EXPLANATORY MEMORANDUM TO

THE CHILD BENEFIT AND GUARDIAN'S ALLOWANCE (MISCELLANEOUS AMENDMENTS) REGULATIONS 2025

2025 No. 207

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.

2. Declaration

2.1 Rt Hon Darren Jones MP, Chief Secretary to the Treasury confirms that this Explanatory Memorandum meets the required standard.

2.2 James Knipe, Deputy Director for Welfare Policy at HMRC confirm that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Tunde Adelakun, Senior Policy Advisor for Welfare Policy at HMRC Telephone: 03000 501 657 or email: tunde.adelakun@hmrc.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument makes changes to the Child Benefit (General) Regulations 2006 (S.I 2006/223) to replace an expired reference to PEACE IV Children and Young People 2.1 with the reference PEACEPLUS Youth Programme 3.2, in relation to approved training for qualifying young people in Northern Ireland.

4.2 The instrument amends the definition of approved training under regulation 1(3) of the Child Benefit (General) Regulations 2006 (S.I. 2006/223) and amends regulation 37 to remove the requirement that parents under the age of 16 years provide a National Insurance Number when making a claim for Child Benefit.

4.3 The instrument amends regulation 6 in the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 (S.I. 2003/492) to remove the extended backdating of Child Benefit and Guardian's Allowance for refugees and individuals with section 67 leave.

4.4 The instrument removes regulation 5 and 6 from the Guardian's Allowance (General) Regulations 2003 (S.I 2003/495) to remove the modifications to section 77(2) of the Social Security Contributions and Benefits Act 1992 in respect of illegitimate children and children of divorced parents and provides transitional protection to existing awards. This will ensure outdated language is removed and guardians of children from married and unmarried parents are treated equally.

Where does the legislation extend to, and apply?

4.5 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is UK wide apart from any references to PEACEPLUS Youth Programme 3.2 which apply to Northern Ireland only.

4.6 The territorial application of this instrument (that is, where the instrument produces a practical effect) is UK wide apart from any references to PEACEPLUS Youth Programme 3.2 which apply to Northern Ireland only.

5. Policy Context

What is being done and why?

5.1 The name of the approved training has changed from PEACE IV Children and Young People 2.1 to PEACEPLUS Youth Programme 3.2. This instrument will ensure that claimants will continue to receive the correct level of Child Benefit where the child claimed for undertakes this particular training course.

5.2 In response to stakeholder feedback, the instrument will remove the requirement for young parents to have a National Insurance number to claim Child Benefit for their biological child. This means they can receive the eldest child rate rather than requiring their parent (i.e. the grandparent of the baby) to claim on their behalf at the lower second or subsequent child rate. Currently, young parents under the age of sixteen are prevented from claiming Child Benefit due to the legislative requirement of having a National Insurance number, which are not issued until a child turns 15 years and 9 months or shortly thereafter.

5.3 The instrument amends the provisions that allow refugees and individuals with section 67 leave to claim backdated Child Benefit and Guardian's Allowance beyond three months and standardises the backdating rules to a maximum period of three months so that they apply equally to all Child Benefit and Guardian's Allowance claimants, irrespective of their immigration status. This is being done to better align Child Benefit and Guardian's Allowance with wider government policy on access to public funds. Making retrospective lump-sum payments of Child Benefit and Guardian's Allowance under the current rules duplicates the support package already provided under the Immigration and Asylum Act 1999 to asylum seekers and their dependants who would otherwise be destitute. The change is also being done to simplify the administration of those benefits. Currently, HMRC is required by legislation and case law to backdate payments to the date a person attains the status of refugee under the Convention and Protocol Relating to the Status of Refugees 1951 ("Refugee Convention"). This is unworkable in practice as it is not always possible to determine this date from the information HMRC holds. The resulting administrative complexity causes a disproportionate number of tribunal appeals. Following the backdating change refugees can begin to access Child Benefit and Guardian's Allowance from the date an individual is recorded as a refugee by the Home Office. The change will not impact anyone who is granted refugee status before the regulations take effect on 7 April 2025 and will ensure that refugees can continue to access the Child Benefit that they are entitled to under Article 23 and Article 24 of the Refugee Convention.

