

2020 No. 1505

EXITING THE EUROPEAN UNION

SOCIAL SECURITY

TAX CREDITS

**The Social Security, Child Benefit and Child Tax Credit
(Amendment) (EU Exit) Regulations 2020**

Made - - - - *9th December 2020*

Laid before Parliament *10th December 2020*

Coming into force - - *1st January 2021*

The Treasury, in exercise of the powers conferred by sections 146(3), 147(1) and 175(3) and (4) of the Social Security Contributions and Benefits Act 1992(a), sections 142(3), 143(1) and 171(3) and (4) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(b), now exercisable by them(c), section 115(3), (4) and (5) of the Immigration and Asylum Act 1999(d), and sections 3(7), 42, 65(1) (7) and (9) and 67 of the Tax Credits Act 2002(e) make regulation 1 but only to the extent that it relates to child benefit and child tax credit, regulation 2 to the extent that it relates to child benefit and regulations 3, 4, 5 and 6 and the Secretary of State, in exercise of the powers conferred by sections 115(3) and (4), 166(3) and 167 of the Immigration and Asylum Act 1999(f) and section 175(3) of the Social Security Contributions and Benefits Act 1992(g) makes regulation 1 to the extent that it does not relate to child benefit and child tax credit and regulation 2 to the extent that it does not relate to child benefit.

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- (a) 1992 c. 4. Section 146 was substituted by section 56(1) of the Tax Credits Act 2002 (c. 21) and subsection (3) of section 146 was subsequently amended by paragraph 13(3) of Part 1 of Schedule 1 to the Child Benefit Act 2005 (c. 6). Section 175(3) is also applied by virtue of section 115(7) of the Immigration and Asylum Act 1999 (c.33). Section 147(1) is cited for the definition of “prescribed” (“prescribed by regulations”).
- (b) 1992 c. 7. Section 142 was substituted by section 56(2) of the Tax Credits Act 2002 and subsection (3) of section 142 was subsequently amended by paragraph 39(3) of Part 2 of Schedule 1 to the Child Benefit Act 2005. Section 143(1) is cited for the definition of “prescribed” (“prescribed by regulations”).
- (c) The powers of the Secretary of State under section 146(3) of the Social Security Contributions and Benefits Act 1992 were transferred to the Treasury by section 49(1)(b) of the Tax Credits Act 2002. The powers of the Department for Social Development in Northern Ireland under section 142(3) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 were transferred to the Treasury by section 49(2)(b) of the Tax Credits Act 2002.
- (d) 1999 c. 33. Section 115 was amended by paragraph 21 of Schedule 4 to the Tax Credits Act 2002. Section 115(5) is cited because in relation to child benefit, sub-section (5) defines “prescribed” as meaning “prescribed by regulations made by the Treasury”.
- (e) 2002 c. 21. Sections 3 and 42 were repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5), subject to savings specified in article 3 of S.I. 2019/167. Section 67 is cited for the definition of “prescribed” (meaning “prescribed by regulations”). Section 67 has been amended but the amendment is not relevant for the purposes of this instrument.
- (f) Section 167 is cited for the definition of “prescribed” as meaning “prescribed by regulations made by the Secretary of State”.
- (g) Section 175(3) is applied by virtue of section 115(7) of the Immigration and Asylum Act 1999.

Citation, commencement and effect

1.—(1) These Regulations may be cited as the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 and come into force on 1st January 2021.

(2) The substitution made by regulation 2(2)(a) does not have effect in relation to a claim for universal credit, or an award of universal credit without a claim(a), made before 1st January 2021.

(3) The amendments made by regulation 2(2)(b) and (3) and regulation 3 do not have effect in relation to claims made before 1st January 2021.

Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000

2.—(1) The Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000(b) are amended as follows.

(2) In regulation 2 (persons not excluded from specified benefits under section 115 of the Immigration and Asylum Act 1999)(c)—

(a) in paragraph (1A), for “paragraphs 2, 3 and 4” substitute “paragraphs 2 and 3”, and

(b) after paragraph (3) insert—

“(3A) For the purposes of entitlement to child benefit under the Contributions and Benefits Act(d), a person who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an agreement under Article 217 of the Treaty on the Functioning of the European Union(e) which makes provision for receipt of family allowances for members of their family who are legally resident in the United Kingdom, is a person to whom section 115 of the Act(f) does not apply.”.

