

# CHILD TRUST FUNDS ACT 2004

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## EXPLANATORY NOTES

### COMMENTARY

#### *Section 1: Child Trust Funds*

10. *Subsection (1)* refers to the Act being about child trust funds and “related matters” because the Act also deals with payments to the personal representatives of otherwise eligible children who die before Government contributions are credited to their accounts.
11. *Subsection (2)* defines a Child Trust Fund (CTF) as an account opened for an eligible child which satisfies the requirements of the Act (and regulations made under it) and has been opened in accordance with the Act.
12. *Subsection (3)* provides for the law relating to Child Trust Funds to be under the care and management of the Inland Revenue. This is a standard feature of Inland Revenue legislation and protects customers by giving the Inland Revenue flexibility to resolve potential problems where a strictly legal interpretation of the position might not be in the customer’s interest, for example a child finding itself with no account because of an error.

#### *Section 2: Eligible children*

13. *Subsection (1)* defines a child eligible for a CTF account as a child born after 31 August 2002 who is the subject of a child benefit award. This means that it will be essential to claim child benefit for a child if that child is to qualify for a CTF account. There is one exception to this rule which is covered in subsection (1)(b). Child benefit cannot be claimed for children who are looked after by a local authority. The effect of subsection (1)(b) (together with subsection (2)) is to bring these children into eligibility for the CTF although child benefit cannot be claimed for them.
14. *Subsection (3)* ensures that children who live in the UK, but in respect of whom child benefit is not payable by the UK because of EU legislation or an international agreement, are eligible for child trust funds. Under European Union Regulation 1408/71 which governs the co-ordination of social security for migrant workers within the EU, child benefit is normally payable by the country in which the parent works. Given the geographic position of the UK, the most common situation is where a family lives in Northern Ireland and the only working parent works in the Republic of Ireland. In these circumstances child benefit is payable by the Republic of Ireland under Regulation 1408/71. This subsection ensures that otherwise eligible children in these circumstances will be entitled to a CTF account.
15. *Subsection (4)* provides that where a person is only entitled to child benefit because of EU legislation or an international agreement the child will not be entitled to a CTF account. Under European Union Regulation 1408/71 UK child benefit can be payable in respect of children who are not living in the UK, for instance children of European Union nationals working in the UK where the child still lives in the country of origin. Children in these circumstances will not be eligible for a CTF account. If such a child

moves to live in the UK, he or she will be eligible from the time of that move subject to child benefit continuing to be awarded. This rule will not affect the children of MoD families and other crown servants as they are entitled to child benefit when based overseas by virtue of regulation 30 of the [Child Benefit \(General\) Regulations 2003 \(S.I. 2003 No. 493\)](#).

16. *Subsection (5)* provides that a child who does not have a right of abode in the United Kingdom, is not entitled to reside in the United Kingdom under European legislation and is not settled in the United Kingdom (within the meaning of section 33(2A) of the Immigration Act 1971), is not an eligible child. A child is settled in the United Kingdom if he is ordinarily resident here and under immigration law is not subject to any restriction on the period for which he may remain.
17. *Subsection (6)* provides that entitlement to child benefit under subsection (1)(a) is established once a decision has been taken to award child benefit under Chapter 2 of Part 1 of the Social Security Act 1998 (or Northern Ireland equivalent). This means that the decision to award child benefit is the point at which a child becomes eligible for a CTF account.
18. *Subsection (7)* enables regulations to be made under which an earlier date would be substituted for 31 August 2002 in subsection (1). Such regulations would bring older children into eligibility for the CTF.

