

2002/2173

Tax Credits (Payments by [the Commissioners]) Regulations 2002

Tax Credits (Payments by the Commissioners)

Made by the Commissioners of Inland Revenue under TCA 2002 ss 24(2), (3), (4), (7) and (8), 65(1), (2) and (7) and 67

Made 20 August 2002

Laid before Parliament 21 August 2002

Coming into force 6 April 2003

Note—

The title of these regulations has been changed by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations, SI 2005/2200 reg 7(1), (2). Also, by virtue of SI 2005/2200 reg 7(1), (4), in regs 3–14 below, the words “the Commissioners” have been substituted throughout for the words “the Board”. These amendments have effect from 29 August 2005.

Commentary—

Simon's Taxes E2.255.

HMRC Manuals—

Tax Credit Technical Manual TCTM8001–8105 (direct payments of tax credits).

[MAIN

1 Citation, commencement and effect

(1) These Regulations may be cited as the Tax Credits (Payments by [the Commissioners]² Regulations 2002 and shall come into force on 6th April 2003.

(2) These Regulations have effect in relation to payments of a tax credit, or any element of a tax credit, which must be made ...¹ in relation to the tax year beginning with 6th April 2003 and subsequent tax years.

[(3) Regulations 8 to 14 have effect only in relation to such payments as must be made by the Board.]¹

Amendments—

- 1 Word in para (2) revoked, and para (3) inserted, by the Tax Credits (Claims and Notifications and Payments by the Board) (Amendment) Regulations, SI 2003/723 regs 6, 7 with effect from 6 April 2003.
- 2 Words substituted by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations, SI 2005/2200 reg 7(1), (2) with effect from 29 August 2005.

2 Interpretation

In these Regulations—

“the Act” means the Tax Credits Act 2002;

...¹

[“the Commissioners” means Commissioners for Her Majesty's Revenue and Customs (see section 1 of the Commissioners for Revenue and Customs Act 2005);]¹

[“couple” has the meaning given by section 3(5A) of the Act;]²

“employee” and “employer” have the meaning given by section 25(5) of the Act;

...2

“period of award” shall be construed in accordance with section 5 of the Act;

“the relevant tax year” means the whole or part of the tax year for which an award of a tax credit has been made to a person or persons (referred to in section 24(4) of the Act);

“tax year” means a period beginning with 6th April in one year and ending with 5th April in the next;

...2

Modifications—

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 48, 49 (definitions of “married couple” and “unmarried couple” revoked, and definition of “polygamous unit” inserted, for the purposes of polygamous marriages).

Amendments—

- 1 Definition of “the Board” revoked, and definition of “the Commissioners” inserted, by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations, SI 2005/2200 reg 7(1), (3) with effect from 29 August 2005.
- 2 Definition of “couple” inserted, and definitions of “married couple” and “unmarried couple” revoked, by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 6(1), (2) with effect from 5 December 2005.

3 Child tax credit and child care element—member of a couple prescribed for the purposes of section 24(2) of the Act

- (1) This regulation has effect in relation to payments of—
 - (a) child tax credit; and
 - (b) any child care element of working tax credit.
- (2) Subject to regulation 5, the member of a [couple]³ prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.
- (3) The member of a [couple]³ [prescribed by this paragraph is—
 - (a) where the [couple]³ are for the time being resident at the same address—
 - (i) the member who is identified by both members of the [couple]³ as the main carer;
 - (ii) in default of a member being so identified, the member who appears to [the Commissioners] to be the main carer; and
 - (b) where—
 - (i) the members of the [couple]³ are for the time being resident at different addresses, or
 - (ii) one member of the [couple]³ is temporarily absent from the address at which they live together,the member who appears to [the Commissioners] to be the main carer.

Here “main carer” means the member of the [couple]³ who is the main carer for the children and qualifying young persons for whom either or both of the members is or are responsible.]²

(4) “Children” means persons who have not attained the age of sixteen or who fall within the terms of regulation 4 of the Child Tax Credit Regulations 2002.