(3) In Part II of the Schedule (persons not excluded under section 115 of the Immigration and Asylum Act 1999 from entitlement to certain benefits)(g), in paragraph 2—

(a) omit sub-paragraph (a), and

(b) in sub-paragraph (b) for the words “an EU Agreement in sub-paragraph (a)” substitute “an agreement under Article 217 of the Treaty on the Functioning of the European Union”.

Amendment of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000

3.—(1) In so far as they relate to child benefit, the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000(h) are amended as follows.

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- (a) For circumstances in which universal credit may be awarded without a claim, see regulation 9 of S.I. 2013/380.
- (b) S.I. 2000/636 (the principal Regulations); relevant amending instruments are S.I. 2002/2497, 2011/1043, 2013/630 and 2013/388. The principal Regulations will be amended by S.I. 2019/1431 which comes into force on IP completion day. That term is defined in section 39(1) of the European Union (Withdrawal Agreement) Act 2020 (c. 1) as 31 December 2020 at 11:00pm. The coming into force date of SI 2019/1431 is stated to be “exit day” but by virtue of paragraph 1(1) of Schedule to the European Union (Withdrawal Agreement) Act references to “exit day” are to be read as references to IP completion day.
- (c) Regulation 2 has been relevantly amended by regulation 31(3)(a) of S.I. 2013/630. There are other amending instruments but none is relevant.
- (d) “The Contributions and Benefits Act” is defined in regulation 1 of the principal Regulations as meaning the Social Security Contributions and Benefits Act 1992.
- (e) OJ C 202, 7.6.2016.
- (f) “The Act” is defined in regulation 1 of the principal Regulations as meaning the Immigration and Asylum Act 1999.
- (g) Part II has been relevantly amended by paragraphs 1 and 2 of Schedule 2 to S.I. 2002/2497, articles 4 and 5 of S.I. 2011/1043, paragraph 23(4) in Part 2 of the Schedule to S.I. 2013/388 and regulation 2 of S.I. 2019/1431. Paragraph 2 is substituted by regulation 2 of S.I. 2019/1431 (which comes into force on IP completion day).
- (h) S.R. 2000 No. 71 (“the Northern Ireland principal Regulations”). Relevant amending instruments are S.R. 2002 No. 323, S.R. 2016 No. 228, S.R. 2019 No. 213 and S.I. 2020/1431 (which comes into force on IP completion day). This instrument amends S.R. 2000 No. 71 in relation to child benefit. It is intended that a separate amending instrument will make identical amendments as those in regulation 3(3) in relation to attendance allowance, severe disablement allowance, carer’s allowance, disability living allowance, personal independence payment and a social fund payment.

(2) In regulation 2 (persons not excluded from specified benefits under section 115 of the Act) after paragraph (3) insert—

“(3A) For the purposes of entitlement to child benefit under the Contributions and Benefits Act(a), a person who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an agreement under Article 217 of the Treaty on the Functioning of the European Union which makes provision for receipt of family allowances for members of their family who are legally resident in the United Kingdom, is a person to whom section 115 of the Act(b) does not apply.”.

(3) In Part II of the Schedule (persons not excluded under section 115 of the Immigration and Asylum Act 1999 from entitlement to certain benefits)(c), in paragraph 2—

- (a) omit sub-paragraph (a), and
- (b) in sub-paragraph (b) for the words “an EU Agreement in sub-paragraph (a)” substitute “an agreement under Article 217 of the Treaty on the Functioning of the European Union”.

Amendment of the Tax Credits (Immigration) Regulations 2003

4.—(1) The Tax Credits (Immigration) Regulations 2003(d) are amended as follows.

(2) In regulation 3(1) (exclusion of person subject to immigration control from entitlement to tax credits) in Case 5 for the text after “he is” until the end of the Case substitute—

“a person who is lawfully working in the United Kingdom and—

- (a) who—
 - (i) made a claim before 1st January 2021; and
 - (ii) is a national of a State with which the European Union had, before 1st January 2021, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory State and their families; or
- (b) who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an agreement under Article 217 of the Treaty on the Functioning of the European Union which either—
 - (i) makes provision in the field of social security for the equal treatment of workers who are nationals of the State with which the agreement has been concluded and their families, or
 - (ii) makes provision for receipt of family allowances by members of a worker’s family who are legally resident in the United Kingdom.”.