5.4 The instrument repeals regulation 6 of the Guardian's Allowance (General) Regulations 2003. This preserves the nature of Guardian's Allowance as an orphan's benefit whilst removing differential treatment where the parents of a child being claimed for were married or unmarried. Regulation 6 of the Guardian's Allowance (General) Regulations 2003 provides that if the child's parents were divorced (or their civil partnership dissolved) when one parent died, and the surviving parent did not

have custody (an outdated reference – the current term is residence) of the child and was not paying maintenance, then Guardian's Allowance can be awarded to a guardian who takes the child into their care. However, where the child's parents had never married, and the surviving parent's whereabouts are known, whether that parent maintains the child or not, the guardian could not claim Guardian's Allowance. Only guardians of children born to parents who were married, or civil partners, can engage the regulation, giving rise to a difference in treatment. In such circumstances, maintenance from the surviving parent is more appropriate than support from Guardian's Allowance as the child is not an orphan. This is consistent with the wider principle that parents should maintain their children.

5.5 The instrument repeals regulation 5 of the Guardian's Allowance (General) Regulations 2003. Currently, regulation 5 provides that where a child's parents were not married to, or civil partners of, each other and paternity has not been established (the wording of the regulation describes such children as illegitimate), a claimant can be entitled to Guardian's Allowance where only the mother of the child is dead. There is no such provision for where the parents were married but the husband was proved not to be the father of the child. While this wording suggests a difference in treatment, in practice that isn't the case as any guardian in these circumstances would be entitled under the provisions in the primary legislation for "whereabouts unknown" – as you cannot know the whereabouts of a person if you do not know who they are. The substantive issue with regulation 5 is that it is redundant, and it uses language (illegitimate) that some people may find offensive. Removing the regulation has the effect of no longer using the prescribing power in the primary legislation that uses the term illegitimate. There would be no effect on those currently entitled to Guardian's Allowance or how much support they receive. Secondary legislation cannot be used to remove the reference from the primary legislation but repealing regulation 5 will remove the term from the secondary legislation, thereby making redundant the powers referenced in the primary legislation.

What was the previous policy, how is this different?

5.6 Currently under Child Benefit regulations the PEACE IV Children and Young People 2.1 Programme is listed as approved training. This programme has now been replaced by the PEACEPLUS Youth Programme 3.2 with the new name reflecting the new source of funding. There has been no change in policy but changing the regulation ensures ongoing entitlement for claimants.

5.7 Currently Child Benefit requires a claimant to have a National Insurance Number. Where parents under 16 do not have a National Insurance Number, HMRC advise that their parents (the grandparents of the child the benefit is intended for) claim instead. The issue is that the parent under 16 could potentially miss out on Child Benefit due to the grandparent already claiming the eldest child rate so would only receive the additional child rate for the child of the parent under 16. Also, in the event the grandparent has already reached the household benefit cap, they may not receive some or all of the Child Benefit. In addition, if the grandparent or their partner is a high earner, they may be liable to the High-Income Child Benefit Charge. There has been no change in policy but this change in the regulation ensures parents, regardless of their age, who are responsible for their biological child can claim Child Benefit at the eldest rate (where applicable).

5.8 The Child Benefit and Guardian's Allowance (Administration) Regulations 2003 currently provide that a claim for Child Benefit or Guardian's Allowance cannot generally be backdated by more than 3 months, irrespective of whether the claimant

could have met the entitlement conditions from an earlier date. These regulations remove an exception for people granted refugee status and individuals granted section 67 leave which currently allows for extended back-dating to the date they made their claim for asylum. It will take effect for individuals recorded as a refugee from 7 April 2025.

5.9 Amending regulations 3 and 4 and removing regulations 5 and 6 of the Guardian's Allowance (General) Regulations 2003 removes the differential treatment of guardians depending on the marital status of the parents of the child they care for and ensures that guardians of children whose parents have died, or one has died and the whereabouts of the other parent is unknown, can continue to be entitled to Guardian's Allowance whilst removing outdated terminology.

