

EXPLANATORY MEMORANDUM TO
THE CHILD BENEFIT AND CHILD TAX CREDIT (PERSONS OF NORTHERN
IRELAND) (AMENDMENT) REGULATIONS 2020

2020 No. 672

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 changes to Child Benefit and tax credits regulations to reflect the government's commitment to the 2020 'New Decade, New Approach' agreement. One of the commitments was to ensure that eligible family members of the people of Northern Ireland will be able to apply for UK immigration status on broadly the same terms as the family members of Irish citizens in the UK. As a consequence, this instrument ensures that family members of the people of Northern Ireland will also have same access to benefits as family members of Irish citizens.

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 This instrument makes changes to the Tax Credits (Residence) Regulations 2003 (S.I. 2003/654) and the Child Benefit (General) Regulations 2006 (S.I. 2006/223).
6.2 Under existing legislation, individuals who wish to claim Child Benefit or Child Tax Credit must be:
- present in the United Kingdom (UK),

- ordinarily resident in the UK, and
 - have a right to reside in the UK
- 6.3 A European Economic Area (EEA) national, as well as their family members who may, or may not, be EEA nationals, have a right to reside in the UK under European Union (EU) law if the EEA national is exercising an EU Treaty right, such as being in the UK as a worker or a self-employed person.
- 6.4 An EEA national, as well as their family members who may, or may not, be EEA nationals, cannot rely on EU law to have a right to reside in the UK if the EEA national has not exercised an EU Treaty right. These individuals would need to rely on the Home Office Immigration Rules to provide them with immigration status.
- 6.5 The Home Office Immigration Rules are being amended by a statement of changes laid before Parliament on 14 May 2020. From 24 August 2020, family members of the people of Northern Ireland will be able to apply for immigration status through the EU Settlement Scheme (EUSS) under the Home Office Immigration Rules. This will give them either limited leave to enter or remain (LLE/R) or indefinite leave to enter or remain (ILE/R), neither of which precludes recourse to public funds.
- 6.6 Regulations 23 and 27 of the Child Benefit (General) Regulations 2006, currently provide that an individual who has LLE/R under the EUSS but who does not have a right to reside under EU law, is not treated as being in Great Britain or Northern Ireland for the purposes of claiming Child Benefit.
- 6.7 Regulation 3 of the Tax Credits (Residence) Regulations 2003 currently provides that an individual who has LLE/R under the EUSS but who does not have a right to reside under EU law, is not treated as being in the UK for the purposes of claiming Child Tax Credit.
- 6.8 Regulation 2 of this instrument amends regulations 23 and 27 of the Child Benefit (General) Regulations 2006. The amendments ensure that family members of a person of Northern Ireland who have LLE/R are not excluded from claiming Child Benefit, as long as the person of Northern Ireland whom they are a family member of, if they were treated as being an EEA national having exercised a Treaty right, would have a qualifying right to reside under the Immigration (European Economic Area) Regulations 2016 (S.I. 2016/1052).
- 6.9 Regulation 3 of this instrument amends the Tax Credits (Residence) Regulations 2003. The amendments ensure that family members of a person of Northern Ireland who have LLE/R are not excluded from claiming Child Tax Credit, as long as the person of Northern Ireland whom they are family member of, if they were treated as being an EEA national, would have a qualifying right to reside under the Immigration (European Economic Area) Regulations 2016.

7. Policy background

What is being done and why?

- 7.1 The 1998 Belfast (Good Friday) Agreement recognises the people of Northern Ireland's right to hold both British and Irish citizenship, and to identify as Irish or British or both.
- 7.2 The people of Northern Ireland are all persons born in Northern Ireland and having, at the time of their birth, at least one parent who is a British citizen, an Irish citizen or

otherwise entitled to reside in Northern Ireland without any restriction on their period of residence.