Amendment of the Tax Credits (Residence) Regulations 2003

5.—(1) The Tax Credits (Residence) Regulations 2003(e) are amended as follows.

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- (a) “The Contributions and Benefits” Act is defined in regulation 1 of the Northern Ireland principal Regulations as meaning the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
 - (b) “The Act” is defined in regulation 1 of the Northern Ireland principal Regulations as meaning the Immigration and Asylum Act 1999.
 - (c) Part II has been relevantly amended by paragraphs 1 and 2 of Schedule 2 to S.I. 2002/2497, articles 4 and 5 of S.I. 2011/1043, paragraph 23(4) in Part 2 of the Schedule to S.I. 2013/388 and regulation 2 of S.I. 2019/1431 (which comes into force on IP completion day). Paragraph 2 is substituted by regulation 2 of S.I. 2019/1431.
 - (d) S.I. 2003/653; Case 5 will be amended by regulation 4 of S.I. 2019/1431 (which comes into force on IP completion day); there are amending instruments, but none is relevant.
 - (e) S.I. 2003/654. Relevant amending instruments are S.I. 2004/1243, 2012/2612, 2019/364, 2019/1431, 2020/672 and 2020/1372 (which comes into force on IP completion day).

(2) In regulation 3 (circumstances in which a person is treated as not being in the United Kingdom)(a)—

(a) for paragraph (5A) substitute—

“(5A) Paragraph (5)(c) does not apply to a person who is lawfully working in the United Kingdom—

(a) who—

(i) made a claim for child tax credit before 1st January 2021, and

(ii) is a national of a State with which the European Union had, before 1st January 2021, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory State and their families; or

(b) who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an EU Agreement which has ceased to apply in the United Kingdom.”, and

(b) after paragraph (11)(b) insert—

“(12) In this regulation “EU Agreement” means—

(a) an Association Agreement concluded under Article 217 of the Treaty on the Functioning of the European Union which makes provision in the field of social security for equal treatment for workers who are nationals of the State with which the agreement has been concluded and their families, or

(b) a Stabilisation and Association Agreement concluded under Article 217 of the Treaty on the Functioning of the European Union which makes provision for receipt of family allowances for members of a worker’s family who are legally resident in the United Kingdom.”.

Amendment of the Child Benefit (General) Regulations 2006

6.—(1) The Child Benefit (General) Regulations 2006(c) are amended as follows.

(2) In regulation 1 (citation, commencement and interpretation) in paragraph (3) at the appropriate place insert—

““EU Agreement” means—

(a) an Association Agreement concluded under Article 217 of the Treaty on the Functioning of the European Union which makes provision in the field of social security for equal treatment for workers who are nationals of the State with which the agreement has been concluded, or

(b) a Stabilisation and Association Agreement concluded under Article 217 of the Treaty on the Functioning of the European Union which makes provision for receipt of family allowances for members of a worker’s family who are legally resident in the United Kingdom;”.

(3) In regulation 23 (circumstances in which person treated as not being in Great Britain)(d), for paragraph (4A) substitute—

(a) Paragraph (5A) of regulation 3 is inserted by regulation 7 of S.I. 2019/364 (which comes into force on IP completion day). Paragraph (5) has been relevantly amended by regulation 3 of S.I. 2004/1243 and regulation 6 of S.I. 2012/2612. Regulation 5(b) is substituted by, and regulation 5(c) inserted by, regulation 14 of S.I. 2020/1372 (which comes into force on IP completion day).

(b) Paragraph (11) was inserted by regulation 3 of S.I. 2020/672.

(c) S.I. 2006/223. Relevant amending instruments are S.I. 2007/2150, 2012/2612, 2019/364 and 2019/1431 (which comes into force on IP completion day).

(d) Paragraph (4A) was inserted by regulation 11 of S.I. 2019/364 and will be amended by regulation 6 of S.I. 2019/1431 (which comes into force on IP completion day). Paragraph (4) has been relevantly amended by regulation 8 of S.I. 2007/2150 and regulation 3 of S.I. 2012/2612.

“(4A) Paragraph (4)(b) does not apply to a person who is lawfully working in Great Britain—

- (a) who—
 - (i) made a claim for child benefit before 1st January 2021, and
 - (ii) is a national of a State with which the European Union had, before 1st January 2021, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory State and their families; or
- (b) who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an EU Agreement which has ceased to apply in the United Kingdom.”.

