per week, ceases to work or starts to work less than 16 hours per week,
- (b) a person, being a member of a couple only one of whom is engaged in qualifying remunerative work for not less than 16 hours per week, ceases to work or starts to work less than 16 hours per week,
- (c) both members of a couple, each of whom is engaged in qualifying remunerative work for not less than 16 hours per week, cease to work or start to work less than 16 hours per week,
- (d) a person, being a member of a couple who is entitled to the childcare element of working tax credit each of whom is engaged in qualifying remunerative work for not less than 16 hours per week, ceases to work or start to work less than 16 hours per week, or
- (e) a person who satisfies paragraph (c) [of the first variation or paragraph (b) of the second variation]<sup>2</sup> of the second condition in regulation 4(1) and who is engaged in qualifying remunerative work for not less than 30 hours per week, ceases to work or starts to work less than 30 hours per week.
- [(f) one or both members of a couple who satisfy paragraph (a) of the third variation of the Second condition in regulation 4(1) and are engaged in qualifying remunerative work cease to work or reduce their hours to the extent that they cease to meet the condition that one member of the couple works not less than 16 hours per week and the aggregate number of hours for which the couple are engaged in qualifying remunerative work is not less than 24 hours per week.]<sup>2</sup>

(2) For the purposes of the conditions of entitlement in this Part, the person is treated as being engaged in qualifying remunerative work during that period.]<sup>1</sup>

### **Amendments—**

- 1 This reg substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 8 with effect from 31 July 2009.
- 2 In heading, words inserted; in para (1)(e), words inserted; and para (1)(f) inserted; by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (10) with effect from 6 April 2012.

## **8 Gaps between jobs**

For the purposes of the [conditions of entitlement in this Part]<sup>1</sup> a person shall be treated as being engaged in qualifying remunerative work for the requisite number of hours if he has been so engaged within the past 7 days.

### **Commentary—**

*Simon's Taxes* E2.222.

### **Amendments—**

- 1 Words substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2009/1829 regs 2, 9 with effect from 31 July 2009.

## **9 [Disability element and workers who are to be treated as at a disadvantage in getting a job]**

(1) The determination of the maximum rate must include the disability element if the claimant, or, in the case of a joint claim, one of the claimants—

- (a) undertakes qualifying remunerative work for at least 16 hours per week;
- (b) has any of the disabilities listed in Part 1 of Schedule 1, or in the case of an initial claim, satisfies the conditions in Part 2 of Schedule 1; and
- (c) is a person who satisfies any of Cases A to G on a day for which the maximum rate is

determined in accordance with these Regulations.

[(2) Case A is where the person has, for at least one day in the preceding 182 days (“the qualifying day”), been in receipt of—

- (a) higher rate short-term incapacity benefit;
- (b) long-term incapacity benefit;
- (c) severe disablement allowance; or
- (d) employment and support allowance [or a limited capability for work credit,]<sup>5</sup> where entitlement to employment and support allowance [or that credit]<sup>5</sup> or statutory sick pay [or a benefit or allowance mentioned in sub-paragraphs (a) to (c) or the income support payable under paragraph (3)(a),]<sup>5</sup> has existed for a period of 28 weeks immediately preceding the qualifying day comprising one continuous period or two or more periods which are linked together.<sup>4</sup>

(3) Case B is where, for at least one day in the preceding 182 days, the person has been a person [for whom at least one of the following benefits has been payable and for whom the applicable amount]<sup>2</sup> included a higher pensioner or disability premium [in respect of him]<sup>2</sup> determined—

- (a) in the case of income support, in accordance with [paragraphs 10(1)(b) or (2)(b) or 11, and where applicable, 12,]<sup>2</sup> of Part III of Schedule 2 to the Income Support (General) Regulations 1987;
- (b) in the case of income-based jobseeker's allowance, in accordance with [paragraphs 12(1)(a), or (b)(ii), or (c), or 13, and where applicable 14 of Part 3 of]<sup>2</sup> Schedule 1 to the Jobseeker's Allowance Regulations 1996;
- (c) in the case of housing benefit, in accordance with [paragraphs 11(1)(b) or 11(2)(b) or 12, and where applicable, 13 of Part 3 Schedule 3 of the Housing Benefit Regulations 2006]<sup>3</sup>;
- (d) ...<sup>9</sup>

(4) Case C is where the person is a person to whom at least one of the following is payable—

- (a) a disability living allowance;
- (b) an attendance allowance;
- (c) a mobility supplement or a constant attendance allowance which is paid, in either case, in conjunction with a war pension or industrial injuries disablement benefit.

[(d) personal independence payment.]<sup>6</sup>

[(e) armed forces independence payment.]<sup>7</sup>

(5) Case D is where the person has an invalid carriage or other vehicle provided under—

- (a) section 5(2)(a) of, and Schedule 2 to, the National Health Service Act 1977,
- (b) section 46 of the National Health Service (Scotland) Act 1978, or
- (c) Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

(6) Case E is where the person—

[(a) has received—

- (i) on account of his incapacity for work, statutory sick pay, occupational sick pay, short-term incapacity benefit payable at the lower rate or income support, for a

period of 140 qualifying days, or has been credited with Class 1 or Class 2 contributions under the Contributions and Benefits Act for a period of 20 weeks on account of incapacity for work, and where the last of those days or weeks (as the case may be) fell within the preceding 56 days; or

- (ii) on account of his [incapacity for work or]<sup>5</sup> having limited capability for work, an employment and support allowance [, or the pay or benefit mentioned in paragraph (i),]<sup>5</sup> or a period of 140 qualifying days, or has been credited with Class 1 or Class 2 contributions under the Contributions and Benefits Act for a period of 20 weeks on account of [incapacity for work or]<sup>5</sup> having limited capability for work, and where the last of those days or weeks (as the case may be) fell within the preceding 56 days;<sup>4</sup>
  - (b) has a disability which is likely to last for at least six months, or for the rest of his life if his death is expected within that time; and
  - (c) has gross earnings which are less than they were before the disability began by at least the greater of 20 per cent. and £15 per week. For the purpose of this Case “qualifying days” are days which form part of a single period of incapacity for work within the meaning of Part 11 of the Contributions and Benefits Act [or a period of limited capability for work within the meaning of regulation 2(1) of the Employment and Support Allowance Regulations 2008]<sup>4</sup>.
- (7) Case F is where the person—
- (a) has undertaken training for work for at least one day in the preceding 56 days; and
  - [(b) has, within 56 days before the first day of that period of training for work, received—
    - (i) higher rate short-term incapacity benefit;
    - (ii) long-term incapacity benefit;
    - (iii) severe disablement allowance; or
    - (iv) contributory employment and support allowance [or a limited capability for work credit,]<sup>5</sup> where entitlement to that allowance [or credit]<sup>5</sup> or statutory sick pay [or a benefit or allowance mentioned in paragraphs (i) to (iii),]<sup>5</sup> has existed for a period of 28 weeks comprising one continuous period or two or more periods which are linked together provided that, if the person received statutory sick pay, the person satisfied the first and second contribution conditions set out in paragraphs 1 and 2 of Schedule 1 to the Welfare Reform Act.<sup>4</sup>