(5) “Qualifying young persons” means persons, other than children, who—

- (a) have not attained the age of nineteen, and
- (b) satisfy the conditions in regulation 5(3) and (4) of the Child Tax Credit Regulations 2002.

(6) Where payments are being made to the member of a [couple]³ prescribed by virtue of paragraph (3) and the members of the [couple]³ jointly give notice to [the Commissioners] that, as a result of a change of circumstances, the payments should be made to the other member as the main carer, the other member shall[, except where the notice appears to [the Commissioners] to be unreasonable,]² be treated as prescribed by virtue of paragraph (3).

[(7) For the purposes of this regulation, 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.]¹

HMRC Manuals—

Tax Credit Technical Manual TCTM2207 (CTC can only be paid to one person; where the claim is made by a couple then it can only be paid to the person in that couple who is the main carer for all the children of that couple. The “main carer” is someone who is normally answerable for, or called to account for, the child or young person).

Modifications—

Tax Credits (Polygamous Marriages) Regulations, SI 2003/742 regs 48, 50 (word in heading substituted, and paras (2)–(6) substituted, for the purposes of polygamous marriages).

Amendments—

- 1 Para (7) inserted by the Tax Credits (Claims and Notifications and Payments by the Board) (Amendment) Regulations, SI 2003/723 regs 6, 8 with effect from 6 April 2003.
- 2 Words in para (3) substituted, and words in para (6) inserted, by the Tax Credits (Miscellaneous Amendments No 2) Regulations, SI 2004/1241 reg 5 with effect from 1 May 2004.
- 3 Word in paras (2), (3), (6) substituted by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 6(1), (3)(a) with effect from 5 December 2005.

4 Working tax credit (excluding any child care element)—member of a couple prescribed for the purposes of section 24(2) of the Act

- (1) This regulation has effect in relation to payments of working tax credit other than payments of any child care element.
- (2) Subject to regulation 5, the member of a [couple]¹ prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.
- (3) The member of a [couple]¹ prescribed by this paragraph is—
 - (a) if only one member of the [couple]¹ is engaged in remunerative work, that member;
 - (b) if both members of the [couple]¹ are engaged in remunerative work—
 - (i) the member elected jointly by them; or
 - (ii) in default of any election, such of them as appears to [the Commissioners] to be appropriate.
- (4) Where payments are being made to the member of a [couple]¹ prescribed by virtue of paragraph (3)(b) and the members of the [couple]¹ jointly give notice to [the Commissioners] that, as a result of a change of circumstances, they wish payments to be made to the other member, the other member shall be treated as prescribed by virtue of paragraph (3)(b).
- (5) For the purposes of paragraph (3), a member of a [couple]¹ is engaged in remunerative work if—
 - (a) he is engaged in qualifying remunerative work; or
 - (b) he works not less than 16 hours per week and the other member of the married or

unmarried couple is engaged in qualifying remunerative work.

(6) "Qualifying remunerative work", and being engaged in it, have the meaning given by regulation 4 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002.

Amendments—

- 1 Word in paras (2), (3), (4) and (5) substituted by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 6(1), (3)(b) with effect from 5 December 2005.

5 Member of a couple prescribed for the purposes of section 24(2) of the Act where one of the members of the couple has died

- (1) This regulation applies where one of the members of a [couple]¹ has died.
- (2) The member of the [couple]¹ prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.
- (3) The member of the [couple]¹ prescribed by this paragraph is the member who survives.
- (4) For the purposes of this regulation, where persons have died in circumstances rendering it uncertain which of them survived the other—
- (a) their deaths shall be presumed to have occurred in order of seniority; and
- (b) the younger shall be treated as having survived the elder.