### ***Section 3: Requirements to be satisfied***

19. This section sets out the requirements to be met for accounts to qualify as CTF accounts. *Subsection (1)* provides for financial institutions (referred to as “account providers”) to be approved by the Inland Revenue before they can offer CTF accounts. The details of this approvals process will be set out in regulations and will be based on the approvals process for Individual Savings Accounts (ISAs) with which financial institutions are already familiar.
20. *Subsection (2)* provides that the only accounts which will qualify as CTF accounts will be accounts of the descriptions specified in regulations. Under these regulations providers will be able to offer a wide range of accounts to meet different needs. The CTF account will be a “wrapper” in a similar way to the ISA, that is it can be wrapped around a variety of products such as cash, unit trusts or life insurance. Accounts which do not meet the requirements specified will not be CTF accounts.
21. *Subsection (3)* provides that the regulations governing the approval of providers may require providers to offer certain types of CTF account as a condition of approval as CTF account providers. The regulations will require all providers to offer the stakeholder CTF account which will include investment in equities. This will allow families to benefit from the potentially higher returns from equities over a long period such as eighteen years. The risk of a loss in value associated with equities will be reduced by the requirement to spread the equity investment over a number of companies and to move the CTF investment from equities to safer assets such as cash or gilts as the maturity date approaches.
22. *Subsection (4)* sets out the key requirements that CTF accounts will have to meet:
  - accounts will be held in the child’s name;
  - that child will be the beneficial owner of the savings and investments in the account;
  - income and gains on investments in the account will themselves become investments in the account, and so cannot be withdrawn;
  - no withdrawals will be allowed from the account except for providers’ administrative charges (these will be expressly permitted under regulations); and

- the only person who will be entitled to give instructions to the account provider will be a person who has authority to manage the child trust fund.
23. *Subsections (6) and (7)* define who will be the person with authority to manage a child trust fund: namely, the child if the child is 16 or over; otherwise a responsible person (explained in subsection (8)). Where there is more than one responsible person, the responsible person as determined by the regulations will have that authority.
  24. *Subsection (8)* defines a “responsible person” in relation to a child under 16. This will be the person with parental responsibility but will not include a local authority looking after a child under 16. Although the account will be beneficially owned by the child from when it is first opened, the account can only be administered by an adult until the child is 16.
  25. *Subsection (9)* defines “parental responsibility” by reference to the Children Act 1989 and its Northern Irish and Scottish equivalents. The 1989 Act defines "parental responsibility" as all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property.
  26. *Subsection (10)* provides that in circumstances prescribed by regulations the person who has authority to manage a CTF account for a child under 16 will be the Official Solicitor or the Accountant of Court.
  27. *Subsection (11)* ensures that the Official Solicitor or Accountant of Court will have appropriate powers to manage a child’s CTF account.
  28. *Subsection (12)* ensures that contracts made by 16 and 17 year olds in connection with a child trust fund have the same effect as contracts made by those aged 18 or over.

#### ***Section 4: Inalienability***

29. Under *subsection (1)* any assignment of or charge on funds held in a CTF account will be void. *Subsection (2)* secures that where a child is made bankrupt it will not be possible for the creditors to gain access to the child’s CTF account. The other subsections deal with Scottish legal equivalents.

#### ***Section 5: Opening by responsible person***

30. *Subsection (1)* requires the Inland Revenue, where a child is entitled to a CTF account by reason of a child benefit award, to issue a voucher in the form prescribed by regulations. *Subsection (2)* requires the Inland Revenue to issue that voucher to the person who is entitled to child benefit for that eligible child. Where the child is eligible by virtue of section 2(3) (living in the UK but with a parent working in another EU country, see paragraph 14) the voucher will be issued to a “responsible person” for that child. This voucher will be in the amount of the initial contribution to be paid to all eligible children: the Government has announced that this will be £250. It will be issued automatically following the award of child benefit. Parents will not be required to make a separate claim for the CTF. Children looked after by local authorities will have CTF accounts opened under special arrangements (see section 6).
31. *Subsection (3)* provides that the child, if over 16, otherwise a responsible person (see paragraph 24), can apply to open a CTF account for the child named on the voucher. The person opening the account can choose the account provider and the type of account to be opened. *Subsection (4)* provides that the method of application, and the period within which the voucher is to be used, is as set out in the regulations.
32. *Subsection (5)* requires the provider, in accordance with regulations setting out the details of this procedure, to open a CTF account when the application has been made and inform the Inland Revenue.

