

EXPLANATORY MEMORANDUM TO

THE CHILD BENEFIT AND TAX CREDITS (AMENDMENT) REGULATIONS 2022

2022 No. 346

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 makes amendments to the Child Benefit (General) Regulations 2006 (S.I. 2006/223) and the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006). These amendments will ensure that those persons who left Ukraine in connection with the Russian invasion on 24 February 2022 are exempt from the requirement to have been living in the United Kingdom (UK) for at least three months before becoming entitled to Child Benefit. They will also ensure that payments under the Homes for Ukraine scheme are disregarded for the purposes of calculating entitlement to tax credits.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instrument

- 3.1 This instrument is being made under emergency procedures and breaches the 21-day rule. The Chief Secretary to the Treasury believes that this is necessary because of the sudden and unexpected nature of the situation in Ukraine and the immediate need to provide support to those arriving from Ukraine. Delay in the legislation coming into force will cause potential delays in access to benefits.

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 To be entitled to Child Benefit, a person must be physically present, ordinarily resident, have a right to reside, and since 2014 have been living in the UK for at least three months (the living in the UK test) before qualifying for Child Benefit. The 'living in the UK test' was introduced in 2014 in order to deter potential abuses of the welfare system by economic migrants. This is set out in regulation 23(5) and regulation 27(4) of the Child Benefit (General) Regulations 2006 for the purposes of

section 146(2) of the Social Security Contributions and Benefits Act 1992, and section 142(2) of Social Security Contributions and Benefits (Northern Ireland) Act 1992.

- 6.2 Regulation 23(6) and regulation 27(5) of the Child Benefit (General) Regulations 2006 set out a list of exceptions to the requirement to meet the living in the UK test. This regulation will provide a further exception to cover people who have left Ukraine and are entering the UK in connection with the Russian invasion on 24 February 2022.
- 6.3 Section 7 of the Tax Credits Act 2002 sets out that the entitlement of a claimant to tax credits is dependent on 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.

7. Policy background

What is being done and why?

- 7.1 The Government has committed to provide support for people coming to the UK in connection with the Russian invasion of Ukraine.
- 7.2 The Home Office has announced that people arriving in the UK from Ukraine will be granted immigration leave outside the rules until such time as they can be granted a form of temporary leave to remain. This leave also provides them with the right to work and gives them recourse to public funds, including HMRC administered benefits.
- 7.3 Those people granted leave within the rules will need to meet the living in the UK test before they can access Child Benefit. This will also apply to UK nationals returning to the UK from Ukraine. To ensure these people can access the full support available from day one and based on similar provisions made in response to the crisis in Afghanistan (2021), these regulations will exempt those people arriving from Ukraine and granted leave by the Home Office from the Child Benefit living in the UK test. This will mean that they are able to access Child Benefit immediately.
- 7.4 Tax credits are a means-tested form of support which provides help to millions of people with a wide variety of differing circumstances. Tax credits awards are calculated based on claimants' income. The rules for calculating income 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.
- 7.5 On 13 March 2022, the government announced the introduction of the Homes for Ukraine scheme, which provides eligible sponsors with £350 a month for a minimum of six months in recognition of their role as a sponsor of a Ukrainian national fleeing Ukraine following the Russian invasion. The provision amending tax credits regulations provides for such payments to be disregarded as income for tax credits purposes, meaning the payments will not impact entitlement.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.6 Individuals must meet the living in the UK test before they can claim Child Benefit. This means that individuals must be resident in the UK for three months before they are able to claim Child Benefit unless there is a specific exemption in place (for example for those with refugee status). Prior to the law change being made by this

instrument, people entering the UK from Ukraine in connection with the Russian invasion would not automatically qualify under one of the existing exemptions.

- 7.7 Section 7 of the Tax Credits Act 2002 sets out that the entitlement of a claimant to tax credits is dependent on 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. Prior to the change being made by this instrument, claimants receiving payments in recognition of their sponsorship of a Ukrainian national would see their entitlement to tax credits reduced as a result of payments under the Homes for Ukraine scheme being included as income.

Why is it being changed?

- 7.8 The changes are being made to align with the policy intention of the Home Office to ensure persons who have left Ukraine in connection with the Russian invasion can access the appropriate support immediately on their arrival into the UK.
- 7.9 These changes will ensure that any claimants in receipt of payments under the Homes for Ukraine scheme do not see their tax credits impacted as a direct result of the payment.

What will it now do?

- 7.10 This instrument will exempt persons who have come to the UK from Ukraine in connection with the Russian invasion from the living in the UK test. This will mean they can access Child Benefit immediately from the day of their arrival.
- 7.11 This instrument will also disregard, for tax credits purposes, payments made to sponsors who have been approved to offer a room or home to a Ukrainian national who has fled Ukraine in connection with the Russian invasion on 24 February 2022.

8. European Union Withdrawal and Future Relationship

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

9. Consolidation

- 9.1 There are no plans to consolidate any of the regulations which are amended by this instrument.

10. Consultation outcome

- 10.1 The regulations will be formally referred to the Social Security Advisory Committee as soon as practicable after the date on which they have been made.

11. Guidance

- 11.1 The provisions of these amending regulations will be reflected in the guidance for [individuals](#) and staff [technical manual](#).

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 A Tax Information and Impact Note 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 The Treasury is committed to monitoring the impact of its policies and will use evidence from a number of sources on the experiences and outcomes of the affected groups. The Treasury will aim to review the policy impacts of all access to HMRC benefits on a routine basis in consultation with other relevant government departments. The Treasury will continue to consider the intersections of Treasury policy with other departments' policies.

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

15. Contact

15.1 Husniye Ilhan, HMRC, email: husniye.ilhan@hmrc.gov.uk can be contacted with any queries relating to this instrument.

15.2 Edmund Hair, Deputy Director for National Insurance Policy, International and Student Finance, at HMRC, can confirm that this Explanatory Memorandum meets the required standard.

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