[(7A) In paragraph (7)(b)(iv), the reference to contributory employment and support allowance is a reference to an allowance under Part 1 of the Welfare Reform Act 2007 (“the 2007 Act”) as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-based allowance, and a contributory allowance under Part 1 of the 2007 Act as that Part has effect apart from those provisions.]<sup>8</sup>

(8) Case G is where the person was entitled, [for at least one day in the preceding 56 days]<sup>2</sup>, to the disability element of working tax credit or to disabled person's tax credit by virtue of his having satisfied the requirements of Case A, B, E or F at some earlier time. For the purposes of this Case a person is treated as having an entitlement to the disability element of working tax credit if that element is taken into account in determining the rate at which the person is entitled to a tax credit.

(9) For the purposes of the Act, a person who satisfies paragraph (1)(b) is to be treated as having a physical or mental disability which puts him at a disadvantage in getting a job.<sup>1</sup>

### **Commentary—**

*Simon's Taxes* E2.227.

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM2501 (summary of entitlement to disability element of WTC).



TCTM2502 (reg 9(2)–(8): explanation of “qualifying benefits” test and fast-track).

## **Amendments—**

- 1 Regulations 9, 9A, 9B substituted for regulation 9 as originally enacted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 8 with effect from 6 April 2003.
- 2 Words in para (3) substituted and inserted, and words in para (8) substituted, by the Tax Credits (Miscellaneous Amendments No 2) Regulations, SI 2003/2815 regs 12, 14 with effect from 26 November 2003.
- 3 Words in para (3)(c), (d) substituted by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006, SI 2006/217 reg 5 Sch 2 para 22(2) with effect from 6 March 2006.
- 4 Paras (2), (6)(a), (7)(b) substituted, and words in para (6) inserted, by the Employment and Support Allowance (Consequential Provisions) (No 3) Regulations, SI 2008/1879 reg 20(1), (4) with effect from 27 October 2008.
- 5 In para (2)(d) and para (7)(b)(iv), words “or a limited capability for work credit,”, “or that credit” and “or credit” inserted with effect from 1 May 2012, and other words in those paras and words in para (6)(a)(ii) inserted with effect from 6 April 2012, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (11), (12), (13).
- 6 Para (4)(d) inserted by the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations, SI 2013/388 reg 28(1), (3) with effect from 8 April 2013.
- 7 Para (4)(e) inserted by the Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order, SI 2013/591 art 7, Schedule para 24(1), (3) with effect from 8 April 2013.
- 8 Para (7A) inserted by the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations, SI 2013/630 reg 77(1), (3) with effect from 29 April 2013.
- 9 Para (3)(d) revoked by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2014/658 reg 2 with effect from 6 April 2014.

## **9A [Initial claims**

- (1) In regulation 9(1)(b) an “initial claim” means a claim which—
  - (a) is made for the disability element of working tax credit, and
  - (b) relates to a person who has not had an entitlement to that element or to disabled person's tax credit during the two years immediately preceding the making of the claim.
- (2) In paragraph (1) any reference to the making of a claim includes the giving of notification, in accordance with regulation 20 of the Tax Credits (Claims and Notifications) Regulations 2002, of a change of circumstances falling within that regulation.
- (3) For the purposes of paragraph (1)(b) a person is treated as having an entitlement to the disability element of working tax credit if, by virtue of the person being a person who satisfies regulation 9, that element is taken into account in determining the rate at which the person is entitled to a tax credit.]<sup>1</sup>

## **Amendments—**

- 1 Regulations 9, 9A, 9B substituted for regulation 9 as originally enacted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 8 with effect from 6 April 2003.

## **9B [Training for work etc**

- (1) In [regulation 9]<sup>2</sup> “training for work” means training for work received—
  - (a) in pursuance of arrangements made under—
    - (i) section 2(1) of the Employment and Training Act 1973,
    - (ii) section 2(3) of the Enterprise and New Towns (Scotland) Act 1990, or

- (iii) section 1(1) of the Employment and Training Act 1950, or
  - (b) on a course whose primary purpose is the teaching of occupational or vocational skills, and which the person attends for 16 hours or more a week.
- (2) For the purposes of regulation 9(7) a period of training for work means a series of consecutive days of training for work, there being disregarded any day specified in paragraph (3).
- (3) Those days are any day on which the claimant was—
- (a) on holiday;
  - (b) attending court as a justice of the peace, a party to any proceedings, a witness or a juror;
  - (c) suffering from some disease or bodily or mental disablement as a result of which he was unable to attend training for work, or his attendance would have put at risk the health of other persons;
  - (d) unable to participate in training for work because—
    - (i) he was looking after a child because the person who usually looked after that child was unable to do so;
    - (ii) he was looking after a member of his family who was ill;
    - (iii) he was required to deal with some domestic emergency; or
    - (iv) he was arranging or attending the funeral of his partner or a relative; or
  - (e) authorised by the training provider to be absent from training for work.
- (4) For the purposes of paragraph (3)(d)(iv) “relative” means close relative, grandparent, grandchild, uncle, aunt, nephew or niece; and in this paragraph “close relative” means parent, parent-in-law, son, son-in-law, daughter, daughter-in-law, step-parent, step-son, step-daughter, brother, sister, or the spouse of any of the preceding persons or, if that person is one of an unmarried couple, the other member of that couple.]<sup>1</sup>

## Commentary—

*Simon's Taxes* E2.227.

