

**2019 No. 713**

**EXITING THE EUROPEAN UNION**

**TAX CREDITS**

**CHILD TRUST FUNDS**

**The Tax Credits and Child Trust Funds (Amendment) (EU Exit)  
Regulations 2019**

*Made* - - - - - *28th March 2019*

*Laid before Parliament* *29th March 2019*

*Coming into force in accordance with regulation 1(2)*

The Treasury make regulations 1, 4, 5, 8 and 9 in exercise of the powers conferred by sections 3(7), 13(2) and 65(1) and (7) of the Tax Credits Act 2002<sup>(a)</sup> and regulations 10 to 13 in exercise of the powers conferred by sections 3(1) and 3(5) and 28(1) to (3) of the Child Trust Funds Act 2004<sup>(b)</sup> and the Commissioners for Her Majesty's Revenue and Customs make regulations 1, 2, 3, 6 and 7 in exercise of the powers conferred by sections 4(1)(h), 24(7) and 65(2) and (7) of the Tax Credits Act 2002 now exercisable by them<sup>(c)</sup>.

**Citation and commencement**

**1.**—(1) These Regulations may be cited as the Tax Credits and Child Trust Funds (Amendment) (EU Exit) Regulations 2019.

(2) These Regulations come into force as follows—

- (a) regulation 1 comes into force on the earlier of the following—
  - (i) exit day<sup>(d)</sup>;
  - (ii) immediately after the coming into force of the Social Security (Ireland) Order 2019<sup>(e)</sup>;
- (b) regulations 2 to 9 come into force immediately after the coming into force of the Social Security (Ireland) Order 2019; and

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(a) 2002 c. 21. Section 67 defines “prescribed” as meaning “prescribed by regulations”.

(b) 2004 c. 6.

(c) By virtue of section 65(2), the powers in sections 4(1) and 24(7) were exercisable by the Board. The Board is defined in section 67 as the Commissioners of Inland Revenue however expressed. The functions of the Commissioners of Inland Revenue were transferred to the Commissioners for Her Majesty's Revenue and Customs by section 5(2) of the Commissioners for Revenue and Customs Act 2005 (c. 11). Section 50(1) of that Act provides that, insofar as is appropriate, in consequence of section 5, a reference to the Commissioners of Inland Revenue shall be taken as a reference to the Commissioners for Her Majesty's Revenue and Customs.

(d) “Exit day” is defined by Schedule 1 to the Interpretation Act 1978 (c. 30).

(e) S.I. 2019/622.

- (c) regulations 10 to 13 come into force on exit day.

### **Amendment of the Tax Credits (Claims and Notifications) Regulations 2002**

2. The Tax Credits (Claims and Notifications) Regulations 2002(a) are amended in accordance with regulation 3.

3. In regulation 2 (interpretation), in the definition of “relevant authority”(b)—

(a) in paragraph (b) after “Northern Ireland;” omit “or”; and

(b) in paragraph (c) after “in connection with tax credits;” insert—

“or,

(d) the Department of Employment Affairs and Social Protection in Ireland, in connection with a claim to a child tax credit made pursuant to Part IV Section 4 of the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1st February 2019(c).”.

### **Amendment of the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002**

4. The Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002(d) are amended in accordance with regulation 5.

5. After regulation 8 (determination of rate of child tax credit), insert—

#### **“Cases where there is a reciprocal agreement**

**8A.**—(1) This regulation applies where the United Kingdom is competent to pay family benefits in accordance with Article 39 of the Reciprocal Agreement with Ireland but where Ireland has primary competence for payment of those benefits.

(2) Where this regulation applies, child tax credit shall be paid at the rate according to the calculation set out in paragraph (4) of Article 39 of the Reciprocal Agreement with Ireland.

(3) Child tax credit shall be paid on a provisional basis where—

(a) Article 39(5) of the Reciprocal Agreement with Ireland applies;

(b) the United Kingdom is Party B in the circumstances set out under Article 40(1)(b) of the Reciprocal Agreement with Ireland; or

(c) the United Kingdom does not agree that it has primary competence for payment of family benefits where the child resides or the children reside in the United Kingdom and Article 63(2) of the Reciprocal Agreement with Ireland applies.

(4) In this regulation—

(a) “family benefits” has the meaning as set out in Article 3(1)(x) of the Reciprocal Agreement with Ireland; and

(b) “the Reciprocal Agreement with Ireland” means the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1st February 2019.”.

