EXPLANATORY MEMORANDUM TO

THE CHILDCARE PAYMENTS (MISCELLANEOUS AMENDMENT) REGULATIONS 2021

2021 No. 781

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 Tax-Free Childcare (TFC) regulations to reflect the effect of the withdrawal of the United Kingdom (UK) from the European Union (EU) on TFC. The changes are largely consequential changes to definitions. But changes are also made to who is considered to be in the UK. These cover persons who are nationals of an European Economic Area (EEA) state or Switzerland but are nonetheless subject to immigration control in the UK. They also include provision to stop persons awaiting decisions from Home Office on settled status in the UK from losing out financially.

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 Childcare Payments Regulations 2015 (SI 2015/522) and the Childcare Payments (Eligibility) Regulations 2015 (SI 2015/448). Changes to both regulations amend references to 'another EEA state' to reflect the fact that the UK is no longer an EEA state. Changes to the latter regulations provide that persons that are nationals of an EEA state or Switzerland but are subject to

immigration control are not considered to be in the UK. Changes to the former regulations provide for compensatory payments to persons that need settled status from Home Office so as not to be subject to immigration control and are awaiting a decision, once they have the required status.

6.2 Changes to the Childcare Payments Regulations 2015 include corrections advised by the Joint Committee for Statutory Instruments arising from changes made by the Tax Credits, Childcare Payments and Childcare (Extended Entitlement) (Coronavirus and Miscellaneous Amendments) Regulations 2020 (SI 2020/1515). As a result this instrument will be issued free of charge to any known recipient of a hard copy of the earlier instrument.

7. Policy background

What is being done and why?

7.1 It is not necessary to amend TFC regulations to stop newly arrived persons from the EEA who have not been given recourse to public funds from being eligible for the scheme as changes to section 115(9) of the Immigration and Asylum Act 1999 have already produced this effect. But TFC regulations refer at many points to 'another EEA state' and that is not accurate now that the UK is not an EEA state. This instrument corrects all such references.

7.2 TFC is a scheme that produces responses to applicants in real time by looking up government data (for instance being in the European Union settlement scheme) by referencing other government departments. Because of this its design has always been to not give eligibility until necessary statuses are confirmed. For example, persons can be counted as in qualifying paid work when they are carers but only if they are paid carers' allowance. These changes do the same in relation to persons that need settled status so as not to be subject to immigration control.

7.3 So that scheme users do not lose out when it takes time to confirm a status there is provision for compensatory payments putting them in the position they would have been in if the status had always been in place to be made after it is confirmed. This instrument extends those provisions to persons awaiting settled status.

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

8.1 This instrument does not trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 There are no plans for consolidating regulations at present.

10. Consultation outcome

10.1 HMRC has not formally consulted before introducing the amendment regulations. However, the Social Security Advisory Committee, which is an independent statutory body that provides impartial advice on social security and related matters, has considered these regulatory changes under its Memorandum of Understanding with Her Majesty's Treasury and HMRC.

11. Guidance

11.1 HMRC has worked with the Government Digital Service to update the online childcare service guidance for parents to reflect the changes to the online process and the eligibility. Guidance on getting TFC is at https://www.gov.uk/get-tax-free-childcare.

11.2 This has been supplemented with additional material embedded in the online screens applicants use in the process. HMRC has updated its operational processes to handle the changes and the transition. HMRC has trained its call centre staff so they can advise parents and have trained their operational staff in the implementation of this amendment to the eligibility criteria.

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 Both the number of individuals that need to apply for compensation and the amount of that compensation will be low.

12.4 A full Impact Assessment of the effect that the childcare payments scheme will have on the costs of business and the voluntary sector was published on 18 November 2014 alongside the Childcare Payments Act 2014 and is available from the gov.uk website at https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/377091/Tax-free_childcare_Impact_Assessment.pdf. An updated Impact Assessment was made on 30 March 2017 and is available at http://www.legislation.gov.uk/ukpga/2014/28/resources.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 HMRC will monitor customer contacts and experiences to ensure the service to customers continues to be good and that guidance is clear.

14.2 The regulation does not include a statutory review clause. This is because this instrument does not regulate business.

15. Contact

15.1 Phil Mattacks at HMRC Telephone: 03000585501 or email: phil.mattacks@hmrc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Gareth Jones, Deputy Director for Tax-Free Childcare, at HMRC can confirm that this Explanatory Memorandum meets the required standard.

15.3 Steve Barclay, Chief Secretary to the Treasury, can confirm that this Explanatory Memorandum meets the required standard.