6. Legislative and Legal Context

How has the law changed?

6.1 Regulation 1(3)(citation, commencement and definition) of the Child Benefit (General) Regulations 2006 sets out the definition of approved training for the purposes of Child Benefit entitlement.

6.2 This instrument makes an amendment to regulation 1(3) of the Child Benefit (General) Regulations 2006 substituting "PEACEPLUS Youth Programme 3.2" for "Peace IV Children and Young People 2.1".

6.3 Regulation 37 of the Child Benefit (General) Regulations 2006 sets out the requirement to have National Insurance Number or be able to provide information to obtain a National Insurance Number for the purposes of claiming Child Benefit.

6.4 This instrument makes an amendment to regulation 37 of the Child Benefit (General) Regulations 2006 so that the requirement to state a National Insurance Number for the purposes of claiming Child Benefit shall not apply where the claimant has not yet attained the age of 16 years and is also the biological parent of the child who is the subject of the claim.

6.5 Regulation 6 of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 sets out the time within which claims to Child Benefit and Guardian's Allowance must be made.

6.6 This instrument makes an amendment to Regulation 6(2) of the Child Benefit and Guardian's Allowance (Administration) Regulations 2003 to remove the provision that allows refugees and individuals with section 67 leave to claim backdated Child Benefit and Guardian's Allowance beyond three months for individuals who are recorded as refugees or receive section 67 leave after 6 April 2025.

6.7 Regulations 3,5 and 6 of the Guardian's Allowance (General) Regulations 2003 set out who can be entitled to Guardian's Allowance.

6.8 This instrument removes regulations 5 and 6 and makes an amendment to regulation 3 and 9 to take into account the removal of regulations 5 and 6.

Why was this approach taken to change the law?

6.9 This is the only possible approach to make the necessary changes.

7. Consultation

Summary of consultation outcome and methodology

7.1 On 22 January, the Social Security Advisory Committee (SSAC) was consulted on this instrument. SSAC is an independent statutory body sponsored by the Department for Work and Pensions that provides impartial advice on social security and related matters. Under a memorandum of understanding with HMRC, it scrutinises secondary legislation that underpins the Child Benefit and Guardian's Allowance schemes. The minutes of the 22 January meeting have been published on the gov.uk website.[1] SSAC focused their feedback on the measure to standardise the backdating rules for Child Benefit and Guardian's Allowance. A subsequent written exchange of views is included in the published minutes under Annex B. There were no changes made as a result of this consultation.

7.2 HMRC presented the regulations at the Individuals Stakeholder Forum meeting on 12 February and wrote to the additional stakeholder groups listed in Annex B of the SSAC minutes on 14 February. HMRC has not received feedback from these groups.

8. Applicable Guidance

8.1 Guidance for Guardian's Allowance is available through the Guardian's Allowance helpline 0345 200 3100 and via the gov.uk website.[2]

8.2 Guidance for Child Benefit is available through the Child Benefit helpline 0300 200 3100 and via the gov.uk website.[3]

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because no significant impact is foreseen.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities or voluntary bodies because the legislation will only affect individuals.

9.3 The legislation does not impact small or micro businesses.

9.4 There is no, or no significant, impact on the public sector.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 HMRC will monitor the impact of these changes as part of its wider routine monitoring of the Child Benefit and Guardian's Allowance schemes.

10.2 The instrument does not include a statutory review clause as it does not make regulatory provision in respect of a business.

[1] SSAC Minutes of the meeting held on 22 January 2025: https://assets.publishing.service.gov.uk/media/67b5fc779ae06ef4a71cf2de/ssac-minutes-of-the-meeting-held-on-22-january-2025.pdf

[2] Guidance for Guardian's Allowance: https://www.gov.uk/guardians-allowance

[3] Guidance for Child Benefit: https://www.gov.uk/government/collections/child-benefit-detailed-information

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").