## Amendments—

- 1 Regulations 9, 9A, 9B substituted for regulation 9 as originally enacted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 8 with effect from 6 April 2003.
- 2 Words substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 8 with effect from 6 April 2004.

## 10 30 hour element

- (1) The determination of the maximum rate must include a 30 hour element if the claimant, or in the case of a joint claim, at least one of the claimants, is engaged in qualifying remunerative work for at least 30 hours per week.
- (2) The determination of the maximum rate must also include the 30 hour element if—
- (a) the claim is a joint claim,
  - (b) at least one of the claimants is responsible for one or more children or qualifying young people,
  - (c) the aggregate number of hours for which the couple engage in qualifying remunerative work is at least 30 hours per week, and
  - (d) at least one member of the couple engages in qualifying remunerative work for at least

16 hours per week.

(3) ...1

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM2405 (examples illustrating the 30 hour element).

### **Modifications—**

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 30 (modification of para (2) above for the purposes of polygamous marriages).

### **Amendments—**

- 1 Para (3) revoked by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (14) with effect from 6 April 2012.

## **11 [Second adult element**

(1) The determination of the maximum rate must include the second adult element if the claim is a joint claim. This is subject to the following provisions of this regulation.

(2) ...5

(3) ...5

[(4) The determination of the maximum rate shall ...5 not include the second adult element if neither claimant has responsibility for a child or qualifying young person, and

- (a) one claimant is serving a custodial sentence of more than twelve months, or
- (b) one claimant is subject to immigration control within the meaning of [section 115(9)]3 of the Immigration and Asylum Act 1999.]2

[(5) Paragraph (4)(b) does not apply where the claimant subject to immigration control is a person to whom Case 4 of regulation 3(1) of the Tax Credits (Immigration) Regulations 2003 applies.]3]1

### **Commentary—**

*Simon's Taxes* E2.224.

### **Modifications—**

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 31 (modification of paras (1), (2) and (4) above for the purposes of polygamous marriages).

### **Amendments—**

- 1 This regulation substituted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 10 with effect from 6 April 2003.
- 2 Para (4) substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2009/697 regs 2, 4 with effect from 6 April 2009.
- 3 In para (4)(b), words substituted for words "section 115(9)(a)", and para (5) inserted, by the Tax Credits (Miscellaneous Amendments) (No 2) Regulations, SI 2009/2887 regs 2, 3 with effect from 6 April 2010.
- 4 In former para (3), word "or" at end of sub-para (a) revoked, and sub-para (c) and preceding word ", or" inserted, by the Tax Credits (Miscellaneous Amendments) (No 3) Regulations, SI 2010/2914 regs 10, 12 with effect from 31 December 2010.
- 5 Para (2), (3) and word in para (4) revoked by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (15) with effect from 6 April 2012.

## **12 Lone parent element**

The determination of the maximum rate must include the lone parent element if—

- (a) the claim is a single claim; and
- (b) the claimant is responsible for [a child or qualifying young person]1.

### **Commentary—**

## Amendments—

- 1 Words substituted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 11 with effect from 6 April 2003.

### Child care element

#### Part 2: Conditions of Entitlement (Child care)

#### 13 Entitlement to child care element of working tax credit

(1) The determination of the maximum rate must include a child care element where that person, or in the case of a joint claim at least one of those persons, is incurring relevant child care charges and—

- (a) is a person, not being a member of a ...3 couple, engaged in [qualifying remunerative work]1;
- [(b) is a member or are members of a ...3 couple where both are engaged in qualifying remunerative work [for not less than 16 hours per week]6; or]1
- [(c) is a member or are members of a ...3 couple where one is engaged in qualifying remunerative work [for not less than 16 hours per week]6 and the other—
  - (i) is incapacitated;
  - (ii) is an in-patient in hospital; or
  - (iii) is in prison (whether serving a custodial sentence or remanded in custody awaiting trial or sentence)]1; or
  - [(iv) is entitled to carer's allowance under section 70 of the Social Security Contributions and Benefits Act 1992.]6

(2) For the purposes of paragraph (1) a person is not treated as incurring relevant child care charges where the average weekly charge calculated in accordance with regulation 15 is nil or where an agreement within regulation 15(4) has not yet commenced.

(3) ...2

[(4) For the purposes of paragraph (1)(c)(i) the other member of a couple is incapacitated in any of the circumstances specified in [paragraphs (5) to (12)]7.]1

[(5) The circumstances specified in this paragraph are where housing benefit is payable under Part 7 of the Contributions and Benefits Act to the other member or the other member's partner and the applicable amount of the person entitled to the benefit includes a disability premium on account of the other member's incapacity or regulation 28(1)(c) of the Housing Benefit Regulations 2006 (treatment of child care charges) applies in that person's case.]7

(6) The circumstances specified in this paragraph are where there is payable [or – in the case of a credit – an entitlement]6 in respect of him one or more of the following6 ...—

- (a) short-term incapacity benefit [payable at the higher rate]1 under section 30A of the Contributions and Benefits Act;
- (b) long term incapacity benefit under section 40 or 41 of the Contributions and Benefits Act;
- (c) attendance allowance under section 64 of that Act;
- (d) severe disablement allowance under section 68 of that Act;
- (e) disability living allowance under section 71 of that Act;

- (f) increase of disablement pension under section 104 of that Act;
- (g) a pension increase under a war pension scheme or an industrial injuries scheme which is analogous to an allowance or increase of disablement pension under sub-paragraph (b), (d) or (e) above;
- [(h) contributory employment and support allowance [or a limited capability for work credit,]<sup>6</sup> where entitlement to that allowance [or credit]<sup>6</sup> or statutory sick pay [or a benefit or allowance mentioned in sub-paragraph (a) or (b) or (d),]<sup>6</sup> has existed for a period of 28 weeks comprising one continuous period or two or more periods which are linked together provided that, if the person received statutory sick pay, the person satisfied the first and second contribution conditions set out in paragraphs 1 and 2 of Schedule 1 to the Welfare Reform Act]<sup>5</sup>.
- [(i) personal independence payment.]<sup>8</sup>
- [(j) armed forces independence payment.]<sup>9</sup>
- [(k) any benefit, allowance or credit of another EEA state or Switzerland which is substantially similar in character to the benefits, allowances and credits in sub-paragraphs (a) to (j).]<sup>11</sup>

[(6A) In paragraph (6)(h), the reference to contributory employment and support allowance is a reference to an allowance under Part 1 of the Welfare Reform Act 2007 (“the 2007 Act”) as amended by the provisions of Schedule 3, and Part 1 of Schedule 14, to the Welfare Reform Act 2012 that remove references to an income-related allowance, and a contributory allowance under Part 1 of the 2007 Act as that Part has effect apart from those provisions.]<sup>10</sup>

(7) The circumstances specified in this paragraph are where a pension or allowance to which sub-paragraph [(c)]<sup>1</sup>, (d), (e) or (f) of paragraph (6) refers, was payable on account of his incapacity but has ceased to be payable only in consequence of his becoming a patient.

