

HM Revenue & Customs (HMRC)
Technical consultation on draft secondary legislation relating to Help to Save accounts
Response from the Low Incomes Tax Reform Group (LITRG)

1 Executive Summary

- 1.1 We welcome the opportunity to comment on the draft Help to Save regulations. We raise a number of points where it is not clear that the regulations meet what we understand to be the original policy intentions of the Help to Save scheme.
- 1.2 Help to Save has been billed as being introduced to help working families on the lowest incomes. It is of course not necessarily only those on the lowest incomes who have the most limited means to save – some people higher up the income scale may have proportionately higher outgoings, therefore have limited disposable income and ability to save. The tax credits and universal credit (UC) systems recognise this by awarding different elements by reference to circumstances – childcare costs, disability, etc. It may therefore be that it is fully intended not to limit eligibility to Help to Save to only lower income tax credits and UC claimants. Nevertheless, we point out that some people with surprisingly high levels of income might qualify for Help to Save. We are not saying that this should not be the case, merely we urge caution in ‘selling’ Help to Save as a scheme targeted only at people on the lowest incomes.
- 1.3 Tax credits awards may be given under a number of different sections of the Tax Credits Act 2002, yet Help to Save eligibility is to be determined only by reference to section 14 awards. We raise some technical queries around the appropriateness of the chosen wording and point out how this might lead to complexity and, in some case, unfairness. We also think this presents a challenge to HMRC in communicating the eligibility criteria.

- 1.4 Moving on to eligibility for UC claimants, we query whether it is truly the policy intention to exclude some younger people who are working 16 hours from Help to Save, as the reference used is 16 hours a week earnings at the national *living wage* rather than the national minimum wage appropriate to the claimant's age. It seems counterintuitive to exclude some younger claimants from developing a savings habit that might be maintained throughout their life by requiring them to work more hours than older claimants to meet this threshold.
- 1.5 We also point out that some UC claimants might have notional earnings applied to their claim (through the minimum income floor (MIF) and surplus earnings rules) which could produce some odd consequences.
- 1.6 Lastly on UC, it is not clear what reference period is being used for calculation of earnings – we believe that the term 'assessment period' rather than 'month' should be used, to match how UC is calculated.
- 1.7 Of great concern is also that if a saver closes their Help to Save account before the end of the maturity period (four years), the bonus paid at the two-year mark is apparently revised to nil according to the way in which the draft regulations are worded. This is not in line with the original policy design intent. It would be startling if a scheme designed to encourage savings (and indeed which was originally intended to be a two-year scheme with the option of extending for a further two years) could in fact put someone in debt to the Exchequer. We think that this jeopardy should be removed from the regulations.
- 1.8 Finally, given that eligibility criteria for Help to Save are based upon entitlement to tax credits and UC, it seems to us that most appeals are likely to relate to the eligibility criteria and therefore should be heard in the social entitlement chamber of the first-tier tribunal rather than the tax chamber.

2 About Us

- 2.1 The LITRG is an initiative of the Chartered Institute of Taxation (CIOT) to give a voice to the unrepresented. Since 1998 LITRG has been working to improve the policy and processes of the tax, tax credits and associated welfare systems for the benefit of those on low incomes. Everything we do is aimed at improving the tax and benefits experience of low income workers, pensioners, migrants, students, disabled people and carers.
- 2.2 LITRG works extensively with HMRC and other government departments, commenting on proposals and putting forward our own ideas for improving the system. Too often the tax and related welfare laws and administrative systems are not designed with the low-income user in mind and this often makes life difficult for those we try to help.
- 2.3 The CIOT is a charity and the leading professional body in the United Kingdom concerned solely with taxation. The CIOT's primary purpose is to promote education and study of the administration and practice of taxation. One of the key aims is to achieve a better, more efficient, tax system for all affected by it – taxpayers, advisers and the authorities.

3 Question 1: Do these draft regulations meet the published policy objectives?

3.1 **Regulation 3 – Eligible persons – entitlement to working tax credit or universal credit (scope of eligibility)**

3.1.1 We think that the criteria laid out in regulation 3 extend eligibility for Help to Save some way beyond its ‘target’ of ‘working families on the **lowest** incomes’¹ [emphasis added].

3.1.2 It may be that the criteria are drafted as they stand to extend eligibility to those higher up the income scale but who might have proportionately higher outgoings such that their disposable income (and therefore means to save) is restricted. It is, however, worth pointing out that regulation 3(2) *Condition 2* extends eligibility to all claimants of both working tax credit (WTC) and child tax credit (CTC).

