

EXPLANATORY MEMORANDUM TO

THE CHILD BENEFIT AND TAX CREDITS (MISCELLANEOUS AMENDMENTS) REGULATIONS 2023

2023 No. 1139

1. Introduction

- 1.1 This explanatory memorandum has been prepared by His Majesty's Revenue and Customs (HMRC) on behalf of His Majesty's Treasury, and is laid before Parliament by Command of His 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). These will ensure that United Kingdom (UK) nationals and individuals with an immigration status which does not prevent them from accessing Child Benefit are exempt from the requirement to have been living in the UK for at least three months before becoming entitled to Child Benefit.
- 2.2 The instrument also amends the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) to ensure that both one-off and annuity payments made under the Victims of Overseas Terrorism Compensation Scheme 2012 are to be disregarded in calculations of income when determining a person's tax credits award, reflecting intended HMRC policy.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument 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 Israel, the Occupied Palestinian Territories and Lebanon and the immediate need to be able to provide support to those arriving from this region. Delay in the legislation coming into force would delay access to Child Benefit for those who need it.
- 3.2 This instrument corrects an error contained within item 9 of Table 4 in regulation 10(2) of the Tax Credits (Definition and Calculation of Income) Regulations 2002 (S.I. 2002/2006) arising from an amendment made on 6 April 2006 by the Tax Credits (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/766). The entry in column 2 of item 9 erroneously cross-refers to periodical payments of personal injury damages exempted from tax liability under section 731 of the Income Tax (Trading and Other Income) Act 2005. The entry should refer to section 732 of that Act. This instrument will be issued free of charge to all known recipients of S.I. 2006/766. The department has complied with the requirement to consult with the Registrar.

4. Extent and Territorial Application

- 4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is the United Kingdom.
- 4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) 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 Entitlement to Child Benefit depends on a person meeting a series of conditions, including: the 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. 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 the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- 6.2 These Regulations remove the living in the UK test in regulations 23(5) and 27(4) of the Child Benefit (General) Regulations 2006, including the legislative exemptions to that test in regulation 23(6) and regulation 27(5).
- 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?

Removing the living in the UK test for Child Benefit

- 7.1 Individuals arriving in the UK with access to public funds, including from areas affected by conflict, would ordinarily need to satisfy the living in the UK test to be entitled to Child Benefit. This states a person must have been living in the UK for at least three months before qualifying for Child Benefit. This is an additional requirement to being physically present, ordinarily resident and having a right to reside in the UK.
- 7.2 To provide support to those individuals arriving from Israel, the Occupied Palestinian Territories and Lebanon, these regulations will remove the living in the UK test. This will mean that they are able to access Child Benefit immediately.
- 7.3 Prior to the current situation, the government was already preparing to simplify the Child Benefit application process by removing the living in the UK test. Following the decision at Spring Budget 2020 to align EEA migrants' access to non-contributory benefits with non-EEA nationals from January 2021, the living in the UK test has had limited practical effect. It primarily impacts British nationals who have spent time living overseas with their families and who have decided to return to the UK. To

avoid the need to legislate twice, whilst responding effectively to the current situation, this simplification has been brought forward and the living in the UK test for Child Benefit is being revoked in full.

- 7.4 The regulations will not provide access to Child Benefit to individuals who are restricted by the no recourse to public funds condition on their immigration status.

Disregarding payments under the Victims of Overseas Terrorism Compensation Scheme for the purpose of calculating tax credits awards

- 7.5 His Majesty's Government has declared some aspects of the violence from 7 October 2023 as incidents of terrorism, which means that victims can claim compensation through the Victims of Overseas Terrorism Compensation Scheme 2012.

- 7.6 The amendments to disregard both annuity and one-off payments made under the Victims of Overseas Terrorism Compensation Scheme 2012 as income when calculating tax credits awards ensure that tax credits claimants who receive payments under this scheme will not see any reduction in their tax credits award.

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 These 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 guidance for individuals and the staff technical manual.
- 11.2 The Child Benefit Technical Manual can be found here: www.gov.uk/hmrc-internal-manuals/child-benefit-technical-manual
- 11.3 The Tax Credits Technical Manual can be found here: www.gov.uk/hmrc-internal-manuals/tax-credits-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 full 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 The Treasury is committed to monitoring the impacts 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 impacts of all policies regarding 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 Andreas Heraclides, HMRC, email: andreas.heraclides@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 John Glen MP, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.