(8) The circumstances specified in this paragraph are where he has an invalid carriage or other vehicle provided to him under section 5(2)(a) of and Schedule 2 to the National Health Service Act 1977, section 46 of the National Health Service (Scotland) Act 1978; or Article 30(1) of the Health and Personal Social Services (Northern Ireland) Order 1972.

[(9) The circumstances specified in this paragraph are where, on 31st March 2013, council tax benefit was payable under Part 7 of the Contributions and Benefits Act (as then in force) to the other member or the other member's partner and the applicable amount of the person entitled to the benefit included a disability premium on account of the other member's incapacity.

(10) Paragraph (9) is subject to paragraphs (11) and (12).

(11) Paragraph (9) does not apply unless the other member of the couple was incapacitated (for the purposes of paragraph (1)(c)(i) and regulation 4(1) Second condition, Third variation (c)(i)) solely by virtue of that person or their partner having been in receipt, on 31st March 2013, of council tax benefit which included a disability premium on account of the other member's incapacity, and none of the other circumstances specified in paragraphs (5) to (8) applied on that date.

(12) If—

- (a) the other member of the couple is incapacitated in the circumstances specified in paragraph (9), and
- (b) the couple ceases to be entitled to working tax credit (for any reason) on or after 1st April 2013,

that member of the couple shall not be treated as incapacitated in the circumstances specified in paragraph (9) in relation to any subsequent claim.]<sup>7</sup>

### **Commentary—**

*Simon's Taxes* E2.225.

## HMRC Manuals—

Tax Credit Technical Manual TCTM2610 (summary of above).

TCTM2620 (meaning of incapacitated).

## Modifications—

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 32 (modification of paras (1), (4), and (5) above for the purposes of polygamous marriages).

## Amendments—

- 1 Words in para (1)(a), and reference in para (7) substituted, para (1)(b), (c), and paras (3), (4) substituted, and words in para (6)(a) inserted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 12 with effect from 6 April 2003.
- 2 Para (3) revoked by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 9 with effect from 6 April 2004.
- 3 Words in para (1) revoked by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 2(1), (3) with effect from 5 December 2005.
- 4 Words in para (5) substituted by the Housing Benefit and Council Tax Benefit (Consequential Provisions) Regulations 2006, SI 2006/217 reg 5 Sch 2 para 22(3) with effect from 6 March 2006.
- 5 Para (6)(h) inserted by the Employment and Support Allowance (Consequential Provisions) (No 3) Regulations, SI 2008/1879 reg 20(1), (5) with effect from 27 October 2008.
- 6 In para (1) words inserted, and sub-para (iv) inserted, with effect from 6 April 2012; in para (6) words “or a benefit or allowance mentioned in sub-paragraph (a) or (b) or (d),” inserted with effect from 6 April 2012, and other words inserted and revoked with effect from 1 May 2012, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), (4), 2(1), (16), (17).
- 7 In para (4), words substituted, para (5) substituted, and paras (9)–(12) inserted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2013/1736 reg 3 with effect from 5 August 2013.
- 8 Para (6)(I) inserted by the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations, SI 2013/388 reg 28(1), (4) with effect from 8 April 2013.
- 9 Para (6)(J) inserted by the Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order, SI 2013/591 art 7, Schedule para 24(1), (4) with effect from 8 April 2013.
- 10 Para (6A) inserted by the Universal Credit (Consequential, Supplementary, Incidental and Miscellaneous Provisions) Regulations, SI 2013/630 reg 77(1), (4) with effect from 29 April 2013.
- 11 Para (6)(k) inserted by the Tax Credits and Childcare (Miscellaneous Amendments) Regulations, SI 2018/365 reg 4(1), (2) with effect from 6 April 2018.

## 14—

(1) [Subject to paragraph (1A),]1 for the purposes of section 12 of the Act charges incurred for child care are charges paid by the person, or in the case of a joint claim, by either or both of the persons, for child care provided for any child for whom the person, or at least one of the persons, is responsible [within the meaning of regulation 3 of the Child Tax Credit Regulations 2002]2.

In these Regulations, such charges are called “relevant child care charges”.

[(1A) Child care charges do not include charges in respect of care provided by [—

(a) a relative of the child, wholly or mainly in the child's home, or

(b) ...11]4]1

[(c) a provider mentioned in regulation 14(2)(c)(v), in circumstances where the care is excluded from being qualifying child care by Article 4(2)(c) of the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006.]6

[(d) a provider mentioned in [regulation 14(2)(f)(vii)]12, in circumstances where the care is

excluded from being qualifying child care by Article 5(3)(d) of the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007.]<sup>7</sup>

[(e) a foster parent[, a foster carer or a kinship carer]<sup>12</sup> in respect of a child whom [that person is fostering or is looking after as the child's kinship carer]<sup>12</sup>.]<sup>11</sup>

[(1B) For the purposes of this regulation—

(a) “relative” means parent, grandparent, aunt, uncle, brother or sister whether by blood, half blood, marriage[, civil partnership]<sup>5</sup> or affinity;

(b) “the child's home” means the home of the person, or in the case of a joint claim of either or both of the persons, responsible for the child.]<sup>1</sup>

[(c) “foster parent” in relation to a child—

(i) in relation to England, means a person with whom the child is placed under the Fostering Services Regulations 2002;

(ii) in relation to Wales, means a person with whom the child is placed under the Fostering Services (Wales) Regulations 2003;

(iii) in relation to Northern Ireland, means a person with whom the child is placed under the Foster Placement (Children) Regulations (Northern Ireland) 1996; and