Amendments—

- 1 Word in paras (1), (2) and (3) substituted by the Civil Partnership Act 2004 (Tax Credits, etc) (Consequential Amendments) Order, SI 2005/2919 art 6(1), (3)(c) with effect from 5 December 2005.

6 Person prescribed for the purposes of section 24(3) of the Act where an award of a tax credit is made on a claim which is made by one person on behalf of another

For the purposes of section 24(3) of the Act, the person prescribed is—

- (a) the person by whom the claim on behalf of another was made; or
- (b) if at any time [the Commissioners] do not consider it appropriate for payments of the tax credit to be made to that person, the person on behalf of whom the claim was made.

7 Prescribed circumstances for the purposes of section 24(4) of the Act

- (1) Either of the circumstances prescribed by paragraphs (2) and (3) are prescribed circumstances for the purposes of section 24(4) of the Act.
- (2) The circumstances prescribed by this paragraph are where—
- (a) a claim for a tax credit for the next tax year has been made or treated as made by the person or persons by the date specified for the purposes of subsection (4) of section 17 of the Act in the notice given to him or them under that section in relation to the relevant tax year; and
- (b) [the Commissioners] have not made a decision under section 14(1) of the Act in relation to that claim.
- (3) The circumstances prescribed by this paragraph are where—
- (a) a claim for a tax credit for the next tax year has not been made or treated as made by the person or persons; and
- (b) [the Commissioners] have not made a decision under section 18(1) of the Act in relation to the person and persons for the relevant tax year.

Modifications—

Universal Credit (Transitional Provisions) Regulations, SI 2013/386 reg 17(1), (2), Schedule paras 43, 44 (modification of this regulation in respect of awards of universal credit and terminations of awards of tax credit in the same year).

Universal Credit (Transitional Provisions) Regulations, SI 2014/1626 reg 4 (modification of this regulation in respect of awards of universal credit and terminations of awards of tax credit in the same year).

8 Time of payment by way of a credit to a bank account or other account

(1) ...2 this regulation applies where the tax credit or element is to be paid by way of a credit to a bank account or other account notified to [the Commissioners].

(2) [Subject to paragraphs (2A) and (2B)]³ the tax credit or element shall be paid—

(a) each week; or

(b) every four weeks,

in accordance with any election given by the person to whom payment is to be made.

[(2A) If a person makes elections under paragraph (2) for child tax credit and any child care element of working tax credit to be paid at differing intervals, the elections shall have no effect and [the Commissioners] may pay the child tax credit and any child care element together either each week or every four weeks as appears to them to be appropriate.]¹

[(2B) Notwithstanding the terms of any election under paragraph (2), the Commissioners may pay the tax credit or element either each week or every four weeks as appears to them to be appropriate.]³

(3) ...2

(4) This regulation is subject to regulations 10 and 11.

Amendments—

1 Words in para (2) inserted, and para (2A) inserted, by the Tax Credits (Claims and Notifications and Payments by the Board) (Amendment) Regulations, SI 2003/723 regs 6, 9 with effect from 6 April 2003.

2 Para (3) and words in para (1) revoked by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations, SI 2005/2200 reg 9(2)(b), (c) with effect from 6 April 2006.

3 In para (2), words substituted , and para (2B) inserted, by the Tax Credits (Miscellaneous Amendments) (No 3) Regulations, SI 2010/2914 regs 6, 7 with effect from 31 December 2010.

9 Time of payment other than by way of a credit to a bank account or other account etc

(1) This regulation applies where—

(a) the tax credit or element is to be paid other than by way of a credit to a bank account or other account notified to [the Commissioners]; or

(b) ...1

(2) The tax credit or element shall be paid at such times as appear to [the Commissioners] to be appropriate.

Amendments—

1 Para (1)(b) revoked by the Tax Credit (Payment by Employers, etc) (Amendment) Regulations, SI 2005/2200 reg 9(2)(b) with effect from 6 April 2006.

