

EXPLANATORY MEMORANDUM TO
THE CHILD TAX CREDIT (AMENDMENT) REGULATIONS 2018
2018 No. 1130

1. Introduction

- 1.1 This explanatory memorandum has been prepared by HM Revenue and Customs (“HMRC”) on behalf of HM Treasury (HMT) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The policy to provide support in Child Tax Credit (CTC) and Universal Credit for a maximum of two children ensures parents in receipt of benefits face the same choices as those supporting themselves solely through work. To recognise that not all parents are able to make the same choices about the number of children in their family exceptions were put in place to protect certain groups, including for those who adopt or care for children under a non-parental caring arrangement. The purpose of this instrument is to ensure that a family that already cares for children who are adopted or cared for under a non-parental caring arrangement can receive CTC for up to two further children to whom no exception applies.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 As the instrument is subject to the negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Section 9 of the Tax Credits Act 2002 (“TCA”) sets out the maximum rate at which people are entitled to CTC. It allows for regulations – the Child Tax Credit Regulations 2002, as amended (SI 2002 No.2007) (“the CTC Regulations”) – to prescribe the detail of that rate.

- 6.2 Section 13 of the Welfare Reform and Work Act 2016 (“the 2016 Act”) amended section 9 of the TCA. The 2016 Act inserted subsections (3A) and (3B) into section 9 of the TCA, which set out that a person cannot be paid CTC for a child if that child is born on or after 6 April 2017 and is the third or subsequent child unless an exception applies.
- 6.3 The exceptions are listed in regulations 10 to 14 of the CTC Regulations respectively: multiple births (twins, etc.); adoption; non-parental caring arrangements (for example, siblings caring for their brothers or sisters); non-consensual conception; and continuation of certain exceptions (if, for example, one member of a couple adopts a child and subsequently dies then the surviving member of the couple would continue to be entitled to the exception).
- 6.4 This statutory instrument means that people can receive CTC for up to two children even if there are already children in the household who are adopted or cared for under a non-parental arrangement.

7. Policy background

What is being done and why?

- 7.1 On the 27 April 2018 the Secretary of State for Work and Pensions announced that the Government would extend the exceptions for children who may otherwise be in local authority care, including children who are adopted or looked after by non-parental carers, also known as ‘kinship’ carers.
- 7.2 The Written Ministerial Statement is published at <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-04-27/HCWS653/>.
- 7.3 This announcement followed an internal review of the exceptions and a High Court Judgment. The court found that in some circumstances the way in which the regulations differentiated between kinship carers on the basis of the order in which the children joined the household was unlawful.
- 7.4 The Government recognises the immense value of the care that non-parental carers and adoptive parents provide. The role that those parents and carers play in helping to bring children up who could otherwise find themselves in local authority care is vital. It is for this reason that the Government is ensuring that they are supported by enabling them to access benefit entitlement in the same way as birth parents.
- 7.5 These regulations allow parents who have adopted children or are kinship carers to receive CTC for up to two further children to whom no exception applies. This change will remove any potential discouragement for families considering looking after children who may otherwise be at risk of entering into, or staying in, local authority care.
- 7.6 The regulations make a minor amendment to clarify a reference to the Children (Scotland) Act 1995. As a consequence of this correction, this instrument is being issued for free.
- 7.7 The regulations make a consequential amendment to ensure that where a person adopts a child, and that person subsequently dies, an exception will continue to apply for the person’s surviving partner.

7.8 Lastly, the regulations make an amendment to the Tax Credits (Polygamous Marriages) Regulations 2003 to make sure these changes also apply to polygamous marriages. Currently there are no polygamous marriage awards in payment.

8. European Union (Withdrawal) Act

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There is no current plan to consolidate the CTC Regulations.

10. Consultation outcome

10.1 The Social Security Advisory Committee (SSAC) is an independent statutory body that provides impartial advice on social security and related matters. It scrutinises most of the complex secondary legislation that underpins the social security system.

10.2 SSAC considered these regulatory changes under its Memorandum of Understanding with HMT and HMRC. The minutes of that meeting are published at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/735203/ssac-minutes-july-2018.pdf.

11. Guidance

11.1 These amendments will be reflected in the Tax Credits Technical Manual and in guidance for claimants. The GOV.UK website will also be updated to reflect the changes made once the statutory instrument comes into force.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument as no, or no significant, impact on the private or voluntary sectors is foreseen.

12.4 The estimated number of families due to be affected by this statutory instrument is relatively small (in the low hundreds).

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring this legislation is to keep these provisions under review and make any amendments as and when necessary by means of further statutory instruments subject to negative procedure.

14.2 The regulation does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Lucia Suggitt at HMRC (telephone: 03000 572 611 or email: lucia.suggitt@hmrc.gsi.gov.uk) can be contacted with any queries regarding the instrument.
- 15.2 James Dunstan, Deputy Director for Tax credits and Child Benefit policy at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Chief Secretary to the Treasury, the Rt Hon Elizabeth Truss, can confirm that this Explanatory Memorandum meets the required standard.