3.1.3 Tax credits can be paid to people with quite high incomes, depending on their personal circumstances – including number of children, childcare costs and/or claiming for children who qualify for the disability element. For instance, a claimant could have an income over £50,000 per annum, such that they fall into the High Income Child Benefit Charge, yet still have an amount of child tax credit in payment such that they qualify for Help to Save. This may of course fit with the policy intention of helping people to save, given that obviously someone with net income of £40,000 and outgoings of £39,000 will struggle to save just as much as someone with net income of £20,000 and outgoings of £19,000.

3.1.4 Note that we do not have a view on whether this is right or wrong, merely that if the regulations are laid as they stand, communications promoting the account will need to take care not to describe it as only being available to those on ‘low incomes’ per se.

3.2 **Regulation 3 – Eligible persons – entitlement to working tax credit or universal credit (definition of tax credits award)**

3.2.1 We have some concerns over gauging Help to Save eligibility by reference to a section 14 Tax Credit Act ‘current award validly obtained’ both in terms of whether this is technically accurate but also in terms of the impact on claimants.

‘Current award’

3.2.2 An initial award of tax credits is always made under section 14. However, that award can be revised under sections 15 or 16. It is then finalised (a conclusive entitlement decision made) under section 18. We think that once a section 15 or 16 decision is made, the section 14 decision is no longer a ‘current award’ and for that reason we suggest that if the decision is

¹ Help to Save consultation on implementation, para 1.1 Policy Context:

<https://www.gov.uk/government/consultations/Help-to-Save-consultation-on-implementation/Help-to-Save-consultation-on-implementation#introduction>

to tie entitlement for Help to Save to a section 14 decision, the wording in the regulations should be amended, otherwise we think people who have their initial award revised may fall foul of the current wording.

3.2.3 It is particularly complicated for those who fall under regulation 3(2) Condition 3(b) which aims to cover the period between 6 April and the point at which HMRC make an initial (section 14) decision for the new tax year. During this period, HMRC pay provisional payments so that the claimant does not experience a break and suffer hardship. Such claimants do not have a section 14 award for the new tax year, so this draft regulation seeks to give them entitlement to Help to Save by saying that as long as the individual 'had, immediately before the end of the preceding tax year, a current award validly obtained under section 14' on each of the eligibility reference dates, they can access the scheme.

3.2.4 We would argue in this case that it is even more difficult to see how the section 14 award in that scenario could be said to be the 'current award' when it is likely to have been revised by a section 15 or 16 decision before the end of the year.

3.2.5 We also understand that it is possible for a section 18 decision to be made on the tax year that has just ended before any section 14 decision is made for the current year. We refer to the recent three Judge Upper Tribunal decision *LS and RS v Commissioners for Her Majesty's Revenue and Customs*¹ where it was said:

'As soon as the Commissioners for Her Majesty's Revenue and Customs have made a decision under section 18 of the Tax Credits Act 2002 for a tax year, any decision made under section 16 for that year ceases retrospectively to have any operative effect, any appeal that has been brought against that section 16 decision therefore lapses.'

3.2.6 The judges also concluded that the same situation would occur in relation to a section 14 decision, and we would say that it could be further extrapolated to the relationship between section 14 and sections 15 and 16 – suggesting that once another decision has been made the section 14 is no longer a 'current' award.

3.2.7 HMRC do not specify the legislative provision that applies to any particular decision about a tax credit award on most tax credit award notices and it is unlikely that claimants themselves would have a reference point to understand clearly whether their tax credit award meets the conditions as laid out in the draft regulations. This may lead to additional contact with HMRC as claimants attempt to check their tax credit position for Help to Save. Whether or not HMRC's helpline advisers will be able to readily answer such queries is unclear.

3.2.8 We think that if there is a desire to link entitlement to the section 14 decision, the regulation should be amended to remove the term 'current' and simply require there to be a section 14 decision in relation to the tax year in which each of the eligibility reference dates falls.