(d) “foster carer” and “kinship carer” have the meanings given in regulation 2 of the Looked After Children (Scotland) Regulations 2009.]<sup>12</sup>

(2) “Child care” means care provided for a child—

(a) in England<sup>9</sup> ...—

(i) ...<sup>11</sup>

(ii) ...<sup>10</sup>

[(ia) by a person registered under Part 3 of the Childcare Act 2006;]<sup>10</sup>

[(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 paragraph (2B))]<sup>11</sup>;]<sup>10</sup>

(iv) ...<sup>11</sup> ...<sup>9</sup>

(v) ...<sup>11</sup>

(vi) ...<sup>11</sup>

(vii) by a domiciliary care worker under the Domiciliary Care Agencies Regulations 2002; ...<sup>10</sup>

(viii) ...<sup>10</sup>]<sup>9</sup>

(b) in Scotland—

(i) by a person in circumstances where the care service provided by him consists of child minding or of day care of children within the meaning of [schedule 12 to the Public Services Reform (Scotland) Act 2010 and is registered under Part 5 of that Act;]<sup>15</sup> ...<sup>3</sup>

[(ia) by a child care agency where the service consists of or includes supplying, or introducing to persons who use the service, child carers within the meaning of [paragraph 5 of schedule 12 to the Public Services Reform (Scotland) Act 2010;

or]15]6

- (ii) by a local authority in circumstances where the care service provided by the local authority consists of child minding or of day care of children within the meaning of [schedule 12 to the Public Services Reform (Scotland) Act 2010 and is registered under Part 5 of that Act; or]15 ...14
- (iii) ...14
- (c) in Northern Ireland—
  - (i) by persons registered under Part XI of the Children (Northern Ireland) Order 1995; ...3
  - (ii) by institutions and establishments exempt from registration under that Part by virtue of Article 121 of that Order;
  - [(iii) in respect of any period ending on or before the day on which he ceases to be a child for the purposes of this regulation, where the care is provided out of school hours by a school on school premises or by an Education and Library Board or a Health and Social Services Trust; or]3
  - (iv) ...14
  - [(v) by a child care provider approved in accordance with the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006]6]; or
  - (vi) by a foster parent in relation to a child (other than one whom the foster parent is fostering) in circumstances where, but for the fact that the child is too old, the care would fall within one of the descriptions in paragraph (2C);]14
- (d) [anywhere outside the United Kingdom]1—
  - (i) by a child care provider approved by an accredited organisation within the meaning given by regulation 4 of the Tax Credit (New Category of Child Care Provider) Regulations 2002; or
  - (ii) ...1.
- [(e) ...9
- [(f) in Wales—
  - (i) by persons registered under [Part 2 of the Children and Families (Wales) Measure 2010]14;
  - [(ii) by a person in circumstances where, but for article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010, the care would be day care for the purposes of Part 2 of the Children and Families (Wales) Measure 2010;]14
  - (iii) in respect of any period on or before the last day he is treated as a child for the purposes of this regulation, where the care is provided out of school hours, by a school on school premises or by a local authority;
  - (iv) by a child care provider approved by an accredited organisation within the meaning given by regulation 4 of the Tax Credit (New Category of Child Care Provider) Regulations 1999;
  - (v) ...14
  - [(vi) by a person who is employed or engaged under a contract for services to provide care and support by the provider of a domiciliary support service within the



meaning of Part 1 of the Regulation and Inspection of Social Care (Wales) Act 2016;]<sup>19</sup>

- (vii) by a child care provider approved under the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007]<sup>9</sup>; or
- (viii) by a foster parent in relation to a child (other than one whom the foster parent is fostering) in circumstances where, but for the fact that the child is too old, the care would fall within one of the descriptions in paragraph (2D)].<sup>14</sup>

[(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, 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 [child care]<sup>11</sup> 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].<sup>10</sup>

[(2C) The descriptions referred to in paragraph (2)(c)(vi) are—

- (a) child minding or day care for the purposes of Part 11 of the Children (Northern Ireland) Order 1995; and
- (b) qualifying child care for the purposes of the Tax Credits (Approval of Home Child Care Providers) Scheme (Northern Ireland) 2006.

(2D) The descriptions referred to in paragraph (2)(f)(viii) are—

- (a) child minding, or day care, for the purposes of Part 2 of the Children and Families (Wales) Measure 2010; and
- (b) qualifying child care for the purposes of the Tax Credits (Approval of Child Care Providers) (Wales) Scheme 2007].<sup>14</sup>

(3) For the purposes of this regulation a person is a child until the last day of the week in which falls the 1st September following that child’s fifteenth birthday (or sixteenth birthday if the child is disabled).

(4) For the purposes of paragraph (3) a child is disabled where—

- (a) a disability living allowance is payable in respect of that child, or has ceased to be payable solely because he is a patient;

[(b) the child is certified as severely sight impaired or blind by a consultant ophthalmologist;]<sup>18</sup>

- (c) the child ceased to be [certified as severely sight impaired or blind by a consultant ophthalmologist]<sup>18</sup> within the 28 weeks immediately preceding the date of claim; ...<sup>17</sup>

- (d) personal independence payment is payable in respect of that child, or would be payable but for regulations under section 86(1) (hospital in-patients) of the Welfare Reform Act 2012;]16 [or
  - (e) armed forces independence payment is payable in respect of that child.]17
- (5) Charges paid in respect of the child's compulsory education or charges paid by a person to a partner or by a partner to the person in respect of any child for whom either or any of them is responsible are not relevant child care charges.
- (6) Where regulation 15(4) (agreement for the provision of future child care) applies—
- (a) the words “charges paid” in paragraph (1) include charges which will be incurred, and
  - (b) the words “child care provided” in paragraph (1) include care which will be provided.
- (7) ...2
- (8) Relevant child care charges are calculated on a weekly basis in accordance with regulation 15.

## **Commentary—**

*Simon's Taxes* E2.225.

## **HMRC Manuals—**

Tax Credit Technical Manual TCTM2630 (meaning of child care).

## **Modifications—**

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 33 (modification of paras (1), (1B) and (5) above for the purposes of polygamous marriages).