### ***Section 6: Opening by Inland Revenue***

33. *Subsection (1)* provides that for children to whom this section applies (defined at subsection (4)) the Inland Revenue has a duty to request a provider to open a CTF account selected in accordance with the regulations. The account opened under this subsection will be the stakeholder CTF account (see paragraph 21).
34. *Subsection (3)* ensures that the provider cannot refuse the application made under subsection (1). Providers will not be obliged to offer accounts under this arrangement. However, where providers decide to offer these accounts, they will not be entitled to refuse the request to open an account.
35. *Subsection (4)* sets out the two groups of children to whom this section applies. The first group consists of children who are entitled to a CTF account because of an award of child benefit where an application has not been made to open a CTF account within the prescribed period (see subsection (5) of this section). The second group of children are those who are entitled to a CTF account by virtue of being looked after by a local authority.
36. *Subsection (5)* sets out the circumstances in which the Inland Revenue will request providers to open accounts although a voucher has been issued: either an application has not been made within the period set in regulations made under section 5(3); or the child is under 16 and the Inland Revenue is satisfied that there is no “responsible person” able to open an account for the child. This will usually be where the parents are under the age of 16 and not entitled to administer a CTF account.
37. *Subsection (6)* provides that the Inland Revenue will not be liable as a result of the selection of account provider or type of account under this section. Account providers will be selected in rotation from a list of those willing to offer these accounts. The account opened at the request of the Inland Revenue will always be the stakeholder CTF account (see paragraph 21). Parents will have the option (under section 7) to change the type of account or the provider at any time.

### ***Section 7: Transfers***

38. This section gives the Treasury power to make regulations allowing a responsible person to change the type of CTF account, e.g. from a cash to a stakeholder CTF account, and to move a CTF account from one provider to a different provider.

### ***Section 8: Initial contribution by Inland Revenue***

39. *Subsection (1)* imposes a duty on the Inland Revenue to pay to a provider the amount of the initial Government contribution (following a claim by the provider) once the provider informs the Inland Revenue that a CTF account has been opened either following an application (section 5(5)) or following a request from the Inland Revenue to open a CTF account (section 6(3)). When CTF accounts are first available the initial contribution will be £250 in relation to children who are eligible because of a child benefit award. Those children may qualify for an additional contribution of £250 under section 9. Children in care will not qualify for an additional contribution under that section, but their initial contribution will be set at an amount equal to £250 plus the additional contribution.

### ***Section 9: Supplementary contributions by Inland Revenue***

40. This section sets out the conditions for eligibility for the additional Government contribution for children in families on lower incomes. It applies only to children who are eligible by virtue of a child benefit award (children in care will receive a higher initial contribution under section 8). *Subsection (1)* imposes a duty on the Inland Revenue to inform the provider with whom the child’s CTF account is held that the

child is entitled to the supplementary contribution. The Inland Revenue will have this information because eligibility is linked to child tax credit.

41. *Subsection (2)* imposes a duty on the Inland Revenue to pay to the provider the amount set out in regulations following a claim. The amount will be £250 with higher amounts for eligible children born before the launch of accounts in 2005. A claim is required because the CTF account may have been transferred from one CTF provider to another.
42. *Subsection (4)* defines the children eligible for a supplementary contribution under this section. These are children who have a CTF account, were first eligible for a CTF account because of a child benefit award and satisfy the test set out in subsection (5) of this section.
43. *Subsection (5)* provides that there are two conditions for eligibility for the supplementary contribution. The first is that a person is entitled to child tax credit in respect of the child when child benefit is first paid for that child (described as the “child benefit commencement date”). The second is that either the household income does not exceed the income threshold for child tax credit or a member of the household was receiving a social security benefit prescribed under section 7(2) of the Tax Credits Act 2002, i.e. income support or income-based job seekers’ allowance.
44. This qualification for the supplementary contribution will not work for all children in the transitional group born between 31 August 2002 and 6 April 2005. There are two reasons for this. Because child tax credit was first introduced on 6 April 2003, subsection (5) cannot be satisfied if the child benefit commencement date is before 6 April 2003. This is addressed in subsection (9). The second reason is that parents claiming some other benefits will not transfer to child tax credit until a process to do that is carried out during the tax year 2004-05. This is addressed in subsections (7) and (8).
45. *Subsection (7)* provides for children in the transitional group to qualify for the supplementary contribution if the condition in subsection (8) is satisfied even though subsection (5) is not satisfied. *Subsection (8)* sets out how children in some families without a claim for child tax credit can qualify for the supplementary contribution. The child will have to be in a household in receipt of one of the following benefits when child benefit was first paid for that child: the child and young person’s credit in working families’ tax credit or disabled person’s tax credit; or the children’s allowance within income support or jobseeker’s allowance (income based).
46. The effect of *subsection (9)* is that if child benefit is first paid for a child before 6 April 2003, whether the child is eligible for the supplementary contribution will be determined by entitlement to child tax credit in the 2003-04 financial year (instead of the date when child benefit is first paid). This will ensure that children born between 1 September 2002 and 5 April 2003 do not miss out on the supplementary contribution simply because child tax credit had not been introduced when their parents first claimed child benefit for them.