¹ 2018 (UKUT) 0257 (AAC)

'Validly obtained'

- 3.2.9 We are also concerned about the wording '*validly obtained*' and what this means in practice. The term is already used in the existing tax credits system, not in legislation, but in HMRC's guidance. A tax credit claim is valid if the claim form 'is completed in accordance with the instructions on the claim form note and includes all the information requested'.¹ A claim that is not a valid claim may be rejected according to HMRC guidance. That particular guidance uses the term 'valid' to cover the requirements set out in regulation 5 Tax Credit (Claims and Notification) Regulations 2002 (SI 2002/2014), which prescribes the manner in which a claim for a tax credit is to be made. However, in the context of the Help to Save regulations we think use of the word is vague and uncertain.
- 3.2.10 We would argue that if the wording remains, it means nothing more than requiring the claim leading to the section 14 decision to be made in the correct manner, which HMRC accept for tax credit purposes is validly made. We do not see that this could be extended to cover other situations, for example where HMRC later decide (under section 16) that the person was never entitled to tax credits, perhaps due to fraud or neglect but also mistake. If HMRC's intention is to allow Help to Save to be withdrawn where someone has acted fraudulently or negligently, then the legislation needs to be specific about this and define the terms very carefully by reference to existing provisions in the tax credits legislation.
- 3.2.11 Where a person claims tax credits in the wrong capacity (ie makes a joint claim instead of a single claim and vice versa), their award is quashed and they then have to make a fresh correct claim. In such a case, it seems – although it is not clear, given the individual had had an award of tax credits under section 14 as mentioned above – that HMRC would notify the account provider that the person never was an eligible person where the initial decision to award tax credit/UC award is subsequently changed. The individual will lose or have to repay any bonuses received by that point. Of course this means not only will they have an overpayment on their tax credit award but they will also acquire this further debt. It would therefore be helpful to extend the definition of eligible person to cover the situation where a claimant who has made a claim for tax credits in the wrong capacity and makes a fresh correct claim within a defined period can retain any bonuses they have already received, other than those where the incorrect claim had been due to fraud or neglect.

Impact on claimants of using section 14 tax credit awards to establish entitlement

- 3.2.12 Using section 14 means that some claimants might not be eligible for Help to Save, though might otherwise be in the same circumstances as another person who is eligible. It might be that such an ineligible person could wait a year and then be eligible, on receipt of a section 14 award for a later year. However, it is also possible that the person's circumstances could have changed in the meantime (for instance they might have been moved over to UC, for which the eligibility criteria are different) and may not qualify at all. This seems anomalous

¹ Tax Credits Technical Manual TCTM06102

when they in fact had a valid tax credits claim a year earlier, albeit under a different section of the Act.

- 3.2.13 We could quote further seemingly anomalous consequences here. For example, someone might be on an award at nil rate for both WTC and CTC under section 14, but then report their child is eligible for the disability element. If this gives rise to a section 15 decision which shows a higher rate of award and some payment of tax credits, the wording of the regulations is such that they cannot apply for Help to Save until the following year when they get a new section 14 decision.
- 3.2.14 Let us also consider the following contrast: Someone with a really low income in one year, say self-employed with a nil profit, who moves into a full-time well-paid employed job would qualify for Help to Save based on their section 14 award (which uses previous year income). Whereas someone who was in a reasonably paid job that they have had to give up to care for their disabled child and work only part time 16 hours at minimum wage will not qualify because the use of previous year income on the section 14 award would mean it shows nil tax credits due. This would be the case even though they could contact HMRC and have their tax credit award revised under section 15 with their estimated income for the current year.
- 3.2.15 For example, consider Cassie, a lone parent who is working full time in 2017/18 who moves to a lower paid, part-time job from April 2018 due to the care needs of her disabled child. If Cassie applies for tax credits in April 2018, her section 14 award will be based on previous year income (2017/18) because HMRC do not ask claimants to report their estimated income for the current tax year (2018/19). As Cassie's income was £45,000 in 2017/18, her initial award is nil. Once Cassie reports her expected income for 2018/19 as £20,000, her award is revised and she is awarded WTC and CTC (although her WTC remains nil due to her income). As the regulations are currently drafted, Cassie will not be able to access the Help to Save scheme until sometime after April 2019. If HMRC delay making her 2019/20 section 14 decision due to compliance activity, it could be towards the end of 2019 when she is able to access Help to Save.
- 3.2.16 When claimants contact HMRC with estimated current year income figures after receiving their initial section 14 award, HMRC will then revise it (if the change in income is sufficient) – most likely under section 15 or 16. Technically, the legislation allows for the estimated income to be used in the initial section 14 decision, but the process HMRC have designed does not allow for this. This situation could encourage people to appeal the section 14 decision rather than simply ask for HMRC to revise the award under section 15 using their income estimate for the current year.
- 3.2.17 The example of delayed access to Help to Save as illustrated with 'Cassie' above could also present a problem on migration from tax credits to UC. Although the current planning indicates all tax credits claimants will have migrated over to UC by March 2022, any delays in being entitled to Help to Save under tax credit rules will present a particular problem should there be any remaining existing claimants of CTC who enter work in the last year of the scheme (2022/23) and who will presumably not have entitlement.

