

EXPLANATORY MEMORANDUM TO
THE SOCIAL SECURITY AND TAX CREDITS (MISCELLANEOUS AND
CORONAVIRUS AMENDMENTS) REGULATIONS 2021

2021 No. 495

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 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 amends the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) to ensure that payment under the Covid-19 support scheme: working households receiving tax credits ("support payment") is disregarded as income for the purposes of tax credits. As a result, households in receipt of the support payment will receive the full benefit of the payment without it reducing their tax credits award.
- 2.2 This instrument also provides that individuals need to be legally working in order to be entitled to Child Benefit under a Trade and Continuity Agreement (TCA) which replaces one of the European Union Association Agreements which provided for the right to receive family allowances (non-equal treatment EUAAs). It does this by correcting an error in the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020 (S.I. 2020/1505). This will ensure that access to family benefits under TCAs is the same as the access that was provided by EUAAs until the end of the transition period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 It has been concluded that the free issue procedure applies to this instrument, which means that this instrument will be issued free of charge to all known recipients of the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020. The free issue procedure applies because this instrument corrects an omission in paragraph (3A) of regulation 2 of the Social Security (Immigration and Asylum) Consequential Amendments 2000 and the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000, which were inserted by the Social Security, Child Benefit and Child Tax Credit (Amendment) (EU Exit) Regulations 2020, to provide that individuals need to be legally working in order to be entitled to Child Benefit under TCAs which replace non-equal treatment EUAAs that were in effect in the United Kingdom (UK) until the end of the transition period.

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 is the United Kingdom except for the provisions amending the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 which apply to Great Britain and the provisions amending the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000 which apply to Northern Ireland.

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 amends the Tax Credits (Definition and Calculation of Income) Regulations 2002 by inserting an entry into table 6 of regulation 19 (general disregards in the calculation of income) to include the Covid-19 support scheme: working households receiving tax credits. This provides for the support payment to be disregarded for tax credits purposes.
- 6.2 Section 7 of the Tax Credits Act 2002 sets out that the entitlement of a person (a claimant) to tax credits is dependent on the relevant income. The Tax Credits (Definition and Calculation of Income) Regulations 2002 provide for what is or is not to be counted, or treated, as relevant income.
- 6.3 This instrument also amends paragraph (3A) of regulation 2 of both the Social Security (Immigration and Asylum) Consequential Amendments Regulations 2000 and the Social Security (Immigration and Asylum) Consequential Amendments Regulations (Northern Ireland) 2000. The amendments ensure that a national of a state with which the UK has entered into a TCA which replaces a non-equal treatment EUAA will not be excluded from claiming Child Benefit in respect of children who are lawfully resident in the UK providing that that national is lawfully working in Great Britain.

7. Policy background

What is being done and why?

Working Tax Credit

- 7.1 Tax credits are a means-tested form of support which provides help to millions of people with a wide variety of differing circumstances. Working Tax Credit provide support for working people on a low income, with or without children. Its design helps ensure that people have incentives to increase their working hours and increase their earnings.

- 7.2 Tax credits awards are calculated based on claimants' income. The rules for calculating income for tax credits generally mirror those for income tax, which means that claimants do not have to carry out a separate calculation of their income but can use figures calculated for tax purposes.
- 7.3 At Budget 2021, the Chancellor announced a one-off payment of £500 to be paid to working households receiving tax credits. The new payment is being introduced to provide support when the temporary increase in Working Tax Credit ends as planned on 5 April 2021. This payment provides similar support to the Chancellor's announcement that the Universal Credit uplift of £20 a week will continue for a further six months. The one-off payment of £500 is intended to continue supporting low-income households during the Covid-19 pandemic. The provision amending the Tax Credits (Definition and Calculation of Income) Regulations 2002 provides for this payment to be disregarded as income for tax credits purposes, meaning recipients will receive the full benefit of the support payment.

Access to family benefits under EU agreements

- 7.4 Until the end of the transition period, a number of agreements that the European Union (EU) has with non-EU countries, often called EUAAs, had legal effect in the UK. Some EUAAs contain provisions on access to benefits which previously applied to those lawfully working in the UK whilst subject to immigration control, either by providing for the equal treatment of nationals with UK nationals (equal treatment EUAAs) or by making specific provision for access to family benefits (non-equal treatment EUAAs).
- 7.5 EUAAs ceased to have direct effect in the UK from 1 January 2021 and in most cases they are expected to be replaced by UK-third country bilateral agreements called TCAs, which replicate the effect of the EU agreements. The policy intention is that nationals covered by both types of EUAAs (equal treatment and non-equal treatment) that are succeeded by a TCA should have their existing rights protected.
- 7.6 The government laid regulations in 2020 to ensure that access to benefits for those in scope of the non-equal treatment EUAAs continues under the replacement TCAs. HMRC have identified an omission in relation to Child Benefit in those regulations which has the effect that individuals do not need to be legally working in order to be entitled to Child Benefit. If left unaddressed this would go beyond the policy intention to provide continuity under TCAs with the previous access to Child Benefit under non-equal treatment EUAAs and entitle non-working individuals subject to immigration control to Child Benefit for the first time.
- 7.7 This instrument will correct the omission by providing that non-European Economic Area nationals in scope of non-equal treatment EUAAs who are subject to immigration control need to be legally working in order to access Child Benefit. This will provide for continuity with the conditions under the previous non-equal treatment EUAAs.

8. EU (Withdrawal) Act/Withdrawal of the UK from the EU

- 8.1 This instrument is not being made under the EU (Withdrawal) Act but relates to the withdrawal of the United Kingdom from the European Union as the existing EUAAs ceased to have legal effect in the United Kingdom at the end of the transition period.

9. Consolidation

9.1 There are no plans to consolidate any of the regulations which are amended by these regulations.

10. Consultation outcome

10.1 The Social Security Advisory Committee which is an advisory non-departmental public body, has been consulted on the proposed regulations.

10.2 No separate consultation exercise was conducted as this instrument makes minor changes to tax credits and Child Benefit legislation.

11. Guidance

11.1 Guidance is provided for tax credits claimants online at the [gov.uk website](http://gov.uk) and through the tax credits helpline.

11.2 Guidance is provided for Child Benefit claimants online through the [gov.uk website](http://gov.uk) and through the Child Benefit helpline.

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 there is no significant impact on business.

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 provides for continuity of access to benefits by individuals in scope of TCAs and it disregards a one-off payment in respect of the tax credits provision.

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 Sophie Evans at HMRC telephone: 07773 092365 or email: sophie.evans1@hmrc.gov.uk can be contacted with any queries regarding Working Tax Credit.

15.2 Vanessa McKay at HMRC telephone: 07776587919 or email: vanessa.mckay@hmrc.gov.uk can be contacted with any queries regarding access to family benefits.

15.3 James Knipe, Deputy Director for International Social Security Policy, Individuals Policy Directorate, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.4 The Rt Hon Steve Barclay MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.