(4) In regulation 27 (circumstances in which person treated as not being in Northern Ireland)(a), for paragraph (3A) substitute—

“(3A) Paragraph (3)(b) does not apply to a person who is lawfully working in Northern Ireland—

- (a) who—
 - (i) made a claim for child benefit before 1st January 2021, and
 - (ii) is a national of a State with which the European Union had, before 1st January 2021, concluded an agreement under Article 217 of the Treaty on the Functioning of the European Union providing in the field of social security for the equal treatment of workers who are nationals of the signatory state and their families; or
- (b) who is a national of a State with which the United Kingdom has concluded an agreement which replaces, in whole or in part, an EU Agreement which has ceased to apply in the United Kingdom.”.

*Michael Tomlinson
Maggie Throup*

9th December 2020

Two of the Lords Commissioners of Her Majesty’s Treasury

Signed by the authority of the Secretary of State for Work and Pensions

Thérèse Coffey
Secretary of State for Work and Pensions
Department for Work and Pensions

9th December 2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend social security and tax credits legislation to reflect the United Kingdom’s transition to trade and continuity agreements (“TCAs”) which replace association agreements concluded with third countries under Article 217 of the Treaty on the Functioning of the European Union which provide for equal treatment or for receipt of family allowances (“Association Agreements”), as a consequence of the United Kingdom’s exit from the European Union.

Regulation 1 provides for citation and commencement.

Regulation 2 amends the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 (S.I. 2000/636) (“the Immigration Regulations”), which apply to Great Britain.

(a) Paragraph (3A) was inserted by regulation 11 of S.I. 2019/364 and will be amended by regulation 6 of S.I. 2019/1431 (which comes into force on IP completion day). Paragraph (3) was relevantly amended by regulation 10 of S.I. 2007/2150 and regulation 4 of S.I. 2012/2612.

Paragraph (2) amends regulation 2 of the Immigration Regulations to remove paragraph 4 of Part 1 of the Schedule from being relevant to persons making a claim for universal credit. Paragraph 4 of Part 1 of the Schedule continues to provide that lawfully present nationals of states which have ratified the European Convention on Social and Medical Assistance or the Council of Europe Social Charter are not treated as being subject to immigration control for the purposes of the benefits specified in regulation 2(1). It also inserts a new paragraph (3A) which provides that where a person is a national of a State with which the United Kingdom has concluded a TCA which replaces an Association Agreement providing that that person is working lawfully that person is not treated as a person subject to immigration control for the purposes of child benefit. Paragraph (3) of regulation 2 amends paragraph 2 of Part II of the Schedule to the Immigration Regulations. The first amendment revokes sub-paragraph (a) which means that where an Association Agreement has not been transitioned to a TCA, nationals of that country who are lawfully working will only be treated as not being subject to immigration control for the purposes of the benefits specified in regulation 2(2) of the Immigration Regulations where that person has made a claim for that benefit before 1st January 2021. Sub-paragraph (b) makes consequential amendments to sub-paragraph (b) of paragraph 2 of Part II of the Schedule.

Regulation 3 amends regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 (S.R. 2000 No. 71) (the Northern Ireland Immigration Regulations) in so far as those Regulations relate to child benefit. Regulation 3 amends regulation 2 of the Northern Ireland Immigration Regulations by making provision equivalent to those made by regulation 2(2)(b) and (3) of these Regulations.

Regulation 4 makes a similar amendment to the Tax Credits (Immigration) Regulations 2003 (S.I. 2003/653).

Regulation 5 amends regulation 3 of the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654), so that paragraph (5)(c) of that regulation does not apply to a person who is lawfully working in the United Kingdom and who is a national of a state with which the United Kingdom has concluded a TCA which replaces, in whole or in part, an Association Agreement where that Agreement has ceased to apply in whole or in part to the United Kingdom. Where an Association Agreement has not been transitioned to a TCA, paragraph (5)(c) will only not apply to nationals of that country who are working lawfully in the United Kingdom where they have made a claim for child tax credit before 1st January 2021.

Regulation 6 makes equivalent amendments to the Child Benefit (General) Regulations 2006 (S.I. 2006/223).

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

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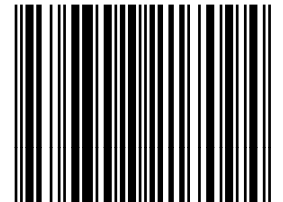
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