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(a) S.I. 2002/2014; relevant amending instruments are S.I. 2003/723 and 2019/364.

(b) The definition of “relevant authority” was inserted by regulation 3 of S.I. 2003/723 and amended by regulation 5 of S.I. 2019/364.

(c) Command Paper 49 of 2019. The Reciprocal Agreement available online: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/778087/CS\\_Ireland\\_1.2019\\_Soc\\_Sec.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/778087/CS_Ireland_1.2019_Soc_Sec.pdf). A hard copy of the Command Paper, which includes the full text of the Reciprocal Agreement, can be viewed by appointment at the Parliamentary Archives, Houses of Parliament, London SW1A 0PW. Appointments must be made at least 2 working days in advance.

(d) S.I. 2002/2008; there are amending instruments but none is relevant.

### **Amendment of the Tax Credits (Payments by the Commissioners) Regulations 2002**

6. The Tax Credits (Payments by the Commissioners) Regulations 2002(a) are amended in accordance with regulation 7.

7. In regulation 12 (amounts of payments), after paragraph (4)(b) insert—

“(5) Paragraph (6) applies where the United Kingdom is competent to pay family benefits in accordance with Article 39 of the Reciprocal Agreement with Ireland.

(6) Where Article 41(2) of the Reciprocal Agreement with Ireland applies, in the event that primary competence for payment of family benefits changes during a month, child tax credit will be paid for the remainder of that month.

(7) For the purposes of paragraph (6), primary competence is to be determined in accordance with Article 39 of the Reciprocal Agreement with Ireland.

(8) In paragraphs (5) to (7)—

- (a) “family benefits” has the meaning as set out in Article 3(1)(x) of the Reciprocal Agreement with Ireland; and
- (b) “the Reciprocal Agreement with Ireland” means the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1st February 1919.”.

### **Amendment of the Tax Credits (Residence) Regulations 2003**

8. The Tax Credits (Residence) Regulations 2003(c) are amended in accordance with regulation 9.

9. In regulation 3 (circumstances in which a person is treated as not being in the United Kingdom)—

(a) for paragraph (4)(d), substitute—

“(4) For the purposes of working tax credit a person (P) shall be treated as being ordinarily resident in the United Kingdom where—

- (a) P is exercising rights in the United Kingdom as a worker pursuant to Parliament and Council Regulation (EU) No 492/2011 or P is a person with a right to reside in the United Kingdom pursuant to the Immigration (European Economic Area) Regulations 2016; or
- (b) P satisfies the conditions in paragraph (4A).

(4A) The conditions are that—

- (a) P is a national of the United Kingdom or is a citizen of Ireland;
- (b) P resides in Ireland; and
- (c) P is engaged in qualifying remunerative work in the United Kingdom.

(4B) For the purposes of paragraph (4A), P is a national of the United Kingdom if—

- (a) P is a British citizen;
- (b) P is a person who is a British subject by virtue of Part IV of the British Nationality Act 1981(e) and is therefore exempt from United Kingdom immigration control; or
- (c) P is a British Dependent Territories citizen who acquires their citizenship from a connection with Gibraltar.

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(a) S.I. 2002/2173; relevant amending instruments are S.I. 2005/2200 and 2008/604. The title of the Regulations was amended by regulation 7 of S.I. 2005/2200.

(b) Paragraph (4) of regulation 12 was substituted by regulation 5 of S.I. 2008/604.

(c) S.I. 2003/654; relevant amending instruments are S.I. 2006/766, 2012/848 and 2019/364.

(d) Regulation 3(4) has been amended by regulation 4 of S.I. 2006/767, regulation 8 of S.I. 2012/848 and regulation 7 of S.I. 2019/364.

(e) 1981 c. 61.

