EXPLANATORY MEMORANDUM TO

THE TAX CREDITS AND THE CHILD TRUST FUNDS (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 713

1. Introduction

1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and is laid before Parliament by Command of Her Majesty.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 This instrument provides for United Kingdom (UK) nationals residing in Ireland, and Irish citizens residing in the UK, the right to access Working Tax Credit (WTC) and Child Tax Credit (CTC). This instrument also amends the Child Trust Funds Regulations 2004 (the 'CTF Regulations') to make minor amendments consequential upon the UK leaving the European Union (EU) to ensure their continued effective operation, including that shares traded on UK based exchanges and other investments will continue to be qualifying investments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 This instrument is subject to negative resolution but it has not been possible to comply with the 21-day rule.

3.2 Amendments made by these regulations to tax credits legislation are only necessary if Section 4 of Part IV of the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1 February 2019[1] (the 'reciprocal agreement' with Ireland) comes into force. It was, therefore, not possible to make and lay these regulations until the Order in Council and the parallel Northern Ireland Order were made. The Order in Council[2] could not be made until after the Privy Council meeting on 13 March 2019.

3.3 The reciprocal agreement has effect from the date the UK leaves the EU, in the event that the UK leaves the EU without a deal. It ensures UK nationals residing in Ireland, and Irish citizens residing in the UK, retain their rights to access WTC and CTC while moving within the Common Travel Area (CTA).

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)

3.4 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.

1 https://www.gov.uk/government/publications/cs-ireland-no12019-ukireland-convention-on-social-security
2 S.I. 2019/471

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 At Dublin, on 1 February 2019, the reciprocal agreement was signed on behalf of the Governments of Ireland and the UK. This establishes reciprocal arrangements in the field of social security in the event that the UK leaves the EU with no deal. The agreement maintains the social security coordination arrangements between the two countries which are currently provided for under EU law. Among other things, the agreement determines which country is primarily responsible for the payment of family benefits and any payment of a supplement where applicable.

6.2 An Order was made under the powers in the Social Security Administration Act 1992, which provides that for the purposes of giving effect to the reciprocal agreement, Her Majesty may by Order in Council make provision for modifying and adapting specified legislation in its application to cases affected by such agreements.

6.3 The main provision of this instrument is to establish reciprocity, currently provided for in the EU Workers Regulations and the EU social security Regulations, using the powers in the Tax Credits Act 2002[3]. Without these changes the UK is unable to fulfil its obligations under the reciprocal agreement with Ireland.

6.4 This instrument makes consequential changes to the Tax Credits - (Claims and Notifications) Regulations 2002[4] - the 'Claims Regulations'; the Tax Credits (Payments by the Commissioners) Regulations 2002[5] - the 'Payments Regulations'; the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002[6] - the 'Rates Regulations'; and the Tax Credits (Residence) Regulations 2003[7]. .

6.5 Tax credits are financial forms of support paid to people who are living and working in the United Kingdom. WTC is considered to be a social advantage for the purpose of Regulation (EU) 492/2011 of the European Parliament and of the Council of 5 April 2011 on freedom of movement for workers within the Union (the EU Workers Regulations), which requires a worker who is a national of a Member State to have the same access to social advantages as national workers.

6.6 CTC is a family benefit for the purposes of Regulation (EC) 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (the EU social security Regulations), which provides a set of common rules to protect the rights of EU citizens when moving within the European Union. The EU social security Regulations determine which country is responsible for the payment of family benefits. Where more than one country is responsible for the payment of

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3 2002 c.21
4 S.I. 2002/2014
5 S.I. 2003/2173
6 S.I. 2002/2008
7 S.I. 2003/654

family benefits, there are priority rules to determine which country is primarily responsible for the payment of family benefits and which country is responsible to pay a supplement, if their family benefit is higher than the country which has primary responsibility for the payment of family benefits.

6.7 The CTF Regulations provide for funds held in a child trust fund account (a tax free savings account) to be invested in certain qualifying investments. This amendment to the Regulations will provide for account holders to be able to continue to invest in shares traded on growth markets and that shares traded on UK based exchanges will continue to be qualifying investments once the UK ceases to be in the European Economic Area (EEA).