### ***Section 10: Further contributions by Inland Revenue***

47. This section gives the Treasury power to make regulations requiring the payment of Government contributions to account providers for children holding CTF accounts. *Subsection (1)* provides for these children to be eligible children as defined in this Act or a sub-set of those children specified in the regulations and for the amount of the contribution to be set by regulations.
48. *Subsection (2)* defines the circumstances in which such contributions would be made as the children reaching an age specified in the regulations or any other condition specified in the regulations. The Government has published its proposal that the first of these payments will be when eligible children turn seven. The first payments will be due in 2009 and the amounts will be published nearer the time when the appropriate regulations will also be made.

49. *Subsection (3)* secures that the regulations must include provisions for informing account providers of the amounts due, for the account providers to claim the payments and to credit CTF accounts with the payments.
50. Child benefit is not payable for children held in legal custody. *Subsection (4)* secures that children held in legal custody but otherwise eligible will not be excluded from receiving payments made under this section.

### ***Section 11: Recouping Inland Revenue contributions***

51. This section gives the Treasury power to make regulations requiring persons of a description specified in the regulations to repay to the Inland Revenue sums paid into accounts by the Inland Revenue under sections 8, 9 and 10 where these should not have been credited. They will also be required to account for any income and gains, together with any tax relief, arising on the sums that were incorrectly credited.

### ***Section 12: Subscription limits***

52. This section relates to contributions to a child's CTF account made by family, friends and others. *Subsection (1)* provides that only monetary payments will be accepted for CTF accounts. It will not, for instance, be possible to transfer shares into a CTF account.
53. *Subsection (2)* gives the Treasury power to make regulations setting the maximum amount of non-Government contributions that can be made to CTF accounts in any year. The limit for savings will initially be £1,200.
54. *Subsection (3)* defines the period of a year for annual contributions as the period from first opening a CTF account to the child's next birthday and each subsequent period of twelve months.

### ***Section 13: Relief from income tax and capital gains tax***

55. *Subsection (1)* provides for regulations to be made giving relief from income tax and capital gains tax for income and gains arising on investments held in CTF accounts. Regulations will disapply the income tax settlements legislation for CTF accounts. This legislation prevents parents from gaining a tax advantage by placing money in their children's accounts. Where gifts from a parent give rise to income of more than £100 in a year, the parent is taxed on all that income at his or her own income tax rate. However, contributions to CTF accounts will not count as such gifts.
56. *Subsection (2)* makes further provision in relation to capital gains tax. Paragraph (a) permits provision to be made in the regulations for capital losses arising on the disposal of investments held in CTF accounts to be disregarded for capital gains tax purposes. This means that such losses will not be deductible from any capital gains outside the CTF. Paragraph (b) allows the regulations to make provision relating to investments held within a CTF, including provision for them to be treated separately from any investments of the same kind (such as shares of the same class in the same company) held by the child in question outside the CTF. In particular, this will enable the identification rules which determine which shares are disposed of on a part-disposal of a holding of shares, to apply separately to shares held by the child within a CTF and to shares the child holds outside the CTF.
57. *Subsection (4)* allows the regulations to include provision for appropriate restitution to be made to the Inland Revenue in circumstances prescribed by the regulations. This will include cases where tax relief has to be repaid because it was given where it was not due.
58. Under *subsection (5)* regulations can be made modifying income tax or capital gains tax legislation in relation to CTF accounts.

***Section 14: Insurance companies and friendly societies***

59. This section is required to allow the income and gains made on investments held in CTF accounts provided in the form of life insurance policies by insurance companies and friendly societies to be exempt from corporation tax. But this does not prevent the profits made by the companies on such business from being taxed. *Subsection (1)* does this by applying the relevant subsections of section 333B of the Income and Corporation Taxes Act 1988 as it relates to the Individual Savings Account (ISA) business of insurance companies and friendly societies to their business in providing CTF accounts. ISA and CTF business will be treated for tax purposes as a single category of business with ISA losses being offset against CTF profits and vice versa.