- (4C) For the purposes of paragraph (4A)—
- (a) P is a citizen of Ireland if P is within the meaning of the Irish Nationality and Citizenship Act 1956<sup>(a)</sup>; and
  - (b) “qualifying remunerative work” has the same meaning as it has in regulation 4 of the Working Tax Credit (Entitlement and Maximum Rate) Regulations 2002<sup>(b)</sup>.”; and
- (b) after paragraph (7), insert—
- “(7A) A person (“P”) who is within Part IV Section 4 of the Reciprocal Agreement with Ireland will be treated as being ordinarily resident in the United Kingdom where P makes a claim for child tax credit if—
- (a) P resides in Ireland; and
  - (b) P is in a relevant situation.
- (7B) Both members of a couple (“A and B”) who are within Part IV Section 4 of the Reciprocal Agreement with Ireland will be treated as being ordinarily resident in the United Kingdom where they make a joint claim for child tax credit tax if—
- (a) either —
    - (i) A or B is resident in Ireland; or
    - (ii) both A and B are resident in Ireland; and
  - (b) either—
    - (i) A or B is in a relevant situation; or
    - (ii) both A and B are in a relevant situation and it does not matter if A and B are not in the same relevant situation.
- (7C) For the purposes of paragraphs (7A) and (7B), a person is in a “relevant situation” if that person is—
- (a) an employed person as defined in Article 1 of the Reciprocal Agreement with Ireland and subject to the legislation of the United Kingdom in accordance with Part II of that Agreement;
  - (b) a self-employed person as defined in Article 1 of the Reciprocal Agreement with Ireland and subject to the legislation of the United Kingdom in accordance with Part II of that Agreement;
  - (c) receiving a contributory benefit from the United Kingdom in accordance with Article 9(2) of the Reciprocal Agreement with Ireland;
  - (d) receiving a state pension from the United Kingdom within the meaning of Article 3(1)(a)(v) of the Reciprocal Agreement with Ireland; or
  - (e) receiving a survivor’s benefit from the United Kingdom within the meaning of Article 3(1)(a)(vi) of the Reciprocal Agreement with Ireland.
- (7D) For the purposes of paragraphs (7A) to (7C), “the Reciprocal Agreement with Ireland” means the Convention on Social Security between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ireland signed at Dublin on 1st February 2019.”.

#### **Amendment of the Child Trust Funds Regulations 2004**

**10.** The Child Trust Funds Regulations 2004<sup>(c)</sup> are amended in accordance with regulations 11 to 13.

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(a) 1956 c. 26 (Ir.).

(b) S.I. 2002/2005.

(c) S.I. 2004/1450; relevant amending instruments are S.I. 2004/2676, 2010/582, 2013/1744, 2014/649, 2015/1371 and 2017/185.

**11.** In regulation 2 (interpretation), in paragraph (1)—

- (a) omit the definitions of “EEA Agreement” and “EEA State”(a);
- (b) for the definition of “European institution”(b) substitute—
  - ““European institution” means—
  - (a) a person who is treated as having permission to carry on a regulated activity in the United Kingdom under Part 4A of the Financial Services and Markets Act 2000(c) by regulation 8, 11, 28 or 34 of the EEA Passport Rights (Amendment, etc., and Transitional Provisions) (EU Exit) Regulations 2018(d); or
  - (b) an EEA firm (within the meaning of Article 2(3G) of the Financial Services and Markets Act 2000 (Gibraltar) Order 2001(e) of the kind mentioned in paragraph 5(a) to (d), (f) and (h) of Schedule 3 to the Financial Services and Markets Act 2000(f) which is an authorised person for the purposes of that Act as a result of qualifying for authorisation under paragraph 12(1) to (4) and (7) of that Schedule.”
  - ; and
- (c) for the definition of “recognised UCITS”(g) substitute—
  - ““recognised UCITS” means—
  - (a) a UCITS within the meaning given by section 236A of the Financial Services and Markets Act 2000(h); or
  - (b) an undertaking established in Gibraltar which is a UCITS under the law of Gibraltar implementing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities(i).”.

**12.** In regulation 12 (qualifying investments for an account)—

- (a) in paragraphs (2)(a)(j) and (5)(d)(k) before “the European Economic area” insert “the United Kingdom, Gibraltar or”; and
- (b) in paragraph (2)(d) after “behalf of” insert “the government of the United Kingdom or”.

**13.** In the Schedule, in paragraph 2 (characteristics of stakeholder account etc.), in sub-paragraph (2)(a)(via)(l) and in the definition of “equities” in sub-paragraph (6)(m), before “the European Economic Area” insert “the United Kingdom, Gibraltar or”.

