

The Tax Credit
(Payment by the Commissioners)
Regulations 2002

Statutory Instrument 2002 No. 2173

As at 6th April 2010

1. This version of the Tax Credit (Payment by the Commissioners) Regulations 2002 (“the regulations”) consolidates the amendments listed in the table overleaf, and is up to date as at 6th April 2010. Amendments are highlighted in red.
2. For polygamous units, this version of the regulations *must* be read alongside the modifications made by the Tax Credits (Polygamous Marriages) Regulations 2003 (SI 2003/742) (April 6, 2003).
3. Throughout these regulations, references to “the Board” should be taken as a reference to the Commissioners for HM Revenue & Customs (section 50 of the Commissioners for Revenue and Customs Act 2005).
4. Any suggestions for improvements or amendments to this document should be notified to the authors at the address below.

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| 3 | Amended by SI 2004 No. 1241 | 1/5/04 |
| 4 | Amended by SI 2005 No. 2200 | 29/8/05 |
| 5 | Amended by SI 2005 No. 2919 | 5/12/05 |
| 6 | Amended by SI 2005 No. 2200 | 1/4/06 |
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| 8 | Amended by SI 2008 No. 604 | 6/4/08 |
| 9 | Amended by SI 2010 No. 751 | 6/4/10 |

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STATUTORY INSTRUMENTS

2002 No. 2173

TAX CREDITS

The Tax Credit (Payment by the Commissioners) Regulations 2002

Made 20th August 2002

Laid before Parliament 21st August 2002

Coming into force 6th April 2003

The Commissioners of Inland Revenue, in exercise of the powers conferred upon them by sections 24(2), (3), (4), (7) and (8), 65(1), (2) and (7) and 67 of the Tax Credits Act 2002, hereby make the following Regulations:

1. Citation, commencement and effect

(1) These Regulations may be cited as the Tax Credits (Payments by [⁴the Commissioners]) 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.

[¹(3) Regulations 8 to 14 have effect only in relation to such payments as must be made by [⁴the Commissioners.]

2. Interpretation

In these Regulations -

"the Act" means the Tax Credits Act 2002;

[⁴ "the Commissioners" means Commissioners for Her Majesty's Revenue and Customs (see section 1 of the Commissioners for Revenue and Customs Act 2005);]

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

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

[⁵];

"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;

[⁵].

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 [⁵ couple] prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.

(3) The member of a [⁵ couple] [³prescribed by this paragraph is—

- (a) where the [⁵ couple] are for the time being resident at the same address—
 - (i) the member who is identified by both members of the [⁵ couple] as the main carer;
 - (ii) in default of a member being so identified, the member who appears to [⁴the Commissioners] to be the main carer; and
- (b) where—
 - (i) the members of the [⁵ couple] are for the time being resident at different addresses, or
 - (ii) one member of [⁵ couple] is temporarily absent from the address at which they live together,

the member who appears to [⁴the Commissioners] to be the main carer.

Here "main carer" means the member of the married couple or unmarried couple who is the main carer for the children and qualifying young persons for whom either or both of the members is or are responsible;]

(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 [⁵ couple] prescribed by virtue of paragraph (3) and the members of the [⁵ couple] jointly give notice to [⁴the 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, [³except where the notice appears to [⁴the Commissioners] to be unreasonable,] be treated as prescribed by virtue of paragraph (3).

[¹(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.]

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 [⁵ couple] prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.

(3) The member of a [⁵ couple] prescribed by this paragraph is -

(a) if only one member of the [⁵ couple] is engaged in remunerative work, that member;

(b) if both members of the [⁵ couple] 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 [⁴the Commissioners] to be appropriate.

(4) Where payments are being made to the member of a [⁵ couple] prescribed by virtue of paragraph (3)(b) and the members of the [⁵ couple] jointly give

notice to [⁴the 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 [⁵ couple] 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 [⁵ 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.

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 [⁵ couple] has died.

(2) The member of the [⁵ couple] prescribed by paragraph (3) is prescribed for the purposes of section 24(2) of the Act.

(3) The member of the [⁵ couple] 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.

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 [⁴the 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) [⁴the 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) [⁴the 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.

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

(1) [⁶.....], 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 [⁴the Commissioners].

(2) [¹Subject to paragraph (2A),] 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.

[¹(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 [⁴the 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.]

[⁶(3).....]