6.8 The instrument also provides that EEA based firms that offer child trust funds under a financial services passport, can continue to do so when they enter the new Financial Conduct Authority (FCA) temporary permissions regime, or, the equivalent regime for Gibraltar-based firms if applicable. It also provides that EEA domiciled Undertakings for Collective Investments in Transferable Securities funds can continue to be held as qualifying investments for a child trust fund.

7. Policy background

What is being done and why?

7.1 This instrument makes changes to the CTC and WTC rules to ensure the calculation and payment of the tax credits works as intended under the terms of the reciprocal agreement for UK and Irish nationals who move, work, and/or live between the two countries.

7.2 Regulation 3 of this instrument amends the definition of the ‘relevant authority’ in the Claims Regulations, so that a claim for family benefits received by the Department of Employment Affairs and Social Protection in Ireland, is recognised as a claim to Child Tax Credit when made under Part 4 Section 4 of the reciprocal agreement.

7.3 Regulation 5 of this instrument provides for the calculation of the rate of CTC payable under the Rates Regulations where the UK is only required to make a supplementary payment under Article 39 of the reciprocal agreement with Ireland. Where a claim for Irish family benefits has been made, but Ireland consider the UK to be primarily responsible, Ireland will make a provisional decision on the claim and then forward it to HMRC to determine whether the UK agrees. If HMRC make no decision within two months, Ireland’s decision will become final. It also provides for a claim for CTC to be awarded provisionally where an agreement on which country is primarily responsible for the payment of family benefits cannot be reached.

7.4 Regulation 7 provides for entitlement of CTC to continue under the Payments Regulations until the end of a calendar month where, during the month, primary responsibility to pay family benefits changes between the countries under the reciprocal agreement.

7.5 Regulation 9 provides for a UK national or Irish citizen who is residing in Ireland and who is in qualifying work in the UK to be treated as residing in the United Kingdom when determining entitlement to WTC. This regulation also provides for a UK or Irish citizen, or nationals or citizens in respect of a single or joint claim to CTC, residing in Ireland, to be treated as residing in the United Kingdom for the purposes of determining entitlement to CTC under the reciprocal agreement.

7.6 Regulations 11 to 13 make minor technical changes to the Child Trust Funds Regulations to ensure that Child Trust Funds account holders can continue to hold certain qualifying investments once the UK leaves the EU.

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 2018, but relates to the withdrawal of the United Kingdom from the European Union. The Government has made a clear commitment to maintain the CTA and associated rights, which include the right of UK nationals and Irish nationals to work, study and access social security and public services in both the UK, Ireland and the Crown dependencies.

9. Consolidation

9.1 There are no plans to consolidate any of the Regulations which are amended by these Regulations as tax credits are being replaced by Universal Credit.

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 has considered these regulatory changes under its Memorandum of Understanding with the Treasury and Her Majesty's Revenue and Customs and was content.

10.2 No consultation has been conducted in relation to the amendments to the CTF Regulations as they contain no substantive changes to policy.

11. Guidance

11.1 These amendments maintain the current arrangements on tax credits for UK nationals in Ireland and Irish citizens in the UK in a no deal scenario, so no further guidance changes are required.

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 it is maintaining current access to tax credits for UK nationals and Irish citizens moving within the United Kingdom and Ireland; or relating to the CTF Regulations because there is no substantive change in policy.

12.4 The estimated number of families due to be affected by this statutory instrument relating to tax credits is relatively small (around a thousand.)

13. Regulating small business

13.1 The instrument 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 the provisions under review and make any amendments as and when necessary by means of further statutory instruments subject to negative procedure.

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

15. Contact

15.1 Phillip Dearne at the Her Majesty's Revenue and Customs Direct line telephone number: 03000 586535 or email: phillip.dearne@hmrc.gsi.gov.uk can be contacted with any queries regarding the instrument.

15.2 Angela Walker, Deputy Director for EU Exit, at Her Majesty's Revenue and Customs can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Rt. Hon. Elizabeth Truss, the Chief Secretary to the Treasury can confirm that this Explanatory Memorandum meets the required standard.