*Rebecca Harris*

*Mike Freer*

28th March 2019

Two of the Commissioners for Her Majesty’s Treasury

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- (a) The definitions of “EEA Agreement” and “EEA State” were substituted by regulation 3 of S.I. 2013/1744. “EEA Agreement” and “EEA State” are defined by Schedule 1 to the Interpretation Act 1978.
  - (b) The definition of “European institution” was amended by regulation 3 of S.I. 2014/649.
  - (c) 2000 c. 8. Part 4A was inserted by section 11(2) of the Financial Services Act 2012 (c. 21).
  - (d) S.I. 2018/1149, amended by S.I. 2019/405.
  - (e) S.I. 2001/3084; relevant amending instruments are S.I. 2005/1, 2006/1805, 2007/2932, 2007/3254, 2012/2017, 2013/3115, 2015/910, 2018/546 and 2019/589.
  - (f) 2000 c. 8. Paragraph 5 of Schedule 3 has been relevantly amended by S.I. 2003/1473, 2007/126, 2012/1906, 2013/3115 and 2013/1773.
  - (g) The definition of “recognised UCITS” was inserted by S.I. 2010/582.
  - (h) Section 236A was inserted by S.I. 2019/325.
  - (i) OJ L No. 302, 17.11.2009, p.32. Directive 2009/65/EC was amended by Directive 2014/91/EU, OJ L No. 257, 28.08.2014, p.1.
  - (j) The reference to the European Economic Area was inserted by S.I. 2013/1744.
  - (k) The reference to the European Economic Area was inserted by S.I. 2015/1371.
  - (l) Sub-paragraph (via) was inserted by regulation 15 of S.I. 2004/2676 and amended by regulation 10 of S.I. 2013/1744.
  - (m) Sub-paragraph (6) was amended by regulation 10 of S.I. 2013/1744 and regulation 8 of S.I. 2017/185.

28th March 2019

Two of the Commissioners for Her Majesty's Revenue and Customs

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Government of the United Kingdom and the Government of Ireland entered into a Convention on Social Security, which was signed at Dublin on 1st February 2019 (“the Reciprocal Agreement”). The Reciprocal Agreement was made in the context of the UK’s exit from the European Union. Amongst other matters, the Reciprocal Agreement makes provision in relation to family benefits, which in the United Kingdom means Child Benefit, Guardian’s Allowance and child tax credit. The provisions relating to child tax credit are implemented domestically in these Regulations. These Regulations also make amendments to working tax credit rules to treat nationals of the United Kingdom or Ireland who are living in Ireland and working in the UK as meeting the residence requirements for that benefit.

These Regulations also make minor amendments to the Child Trust Funds Regulations 2004 (S.I. 2004/1450) consequential on the United Kingdom leaving the European Union in order to ensure their continued effective operation (regulations 11 to 13).

Regulation 3 amends the Tax Credits (Claims and Notifications) Regulations 2002 (S.I. 2002/2014) to provide that, in relation to a claim for child tax credit made by a person within scope of the Reciprocal Agreement, and where the United Kingdom is competent to pay this benefit, if that claim has been submitted to the Department of Employment Affairs and Social Protection in Ireland it will nevertheless be accepted by Her Majesty’s Revenue and Customs.

Regulation 5 amends the Tax Credits (Income Thresholds and Determination of Rates) Regulations 2002 (S.I. 2002/2008) by inserting new regulation 8A. This new regulation provides that where the United Kingdom is competent to pay family benefits but not by priority, child tax credit will be paid at the rate in accordance with the calculation set out in Article 39(4) of the Reciprocal Agreement. New regulation 8A also provides that child tax credit will be paid on a provisional basis where any of Article 39(5), 40(1)(b) or 63(2) of the Reciprocal Agreement apply.

Regulation 7 amends regulation 12 of the Tax Credits (Payments by the Commissioners) Regulations 2002 (S.I. 2002/2173) by inserting new paragraphs (5) to (8). Regulation 12(6) provides that where the United Kingdom ceases to be competent to pay family benefits by priority during a calendar month, Her Majesty’s Commissioners for Revenue and Customs will continue to make the payment for the remainder of that calendar month. New paragraph (8) contains definitions.

Regulation 9 makes two amendments to regulation 3 of the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654). First, it substitutes paragraph (4) and inserts new paragraphs (4A) to (4C) which set out the circumstances in which a person shall be treated as being ordinarily resident in the United Kingdom for the purposes of working tax credit, which includes a person in a cross-border situation involving Ireland. Secondly, it inserts new paragraphs (7A) to (7D) which make provision in relation to persons within scope of the Reciprocal Agreement, in a cross-border situation involving Ireland, for the purposes of claiming child tax credit.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.

A Tax Information and Impact Note has not been produced for this instrument as it contains no substantive changes to tax policy.

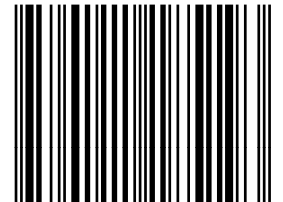


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