3.2.18 We can see the merit of linking to a section 14 award rather than making people wait for a section 18 decision. We also understand that opening up the criteria to section 15 decisions may give the opportunity for abuse, hence the choice of section 14 as the key criteria. However, we think that the risk of abuse is small especially since tax credits will be closed to new claims from November 2018, so we think that the regulations should allow an alternative of a section 15, 16 or 18 decision. This would at least allow CTC only claimants who go into low-paid work or existing claimants who have a fall in income to qualify more quickly. It also gives scope to cover erroneous nil awards that are subsequently corrected using section 15 or 16.

3.2.19 Furthermore, given the way HMRC use RTI data to check up-to-date income information for employees and the strengthened self-employment test, there is little scope for an individual to purposely notify an artificially low current year income estimate in order to get or increase tax credits and then correct it at a later date.

3.2.20 Condition 3 covers the renewal period for tax credit awards and helpfully provides that someone who had a relevant award of tax credits immediately before the end of the preceding tax year and is currently receiving payments made under s24(4) of the Tax Credits Act 2002 (provisional payments) can access the Help to Save scheme. HMRC are not obliged to pay provisional payments during this period and claimants have no right of appeal if provisional payments are not made, which places this eligibility criteria on a discretionary basis. Increasingly, we have seen HMRC's compliance initiatives use this discretion to stop payments or vary them during the renewals period. We would hope that HMRC tax credit administration are aware of the importance of provisional payments as a qualifying condition to Help to Save and that cessation of provisional payments may lead to an individual missing out on Help to Save.

3.3 ***Regulation 3 – Eligible persons – entitlement to working tax credit or universal credit (eligibility by reference to universal credit)***

3.3.1 We have a few issues to raise in respect of the UC eligibility criteria.

3.3.2 The term 'earned income' is used as defined in the UC regulations, per draft regulation 3(5)(b). There are complications with this definition. First, 'earned income' includes tax refunds, so even if you are not working 16 hours, if your refund is high enough, you could qualify for Help to Save. Secondly, earned income is after deductions for tax, National Insurance and pension contributions, so anyone making pension contributions who is working 16 hours at the national living wage will not qualify. People could therefore be discouraged from making pension savings (and even opt out of being automatically enrolled, contrary to other policy aims) in order to preserve entitlement to Help to Save.

3.3.3 For the self-employed where the MIF is applied, it would seem that they would be eligible to open a Help to Save account even if their actual earnings are below 16 x national living wage. This is because their earned income is treated as being equal to the MIF. On the other hand, if application of the MIF were to reduce the award to nil, this would prevent eligibility for Help to Save – again, this is a somewhat strange effect of the regulations, given that it

could mean someone who meets the eligibility criteria in terms of their actual circumstances could be prevented from opening an account. We suggest further thought is given to the interaction with the MIF.

- 3.3.4 Further, from April 18, if the UC ‘surplus earnings’ rules¹ come in, any surplus earnings under these regulations would be treated as earned income. This has two consequences – either:
- that someone who in real terms would otherwise be eligible for Help to Save is prevented from opening an account (because the inclusion of surplus earnings gives rise to a nil award); or
 - that someone who is not working but who has surplus earnings included in their award could be eligible for Help to Save.
- 3.3.5 Using national *living wage* as a reference point for UC claimants creates some unfairness for those under 25, because they may have to work more than 16 hours to hit the threshold. If the policy intention is to encourage a culture of savings, it would be preferable to include younger claimants more obviously in the eligibility criteria (to instill a savings habit in them as early as possible). This also does not sit comfortably with automatic enrolment, which kicks in at age 22 (and which may even be lowered following the DWP’s 2017 review of that scheme). What is the rationale therefore for pinning Help to Save to the living wage and perhaps as a result excluding those under 25? Why not define eligibility by age-appropriate national minimum wage rather than the national living wage?
- 3.3.6 Given that the very intention of the scheme is to allow people on low incomes to build up a reserve of savings, it does not seem logical to exclude claimants as described in the above paragraphs.
- 3.3.7 Finally, we are confused by what period the regulations are using for earned income. We understand that, per regulation 3(3)(a), at both the application date and the date the application is accepted, the person must be ‘in receipt of an award validly obtained of UC (not being a nil award)’. Regulation 3(3)(b) then goes on to say that the applicant must have ‘earned income in the **month** immediately preceding the first eligibility reference date equal to or greater than the equivalent of 16 hours per week at the national living wage’. As UC is calculated by reference to ‘assessment periods’ rather than months, it is difficult to see what period the above refers to – particularly as no further cross reference is made to its meaning

