

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY, CHILD BENEFIT AND CHILD TAX CREDIT
(AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 1431

1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs (HMRC) on behalf of Her Majesty's Treasury and the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This instrument makes changes to Social Security, Child Benefit and Child Tax Credit Regulations. These changes to domestic legislation will ensure that, after the United Kingdom (UK) exits the European Union (EU), the rights of certain third country nationals lawfully living and working in the UK are protected for the purposes of determining entitlement to certain benefits and tax credits.

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 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 varies between provisions. Regulation 2 applies to Great Britain and regulation 3 applies to Northern Ireland. Regulations 1, 4, 5 and 6 apply to 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 This instrument makes changes to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636), and in so far as it relates to child benefits makes changes to the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.I. 2000/71), the Tax Credits (Immigration) Regulations 2003 (S.I. 2003/653), the Tax

Credits (Residence) Regulations 2003 (S.I. 2003/654) and the Child Benefit (General) Regulations 2006 (S.I. 2006/223).

6.2 Under existing legislation, persons who are subject to immigration control are generally not entitled to benefits or tax credits. This policy is reflected in legislation in the Immigration and Asylum Act 1999 and the Tax Credits Act 2002. However, there are some exceptions to this general approach. Currently, a person who is

- lawfully working in the UK;
- subject to immigration control as set out in Section 115(9) of the Immigration and Asylum Act 1999 or section 42 of the Tax Credits Act 2002; and
- a national of a State which has concluded an Association Agreement (AA) with the EU providing, in the field of social security, for the equal treatment of workers who are nationals of the signatory State and their families

is treated as not being subject to immigration control for the purposes of accessing certain benefits. This means that they can access Child Benefit and Child Tax Credit, as well as certain disability and carer's benefits, where all eligibility criteria are met.

6.3 Part II of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 and the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 set out the persons not excluded from accessing certain benefits under Section 115 of the Immigration and Asylum Act. Paragraph 2 of Part II of the Schedule to each instrument provides that a person who is lawfully working in either Great Britain or Northern Ireland and is a national of a State with which the EU has concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union (TFEU) which provides for equal treatment in the field of social security is not excluded from accessing Child Benefit and certain disability and carer's benefits, and social fund payments. Regulation 2 of this instrument extends paragraph 2 of Part II of the Schedule to the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 to also cover agreements the UK has concluded which replace, in whole or in part, an EU Agreement¹ which has ceased to apply. This would cover the Trade and Partnership Agreements (TPAs) the UK has agreed with some third countries where relevant. Regulation 3 of this instrument makes an amendment in identical terms to paragraph 2 of Part II of Schedule to the Northern Ireland instrument in relation to Child Benefit. The amendment in relation to certain disability and carer's benefits, and social fund payments are made in a separate Northern Ireland instrument.

6.4 Regulation 3 of the Tax Credit (Immigration) Regulations 2003 sets out that persons subject to immigration control are not entitled to Child Tax Credit or Working Tax Credit, except in certain cases as set out in that regulation. The exception set out in Case 5, which relates to Child Tax Credit, is a person lawfully working in the UK who is a national of a State with which the EU has an agreement providing for the equal treatment of workers in the field of social security. Regulation (4) of this instrument extends this paragraph to also cover agreements the UK has concluded which replace, in whole or in part, an EU Agreement which has ceased to apply. This would cover the TPAs the UK has agreed with some third countries where relevant.

¹ This is defined as an agreement concluded by the European Union under Article 217 of the Treaty on the Functioning of the European Union.

- 6.5 The Tax Credits (Residence) Regulations 2003 and the Child Benefit (General) Regulations 2006 provide that a person relying on a right to reside in the UK under regulation 16(5) of the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052), is treated as being in the UK for the purposes of claiming Child Tax Credit or Child Benefit. This only applies if they are lawfully working in the UK and are covered by an agreement made between the EU and a non-European Economic Area (EEA) country under Article 217 of the TFEU, which provides for the equal treatment in the field of social security. Regulation 5 of this instrument amends the Tax Credits (Residence) Regulations 2003 to extend this to also cover agreements the UK has concluded which replace, in whole or in part, an EU Agreement which has ceased to apply. This would cover the TPAs the UK has agreed with some third countries where relevant. Regulation 6 of this instruments makes amendments in identical terms to the Child Benefit (General) Regulations 2006.