## **Amendments—**

- 1 Words in para (1) inserted, paras (1A), (1B) inserted; words in para (2)(d) substituted, sub-para (2)(d)(ii) revoked; by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 13 with effect from 6 April 2003.
- 2 Words in para (1) inserted, and para (7) revoked, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 regs 4, 10 with effect from 6 April 2004.
- 3 In para (2), words substituted, revoked and inserted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2004/1276 with effect from 1 June 2004.
- 4 Words in para (1A) substituted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2005/769 regs 3, 4(b) with effect from 6 April 2005.
- 5 In para (1B)(a), words inserted in the definition of “relative” by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 2(1), (4) with effect from 5 December 2005.
- 6 Paras (1A)(c), (2)(b)(ia), (c)(v) inserted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2006/766 reg 20(1), (4)–(6) with effect from 6 April 2006.
- 7 Para (1A)(d) inserted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2007/824 regs 2, 6 with effect from 6 April 2007.
- 9 In para (2), in sub-para (a), words before para (i), word “or” in para (iv), and paras (vii), (viii) inserted; sub-para (e) revoked; and sub-para (f) substituted; by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2008/604 reg 3 with effect from 6 April 2008.
- 10 In para (2)(a), para (ii) revoked, para (iia) inserted, para (iii) substituted, and para (viii) and preceding word “or” revoked, and paras (2A), (2B) inserted, by the Tax Credits (Miscellaneous Amendments) (No 2) Regulations, SI 2008/2169 reg 2 with effect from 1 September 2008.
- 11 In para (1A), sub-para (b) revoked, sub-para (e) inserted, in para (2)(a), sub-paras (i), (v), (vi) revoked and words in sub-para (iii) substituted, and in para (2B), words substituted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2009/697 regs 2, 5 with effect from 6 April 2009.
- 12 In para (1A)(d), words substituted, in para (1A)(e), words inserted and words substituted; para (1B)(c), (d) inserted; by the Tax Credits (Miscellaneous Amendments) (No 2) Regulations, SI 2009/2887 regs 2, 4 with effect from 21 November 2009.
- 14 In para (2), sub-para (b)(iii) and preceding word “or” revoked, in sub-para (c) para (iv) revoked, para (vi) and preceding word “or” inserted, in sub-para (f) in para (i) words substituted, para (ii)

substituted, para (v) revoked, para (viii) and preceding word "or" inserted; and paras (2C), (2D) inserted; by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2011/721 reg 3 with effect from 6 April 2011.

- 15 In para (2)(b), words substituted by the Public Services Reform (Scotland) Act 2010 (Consequential Modifications of Enactments) Order, SI 2011/2581 art 2, Sch 2 para 36 with effect from 28 October 2011.
- 16 In para (4), sub-para (d) and preceding word "or" inserted by the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations, SI 2013/388 reg 28(1), (5) with effect from 8 April 2013.
- 17 In para (4), word "or" at end of sub-para (c) revoked, and sub-para (e) and preceding word "or" inserted, by the Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order, SI 2013/591 art 7, Schedule para 24(1), (5) with effect from 8 April 2013.
- 18 In para (4), sub-para (b) substituted, and in sub-para (c) words substituted by the Child Benefit (General) and Tax Credits (Miscellaneous Amendments) Regulations, SI 2014/2924 reg 4(1), (2) with effect from 28 November 2014.
- 19 Para (2)(f)(vi) substituted by the Tax Credits and Childcare (Miscellaneous Amendments) Regulations, SI 2018/365 reg 4(1), (3) with effect from 6 April 2018.

## **15 Calculation of relevant child care charges**

(1) Relevant child care charges are calculated by aggregating the average weekly charge paid for child care for each child in respect of whom charges are incurred [and rounding up the total to the nearest whole pound]<sup>1</sup>.

This is subject to [paragraphs (1A) and (2)]<sup>1</sup>.

[(1A) In any case in which the charges in respect of child care are paid weekly, the average weekly charge for the purposes of paragraph (1) is established—

- (a) where the charges are for a fixed weekly amount, by aggregating the average weekly charge paid for child care for each child in respect of whom charges are incurred in the most recent four complete weeks; or
- (b) where the charges are for variable weekly amounts, by aggregating the charges for the previous 52 weeks and dividing the total by 52.]<sup>1</sup>

(2) In any case in which the charges in respect of child care are paid monthly, the average weekly charge for the purposes of paragraph (1) is established—

- (a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52; or
- (b) where the charges are for variable monthly amounts, by aggregating the charges for the previous 12 months and dividing the total by 52.

(3) In a case where there is insufficient information for establishing the average weekly charge paid for child care in accordance with paragraphs (1) and (2), an officer of the Board shall estimate the charge—

- (a) in accordance with information provided by the person or persons incurring the charges; and
- (b) by any method which in the officer's opinion is reasonable.

(4) If a person—

- (a) has entered into an agreement for the provision of child care; and
- (b) will incur under that agreement relevant child care charges in respect of child care during the period of the award,

the average weekly charge for child care is based upon a written estimate of the future weekly charges provided by that person.

## **Commentary—**

*Simon's Taxes* E2.225.

## **HMRC Manuals—**

Tax Credit Technical Manual TCTM2640 (where there is no or insufficient information to calculate relevant child care charges, the Revenue officer will estimate the relevant child care charges in accordance with relevant information provided by the person or persons incurring the charges and by any method which in the officer's opinion is reasonable).

## **Amendments—**

- 1 Words in para (1) substituted, and para (1A) inserted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 14 with effect from 6 April 2003.

### **16 Change of circumstances**

(1) There is a relevant change in circumstances if—

- (a) ...<sup>1</sup>
- (b) [during the period of an award, the weekly relevant child care charges, rounded up to the nearest whole pound<sup>1</sup>]—
  - (i) exceed the average weekly charge calculated in accordance with regulation 15 by £10 a week or more;
  - (ii) are less than the average weekly charge calculated in accordance with regulation 15 by £10 a week or more; or
  - (iii) are nil.

If there is a relevant change in circumstances, the amount of the child care element of working tax credit shall be recalculated with effect from the specified date.