¹ The basic principle is that if someone has a UC award terminated (for example because their income goes up due to a new job) a calculation will be done to work out their ‘surplus earnings’ for that month and the following five months. Surplus earnings are essentially the amount of income they have above the point at which their UC would reduce to nil plus a £300 de minimis. If the person then needs to reclaim UC within that period, say because they lose their job after four months, the surplus earnings for those four months will be applied to their new claim as income. This means they will receive either a reduced UC award or a Nil award and that will continue until the surplus earnings are used up. These surplus earnings will apply to both employed and self-employed claimants.

as is the case with other terms in regulation 3(5). It would be clearer therefore if regulation 3(3(b)) were to refer to the immediately preceding **assessment period** rather than month.

3.4 **Regulation 10(2) – Amount of Bonus (account closure)**

- 3.4.1 We are concerned about regulation 10(2). Our reading of regulation 10(2) is that if an account is closed before the end of the maturity period (48 months,¹ as per Schedule 2, para 3(6) of the Saving (Government Contributions) Act 2017), any bonus paid at the two-year point will be clawed back.
- 3.4.2 Say, for example, someone saves £50 a month for the first two years, building up a ‘pot’ of £1,200 and the first bonus period bonus is paid to them of £600. The saver’s circumstances then change such that they need the money saved so far and can no longer afford to save into the account. If that saver then withdraws all the funds and closes the account, then if our interpretation is correct, they will be in debt to the Government to the tune of £600 (which is treated as a tax assessment per regulation 13(6)).
- 3.4.3 This is contrary to the original policy intention of having a two-year scheme which then had the option to roll on for a further two years.² It also directly conflicts with paragraph 1.29 of the ‘Help to save policy design note’³ which suggests that if an account is closed after the two year bonus is paid, no additional bonus will be accrued but the original bonus remains.
- 3.4.4 While it might be argued that the saver may withdraw the entire balance, including any accrued bonus, at any time within the four-year period and leave the account open so as not to jeopardise their bonus, we are concerned that some people will nonetheless fall foul of regulation 10(2). Even if the system warns account holders of this jeopardy, some may ignore the warnings and close the account anyway. This concern is based upon recent experience of the tax-free childcare system where, despite being warned that an application

¹ Except in the case of death or terminal illness of the accountholder, which means maturity is triggered earlier.

² Help to Save consultation on implementation, para 5.2:
<https://www.gov.uk/government/consultations/Help-to-Save-consultation-on-implementation/Help-to-Save-consultation-on-implementation#detailed-policy-design-issues>

‘5.2 Delivering second term Help to Save accounts

At the end of two years, account holders will be able to choose whether to continue to save under the scheme for another 2 years and receive a further government bonus worth up to £600. They will need to confirm this decision with their account provider.’

³

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/576030/Help_to_Save_policy_design_note_2016.pdf

for tax-free childcare will end a tax credits claim, people have nonetheless mistakenly still proceeded.

- 3.4.5 On that basis, draft regulation 10(2) should be amended to make it clear that if the account is closed after the first bonus is paid, but before the second bonus is paid, entitlement to the first bonus is retained.

4 Question 2: Do these draft regulations produce any unintended consequences?

4.1 Regulation 16 - Appeals

- 4.1.1 We are not certain whether or not this is an **unintended** consequence, but our reading of regulation 16 is that appeals will go to the tax chamber of the first-tier tribunal and that the appellant would first have the option of an HMRC internal review.
- 4.1.2 We are surprised at this, given that much of what would give rise to appeals cross refer to tax credits and UC legislation – for example, matters of eligibility for opening an account or continuing presence in the United Kingdom. The natural place for appeals would therefore seem to be the social entitlement chamber. We therefore query the wording of this regulation and would suggest it is amended so that appeals go to the social entitlement chamber.
- 4.1.3 There appears to be an inherent risk that because of the cross-reference to tax credits and UC eligibility, appeals on matters relating to Help to Save may jar with decisions elsewhere on entitlement to those qualifying awards. It may therefore be advisable to clarify priority to avoid the landscape where one tribunal may determine that the applicant is an eligible person for Help to Save meanwhile a different tribunal, looking at say the tax credit claim, may determine that same individual does not have a necessary award validly obtained under the specified legislation.

LITRG
17 October 2017