

## EXPLANATORY MEMORANDUM TO

### THE CHILD BENEFIT, TAX CREDITS AND CHILDCARE PAYMENTS (SECTION 67 IMMIGRATION ACT 2016 LEAVE) (AMENDMENT) REGULATIONS 2018

2018 No. 788

#### 1. Introduction

- 1.1 This explanatory memorandum has been prepared by Her Majesty's Revenue and Customs on behalf of Her Majesty's Treasury (HMT) and is laid before Parliament by Command of Her Majesty.

#### 2. Purpose of the instrument

- 2.1 The Home Office has introduced a new form of immigration leave under section 67 of the Immigration Act 2016 ("section 67 leave") to be granted to individuals relocated to the UK under section 67 of the Immigration Act 2016 from Europe and who do not qualify for international protection. Section 67 required the Government to relocate and support a specified number of unaccompanied children from Europe to the UK. In line with the spirit of the legislation, the Government considers its obligations to these individuals to be to ensure that they have rights akin to those provided to refugees. These Regulations will therefore give those individuals access to Child Benefit, tax credits and Tax-Free Childcare (referred to in the legislation as childcare payments) that is equivalent to the minimum access granted to individuals with refugee status.
- 2.2 This group would otherwise be restricted under current rules from accessing Child Benefit, tax credits or Tax-Free Childcare if they started work or became responsible for any children in the future.

#### 3. Matters of special interest to Parliament

##### *Matters of special interest to the Joint Committee on Statutory Instruments*

- 3.1 None.

##### *Other matters of interest to the House of Commons*

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

#### 4. Legislative Context

- 4.1 Tax credits, Child Benefit and Tax-Free Childcare are financial forms of support paid to people living or working in the UK who do not have an immigration status that excludes them from accessing public funds. This follows the Government's long standing policy that persons from outside the European Economic Area are, in general, not entitled to public funds.
- 4.2 Individuals granted refugee status or humanitarian protection are an exception to this rule, and those individuals relocated to the UK under section 67 Immigration Act 2016 will generally fall into one of these exceptions. However, some will not qualify for refugee status or humanitarian protection and would, therefore, fall to be refused

under the current rules. Following the laying of a bespoke immigration rule on 15 June, those who do not qualify for international protection (i.e. refugee status or humanitarian protection) will nevertheless be granted section 67 leave if they meet the requirements set out in the Statement of Changes to the Immigration Rules HC1154, 15 June 2018. These rules were made under section 3(2) of the Immigration Act 1971.

- 4.3 This current instrument ensures that these individuals will be treated in the same way as refugees if they apply for Child Benefit, tax credits, or Tax-Free Childcare ("benefits or schemes administered by HMRC") once they are granted section 67 leave.
- 4.4 This instrument makes consequential changes to the Child Benefit (General) Regulations 2006 (S.I. 2006/223), the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 (S.I. 2003/492), the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654), the Tax Credits (Immigration) Regulations 2003 (S.I. 2003/653) and the Childcare Payments (Eligibility) Regulations 2015 (S.I. 2015/448).

## **5. Extent and Territorial Application**

- 5.1 The extent of this instrument is the United Kingdom.
- 5.2 The territorial application of this instrument is the United Kingdom.

## **6. European Convention on Human Rights**

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

## **7. Policy background**

### *What is being done and why*

- 7.1 Section 67 of the Immigration Act 2016 (the 'Dubs amendment') requires the Government to relocate to the UK and support unaccompanied children who are currently in Europe. In line with this provision to the Immigration Act 2016, and following consultation with local authorities, the Government set the specified number at 480.
- 7.2 The Home Secretary's statutory obligation towards these children - to relocate and support - and the spirit of Parliamentary debates at the time of the passage of the Immigration Act 2016 justify these individuals receiving the same protection and support offered to those granted refugee or humanitarian protection leave in the UK. Individuals who qualify for section 67 leave will therefore have the right to study, work, access public funds (claim benefits and housing support) and healthcare, and apply for indefinite leave to remain without paying a fee after five years.
- 7.3 To date, over 220 unaccompanied children have been transferred under this section and transfers are ongoing.
- 7.4 Under current rules, the group of individuals who have been transferred to the UK under section 67 Immigration Act 2016 and who do not qualify for international protection would be restricted from accessing Child Benefit, tax credits or Tax-Free Childcare in respect of any children they have in the future.

- 7.5 For this reason, these Regulations amend the Regulations specified in paragraphs 4.4 above to ensure that those granted this new form of immigration leave will have access to Child Benefit, tax credits and Tax-Free Childcare in the same way as a refugee.

#### ***Consolidation***

- 7.6 There are no plans to consolidate any of the Regulations which are amended by these Regulations.

### **8. Consultation outcome**

- 8.1 The Social Security Advisory Committee, an independent statutory body that provides impartial advice on social security and related matters, has considered these regulatory changes under its Memorandum of Understanding with HM Treasury and Her Majesty's Revenue and Customs and was content.

### **9. Guidance**

- 9.1 Information relating to these changes to legislation will be incorporated into online guidance, forms and manuals where appropriate. Internal guidance will also be updated.

### **10. Impact**

- 10.1 There is no impact on business, charities or voluntary bodies.
- 10.2 There is no impact on the public sector, except the above-mentioned changes to HMRC guidance for operational staff.
- 10.3 An impact assessment has not been prepared for this instrument.
- 10.4 This instrument will ensure that individuals granted Section 67 leave have access to benefits that is equivalent to the minimum granted to those with a refugee status. In practice, this instrument will remove some of the restrictions that those individuals would have in accessing HMRC administered benefits and schemes, particularly around residence requirements and the backdating of claims.
- 10.5 This change will only apply to those individuals relocated under section 67 who do not qualify for international protection and will therefore impact on a very small number of children. Apart from this group there will be no impacts on any other group sharing protected characteristics.

### **11. Regulating small business**

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

### **12. Monitoring & review**

- 12.1 The changes made by this instrument are consequential changes. HMRC will keep the practical application of the changes under review.

### **13. Contact**

- 13.1 Andreas Heraclides at HMRC Telephone: 03000570165 or email: [Andreas.Heraclides@hmrc.gsi.gov.uk](mailto:Andreas.Heraclides@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.