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

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 [⁴the Commissioners]; or

[⁶(b)]

(2) The tax credit or element shall be paid at such times as appear to [⁴the Commissioners] to be appropriate.

[10¹. 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 [⁴the Commissioners] to be appropriate, in any of the following cases -

(a) where [⁴the 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 [⁴the 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 [⁴the 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 [⁴the 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 [⁴the 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.]

11. Postponement of payment

(1) [⁴the Commissioners] may postpone payment of the tax credit or element in any of the circumstances specified in [⁹ paragraphs (2), (2A), (3) and (3A)].

(2) The circumstances specified in this paragraph are where there is a pending determination of an appeal against a decision of an appeal tribunal, a Social Security Commissioner or a court relating to -

(a) the case in question; or

(b) another case where it appears to [⁴the 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.

[⁹ (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 eight weeks has elapsed since the day on which the Commissioners gave their notice; and

(c) no bank account or other account has been notified to the Commissioners pursuant to their notice.]

(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 [⁴the Commissioners] that such details or address as were previously notified to them are incorrect.

[⁹ (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.]

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

(a) are awaiting receipt of the decision;

(b) in the case of a decision by an appeal tribunal, 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" has the meaning given by section 63(10) of the Act.

(6) "Social Security Commissioner" has the meaning given by section 63(13) of the Act.

[⁹ (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.]

12. Amounts of payments

(1) The tax credit or element shall be paid in accordance with the most recent decision by [⁴the 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 [⁷may] be taken into account by [⁴the

Commissioners] in determining the amount of any further payments for the remainder of the period of award.

[⁸(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.]

12A. [²Recovery 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, 25% of the tax credit to which the person is, or in the case of a joint claim, the persons are, entitled.

(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.]

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 [⁴the Commissioners] by the person to whom payment is to be made.

(2) Where [¹it does not appear to [⁴the Commissioners]] to be appropriate for the tax credit or element to be paid by way of a credit to a bank account or other account notified to [⁴the 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 [⁴the Commissioners] to be appropriate.

(3) Subject to regulation 14, if no bank account or other account has been notified to [⁴the Commissioners], the tax credit or element shall be paid in such manner as appears to [⁴the Commissioners] to be appropriate.

14. Entitlement to tax credit or element dependent on a bank account or other account having been notified to [⁴the Commissioners]

[⁹ (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.]

[⁹]

(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.

[⁹]

[⁹ (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.]

(5) "Writing" includes writing produced by electronic communications that are approved by [⁴the Commissioners].

Dave Hartnett

Ann Chant

Two of the Commissioners of Inland Revenue

20th August 2002

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 24(6) of the Tax Credits Act 2002 (c. 21) ("the Act") provides that, subject to section 25 of the Act, payments of a tax credit must be made by the Commissioners of Inland Revenue ("the Board"). Section 25 of the Act provides for regulations to be made requiring employers to pay working tax credit.

The Working Tax Credit (Payment by Employers) Regulations 2002 (S.I. 2002/2172) are being made under section 25 of the Act at the same time as these Regulations. These Regulations make provision in relation to the payment of tax credits by the Board.

Regulation 1 provides for citation, commencement and effect, and regulation 2 for interpretation.

Regulations 3, 4 and 5 prescribe the member of a married couple or an unmarried couple to whom payment is to be made where an award of a tax credit is made to such a couple. Regulation 3 relates to child tax credit and the child care element of working tax credit and regulation 4 relates to working tax credit. Regulation 5 deals with cases where one member of such a couple dies.

Regulation 6 prescribes the person to whom payment is to be made where a claim for a tax credit was made by one person on behalf of another.

Regulation 7 prescribes circumstances in which payments may continue to be made for any period, after the tax year for which an award of tax credit has been made to a person or persons, within which the person is or the persons are entitled to make a claim for the tax credit for the next tax year.

Regulations 8 to 11 provide for the time when a tax credit is to be paid. Regulation 8 relates to payments by way of a credit to a bank account or other account and regulation 9 relates to payments by other means. Regulation 10 provides for a single payment where the weekly rate of the tax credit is less than £2.00. Regulation 11 provides for the postponement of payment in certain circumstances.

Regulation 12 provides for the amount of payments.

Regulation 13 provides for the manner of payments. The main manner of payment is by way of a credit to a bank account or other account.

Regulation 14 provides for entitlement to a tax credit to be dependent on a bank account or other account having been notified to the Board.