

EXPLANATORY MEMORANDUM TO

THE CHILD BENEFIT AND CHILD TAX CREDIT (AMENDMENT) (EU EXIT) REGULATIONS 2019

2019 No. 867

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.

2. Purpose of the instrument

- 2.1 This instrument makes amendments to Child Benefit and Child Tax Credits regulations, to clarify that the existing rules on access to Child Benefit and Child Tax Credit remain in place for EEA (European Economic Area) and Swiss nationals and for Zambrano carers (non-United Kingdom, non-EEA citizen primary carers of a British citizen child, or adult dependant) who are granted limited leave to enter or remain under the EU Settlement Scheme (the EUSS). The EUSS is the new immigration scheme for EEA and Swiss nationals in the UK (United Kingdom) when the UK leaves the EU (European Union).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

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.

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 Under existing legislation, individuals who wish to claim Child Benefit or Child Tax Credit must be:
- present in the UK;
 - ordinarily resident in the UK; and

- have a right to reside in the UK.
- 6.2 EU, EEA and Swiss nationals and their family members have a right to reside in the UK if they are exercising EU Treaty rights such as being in the UK as a worker (or self-employed person), or as a family member of a person exercising Treaty rights.
 - 6.3 Zambrano carers are non-UK, non-EEA citizen primary carers of a British citizen child, or dependent adult, where the child or dependant would be forced to leave the EEA if the primary carer were required to leave the UK.
 - 6.4 Regulation 23 and 27 of the Child Benefit (General) Regulations 2006 (S.I. 2006/223), currently provide that an individual who does not have a right to reside, or who has a right to reside only as a Zambrano carer, is not treated as being within Great Britain or Northern Ireland for the purposes of claiming Child Benefit.
 - 6.5 Similar provisions at regulation 3 of the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654), mean that an individual who does not have a right to reside, or has a right to reside only as a Zambrano carer, is treated as not being in the United Kingdom for the purposes of claiming Child Tax Credit.
 - 6.6 Regulations 3 and 4 of this instrument amend regulations 23 and 27 of the Child Benefit (General) Regulations 2006. The amendments clarify that a person who has limited leave to enter or remain in the United Kingdom under the EUSS must also have a right to reside in the United Kingdom in order to qualify for Child Benefit. The amendments also clarify that a person who has limited leave to enter or remain under the EUSS (also referred to as pre-settled status) on the basis they have a right to reside as a Zambrano carer, continues to not qualify for Child Benefit.
 - 6.7 Regulation 6 amends the Tax Credits (Residence) Regulations 2003. The amendment clarifies that a person who has limited leave to enter or remain in the United Kingdom under the EUSS must also have a right to reside in the United Kingdom in order to qualify for Child Tax Credit. The amendment also clarifies that a person who has limited leave to enter or remain under the EUSS on the basis they have a right to reside as a Zambrano carer, continues to not qualify for Child Tax Credit.

7. Policy background

What is being done and why?

- 7.1 Child Benefit is a tax-free, non-means-tested benefit, administered by HMRC. It is paid to people who are responsible for, or treated as responsible for, children or qualifying young persons. There are two rates of payment:
 - higher rate payable for the eldest or only child or qualifying young person in the family unit,
 - basic rate payable for all other children or qualifying young persons in the family unit.
- 7.2 Child Benefit is payable to only one person for a particular child or qualifying young person in any one week. The child or qualifying young person must be present, or treated as being present in Great Britain or Northern Ireland, and the claimant both present and ordinarily resident in Great Britain or Northern Ireland.
- 7.3 Tax credits are a means-tested form of support which provide help to millions of families with a wide variety of differing circumstances. Child Tax Credit supports families with children. Working Tax Credit provides support for working people on a

low income. It tops up the earnings of workers on low to moderate incomes, targeting support to those in work at the lowest income levels.

7.4 The EUSS requires that EEA and Swiss nationals, resident in the UK before a specified date, apply to the Home Office in order to obtain a UK immigration status which protects their rights in the UK. Zambrano carers will also need to apply by the same date in order to confirm their immigration status and rights. Those with less than 5 years continuous residence in the UK will be granted limited leave to enter or remain. Those with 5 or more years continuous residence will be granted indefinite leave to enter or remain (also referred to as settled status). More information on the EUSS can be found on GOV.UK at: <https://www.gov.uk/government/collections/eu-settlement-scheme-applicant-information>

7.5 This instrument makes amendments to Child Benefit and Tax Credit regulations to clarify that the current rules on access to benefits for EEA nationals, Swiss nationals and Zambrano carers continue to apply whilst they hold limited leave to enter or remain that has been granted under the EUSS.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is not being made under the European Union (Withdrawal) Act 2018, but relates to the withdrawal of the United Kingdom from the European Union because it relates to the EU Settlement Scheme.

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 A consultation has not been carried out as these regulations clarify that the existing rules on access to benefits for EEA, Swiss nationals and Zambrano carers continue to apply to those holding limited leave to enter or remain under the EUSS.

10.2 HMRC has not consulted with the Social Security Advisory Committee, due to the short timescale for making these clarifying amendments. However the Committee has been notified of the intention not to consult due to urgency, and will be provided with an overview of the legislative changes.

11. Guidance

11.1 As these changes will maintain the current rules for access to benefits changes to online guidance, leaflets, forms and manuals will not be required. More information on Child Benefit can be found at: <https://www.gov.uk/child-benefit> and on Child Tax Credit at: <https://www.gov.uk/child-tax-credit>

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 these regulations maintain the current level of access to benefits.

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 clarifies that the current rules on access to benefits will continue to apply to those holding limited leave to enter or remain under the EUSS.

14.2 These Regulations do not include a statutory review clause as they have no regulatory effect on business activity.

15. Contact

15.1 Lynn Meikle at HM Revenue & Customs, Telephone: 03000 586644 or email: lynn.meikle@hmrc.gov.uk, can be contacted with any queries regarding the instrument.

15.2 Angela Walker, Deputy Director for Individuals Policy Directorate, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.

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