10 [Single payment of small sums of tax credit

The tax credit or element may be paid by way of a single payment, and at such time, and in such manner, as appear to [the Commissioners] to be appropriate, in any of the following cases—

- (a) where [the Commissioners] are paying only child tax credit to a person and the weekly rate at which it is payable is less than £2.00;
- (b) where [the Commissioners] are paying both any child care element (but no other element) of working tax credit and child tax credit to a person and the total weekly rate at which they are payable is less than £2.00;
- (c) where [the Commissioners] are paying only working tax credit (apart from any child care element) to a person and the weekly rate at which it is payable (excluding any such child care element) is less than £2.00;
- (d) where [the Commissioners] are paying both working tax credit (including elements other than, or in addition to, any child care element) and child tax credit to a person who has elected under regulation 8(2) to have them paid at the same intervals and the total weekly rate at which they are payable is less than £2.00;
- (e) where [the Commissioners] are paying both working tax credit (apart from any child care element) and child tax credit to a person who has elected under regulation 8(2) to have them paid at differing intervals and—
 - (i) the total weekly rate at which any such child care element and the child tax credit are payable is less than £2.00; or
 - (ii) the weekly rate at which the working tax credit is payable (excluding any such child care element) is less than £2.00.¹

Amendments—

- ¹ This regulation substituted by the Tax Credits (Claims and Notifications and Payments by the Board) (Amendment) Regulations, SI 2003/723 regs 6, 10 with effect from 6 April 2003.

11 Postponement of payment

- (1) [The Commissioners] may postpone payment of the tax credit or element in any of the circumstances specified in [paragraphs (2), (2A), (3) and (3A)]³.
- (2) The circumstances specified in this paragraph are where there is a pending determination of an appeal against a decision of [[the First-tier Tribunal, the appeal tribunal, the]² Upper Tribunal, the Northern Ireland]¹ Social Security Commissioner or a court relating to—
- (a) the case in question; or
 - (b) another case where it appears to [the Commissioners] that, if the appeal were to be determined in a particular way, an issue would arise as to whether the award in the case in question should be amended or terminated under section 16(1) of the Act.
- [(2A) The circumstances specified in this paragraph are where—
- (a) a notice in writing has been given by the Commissioners to a person to notify a bank account or other account to which the Commissioners may make payment of a tax credit or element to which the person is entitled;
 - (b) a period of [four] weeks has elapsed since the day on which the Commissioners gave their notice; and
 - (c) no bank account or other account has been⁴ notified to the Commissioners pursuant to their notice.³
- (3) The circumstances specified in this paragraph are where confirmation is pending of—
- (a) the details of a bank account or other account by way of a credit to which payment is to be made; or
 - (b) the address of the person to whom payment is to be made,

where it appears to [the Commissioners] that such details or address as were previously notified to them are incorrect.

[(3A) The circumstances specified in this paragraph are where—

- (a) a notice under section 16(3) of the Tax Credits Act 2002 has been issued to the person, or either or both of the persons, to whom the tax credit or element was awarded, and
- (b) such person or persons have not provided the information or evidence requested in that notice by the date specified in such notice.]³

(4) For the purposes of paragraph (2), the circumstances where a determination of an appeal is pending include circumstances where a decision of [[the First-tier Tribunal, the appeal tribunal, the]² Upper Tribunal, the Northern Ireland]¹ Social Security Commissioner or a court has been made and [the Commissioners]—

- (a) are awaiting receipt of the decision;
- (b) in the case of a decision by [the [First-tier Tribunal or the appeal tribunal]²]¹, are considering whether to apply for a statement of reasons or have applied for, and are awaiting receipt of, a statement of reasons; or
- (c) have received the decision or statement of reasons and are considering—
 - (i) whether to apply for permission to appeal; or
 - (ii) where permission is not needed or has been given, whether to appeal.

(5) “[Appeal tribunal]²” has the meaning given by section 63(10) of the Act.