[(2) For the purposes of paragraph (1), the weekly relevant child care charge—

- (a) where the child care charges are for a fixed weekly amount, is the aggregate of the weekly charge paid for child care for each child in respect of whom charges are incurred in each of the four consecutive weeks in which the change occurred; or
- (b) where the child care charges are for variable weekly amounts, is established by aggregating the anticipated weekly charge paid for child care for each child in respect of whom charges will be incurred for the following 52 weeks and dividing the total by 52.<sup>1</sup>

(3) If in any case the charges in respect of child care are paid monthly, the weekly relevant child care charge for the purposes of paragraph (1) is established—

- (a) where the charges are for a fixed monthly amount, by multiplying that amount by 12 and dividing the product by 52; or
- (b) where the charges are for variable monthly amounts, by aggregating the [anticipated]<sup>1</sup> charges for the [next]<sup>1</sup> 12 months and dividing the total by 52.

(4) In a case where there is insufficient information for establishing the weekly relevant child care charge paid for child care in accordance with paragraphs (2) and (3), an officer of the Board shall estimate the charge—

- (a) in accordance with information provided by the person or persons incurring the charges; and
- (b) by any method which in the officer's opinion is reasonable.

- (5) For the purpose of paragraph (1) the specified date is—
- (a) where the child care charges are increased, the later of—
- (i) the first day of the week in which the change occurred, and
  - (ii) the first day of the week in which falls the day which is [one month]<sup>3</sup> prior to the date notification of the change is given;
- [(b) where the child care charges are decreased—
- (i) in a case where an award of child care charges is a fixed period, the length of which is known when the award is first made, the first day of the week following the end of that fixed period, and
  - (ii) in all other cases, the first day of the week following the four consecutive weeks in which the change occurred.]<sup>2</sup>

### Commentary—

*Simon's Taxes* E2.225.

### HMRC Manuals—

Tax Credit Technical Manual TCTM5200 (examples of changes in circumstances that should be notified).

### Amendments—

- 1 Para (1)(a) revoked, words in para (1)(b) substituted, para (2) substituted, and words in para (3)(b) inserted and substituted, by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 15 with effect from 6 April 2003.
- 2 Para (5)(b) substituted by the Working Tax Credit (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2010/918, regs 2, 3, with effect from 15 April 2010.
- 3 Words in para (5)(a)(ii) substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (18) with effect from 6 April 2012.

## 17 Severe disability element

(1) The determination of the maximum rate must include the severe disability element if the claimant, or, in the case of a joint claim, one of the claimants satisfies paragraph (2) [or (3)]<sup>1</sup> [or (4)]<sup>2</sup>.

(2) A person satisfies this paragraph if a disability living allowance, attributable to the care component payable at the highest rate prescribed under section 72(3) of the Contributions and Benefits Act or an attendance allowance at the higher rate prescribed under section 65(3) of that Act—

- (a) is payable in respect of him; or
- (b) would be so payable but for a suspension of benefit by virtue of regulations under section 113(2) of the Contributions and Benefits Act (suspension during hospitalisation), or an abatement as a consequence of hospitalisation.

[(3) A person satisfies this paragraph if the enhanced rate of the daily living component of personal independence payment under section 78(2) of the Welfare Reform Act 2012—

- (a) is payable in respect of that person; or
- (b) would be so payable but for regulations made under section 86(1) (hospital inpatients) of that Act.]<sup>1</sup>

[(4) A person satisfies this paragraph if an armed forces independence payment is payable in respect of him.]<sup>2</sup>

### Amendments—

- 1 In para (1) words inserted, and para (3) inserted, by the Personal Independence Payment (Supplementary Provisions and Consequential Amendments) Regulations, SI 2013/388 reg 28(1), (6) with effect from 8 April 2013.

- 2 Words in para (1), and whole of para (4), inserted, by the Armed Forces and Reserve Forces Compensation Scheme (Consequential Provisions: Subordinate Legislation) Order, SI 2013/591 art 7, Schedule para 24(1), (6) with effect from 8 April 2013.

## 18 50 plus element

...1

### Commentary—

*Simon's Taxes* E2.228.

### HMRC Manuals—

Tax Credit Technical Manual TCTM2700–2704 (summary of WTC entitlement to 50 plus element).

### Amendments—

- 1 This regulation revoked by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (19) with effect from 6 April 2012.

## Death of a child or qualifying young person for whom the claimant is responsible

### Part 2: Death: child/qualifying young person etc

## 19 Entitlement after death of a child or qualifying young person for whom the claimant is responsible

- (1) Paragraph (2) applies if—
- (a) the death occurs of a child or qualifying young person,
  - (b) working tax credit is payable to a person who was, or to a couple at least one of whom was, immediately before the death responsible for that child or qualifying young person;
  - (c) the prescribed conditions for an element of working tax credit were satisfied because the claimant, or at least one of the claimants, was responsible for that child or qualifying person, but would not have been satisfied but for that responsibility; and
  - (d) the prescribed conditions would have continued to be satisfied but for the death.
- (2) If this paragraph applies, working tax credit shall continue to be payable, as if the child or qualifying young person had not died, for the period for which child tax credit continues to be payable in accordance with regulation 6 of the Child Tax Credit Regulations 2002.

## Part 3 Maximum Rate

## 20 Maximum rates of elements of working tax credit

- (1) The maximum annual rate of working tax credit (excluding the child care element) payable to a single claimant or to a couple making a joint claim is the sum of whichever of the following elements are applicable—
- (a) the basic element specified in column (2) of the table in Schedule 2 at paragraph 1;
  - (b) in respect of a claimant who satisfies regulation 9(1), the disability element specified in column (2) of the table in Schedule 2 at paragraph 2;
  - (c) the 30 hour element specified in column (2) of the table in Schedule 2 at paragraph 3 in respect of—
    - (i) a single claimant who works for not less than 30 hours per week,
    - (ii) a couple either or both of whom work for not less than 30 hours per week; or
    - (iii) a couple, at least one of whom is responsible for a child or a qualifying young person and at least one of whom works for 16 hours per week if their hours of

work when aggregated amount to at least 30 hours per week;

- (d) the second adult element specified in column (2) of the table in Schedule 2 at paragraph 4 where regulation 11 so provides;
- (e) the lone parent element specified in column (2) of the table in Schedule 2 at paragraph 5 where regulation 12 applies; [and]<sup>4</sup>
- (f) the severe disability element specified in column (2) of the table in Schedule 2 at paragraph 6—
  - (i) in respect of a single claimant who satisfies regulation 17; or
  - (ii) in respect of a member of a couple making a joint claim who satisfies regulation 17. ...<sup>4</sup>
- (g) ...<sup>4</sup>

(2) The maximum rate of the child care element of a working tax credit is [70 per cent]<sup>3</sup> of the maxima specified in paragraph (3).