***Section 15: Information from account providers etc***

60. This section gives the Treasury power to make regulations under which information can be required from account providers and others. Under *subsection (1)* the regulations may require or authorise officers of the Inland Revenue to require account providers and other relevant persons to provide documents for inspection or to provide information about CTF accounts.
61. *Subsection (2)* defines relevant persons as the current or previous provider of the CTF account; the person who owns, or owned, the CTF account; the person to whom a CTF voucher was issued; the person who applied to open the CTF account; anyone who gave instructions about the management of the account; and anyone entitled to child benefit in respect of the child.
62. *Subsection (3)* provides that regulations may specify how, where and when information should be provided.

***Section 16: Information about children in care of authority***

63. The child benefit legislation does not allow child benefit to be claimed for children in care (see paragraph 13) but the Government wants to ensure that these children do not miss out on the CTF. *Subsection (1)* gives the Treasury power to make regulations requiring authorities to provide both the information necessary to arrange for CTF accounts to be opened for children looked after by a local authority and any other information required for the administration of accounts, for example, for further Government contributions to be made.
64. *Subsection (2)* sets out the legislation under which child benefit cannot be claimed for children in care. *Subsection (3)* provides that regulations may specify how, where and when information should be provided.

***Section 17: Use of information***

65. This section allows information to be shared within Government and between Government departments and contractors such as the Inland Revenue's IT provider. In the section such contractors are described as "persons providing services to the Inland Revenue". Under *subsection (1)* information held for CTF purposes can be used in connection with the CTF. Under *subsection (2)* information held for CTF purposes can be used for other functions carried out by the Inland Revenue. This would allow the Inland Revenue to use information about the CTF for statistical purposes in assessing the success of savings policies. Under *subsection (3)* information held for functions not connected with the CTF can be used in connection with the CTF. This would allow the Revenue to use information about households' claims for child tax credit to assess a child's eligibility for the supplementary contribution.
66. *Subsection (4)* allows other government departments to provide information to the Inland Revenue or one of its contractors for purposes connected with the CTF. The Inland Revenue will need to use information provided by the Department for Work

and Pensions (DWP) or the Northern Irish equivalent to assess the eligibility for supplementary contribution of children born after 31 August 2002 but before the launch of CTF accounts. This group will include children in households unable to claim child tax credit as this was not introduced until April 2003 and children whose parents are receiving other benefits and will only transfer to child tax credit in the tax year 2004-05. For households in these circumstances, DWP will provide the Inland Revenue with information about other benefits that were claimed at the relevant time (see paragraphs 45 and 46).

### ***Section 18: Disclosure of information***

67. This section deals with the disclosure of information relating to a CTF account held by an identifiable person by Government officials to people outside Government. It brings the CTF within the existing statutory provisions providing for Revenue confidentiality, and the exceptions to those rules on confidentiality.

### ***Section 19: Payments after death of child***

68. Under *subsections (1) and (2)* the Inland Revenue will have the power to make payments to the personal representatives of a child born after 31 August 2002 who has died before payments to which the child was entitled have been credited to a CTF account.
69. *Subsection (3)* sets out the conditions that will have to be met for a payment to be made. These are that no initial contribution was paid under section 8, or if one was paid, it had not been credited to the child's CTF account; that the child was entitled to a supplementary contribution under section 9 but this had not been credited to the child's CTF account; or that a further contribution under section 10 was payable but had not been credited to the child's CTF account.