(6) “[Northern Ireland Social]¹ Security Commissioner” has the meaning given by section 63(13) of the Act.

[(7) The postponement of payment pursuant to the circumstances specified in paragraph (2A) shall cease at the earlier of the time when—

- (a) a bank account or other account is notified to the Commissioners; or
- (b) the entitlement to the tax credit or element ceases in accordance with regulation 14.]³

Amendments—

- 1 In paras (2), (4), (6), words substituted by the Tribunals, Courts and Enforcement Act 2007 (Transitional and Consequential Provisions) Order, SI 2008/2683 art 6(1), Sch 1 para 190 with effect from 3 November 2008.
- 2 In paras (2), (4), (5), words substituted by the Transfer of Tribunal Functions and Revenue and Customs Appeals Order, SI 2009/56 art 3, Sch 2 para 78 with effect from 1 April 2009.
- 3 Words in para (1) substituted and paras (2A), (3A) and (7) inserted, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2010/751 reg 10(1)–(5) with effect from 6 April 2010.
- 4 In para (2A)(b), word substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2012/848 regs 1(3), 6 with effect in relation to a notice given on or after 6 April 2012 within para (2A)(a).

12 Amounts of payments

(1) The tax credit or element shall be paid in accordance with the most recent decision by [the Commissioners] under section 14(1), 15(1) or 16(1) of the Act.

(2) Where the tax credit or element is to be paid other than by way of a single payment, it shall be paid so far as possible in such amounts as will result in the person to whom payment is to be made receiving regular payments of similar amounts over the entire period of award.

(3) Where an award of tax credit is amended, the total amount paid prior to the award being

amended [may]¹ be taken into account by [the Commissioners] in determining the amount of any further payments for the remainder of the period of award.

[(4) Where payments under section 24(4) of the Act are to be made the Commissioners may take any or both of the following factors into account in determining the amount of those payments—

- (a) the rate at which the person or persons were entitled to the tax credit for the relevant tax year;
- (b) the estimated amount of income the person or persons referred to above may receive in the current tax year.]²

Amendment—

- 1 Word in para (3) substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2007/824 reg 15 with effect from 6 April 2007.
- 2 Para (4) substituted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2008/604 reg 5 with effect from 6 April 2008.

12A [Recovery of overpayments of tax credit from other payments of tax credit

(1) This regulation applies where notice is given to a person or persons under subsection (4) of section 29 of the Act (deduction of overpayments from payments of tax credit).

(2) The maximum rate at which an overpayment may be recovered from payments of tax credit is—

- (a) where the only amount of tax credit to which the person is, or, in the case of a joint claim, the persons are, entitled, is the family element of child tax credit, 100% of that tax credit;
- (b) where the total amount of tax credit to which the person is, or, in the case of a joint claim, the persons are, entitled is not subject to reduction—
 - (i) by virtue of section 7(2) of the Act; or
 - (ii) because their income for the relevant year does not exceed the relevant income threshold prescribed in his or their case in regulation 3 of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002;10% of that tax credit; and
- (c) in any other case, [the income-related percentage]² of the tax credit to which the person is, or in the case of a joint claim, the persons are, entitled.

[(2A) In paragraph (2)(c), “the income-related percentage” means—

- (a) 50% if annual income exceeds £20,000; and
- (b) 25% in any other case.

(2B) For the purposes of paragraph (2A)(a), “annual income”—

- (a) means the annual income of the person or, in the case of a joint claim, the aggregate annual income of the persons, mentioned in paragraph (2)(c); and
- (b) is to be taken to be the amount that the Commissioners are for the time being treating that income to be for the purposes of Part 1 of the Act, regardless of whether that amount is also “the relevant income” (as defined by section 7(3) of the Act) on which the entitlement to the tax credit mentioned in paragraph (2)(c) is dependent.]²

(3) In paragraph (2) a reference to the amount to which a person is, or persons are, entitled is a reference to the amount to which they would be entitled but for the operation of that paragraph.]¹

Amendments—

- 1 This regulation inserted by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2004/762 reg 18 with effect from 6 April 2004.
- 2 In para (2)(c), words substituted, and paras (2A), (2B) inserted by the Tax Credits and Child Benefit (Miscellaneous Amendments) Regulations, SI 2016/360 reg 5 with effect from 6 April 2016.