(3) The maxima are—

- (a) [£175]<sup>2</sup>.00 per week, where the [claimant or, in the case of a joint claim, at least one of the claimants, is responsible for]<sup>1</sup> only one child in respect of whom relevant child care charges are paid; and
- (b) [£300]<sup>2</sup>.00 per week where the [claimant or, in the case of a joint claim, at least one of the claimants, is responsible for]<sup>1</sup> more than one child in respect of whom relevant child care charges are paid.

### Commentary—

*Simon's Taxes* E2.221, E2.225.

### HMRC Manuals—

Tax Credit Technical Manual TCTM2601, 3101 (summary of above).

### Modifications—

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 26, 34 (modification of para (1) above for the purposes of polygamous marriages).

### Amendments—

- 1 Words in para (3) substituted by the WTC (Entitlement and Maximum Rate) (Amendment) Regulations, SI 2003/701 regs 2, 16 with effect from 6 April 2003.
- 2 Figures in para (3) substituted by the Tax Credits Up-rating Regulations, SI 2005/681 reg 3(1). The amendments have effect in relation to awards of tax credits for the tax year beginning on 6 April 2005 and subsequent tax years: SI 2005/681 reg 1(3).
- 3 Figure in para (2) substituted by the Tax Credits Up-rating Regulations, SI 2011/1035 reg 3 with effect in relation to awards of tax credits for the year beginning on 6 April 2011. This amendment continues to have effect in relation to awards of tax credits for the tax year beginning on 6 April 2012 and subsequent tax years (SI 2012/849 reg 5(b)).
- 4 In para (1), in sub-para (e) word inserted and sub-para (g) and preceding word “and” revoked, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(2), 2(1), (20) with effect from 6 April 2012.

[SCHD

## SCHEDULE 1

### DISABILITY WHICH PUTS A PERSON AT A DISADVANTAGE IN GETTING A JOB

Disability etc

Regulation 9(1)

When standing he cannot keep his balance unless he continually holds onto something.

**2**

Using any crutches, walking frame, walking stick, prosthesis or similar walking aid which he habitually uses, he cannot walk a continuous distance of 100 metres along level ground without stopping or without suffering severe pain.

**3**

He can use neither of his hands behind his back as in the process of putting on a jacket or of tucking a shirt into trousers.

**4**

He can extend neither of his arms in front of him so as to shake hands with another person without difficulty.

**5**

He can put neither of his hands up to his head without difficulty so as to put on a hat.

**6**

Due to lack of manual dexterity he cannot, with one hand, pick up a coin which is not more than 2½ centimetres in diameter.

**7**

He is not able to use his hands or arms to pick up a full jug of 1 litre capacity and pour from it into a cup, without difficulty.

**8**

He can turn neither of his hands sideways through 180 degrees.

**[9**

He is certified as severely sight impaired or blind by a consultant ophthalmologist.]<sup>1</sup>

### **Amendments—**

- <sup>1</sup> Para 9 substituted by the Child Benefit (General) and Tax Credits (Miscellaneous Amendments) Regulations, SI 2014/2924 reg 4(1), (3) with effect from 28 November 2014.

**10**

He cannot see to read 16 point print at a distance greater than 20 centimetres, if appropriate, wearing the glasses he normally uses.

**11**

He cannot hear a telephone ring when he is in the same room as the telephone, if appropriate, using a hearing aid he normally uses.

**12**

In a quiet room he has difficulty in hearing what someone talking in a loud voice at a distance of 2 metres says, if appropriate, using a hearing aid he normally uses.

**13**

People who know him well have difficulty in understanding what he says.

**14**



When a person he knows well speaks to him, he has difficulty in understanding what that person says.

**15**

At least once a year during waking hours he is in a coma or has a fit in which he loses consciousness.

**16**

He has a mental illness for which he receives regular treatment under the supervision of a medically qualified person.

**17**

Due to mental disability he is often confused or forgetful.

**18**

He cannot do the simplest addition and subtraction.

**19**

Due to mental disability he strikes people or damages property or is unable to form normal social relationships.

**20**

He cannot normally sustain an 8 hour working day or a 5 day working week due to a medical condition or intermittent or continuous severe pain.

**21**

As a result of an illness or accident he is undergoing a period of habilitation or rehabilitation.

### **Commentary—**

*Simon's Taxes E2.227.*

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM2504, 2505 (explanation, with examples, of tests used in determining whether the above disabilities exist).

## **SCHEDULE 2**

### **MAXIMUM RATES OF THE ELEMENTS OF A WORKING TAX CREDIT**

**Maximum Rates etc**

### **Commentary—**

*Simon's Taxes E2.221.*

### **HMRC Manuals—**

Tax Credit Technical Manual TCTM7APPX2 (maximum rates, with daily rates and income thresholds).

Regulation 20(1)

### **[FTB**

<i>[Relevant element of working tax credit]</i>	<i>Maximum annual rate</i>
1. Basic element	[£1,960]2
2. Disability element	[£3,090]3
3. 30 hour element	[£810]2
4. Second adult element	[£2,010]2
5. Lone parent element	[£2,010]2

<i>[Relevant element of working tax credit]</i>	<i>Maximum annual rate</i>
6. Severe disability element	[£1,330]3]1

**[FTE**

### **Amendments—**

- 1 Table substituted by the Tax Credits Up-rating, etc. Regulations, SI 2013/750 reg 3 with effect in relation to awards of tax credits for the tax year beginning on 6 April 2013 and subsequent tax years.
- 2 Figure in items 1, 3, 4, 5 substituted by the Child Benefit and Tax Credits Up-rating Order, SI 2015/567 art 4 with effect from 6 April 2015.
- 3 Figures in items 2, 6 substituted by the Tax Credits and Guardian's Allowance Up-rating etc Regulations, SI 2018/344 reg 2 with effect in relation to awards of tax credits for the tax year beginning on 6 April 2018 and subsequent tax years. Figures were previously £3,000 and £1,330 respectively.