- 7.3 Irish citizens who have exercised a Treaty right are currently able to bring family members to the UK under EU law provisions, while the people of Northern Ireland who are British or dual British-Irish citizens and have not exercised a Treaty right are subject to the UK's domestic Immigration Rules.
- 7.4 The 'New Decade, New Approach' agreement to re-establish power sharing in Northern Ireland included a commitment to change the rules governing how the people of Northern Ireland can bring their family members to the UK, ensuring that the people of Northern Ireland can will be able to apply for UK immigration status on broadly the same terms as the family members of Irish citizens in the UK. The rule changes will apply to eligible family members of all people of Northern Ireland, regardless of how they identify, whether they hold British, Irish or dual British-Irish citizenship and whether they live in Northern Ireland or elsewhere within the UK.
- 7.5 This commitment will be implemented through a change to Appendix EU to the Home Office Immigration Rules, which was introduced by the Home Office to implement the system provided for in Article 18 of the Withdrawal Agreement. The changes to the Rules were laid before Parliament on 14 May 2020 and come into force on 24 August 2020. Once this change comes into force, family members of the people of Northern Ireland will be able to apply for leave under the EUSS on broadly the same terms as family members of EEA nationals.
- 7.6 Access to Child Benefit and Child Tax Credit depends on whether the claimant (or in the case of Child Tax Credit, claimants) must be treated as being in the United Kingdom. For the purposes of Child Benefit and Child Tax Credit, this requires them to have a right to reside in the United Kingdom. This includes leave to enter or remain under the Immigration Rules or residence rights under EU law, which have been implemented in the UK through the Immigration (European Economic Area) Regulations 2016.
- 7.7 EEA nationals not exercising a qualifying right to reside but who are family members of EEA nationals, as well as non-EEA nationals (nationals of countries outside of the EEA) who are family members of the EEA national, are able to derive a right from their EEA national family member that enables them to access Child Benefit and Child Tax Credit, if the EEA national they are family member of is exercising a qualifying right to reside.
- 7.8 This instrument amends the Child Benefit (General) Regulations 2006 and the Tax Credits (Residence) Regulations 2003 so that a family member of a person of Northern Ireland is able claim Child Benefit or Child Tax Credit, provided that, if the person of Northern Ireland were treated as an EEA national, the family member would have a qualifying right to reside under the Immigration (European Economic Area) Regulations 2016.
- 7.9 Since 31 March 2019, EEA nationals and their family members can apply for a domestic form of immigration status in the UK under the EUSS. The scheme is designed to protect the rights of EEA nationals and their family members already resident in the UK before the end of the transition period, and qualifying family members joining an EEA national in the UK after that date, relating to the UK's exit from the EU.

- 7.10 EEA nationals and their family members (non-EEA national or EEA national) are granted settled status if they have been resident in the UK for five years or more. This means that those persons who have ILE/R have, for the purposes of Child Benefit and Child Tax Credit legislation, a right to reside in the UK and are able to access all benefits on the same basis as UK nationals in their own right.
- 7.11 EEA nationals and their family members (non-EEA national or EEA national) are generally granted pre-settled status if they have been resident in the UK for less than five years. The EEA national and their family members with LLE/R under the EUSS can only access Child Benefit and Child Tax Credit if the EEA national is exercising a qualifying right to reside in accordance with the Immigration (European Economic Area) Regulations 2016.
- 7.12 Family members of the people of Northern Ireland will be able to apply for status under the EUSS from 24 August 2020. The policy intention is that family members of the people of Northern Ireland will be able to access benefits on broadly the same terms as family members of Irish and other EEA nationals if they apply for and are granted leave under the EUSS. The proposed regulations amend the Child Benefit and tax credits regulations to give effect to the access to benefits element of this policy intention so that those:
- granted LLE/R will be entitled to access Child Benefit and Child Tax Credit only if the person of Northern Ireland on whom they rely would be deemed as exercising a qualifying right to reside in accordance with the Immigration (European Economic Area) Regulations 2016, if the person of Northern Ireland were an EEA national; and
 - granted ILE/R will, as now, be entitled to access Child Benefit and Child Tax Credit on the same basis as UK nationals
- 7.13 The proposed amendments made by the regulations therefore ensure that an eligible family member of a person of Northern Ireland can access Child Benefit and Child Tax Credit broadly on the same basis as a family member of an Irish national or other EEA national. No changes are being made to the status of a person of Northern Ireland and they will continue to access benefits as they do currently in their own right.

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

- 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 these Regulations.

10. Consultation outcome

- 10.1 The Social Security Advisory Committee (SSAC) is an independent statutory body that provides impartial advice on social security and related matters. The committee has considered these regulatory changes under its Memorandum of Understanding with the Treasury and HMRC and was content.

11. Guidance

- 11.1 Guidance for staff and standard operating procedures will be updated and in place before this instrument comes into force. Information relating to these changes to legislation will be incorporated into leaflets, forms and manuals where appropriate on an ongoing basis.
- 11.2 Guidance is provided for tax credits and Child Benefit claimants online through the gov.uk website and through the tax credits and Child Benefit helplines.

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 no, or no significant, impact on the private or voluntary sectors is foreseen.

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 the changes made by this instrument are consequential changes. HMRC will keep the practical application of the changes under review.
- 14.2 The regulation does not include a statutory review clause as this regulation does not make regulatory provision in respect of a business.

15. Contact

- 15.1 Saddique Saleem at HM Revenue & Customs, Telephone: 03000 543590 or email: saddique.saleem@hmrc.gov.uk, can be contacted with any queries regarding the instrument.
- 15.2 James Knipe, Deputy Director, Individuals Policy Directorate, at HM Revenue & Customs can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Steve Barclay MP, the Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.