

**EXPLANATORY MEMORANDUM TO**  
**THE CHILD BENEFIT (GENERAL) (AMENDMENT) REGULATIONS 2021**  
**2021 No. 1039**

**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.
- 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 amendments will ensure that those persons who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021 are exempt from the requirement to have been living in the UK for at least three months before becoming entitled to Child Benefit.

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

*Matters of special interest to the Joint Committee on Statutory Instrument*

- 3.1 This instrument is being made under emergency procedures and 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 Afghanistan and the immediate need to provide support to those arriving from Afghanistan. Delay in the legislation coming into force will cause potential delays in access to benefits.

**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 To be entitled to Child Benefit, a 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. The 'living in the UK test' was introduced in 2014 in order to deter potential abuses of the welfare system by economic migrants. 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 Regulation 23(6) and regulation 27(5) of the Child Benefit (General) Regulations 2006 set out a list of exceptions to the requirement to meet the living in the UK test. This regulation will provide two further exceptions for persons who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021. The two groups are those whose immigration status does not preclude them from accessing Child Benefit, and those who have been given leave to enter or remain under the Home Office Afghan resettlement schemes.

## **7. Policy background**

### *What is being done and why?*

- 7.1 The government has established three schemes to relocate and resettle those living in Afghanistan to the UK:
- (a) the Afghan Relocations and Assistance Policy (ARAP). This scheme was set up to assist Afghan citizens who worked with the British armed forces, and their family members.
  - (b) the Afghan Citizens Resettlement Scheme (ACRS). This scheme was set up for those considered particularly vulnerable. The government has announced that the scheme will resettle 20,000 individuals over 5 years, with a focus on women, girls and minority groups.
  - (c) the Afghan Locally Employed Staff ex-gratia scheme. This scheme was announced in December 2012 and was set up to support locally employed staff who have worked for the British forces. This scheme is set to close in November 2022.
- 7.2 The Home Office has announced that those arriving in the UK under the schemes will be granted indefinite leave to remain under the immigration rules, except for initial arrivals under the ACRS who have been granted 6 months leave outside the immigration rules. Granting indefinite leave to remain provides certainty and stability to those resettling in the UK. It provides the right to work and recourse to public funds, including HMRC benefits. Those granted indefinite leave to remain need to meet the Child Benefit living in the UK test, before they can access Child Benefit. This test also applies to UK nationals who have recently returned to the UK following a period of absence.
- 7.3 To ensure those arriving from Afghanistan, including UK nationals, can access the full support available to them from day one, and based on similar provisions made in response to the crisis in Lebanon (2006), these regulations will exempt those arriving from Afghanistan in connection with the collapse of the Afghan government from the Child Benefit living in the UK test. This will mean that they are able to access Child Benefit immediately.

### *Explanations*

#### What did any law do before the changes to be made by this instrument?

- 7.4 Individuals must meet the living in the UK test before they can claim Child Benefit. This means that individuals must be resident in the UK for three months before they are able to claim unless there is a specific exemption in place (for example for those with refugee status). Prior to the law change in this instrument, those who are now being exempted would have been required to reside in the UK for three months

before claiming Child Benefit where they have been granted indefinite leave to remain by the Home Office as they would not qualify under an existing exemption.

Why is it being changed?

- 7.5 The changes are being made to align with the policy intention of the Home Office resettlement schemes, and to ensure those arriving in the UK from Afghanistan, in connection with the collapse of the Afghan government, can access Child Benefit immediately.

What will it now do?

- 7.6 This instrument will exempt persons who have come to the UK from Afghanistan under the Home Office resettlement schemes, and those who are not covered by one of the listed schemes but who left Afghanistan in connection with the collapse of the Afghan government that took place on 15 August 2021, from the living in the UK test. This will mean they can access Child Benefit immediately.

**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 An informal consultation has been carried out with the Social Security Advisory Committee who are aware that the urgency provisions have been used. The 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 the guidance for [individuals](#) and staff [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 policy impacts of all 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 Husniye Ilhan, HMRC, email: [husniye.ilhan@hmrc.gov.uk](mailto:husniye.ilhan@hmrc.gov.uk) can be contacted with any queries relating to this instrument.
- 15.2 James Knipe, Deputy Director for International Social Security Policy, at HMRC, can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 The Rt Hon Steve Barclay MP, Chief Secretary to the Treasury, at HM Treasury, can confirm that this Explanatory Memorandum meets the required standard.