7. Policy background

What is being done and why?

- 7.1 The EU currently has a number of AAs with third countries, some of which include social security provisions for workers which provide for equal treatment. When the UK leaves the EU, the provisions in the AAs will be transitioned into TPAs between the UK and those third countries. To give effect to the TPA social security provisions where relevant, these Regulations make simple technical changes to include references to TPAs in existing domestic UK social security legislation. This will maintain continuity of access to Child Benefit and Child Tax Credit and to certain disability and carer's benefits, and social fund payments, for those in the scope of these TPAs, including Zambrano Carers (non-EEA nationals who are primary carers of a British citizen and derive their right to reside in the UK through the person they care for).
- 7.2 Child Benefit is a tax-free, non-means-tested benefit, administered by HMRC. It is paid to people who are responsible for, or treated as being responsible for, children or qualifying young persons, and is payable to only one person at a time for a particular child or qualifying young person in any one week. The claimant, and the child or qualifying young person, must be present and ordinarily resident in Great Britain or Northern Ireland, or treated as such under the EU regulations, in order to satisfy the eligibility requirements.
- 7.3 Tax credits are a means-tested form of support which provides help to millions of families with a wide variety of differing circumstances. Child Tax Credit supports families with children.
- 7.4 The relevant benefits and payments, which are administered by the Department for Work and Pensions (DWP), are Attendance Allowance, Personal Independence Payment, Disability Living Allowance, Severe Disablement Allowance, Carer's Allowance and Social Fund Payments. The only Social Fund payment to which the provisions apply is Winter Fuel Payment.
- 7.5 Attendance Allowance is a tax-free, non-means-tested benefit which helps with extra costs to someone over state pension age who has a disability severe enough that they need someone to help look after them.

- 7.6 Personal Independence Payment is tax-free, non-means-tested benefit which helps with extra costs to someone under state pension age who has a long term ill-health or disability.
- 7.7 Disability Living Allowance is a tax-free, non-means-tested benefit which helps with extra costs to someone under state pension age who has a long term ill-health or disability. This benefit is being replaced by Personal Independence Payment for disabled adults.
- 7.8 Severe Disablement Allowance is a tax-free, non-means-tested benefit for those below the state pension age who cannot work because of illness or disability. The benefit is being replaced by Employment Support Allowance.
- 7.9 Carer's Allowance is a benefit for people who are giving regular and substantial care to disabled people in their own homes. They must spend at least 35 hours a week caring for a disabled person who is receiving certain disability benefits.
- 7.10 Winter Fuel Payment is a payment made to households with someone over state pension age to help pay their heating bills.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is not being made under the European Union (Withdrawal) Act but relates to the withdrawal of the UK from the EU because of the transition of the AAs into TPAs.

9. Consolidation

- 9.1 In relation to HMRC, there are no plans to consolidate any of the Regulations which are amended by these Regulations.
- 9.2 In relation to DWP, informal consolidation of new instruments is available to the public free of charge via the National Archives website: www.legislation.gov.uk.

10. Consultation outcome

- 10.1 No separate consultation exercise was conducted as this instrument makes simple technical changes to maintain continuity of access to certain UK benefits for those currently in the scope of these agreements.
- 10.2 The Social Security Advisory Committee (SSAC) is an independent statutory body that provides impartial advice on social security and related matters. In relation to HMRC, the Committee has considered these regulatory changes under its Memorandum of Understanding with HM Treasury and HMRC, and was content.
- 10.3 In relation to DWP, it is not necessary to refer this matter to SSAC as it does not involve a regulation made under a relevant enactment as defined under section 170(5) of the Social Security Administration Act 1992.

11. Guidance

- 11.1 Guidance for staff about these minor amendments will be made available before this instrument is laid.

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 because these regulations maintain the current level of access to certain benefits and tax credits.

13. Regulating small business

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

14. Monitoring & review

- 14.1 There are no plans to monitor or review this instrument as it will maintain the status quo by ensuring the current rules on access to certain benefits and credits will continue to apply to certain third country nationals lawfully living and working in the UK.
- 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 Saddique Saleem at HM Revenue & Customs, Telephone: 03000 543590 or email: saddique.saleem@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 James Knipe, Deputy Director for Individuals Policy Directorate, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Rishi Sunak MP, The Chief Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.