13 Manner of payment

(1) Subject to paragraph (2), the tax credit or element shall be paid by way of a credit to a bank account or other account notified to [the Commissioners] by the person to whom payment is to be made.

(2) Where [it does not appear to [the Commissioners] to be appropriate]¹ for the tax credit or element to be paid by way of a credit to a bank account or other account notified to [the Commissioners] by the person to whom payment is to be made, the tax credit or element may be paid in such manner as appears to [the Commissioners] to be appropriate.

(3) Subject to regulation 14, if no bank account or other account has been notified to [the Commissioners], the tax credit or element shall be paid in such manner as appears to [the Commissioners] to be appropriate.

Amendments—

- 1 Words in para (2) substituted by the Tax Credits (Claims and Notifications and Payments by the Board) (Amendment) Regulations, SI 2003/723 regs 6, 11 with effect from 6 April 2003.

14 Entitlement to tax credit or element dependent on a bank account or other account having been notified to [the Commissioners]

[(1) Subject to paragraph (3), where—

- (a) payment of a tax credit or element is postponed pursuant to the circumstances specified in regulation 11(2A), and
- (b) before the relevant time determined in accordance with this regulation, no bank account or other account is notified to the Commissioners by the person to whom a tax credit or element would have been paid if payment of it had not been postponed,

that person shall cease to be entitled to the tax credit or element for the remainder of the period of the award beginning on the day from which the Commissioners decide to postpone payment.]¹

(2) ...¹

(3) Where there are exceptional circumstances which are expected to result in a person not being able to obtain a bank account or other account throughout the period of award, paragraph (1) shall not have effect in relation to that person's entitlement to a tax credit or element for the period of award.

(4) ...¹

[(4A) Subject to paragraphs (4C) and (4E), the relevant time is the earlier of—

- (a) three months after the time when the Commissioners decide to postpone payment of a tax credit or element; or
- (b) immediately after the end of the relevant tax year.

(4B) This paragraph applies where, before the time determined in accordance with paragraph (4A), the person entitled to payment of the tax credit or element—

- (a) requests from the Commissioners authority to open an account for which such authority is required; and
- (b) provides sufficient information from which the Commissioners can give that authority.

(4C) Subject to paragraph (4E), where paragraph (4B) applies, the relevant time is the later of—

- (a) the time determined in accordance with paragraph (4A); and
- (b) the expiry of the period of 3 weeks from the day on which the Commissioners give their authority following a request described in paragraph (4B)(a).

(4D) This paragraph applies where a person to whom a notice described in regulation 11(2A)(a) has been given has a reasonable excuse—

- (a) for not being able to take all necessary steps to obtain a bank account or other account before a time determined in accordance with paragraphs (4A) or (4C), or
- (b) for not being able to notify to the Commissioners the bank account or other account before a time determined in accordance with paragraphs (4A) or (4C).

(4E) Where paragraph (4D) applies, the relevant time is the later of—

- (a) the time determined in accordance with paragraph (4A);
- (b) where paragraph (4B) applies, the time determined in accordance with paragraph (4C); and
- (c) the date by which the account can reasonably be expected to be notified to the Commissioners.¹

(5) “Writing” includes writing produced by electronic communications that are approved by [the Commissioners].

Amendments—

- 1 Para (1) substituted, paras (4A)–(4E) inserted, and paras (2), (4) repealed, by the Tax Credits (Miscellaneous Amendments) Regulations, SI 2010/751 reg 10(1), (6)–(8) with effect from 6 April 2010.