### ***Section 20: Penalties***

70. Under *subsection (1)* the Inland Revenue has power to impose a penalty of £300 on anyone who fraudulently applies to open, makes a withdrawal from or secures the opening by the Inland Revenue of a child trust fund.
71. *Subsection (2)* allows the Inland Revenue to impose a penalty not greater than £3,000 on an account provider who makes a fraudulent or negligent claim under sections 8 or 9 or in connection with regulations under sections 10 or 13 and on any person who fraudulently or negligently provides incorrect information under section 15.
72. Under *subsection (3)* penalties can be imposed on account providers who do not make a claim under section 8, 9 or 10 within the time set out in regulations and on any person who does not provide a document or information within the time set out in regulations under section 15. *Subsection (4)* sets this penalty at no more than £300 and no more than £60 for each day that the failure continues after the first penalty is imposed. *Subsection (5)* ensures that no penalty will be charged under subsection (3) once the failure has been remedied. *Subsection (6)* ensures that a person will not be considered to have failed to make a timely claim or failed to provide or make information available on time if they have made the claim etc. within any additional time offered by the Inland Revenue, if they had a reasonable excuse for the delay, and if they made the claim etc. without delay once the excuse no longer applied.
73. Under *subsection (7)* penalties can be imposed on account providers in respect of:
- a) the provision of an account which does not comply with the requirements of this Act or regulations made under it as set out in *subsection (8)*;
  - b) the failure to comply with sections 8(2) and 9(3) on crediting accounts with the initial and supplementary Government contributions or with regulations under 5(5) on the opening of accounts by providers, under section 6(3) on providers



opening accounts at the request of the Inland Revenue, under section 7 on transfers and under section 10(3) on crediting accounts with further Government contributions; or

- c) a breach of section 12(1) allowing only monetary contributions to CTF accounts or regulations on subscription limits under section 12(2).

74. *Subsection (9)* sets the penalty under subsection (7) as the greater of £300 or £1 in respect of each child trust fund for which a penalty is incurred.

### ***Section 21: Decisions, appeals, mitigation and recovery***

75. This section sets out various procedural matters related to decisions, appeals and the mitigation and recovery of penalties. Under *subsection (7)* the Inland Revenue is given the power to mitigate penalties imposed under section 20.

### ***Section 22: Rights of appeal***

76. This section sets out the grounds under which account providers or responsible persons may appeal against decisions taken by the Inland Revenue. *Subsection (1)* states that account providers can appeal against the withholding or withdrawal of approval as a CTF account provider. *Subsection (2)* states that a relevant person can appeal against the Inland Revenue deciding not to issue a voucher or open an account or deciding not to make any of the Government contributions required under this Act. *Subsection (3)* defines relevant person as the person entitled to child benefit, the person who applied to open a CTF account and anyone who has given instructions on the management of the CTF account. *Subsection (4)* entitles a person required to repay tax relief or a contribution to the Inland Revenue to appeal against that requirement. *Subsection (5)* allows a child's personal representatives to appeal against a decision not to make a payment in accordance with section 19. *Subsection (6)* allows someone who is charged a penalty under section 20 to appeal against the decision to impose that penalty.

### ***Section 23: Exercise of rights of appeal***

77. This section specifies the procedures for appeal, either to the General Commissioners or, if the appellant so chooses under the Taxes Management Act 1970, to the Special Commissioners. It should be read in conjunction with section 24. Until a day appointed by the Treasury by order, the appeals procedures are modified by section 24, so that appeals will be heard by an appeals tribunal and Northern Irish equivalent and any appeal against any decision made by this service will be to the Social Security Commissioner.

### ***Section 24: Temporary modifications***

78. In line with the current arrangements for appeals against decisions on tax credits, these appeals will be heard by an appeals tribunal. See section 23.

### ***Section 25: Northern Ireland***

79. This Act will have effect throughout the United Kingdom. Under this section the Northern Ireland Act 1998 is amended to place the Child Trust Fund in the Schedule of excepted matters. This will ensure that the Child Trust Fund will always be dealt with by way of a UK-wide Act.

### ***Section 26: Money***

80. *Subsection (1)* provides that the expenditure made by the Inland Revenue under this Act, including the Government contributions, will be met out of money provided by Parliament. *Subsection (2)* provides that any sums received by the Inland Revenue,

*These notes refer to the Child Trust Funds Act 2004  
(c.6) which received Royal Assent on 13 May 2004*

such as recoveries of Government contributions incorrectly made, will be paid into the Consolidated Fund.

***Section 27: Commencement***

81. This section provides for the main provisions of the Act to come into force in accordance with provision made by order.

***Section 28: Regulations and orders***

82. This section sets out the powers of the Treasury to make regulations under this Act by statutory instrument.